



Colchester
City Council

Planning Committee Meeting

**Grand Jury Room, Town Hall, High Street,
Colchester, CO1 1PJ
Thursday, 27 July 2023 at 18:00**

The Planning 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. Usually, only one person for and one person against each application is permitted.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published.

Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

Have Your Say!

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COLCHESTER CITY COUNCIL
Planning Committee
Thursday, 27 July 2023 at 18:00

The Planning Committee Members are:

Cllr Lilley	Chair
Cllr Barton	Deputy Chair
Cllr Davidson	
Cllr Hogg	
Cllr Mannion	
Cllr MacLean	
Cllr McCarthy	
Cllr McLean	
Cllr Tate	
Cllr Warnes	

The Planning Committee Substitute Members are:

All members of the Council who are not members of this committee and who have undertaken the required planning skills workshop training:-

Councillors:

Cllr Arnold	Cllr Bickersteth	Cllr Bloomfield	Cllr Burrows
Cllr Buston	Cllr Cory	Cllr Dundas	Cllr Ellis
Cllr Goacher	Cllr Hagon	Cllr Harris	Cllr Kirkby-Taylor
Cllr Law	Cllr Laws	Cllr Lissimore	Cllr Luxford-Vaughar
Cllr Naylor	Cllr Nissen	Cllr Pearson	Cllr Powling
Cllr Rippingale	Cllr Rowe	Cllr Scordis	Cllr Scott-Boutell
Cllr Smalls	Cllr Smith	Cllr Sommers	Cllr Sunnucks
Cllr Willetts	Cllr J. Young	Cllr T. Young	

AGENDA

THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING

(Part A - open to the public)

Please note that Agenda items 1 to 2 are normally dealt with briefly.

An Amendment Sheet is published on the Council's website by 4:30pm on the day before the meeting and is available to view at the bottom of the relevant Planning Committee webpage. Please note that any further information for the Committee to consider must be received no later than 5pm two days 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.

Live Broadcast

Please follow this link to watch the meeting live on YouTube:

[\(107\) ColchesterCBC - YouTube](#)

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will introduce themselves.

2 Substitutions

Councillors will be asked to say if they are attending on behalf of a Committee member who is absent.

3 Declarations of Interest

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other registerable interest or non-registerable interest.

4 Urgent Items

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

5 Have Your Say(Hybrid Planning Meetings)

At meetings of the Planning Committee, members of the public may make representations to the Committee members. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Council via Zoom. These Have Your

Say! arrangements will allow for one person to make representations in opposition and one person to make representations in support of each planning application. Each representation may be no longer than three minutes(500 words). Members of the public wishing to address the Committee either in person or remotely need to register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk by 12.00 noon on the working day before the meeting date. In addition for those who wish to address the committee online we advise that a written copy of the representation be supplied for use in the event of unforeseen technical difficulties preventing participation at the meeting itself.

These speaking arrangements do not apply to councillors who are not members of the Committee who may make representations of no longer than five minutes each

6 Minutes of Previous Meeting

The Councillors will be invited to confirm that the minutes of the meeting held on 6 July 2023 are a correct record.

2023-07-06 CCC Planning Committee Minutes 7 - 10

7 Planning Applications

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which no member of the Committee or member of the public wishes to address the Committee.

7.1 231007 1 and 3 Keelers Way, Great Horkesley, Colchester, CO6 4EE 11 - 28

Application for the change of use of no. 3 Keelers Way from residential to commercial. Connect numbers 1 & 3 at Keelers Way into one Dental Practice. Add 2 treatment rooms (5 in total) Resubmission of 222808.

7.2 230031 Land between, 7 & 15 Marlowe Way, Colchester, CO3 4JP 29 - 54

Application for variation of condition 2 following grant of planning permission of application 212888 (DAYLIGHT AND SUNLIGHT REPORT RECIEVED). Reduced ridge height of plot 1 including introduction of two chimneys.

Planning Committee Information Pages v2 55 - 66

8 Exclusion of the Public (not Scrutiny or Executive)

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).

Part B
(not open to the public including the press)

PLANNING COMMITTEE

6 July 2023

<i>Present:-</i>	Councillors Lilley (Chair), Barton, Davidson, Hogg, MacLean, Mannion, McCarthy, Tate, and Warnes
<i>Substitute Member:-</i>	
<i>Also in Attendance:-</i>	Cllr Goacher

1002. Site Visits

A site visit was conducted on the 6 July 2023 attended by Councillor Hogg. The Member visited the following site:

- 222839 Land Adj, 62 Brook Street, Colchester, CO1 2UT.

1003. Minutes

The minutes of the meetings held on the 25 May 2023 were confirmed as a true record.

1004. 222839 Land Adj, 62 Brook Street, Colchester, CO1 2UT

Councillor Lilley declared that he knew the Agent on the application and that he had applied for an Almshouse with the Council's Sheltered Housing Team.

The Committee considered an application for outline permission for the erection of 7 almshouse type one bedroom dwelling with associated parking facilities, alterations, and improvements to existing vehicular access and diversion of part of footpath 137. The application was referred to the Planning Committee as it had been called in by Cllr Nissen for the following reason:

"A resident has just recently contacted me regarding the planned building of 7 new houses off Brook Street – application number 222839, which closed in mid-December. This is on ecological and infrastructure grounds. I appreciated the date has passed for the call-in, and I did receive the notification as per process; would there be any grounds on which yourself as Chair and the Planning Committee would be willing to accept a late call in. The application had also been brought before the Committee as it was locally controversial and had a history of appeals on the site.

The Committee had before it a report in which all information was set out.

Chris Harden, Senior Planning Officer presented the application to the Committee and

assisted the Committee in its deliberations. The Committee were shown the location of the site in the red line plan as well as the blue line showing the land immediately adjacent to the site that was in the applicant's ownership. The Senior Planning Officer detailed the access to the site and how it would be intersected with the public right of way which would go between an existing dwellings driveway access. It was noted that the proposed access had been amended since a previous scheme and had been accepted by Essex County Council's Highways Department which had not been the case on previous applications on this site. The Committee were shown that the proposal would include the parking and manoeuvring space as well as a step and ramp system to the dwellings with the addition of terrace and amenity space. It was noted that the proposal before the Committee was an outline application and that there would need to be levelling on the site as well as the removal of some trees on the site which had been assessed to be dangerous. Members were informed that the Public Right of Way was significantly overgrown as seen on the photographs and the site visit and that the proposal would improve the security in the area near the access of the site. The Senior Planning Officer showed the Committee previous elevations that had been refused and explained the differences between the two proposals and confirmed that there would be a biodiversity net gain on the site. The Senior Planning Officer concluded by detailing the officer recommendation was for approval as detailed in the report.

Councillor Mark Goacher addressed the Committee as Ward Member for Castle. The Committee heard that the Ward Member had concerns regarding the context along the street and how the area was very polluted with the development adding to these issues by removing a green space. The Ward Member raised further concerns on the issues of traffic on Brook Street and how there were currently issues of traffic buildup and slow-moving vehicles. The Committee heard that they had further concerns about the removal of the trees on the site and asked for clarification on exactly how many were being removed, how many were dangerous and whether any silver birch trees were due to be removed from the proposal. The Ward Member concluded by detailing that their main concern was the pollution in the area, that the proposal would slow down the traffic in the area causing more issues, and asked that the application be refused on the grounds of the context of the proposal.

The Democratic Services Officer read out the statement as follows from Councillor Nissen, Ward Member for Castle:

“At the beginning of 2023 I called in the Brook Street Almshouses application on Highways grounds. There have previously been concerns and revisions of the development. Given Highways have subsequently resolved these issues in accordance with resident concerns, and the grounds for challenge are no longer applicable; I am happy to withdraw the call-in.

My thanks to the Committee, Chair, and Officers for diligent consideration of the matters.”

At the request of the Chair the Senior Planning Officer and Planning Manager responded that the Silver Birch tree on site was a category C tree and had been sustained damage and that there was no special protection for the species.

Members debated the application and queried why the informatives regarding the Public Right of Way were not added as conditions, the flood management conditions and the sites relationship to the Air Quality Management Zone.

At the request of the Chair the Senior Planning Officer detailed that 4 trees were detailed to be removed from the site in total as well as a small group of vegetation and which had all

been assessed by the Councils Arboricultural Officer as acceptable for removal. It was detailed that the reservoir was safe and protected and that the site was on the edge of the air quality management area but not actually in it with dispersion modelling showing that the site would not exceed the allowed limits. The Senior Planning Officer confirmed that the Environmental protection team had been consulted on the application and that the informatives regarding the footpath were standard as they were covered by other Public Right of Way legislation.

Members raised concern that if approved then the proposal could change and have different sorts of dwellings than the one bedroom as currently proposed on the site if the principle of development was agreed by the Committee. The Senior Planning Officer detailed that if there was such a proposal then that could be called in by the Ward Councillor and then brought before the Committee for consideration, however the applicant did have the right to put in any subsequent application as they chose to.

Members debated the proposal further with some concern being raised regarding the landscaped space on the site and its possible use as public open space, whether the proposal could be conditioned that the site could only be used for almshousing, and whether any further trees could be planted on the site.

The Senior Planning Officer confirmed that the proposal was for the open space to be private to the occupiers of the dwellings and that a legitimate planning reason would be needed to divert the private land to publicly accessible space. It was noted that the description for the development was for “almshouse type one-bedroom dwellings” and that these were private dwellings so could not be conditioned as such but did include the provision that they would only be available to over 60s. The Senior Planning Officer concluded by detailing that the provision of new trees that would be included on the site would be included in any reserved matter application.

RESOLVED (UNANIMOUSLY) That the application be approved as detailed in the officer recommendation.

1005. Variation of S106 Agreement O/COL/01/1799 – 230758 Dinghy Park, Former Cooks Shipyard, Walter Radcliffe Way, Wivenhoe, Colchester

The Committee considered an application for a revised S106 agreement with delegation to Officer Level to complete the variation of the legal agreement . The S106 agreement would be varied to include “ outdoor markets” and “any purpose other than as a dinghy park for the parking or storage of boats, their trailers and outdoor markets on behalf of Wivenhoe Town Council”.

The Committee had before it a report and amendment sheet in which all information was set out.

James Ryan, Planning Manager presented the application to the Committee and assisted the Committee in its deliberations. The Committee heard that the original application which had been built out was from 2001 and were shown pictures of the dinghy park on Walter Radcliffe way. The Planning Manager showed the relevant page in the Section 106 agreement which showed the areas where dinghies would be parked under the lease from the Wivenhoe Town Council. The proposal before the Committee was not a standard planning application and would be to allow Wivenhoe Town Council to use for any other use but notably that they would like to hold markets up to 12 times a year. The Planning Manager

detailed that the officer recommendation to delegate authority to allow officers to process the changes to the S106 agreement.

Jonathan Frank addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee were asked whether they would undertake a site visit of the proposal and detailed that residents in the area should not have been losing sleep over what their Town Council was choosing to do with the park. The Committee heard that there was a strength of feeling against the variation and that the entire development was protected by the legal agreement the Town Council were trying to amend. The Committee heard that the proposal for the change was far too ambiguous and could lead to other events that had not been foreseen whilst showing contempt for residents and concluded by asking for the variation to be refused.

Tom Kane (Wivenhoe Town Council) addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the resident was one of the earliest residents of Cooks Shipyard and detailed that the Town Council spent £2,000 for the lease of the dinghy park and confirmed that they were not involved in the original S106 agreement. The speaker outlined that the applicants aim was to make a better use of the space and recoup some of the costs spent on the lease of the land and possibly use it for a summer market by moving the dinghies into one area. The speaker concluded that the Town Council would be failing in their duty if they did not try and get a better use for the area and that it would not be a competition to Colchester Market and that many residents would welcome this local facility.

At the request of the Chair, the Planning Manager confirmed that the land was owned by Taylor Wimpey and that it was leased to the Town Council and showed the Committee a video of the site.

Members debated the proposal and raised concern that the change in the Section 106 Agreement could have on the residents and queried why a market could not be held elsewhere within the Town as the proposal could impact on the SSSI as well as the waterways and ecosystem in the immediate area. At the request of the Chair the Area Planning Manager responded that there may be other sites but that the Committee were being asked to look at the proposal before them and that the impacts were not something that the Committee had before them for information. The Committee heard that as the application was coming from a Parish Council it would be expected that they were acting in the public interest and that the proposals for a market would be mainly in the morning to mid day time and that the Colne River was already widely used for leisure activities.

Members continued to debate the variation on issues including: the possibility of breaching environmental regulations, the harm that could be caused to the areas, the wider benefit to the community, that the attendees would not be advised to park in the area and would encourage attendance on foot. Members concluded the debate by detailing that there was no precise number of how many market events would be held or other types of events.

A proposal was made and seconded as follows:

That the variation of the S106 agreement is refused due to the environmental impact, impact on local residents, and the impact on the river Colne

RESOLVED (*SEVEN votes FOR and TWO votes AGAINST*) That the variation of the S106 agreement is refused due to the environmental impact, impact on local residents, and the impact on the river Colne.



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Item No: 7.1

Application: 231007

Applicant: Mrs Agnieszka Marcinkowska-Lagosz

Agent: Mr Piotr Lagosz

Proposal: Change the usage of no. 3 Keelers Way from residential to commercial. Connect numbers 1 and 3 at Keelers Way into one Dental Practice. Add 2 treatment rooms (5 in total) Resubmission of 222808

Location: 1 & 3 Keelers Way, Great Horkelesley, Colchester, CO6 4EE

Ward: Rural North

Officer: Simon Grady

Recommendation: **Approval subject to legal agreement**

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because the officer's recommendation is to approve the application despite a strong objection from the Highway Authority on grounds of inadequate on-site parking and displaced patient parking on street.

2.0 Synopsis

2.1 This application seeks permission for the change of use of dwelling to a dental practice offering services to both NHS and private patients. The key issues for consideration are the impact on neighbouring amenity and the impact on highway safety from the increased traffic/on street parking generated by the change of use.

2.2 Having assessed the application against local and national legislation, policy and guidelines it is considered that, on balance, the public benefits associated with the proposed change of use outweigh the potential harm identified from inadequate parking provision and thereby complies with the relevant local plan policies and is acceptable in all other respects as outlined in the report below.

2.3 The application is therefore recommended for approval, subject to conditions.

3.0 Site Description and Context

3.1 The application site features no. 3 Keelers Way, a 3-bedroom, mid terrace (of 3) C3 dwellinghouse and the adjoining no. 1 Keelers Way, which has been operating as a dental practice since the 1980s. The site lies inside of the Great Horkesley village settlement boundary.

3.2 The application site lies close to the Horkesley Manor site, which is the subject of a live outline planning application for 100 no. dwellings, new access and A134 crossings, land for allotments, provision of a Scout and Girl Guiding Hut with associated car park, public open space and associated works, all Matter Reserved, except access (application reference 230625). If approved and implemented this scheme would generate further demand for local dental services. There is also an extant permission for further housing development at the Chesterwell development within walking distance of the current practice. A footway cycleway link is proposed as part of the Horkesley Manor site to the east of the A134 to the Chesterwell neighbourhood centre.

4.0 Description of the Proposal

- 4.1 This application seeks permission for the change of use of no. 3 Keelers Way from residential (C3) to a commercial dentist (Use class E (e)). The proposal also entails building works to both the existing dentist at no. 1 Keelers Way and the proposed dentist at no. 3 Keelers Way. The proposed works involve internal reconfiguration and would connect no. 1 and no. 3 Keelers Way into a single dental practice at ground-floor and at first-floor level. The resultant dentist accommodation would provide 5 treatment rooms (there are currently 3 at no. 1 Keelers Way) and various staff / office areas and customer waiting spaces. This represents an increased capacity of the existing dental practice of 66%.
- 4.2 The Proposed development includes a small ground-floor extension to the front of no. 1 Keelers Way to square off the front elevation and proposes a 3.8m deep x 6.6m wide (full width) single-storey extension to the rear of no.3. Also included in this proposal is the removal of 4 chimneys, (2 within no 1 and 2 within no. 3 Keelers Way).
- 4.3 The existing cladding on no. 1 and no. 3 is to be removed and all existing brickwork is to be rendered. The existing and new render is to be painted grey. All of the existing windows would be replaced with double or triple glazed windows in a design to match the existing domestic appearance of both no.s 1 and no. 3 Keelers Way. The windows would be dark grey.
- 4.4 The dental practice would be accessible by both NHS and private patients and it is proposed that the extended dental practice would be open to patients from 8am to 5.00pm, Monday to Friday with occasional opening on Saturday mornings also.
- 4.5 New signage is also proposed for the expanded dental practice but this is not included in this application but would be subject to a separate application for advertisement consent.
- 4.6 The scheme proposes to relocate all existing air conditioning units from the side elevation (most visible) to the back of no. 1 and no. 3. There are concerns that the noise generated by these units would have a harmful impact on the neighbouring amenity of no. 5 Keelers Way. A condition could be imposed to address these legitimate concerns.
- 5.0 Land Use Allocation
- 5.1 The site has no land use allocation.
- 6.0 Relevant Planning History
- 6.1 A previous application to convert the application site into a combined dental practice with 7 treatment rooms was withdrawn (222808) because it was likely to be refused on highway safety grounds. The applicant has now submitted a

Transport Statement with a traffic survey in support of this current application in response to the concerns raised about parking and potential impact on highway safety associated with this proposal.

6.2 This proposed change of use of 3 Keelers Way was also the subject of a Preliminary Enquiry (ref. 213222). The Council's response concluded that: "In summary, there are a number of benefits to extending this dental practice, particularly in the light of the additional housing planned for the area. Whilst the proposed works could be visually acceptable, subject to assessing the detail, the change of use needs to be carefully assessed to ensure no harmful impact on neighbour amenity would arise and that there would be no highway safety issues, including a lack of parking provision. Advertisement Consent is required for any proposed advertising."

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP5 Employment
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

SG1 Colchester's Spatial Strategy
SG2 Housing Delivery
SG3 Economic Growth Provision
SG7 Infrastructure Delivery and Impact Mitigation

SS7 Great Horkesley
OV1 Development in Other Villages
DM1 Health and Wellbeing
DM2 Community Facilities
DM15 Design and Amenity
DM20 Promoting Sustainable Transport and Changing Travel Behaviour
DM21 Sustainable Access to development
DM22 Parking

7.4 The housing site allocation for 80 dwellings at Horkesley Manor is included in Local Plan Policy SS7 (extant outline permission ref. 190302). A current outline application for 100 units is currently under consideration (230625). There is no increased dental provision included in this proposal or at the nearby Chesterwell development which is now well advanced in delivery.

7.5 The application site is not an “allocated site”.

7.6 The site is not located within a Neighbourhood Plan area.

7.7 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

- The Essex Design Guide
- EPOA Vehicle Parking Standards
- Affordable Housing
- Sustainable Construction
- Cycling Delivery Strategy

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website. The following stakeholders were consulted:

- Essex Highway Authority
- Colchester Council’s Environmental Protection Team
- Colchester Cycling Campaign

Essex Highway Authority

8.2 The Highway Authority recommends refusal of the application on the basis that this proposed change of use would lead to users of the dental practice to park within the highway. This would lead to additional parking stress in the area, which would cause highway congestion, danger and obstruction. The Highway Authority suggests that the adopted Parking Standards are not being met for off-street parking or for the proposed 4x mobility impaired spaces fronting both sites. They also raise concerns about manoeuvrability in and out of the 4 spaces provided on site.

- 8.3 The Highway Authority's concerns are discussed in the assessment below along with the findings from the Transport Statement.

Environmental Protection

- 8.4 Should planning permission be granted Environmental Protection suggest conditions to limit the hours of work in respect of the building works, ensure the noise emitted from the site's plant, equipment and machinery does not exceed 0dB(A) above the background levels and to restrict the dental practices hours of operation following the proposed change of use.

Colchester Cycling Campaign

- 8.5 The Colchester Cycling Campaign asked for the provision of secure and covered cycle parking for staff and that patient cycle parking should be provided in line with LTN 1/20 and the Essex Parking Guide, with special note taken about positioning. It is suggested that this can be controlled by condition.

9.0 Parish Council Response

- 9.1 The Parish Council has suggested that on street parking restrictions should be added close to the highway close to the Keelers Way junction and that post and rail fencing on both sides of the junction to prevent parking on the grass should be installed (both funded and organised by the applicant). The Parish Council also raise concerns about the permanence of the arrangement for visitors to the dental practice to use the adjacent public house car park. They are concerned about the pressure of parking displaced on street on highway safety if this arrangement were to cease.

10.0 Representations from Notified Parties

- 10.1 This application resulted in one letter of objection and one letter of support from local representations. The letter of objection raises concerns about Keelers Way becoming single carriage-way due to the users of the dentist parking on Keelers Way, difficulties using their private drive,
- 10.2 The letter of support confirms that the current/previous occupier of 3 Keelers Way supports the proposed change of use.

10.3 The previous withdrawn application also attracted two objection responses.

11.0 Parking Provision

11.1 The proposal includes the provision of four forecourt parking spaces on the application site, two in front of no. 1 and two in front of no. 3 Keelers Way. These spaces are to be reserved for visitors to the Dental Practice who have mobility issues. There is no other allocated parking provision for staff or patients other than an informal arrangement for visitors to the dentist to park their cars in the public house car park that is situated immediately behind the application site. It is understood that this arrangement has been in place for some time, but it is not legally binding.

11.2 There is no minimum parking provision for dentists contained in the Council's adopted Parking Standards.

12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed ground floor plan drawing submitted with the application shows that the ground floor, which includes dentist treatment rooms, is largely accessible by wheelchair users.

13.0 Open Space Provisions

13.1 N/A

14.0 Air Quality

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

15.0 Planning Obligations

15.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

16.0 Report

16.1 The main issues in this case are:

- The Principle of Development
- Visual Impact
- Impact on Neighbouring Amenity
- Highway Safety and Parking Provisions (including Cycling)
- Sustainable Transport
- Climate Change Mitigation
- Other Matters

Principle of Development

16.2 The lack of NHS dental services is well documented and increasing the provision of dental services at this site is considered to be acceptable in principle. Dental surgeries are frequently located in residential areas and are normally considered to be compatible with residential amenity. Many of these surgeries occupied former residential properties. It would have a positive impact on the wellbeing of the local community and could potentially reduce the amount of unsustainable travel by Gt Horkesley and Chesterwell residents travelling into Colchester, for example, to access such services. The loss of a single dwelling caused by this change of use (no. 3 Keelers Way) is not seen as a materially negative consideration, particularly given the amount of additional house building that is expected in Great Horkesley, which is situated very near to the application site. The principle of this change of use is therefore considered to be acceptable, subject to the detailed consideration of the planning balance.

16.3 The proposed works to link no. 1 and no. 3 internally at ground floor and first floor levels are reversible in the future and so no objections in principle are raised in this respect either. The premises could potentially revert to residential use if no longer required (subject to planning permission).

Visual Impact

16.4 Policy DM13: Domestic Development from Section 2 of the emerging Local

Plan is relevant to this proposal and states: -

“...proposals for the conversion and sub-division of existing residential premises and, conversions of non-residential buildings where planning permission is required, will only be supported if they meet the following criteria:

- (i) The proposal does not result in detrimental effects to the appearance of the building by reason of unsympathetic additions or alterations, either in isolation or due to cumulative impact;
- (ii) Opportunities are taken for improving the character and quality of an area and the way it functions;

- (iii) Appropriate provision is made for parking, private amenity space, cycle storage and refuse storage facilities, in a visually acceptable manner;
- (iv) The internal layout minimises possible noise disturbance and/or overlooking to the immediate neighbours; and
- (v) Overall, the proposal will not result in an unsatisfactory living environment for prospective occupiers.”

16.5 The proposed refurbishment of the walls, windows and doors of no. 1 and no. 3 Keelers Way would retain the domestic appearance of the existing dental practice and dwelling.

16. The proposed rear extension would not be visible from the public domain and the proposed front extension is modest in scale and visually acceptable in the street scene. Neither developments would detract from the appearance of the original building and consequently would not harm the established residential character of the surrounding area either.

16. It is proposed to move the existing, highly visible air-conditioning units from the side elevation of no. 1 Keelers Way to the rear elevation of no. 3 where they would not be as visible from the public domain. This is considered to be a significant visual improvement of the street scene but there are some concerns about potential noise pollution from them harming neighbouring amenity. This could be mitigated through the use of an appropriate planning condition to control noise.

Impact on Neighbouring Amenity

16. A residential property, No. 5 Keelers Way, is attached to the application site and so particular consideration must be given to the amenity of the neighbouring property. Other than the traffic / parking issue, which is addressed below, there are no other neighbours whose amenity could be negatively impacted by this proposed development. Dental surgeries are often located in residential areas and are considered generally compatible with residential amenity. The use of planning conditions to control the hours of opening can also ensure that the amenity of the neighbourhood is protected.

Noise

16. The dental practice generally only operates between 8am and 5pm on a Monday to Friday with occasional use on a Saturday morning. It is considered unlikely that the noise generated by the dental practice would harm neighbouring amenity to an unacceptable level. There are no treatment rooms located at first floor level immediately adjacent to the party wall shared with the neighbouring dwelling at no. 5. Dental practices are often located in residential settings as this is the best location for them in terms of ease of access.

16. Should permission be approved for this proposed development, further information/conditions is required to ascertain if the proposed relocation of Air Conditioning units onto the rear elevation of the application site would have an unacceptable level of impact on neighbouring amenity. This is a matter that could be adequately controlled by planning condition.

Built Development

16. The depth of the proposed single-storey, rear extension is similar to the existing conservatory on the rear of no. 5 Keelers Way. This minimises the impact that the extension would have on neighbouring amenity in terms of avoiding an overbearing impact on the outlook of neighbours. The Council policy sets out that an unrestricted 45 degree angle of outlook from the midpoint of the nearest neighbouring windows should be preserved and it is considered that this proposal satisfies this requirement.
16. Similarly, there are no concerns regarding loss of light. The combined plan and elevation tests are not breached and the proposal therefore satisfies the Councils standards for assessing this issue as set out in the Essex Design Guide.
16. Additionally, the proposed extensions are single storey and there are no new windows proposed at first floor. This means that there are no concerns that neighbouring amenity would be harmed in terms of overlooking, including their protected sitting out areas as identified in the above SPD.

Comings and goings

16. According to the Planning Statement submitted with the application, the number of staff working at the extended dental practice would increase from 8 to 10 per day to 10 to 14 per day and the number of patients / members of the public visiting the extended dental practice would increase from 8 to 14 per hour to 10 to 15 per hour.
16. The comings and goings to the application site would therefore increase, which may have some impact on neighbouring amenity during the working day. However, it is considered that given the proposed hours of operation are daytime only and the visitors are unlikely to generate excessive noise whilst entering and leaving the site, it is considered that any harm caused by this increase in activity may be outweighed by the public benefits accrued by having increased dentist provision in close proximity to a large catchment area of new and existing homes. The use of a travel plan and membership of the Colchester Travel Plan Club could help to minimise trip generation by private car and thereby manage associated vehicular movements and parking.

Highway Safety and Parking Provision

16. Concerns had previously been raised about parking provision and highway safety at Preliminary Enquiry and full application stage. Keelers Way is a bus route and there are currently no parking restrictions on either side of the road or in neighbouring roads. The application site is close to the junction with the A134 Nayland Road, which links Colchester to Sudbury. No parking is desirable on this primary route.
16. This revised scheme has reduced the proposed number of treatment rooms available at the extended dental practice from 7 to 5 in response to the previous concerns raised. However, the Highway Authority are still concerned that the additional traffic generated will displace parking onto the streets around the application site, potentially causing congestion and consequent risks to highway safety.
16. This latest application being considered in this report was accompanied by a Transport Statement authored by an independent transport and traffic consultancy. The Statement is available to read in full on the website. Their study included a survey of staff and patients' travel habits as well as a parking count in the area around the application site.
16. The Transport Statement takes into account the likely increase in trips generated by the proposed development, the availability of on-street parking in the vicinity of the area and concludes that there is "...no parking, traffic or other transport reason why the development should not be permitted" (para 5.5). This is on the basis that "...there is substantial vacant space on-street very close to the site throughout the daytime. The analysis has further demonstrated that if all the additional parking resulting from the development took place on-street, whether or not the Half Butt Inn car park continued to be available for dental practice staff and patients, on-street parking pressure would continue to be low with ample vacant kerbside parking space." (para 5.2)
16. The Transport Statement also included an interrogation of the national Crashmap road accidents database, which identified "...there has been no personal injury accidents at all anywhere near the site access in the last 5 years" (Para 4.18).
16. Despite the findings of the Transport Statement, the Highway Authority is objecting to this application on the grounds of risks to highway safety created by increased journeys to the site by private cars. In particular, that there would be a significant potential increase in on street parking. There are only 4 parking spaces proposed across the forecourt of the proposed/existing premises.
16. The permissive use of the car park associated with the public house located behind the application site is a positive factor to mitigate the concerns about lack of on-site parking and the consequent risks to highway safety. However, only limited weight can be afforded to this arrangement because it could cease

at any point, through a change in ownership or management of the public house, for example. There is no contractual arrangement between the applicants and the pub.

Sustainable Transport

16. Section 2 Local Plan policy DM21: Sustainable Access to Development is relevant to this proposal. It states that all new developments should seek to enhance accessibility for sustainable modes of transport. Expansion of the dentist could lead to more residents in Great Horkesley and Chesterwell being able to access dental services in the village rather than travelling elsewhere, such as Colchester. These trips are likely to be dominated by the private car, an inherently unsustainable mode of transport, for a significant proportion of these journeys.
16. The policy also states that "development will only be allowed where there is physical and environmental capacity to accommodate the type and amount of traffic generated in a safe manner". Whilst the transport statement concludes that there is parking capacity in the roads around the application site, the Highway Authority are objecting to this parking solution due to the potential risk that this would lead to traffic congestion and could thereby prejudice road safety. The submitted Transport Statement demonstrates that there is sufficient space on street at present to accommodate the anticipated levels of patient parking should access to the pub car park cease.
16. The applicant should be asked to encourage its visitors (staff and customers) to travel to the site by the most sustainable mode of travel possible. A travel plan and membership of the travel plan club could encourage behaviour change by staff and patients to encourage active and sustainable travel.
16. There are a number of bus stops very close to the application site that could be used by all staff and visitors to the dental practice. However, the route that the buses take is generally to Colchester and back along the A134 so it does not reach all parts of the village. This means that the bus option cannot be relied on as a suitable mode of transport for all residents of Gt Horkesley to travel to the dentist from their home.
16. To encourage as many people as possible to cycle to the dentist, good quality bike parking should be provided on site that is secure and keeps bikes dry. This has been requested by the Colchester Cycling Campaign in their consultation response to this application too and this provision could be secured by way of a planning condition.
17. If committee is minded to approve the application, a unilateral undertaking could be requested under s.106 of the Act to require membership in perpetuity of the Colchester Travel Plan Club. There is a fee for this service. The

production of a Travel Plan could be also required by condition to seek to prompt behaviour change.

Climate Change Mitigation

16. This proposal also includes the addition of photo-voltaic panels on the roof of the application site, the removal of a domestic conservatory and the replacement of doors and windows. These measures will help to reduce the carbon footprint of the application site.

Other Matters

16. The proposed new signage will need a further application for Advertisement Consent. This can be added as an Informative should planning permission be granted.
16. The expanded dental practice could result in the employment of 2 new full-time equivalent members of staff (1 full-time and 2 part-time), which, while not significant, potentially provides employment opportunities for local people.

17.0 Planning Balance and Conclusion

- 17.1 This proposed development will increase traffic in the area through associated comings and goings to the application site, which will have an impact on the amenity of local residents and on road users in Keelers Way and adjacent residential roads. However, it is considered that the public benefit of an increase in the provision of NHS dentist services locally to the surrounding residential area weighs as a significant factor in the planning balance that this development would deliver. It is for committee to decide if this outweighs the level of harm it would cause to amenity and road safety and whether this justifies a refusal on highway grounds. In the opinion of officers, the submitted Transport Statement provides evidence that even in the worst case scenario, adequate on street parking exists to serve the proposed use. This could also be moderated further by a travel plan and membership of the Colchester Travel Plan Club.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting. The agreement would secure membership of the Colchester Travel Plan Club in perpetuity. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement. Delegated authority to make non-material amendments to planning

conditions as necessary. The Permission will also be subject to the following conditions:

1. ZAA - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. ZAM - Development to Accord With Approved Plans

3. ZBB - Materials as Stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings.

Reason: To ensure that materials are of an acceptable quality appropriate to the area

4. ZPD - Limits to Hours of Work

No demolition or construction work shall take outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

5. ZGG - Site Boundary Noise Levels

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 0dB(A) above the background levels determined at all facades of [or boundaries near to] noisesensitive 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.

6. ZGA - Restriction of Hours of Operation

The use hereby permitted shall not OPERATE/BE OPEN TO CUSTOMERS outside of the following times:

Weekdays: Monday- Friday 08:00-17:00

Saturdays: 09:00-13:00

Sundays and Public Holidays: None

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 people 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.

7. Z00 – Travel Plan

Prior to the occupation of the development and first treatment of patients, a Travel Plan shall be submitted to the local planning authority and agreed in writing. The travel plan shall include measures to promote sustainable and active travel by staff and patients to and from the site and to sustain behaviour change to this end. The plan shall thereafter be implemented in accordance with a programme timetable and reviewed every three years to ensure that it remains effective and responsive to changes in circumstances.

Reason: To ensure that the impact of the development on the highways in the vicinity of the site is mitigated and that trips by private car are minimized in accordance with policies DM20 and DM21 of the Adopted Colchester Local Plan 2017-2033.

8. Z00 – Cycle Parking

Prior to the initial beneficial use of the development, a scheme for the provision of cycle parking shall be submitted to and approved in writing by the lpa. The approved scheme shall be implemented prior to the use of the premises by patients and thereafter so retained and kept available at all times for the parking of cycles by both patients and staff.

Reason: To ensure that the impact of the development on the highways in the vicinity of the site is mitigated and that trips by private car are minimized in accordance with policies DM20 and DM21 of the Adopted Colchester Local Plan 2017-2033.

19.1 Informatives

19.1 The following informatives are also recommended:

INS - Non-Standard Highways Informative

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org.

ZT0 – Advisory Note on Construction & Demolition

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.

ZTA - Informative on Conditions Stating Prior to Commencement/Occupation PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via

www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.



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Item No: 7.2

Application: 230031

Applicant: Mr John Beton

Agent: Mr Robert Pomery

Proposal: Application for variation of condition 2 following grant of planning permission of application 212888 (DAYLIGHT AND SUNLIGHT REPORT RECEIVED) Reduced ridge height of plot 1 including introduction of two chimneys.

Location: Land between, 7 & 15 Marlowe Way, Colchester, CO3 4JP

Ward: Prettygate

Officer: Chris Harden

Recommendation: **Authority to Approve subject to consideration of any further consultation responses received on the amended plans.**

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 Buston who raises the following concerns:

1. Over development
2. Ignoring the Planning Conditions imposed in 21 2888 approved 21 Apr 21

3. Development over a former publicly accessible Open Green Space

4. The previous Application for development on this site (21 0304) was dismissed on 10 Sep 21 , citing , as reason for dismissal (inter alia) : " 1. The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established street scene and surroundings."

Thus that the current buildings have been erected on the site without reference to the plans Approved in 21 2888 , in particular the height of these buildings .

Policies UR 2 and DP1 , and the (Borough) Council's adopted "Backland & Infill Development" SPD, are in particular infringed.

1.2 The application was deferred at the Planning Committee of 27th April 2023 to enable officers to discuss options with the developer for lowering the roof ridge of the constructed dwellings. Plot 1 was subsequently lowered but the application was then deferred at the Planning Committee of 25th May 2023 to enable officers to discuss with the developer the lowering of the roofs on plots 2 and 3 as well.

2.0 Synopsis

2.1 Since the last Planning Committee of 25.5.23, further revised plans have been submitted to show the roof ridge height of the dwelling on plot 2 reduced 0.374 (to 7.420m) and the main roof ridge on plot 3 reduced by 0.309mm (to 7.470m), by the introduction of a flat roof strip along the ridges hidden by chimneys either end. The same was previously shown to be proposed for plot 1 which would result in the roof ridge on plot 1 being 0.300m above the ridge height of No.7 compared to 0.715 m above as built. As before, the key issue for consideration of the overall scheme is the relationship of the new elevations as built with the previously approved dwellings in relation to neighbouring properties, particularly in respect of the comparative height which has been corrected on the street scene drawings to show the neighbouring properties at the correct, lower height (condition 2 of 212888) compared to the previous approval.

- 2.2 The application is subsequently recommended for approval subject to consideration of any further consultee responses received in respect of the latest revised plans. In summary, the site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy. On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings consequently showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects the street scene plan to show the neighbouring dwellings at their correct height and the relationship as constructed on site.
- 2.3 It is considered that the newly constructed dwellings are now shown correctly (with proposed revision on plot 1) and modestly higher than the neighbouring dwellings which, in the opinion of officers, does not undermine the character of the street scene in a significant or material way. They are not considered to be overly dominant in the street scene and remain relatively modest in height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings. Consequently, it is not considered that a refusal can be justified or sustained on the grounds that the new dwellings as built are between 0.3 (plot 1) and 0.587 metres (front gable only on plot 3) higher than the neighbouring properties.
- 2.4 It should also be noted that the neighbouring dwelling No. 7 Marlowe Way was originally shown sited slightly further away than as existing and this has been corrected on the submitted drawings. This in itself is not considered to be materially detrimental to the street scene nor to undermine residential amenity. The rear flat roofed kitchens were also built to a height of 3.3 m, + 0.7 m higher than approved so the drawings have been corrected to reflect the scheme as built. This element is considered to be acceptable in height and sited sufficiently far enough away from neighbouring properties to avoid any detriment to neighbouring residential amenity, including loss of light.
- 2.5 Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable in the opinion of officers.

3.0 Site Description and Context

- 3.1 The site lies within the settlement limits and was partly a gap site comprising an open grassed area with two TPO'd trees. It lies within an established housing estate that dates from the late

60's early 70's. Adjacent to the site are two storey dwellings on either side (nos.7 and 15 Marlowe Way) and to the rear is the property known as Lexden Manor which has received permission for extension works and conversion. Residential development on the site for three dwellings approved under 212888 is very advanced, including up to roof ridges for each dwelling. The TPO trees have been retained.

4.0 Description of the Proposal

4.1 The current application is for variation of condition 2 following grant of planning permission of application 212888. Application 212888, which was approved at the Planning Committee was for the construction of three No. 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. It included the demolition of a modern brick boundary wall to Lexden Manor, which had already been partly removed. This element was permitted development. The two protected (TPO) trees at

the front of the site are retained. Street scene elevation drawings were submitted that showed the new dwellings were proposed to be no taller than the existing neighbouring properties on either side of the site, as displayed at the Planning Committee.

4.2 During construction of the approved scheme 212888 it became apparent that the roof ridge heights of the newly constructed dwellings were higher than the ridge height of the neighbouring dwellings. Instead of being in line with the roof ridge height of the neighbouring properties as shown in the approved street scene drawings, the ridge height of the new dwellings appeared higher. This is as a result of the neighbouring property heights not being shown correctly on the approved street view drawings. The new dwellings are constructed in accordance with the approved elevations for each unit.

4.3 The agent on this current application originally submitted front elevation street scene drawings showing the following:

- Plot 1 built to 7.790 m to roof ridge, +0.715m higher than the adjacent No. 7
- Plot 2 built to 7.790 m to roof ridge
- Plot 3 built to 7.671 m to roof ridge, +0.587m higher than the adjacent

No. 15

The subsequent first revision submitted and considered by members at the last Committee shows the ridge height of plot 1 to be lowered to 7.379 m with a flat roof element, with chimneys set on either end so that the ridge height would be 0.3 m higher than the ridge height on the adjacent dwelling, No.7 Marlowe Way.

- 4.4 The second submitted revision since the last Planning Committee of 25.5.23, shows the roof ridge height of the dwelling on plot 2 reduced 0.374 (to 7.420 m) and the main roof ridge on plot 3 reduced by 0.309mm (to 7.470m), by the introduction of a flat roof strip along the ridges hidden by chimneys either end.
- 4.5 As condition 2 of the planning approval states that the development must be built in accordance with the approved drawings, this application now seeks to vary condition 2 (approved drawings) in order to reflect what has currently been built on site in relation to neighbouring properties and the proposed reduction in ridge heights now proposed. The submitted plans also accurately illustrate the height of the existing neighbouring properties and the proposed reduction in the ridge height of plots 1, 2 and 3 from the scheme as built.
- 4.6 In the submitted planning statement the agent states:
- “The drawing of relevance to this matter is 6817 / 1606 Rev E, which shows an illustrative streetscene. The drawing illustrates the proposed houses with a height or ridgeline, which is marginally lower than the two dwellings that flank the site, nos. 7 and 15 Marlowe Way. As built, the ridgeline of each house is now slightly taller than was illustrated on the streetscene drawing 6817 / 1606 Rev E, and taller than the two neighbouring dwellings nos. 7 and 15. As the houses have taller ridge lines than those shown in the approved drawing 6817 / 1606 Rev E, it can be said that the dwellings have not been carried out in accordance with the details shown on the submitted drawings. Therefore, this change from the approved plan needs to be regularised via an application to vary condition 02, to substitute approved plan 6817 / 1606 Rev E with the proposed plan 6817 / 1612, which illustrates the houses as built.”
- 4.7 In additional information submitted the agent also states: “the dimensions from the ridge to the DPC on each of the as built properties is broadly the same as the approved elevation drawings for each plot. That said, there is some minor variation, but it is inconsequential. Plots 1 & 2 are 116mm (4.5 inches) taller, so the height of one brick and Plot 3 is 3.0mm lower than was approved, so de minimis in planning terms.”
- 4.8 It should also be noted that in addition, through consultation on this application, a resident has highlighted a further inconsistency with the approved drawings in relation to the gap separating no. 7 Marlowe Way and Plot 1 of the development. This relates to approved drawing 6817/1105 Revision A, which was a drawing submitted showing the proposed layout of the development, including the siting of the new and existing dwellings and spaces between the new and existing neighbouring dwellings.

4.9 In response to this issue the agent states “This drawing was based on a digital Ordinance Survey map (OS map), purchased from a licensed seller of Ordinance Survey data. Since raising this concern, the applicants have looked into the point made by the resident and have discovered that the Ordinance Survey information is inaccurate, this is not unusual, as Officers will know; the OS map data is not a topographical survey. The resident is correct to point out that the gap between properties shown on drawing 6817/1105 Revision A, was 4.888m. The actual as built gap recently measured is actually 4.382m. It has been discovered that no. 7 is not shown on the OS Map in its correct position, it is in fact 506mm closer to the common boundary than is shown on the OS Map. This accounts for the discrepancy identified by the resident, however, what is important, is that Plot 1, is positioned no closer to the common boundary with no. 7, than was approved and that the gap remains consistent with the spaces between dwellings in the location.”

4.10 A Daylight/Sunlight report has also been submitted.

4.11 It should also be noted that drawings have been submitted to show the revised heights of the single storey, flat roofed rear kitchens as built.

5.0 Land Use Allocation

5.1 Settlement Limits

6.0 Relevant Planning History

6.1 212888 Construction of three 4-bedroom detached houses, each with an integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees. - Approved

6.2 210304 Demolition of brick boundary wall to Lexden Manor. Construction of three 4-bedroom detached houses, each with integral garage, plus individual private driveways connecting to Marlowe Way. Retention of two TPO trees.

Refused: “The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established streetscene and surroundings.”

6.3 210331 land adj Lexden Manor – Erection of 1 No.5 bed house. Approved & implemented.

6.4 192337 Conversion of Lexden Manor to create 5 flatted units. Approved

6.5 COL/89/1308, Conversion of the main dwelling into flats and additional cottages and apartments in the grounds. Refused. Appeal dismissed

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of two sections as below.

7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP6 Infrastructure & Connectivity
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

SG1 Colchester's Spatial Strategy
SG2 Housing Delivery SG5
Centre Hierarchy
SG6a Local Centres
SG7 Infrastructure Delivery and Impact Mitigation
SG8 Neighbourhood Plan
ENV1 Environment
ENV3 Green Infrastructure
ENV5 Pollution and Contaminated Land
CC1 Climate Change
PP1 Generic Infrastructure and Mitigation Requirements
DM1 Health and Wellbeing
DM2 Community Facilities
DM3 Education Provision

DM4 Sports Provision
DM9 Development Density
DM10 Housing Diversity
DM12 Housing Standards
DM15 Design and Amenity
DM16 Historic Environment
DM17 Retention of Open Space
DM18 Provision of Open Space and Recreation Facilities
DM19 Private Amenity Space
DM20 Promoting Sustainable Transport and Changing Travel Behaviour
DM21 Sustainable Access to development
DM22 Parking
DM23 Flood Risk and Water Management
DM24 Sustainable Urban Drainage Systems
DM25 Renewable Energy, Water Waste and Recycling

7.4 Some “allocated sites” also have specific policies applicable to them but this is not applicable to this site.

7.5 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide
External Materials in New Developments
EPOA Vehicle Parking Standards
Backland and Infill
Affordable Housing
Community Facilities
Open Space, Sport and Recreation
Sustainable Construction
Cycling Delivery Strategy
Urban Place Supplement
Sustainable Drainage Systems Design Guide
Street Services Delivery Strategy
Planning for Broadband 2016
Managing Archaeology in Development.
Developing a Landscape for the Future

7.6 5 Year Housing Land Supply

Section 1 of the Colchester Local Plan 2017-2033 was adopted by the Council on the 1 February 2021, with Section 2 being adopted in July 2022. The complete Local Plan carries full statutory weight as the development plan.

Section 1 includes strategic policies covering housing and employment, as well as infrastructure, place shaping and the allocation of a Garden Community. Policy SP4 sets out the annual housing requirement, which for Colchester is

920 units. This equates to a minimum housing requirement across the plan period to 2033 of 18,400 new homes.

The Tendring Colchester Borders Garden Community is allocated in Section 1, all other site allocations are made within Section 2 of the Plan. Within Section 2 the Council has allocated adequate sites to deliver against the requirements set out in the strategic policy within the adopted Section 1. All allocated sites are considered to be deliverable and developable.

In addition and in accordance with the NPPF, the Council maintains a sufficient supply of deliverable sites to provide for at least five years' worth of housing, plus an appropriate buffer and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy. The Council has consistently delivered against its requirements which has been demonstrated through the Housing Delivery Test. It is therefore appropriate to add a 5% buffer to the 5-year requirement. This results in a 5 year target of 4,830 dwellings (5 x 920 + 5%).

The Council's latest published Housing Land Supply Annual Position Statement (July 2022) demonstrates a housing supply of 5,074 dwellings which equates to 5.25 years based on an annual target of 920 dwellings (966 dwellings with 5% buffer applied) which was calculated using the Standard Methodology. This relates to the monitoring period covering 2022/2023 through to 2026/27.

In accordance with paragraph 73 of the NPPF, the adoption of the strategic housing policy in Section 1 of the Local Plan the adopted housing requirement is the basis for determining the 5YHLS, rather than the application of the standard methodology.

Given the above, it is therefore considered that the Council can demonstrate a five year housing land supply.

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.2 Highway Authority states:

The Highway Authority does not object to the proposals as submitted.

Informative1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and

specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org.

8.3 Environmental Protection has “No comments.”

8.4 Tree Officer has raised no concerns.

8.5 Archaeologist has raised no concerns.

9.0 Parish Council Response

9.1 Not parished.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council’s website. However, a summary of the material considerations is given below.

10.2 17 letters of objection have been received (some multiple representations from a single household) which make the following points:

- Architectural drawings do not fully represent close proximity of plot 3 to 15 Marlowe Way and don’t clearly state what the measurement differential is for the higher ridge line compared to neighbouring properties.
- Application claims that neighbouring properties are marginally impacted by the revised height but no evidence to support that claim.
- Planners, committee and neighbouring properties need to see the BRE sunlight report before we can comment or decide on this application.
- House on plot 3 is 1 metre from the boundary of the existing neighbouring property (at the front of the build) and is a good 2-3 metres advanced of the living areas of 15 Marlowe Way. The higher ridge line on the gable end building on plot 3 may impact the amount of daylight in the living areas of that house.
- Bricks and design are totally out of keeping with the estate.
- clear when entering the estate that the roofs of the new houses are clearly not in align to the existing houses;
- Not aware that windows were going to be on the side of the first house; again not in keeping with the estate.
- Regulations need to be upheld by the project managers rather than allow new houses to be built which are clearly higher than stated in the plans. They must have known the height before they put the roofs on as now difficult to remove and we are left with their mistake.
- Development on a plot that is far too small. □ House will overlook others

- The plot has been used to hold communal events, since to my knowledge the 1970s this open space would be a great loss to local people.
- Gross, over development. Open spaces are at a premium due to the rising population Should be preserved for future generations.
- Speculative proposal.
- Ruins the open aspect which we now have and promoting more on.
- Street parking
- Houses are currently taller than permitted. Taller than all the other houses in the street.
- Extremely dominating and harmful to the character of the established street scene and surroundings.
- Original plans submitted by the developer featured houses that were taller than all the existing houses. This was refused.
- Enforcement action should now be taken so that these buildings reflect the drawings presented by the developer on which permission was granted.
- Deliberate flouting of the regulations. What are the penalties? Has this company done this before?
- Planning statement completely ignores the Planning Committees rational for refusal of their original application for this site under reference 210304.
- Height of the three dwellings is closer to original application reference 210304.
- Daylight and Sunlight Report” does not specifically address the increase in height.
- Report that is commissioned by a developer will favour their position.
- No doubt neighbouring properties had a lot of sunlight throughout the year but have probably now lost 100% of sunlight into back gardens during the winter equinox.
- Why has the report totally ignored the other neighbouring property apart from the overshadowing to garden (ie Garden 5 of Lexden Manor)?
- Single storey area at the rear of the properties, which again looks higher than the drawing approved by the Committee.
- Hope the committee stand up and make an example of developer and their professional advisors for blatant reach of planning permissions.
- Drawings are now known to be misleading, evident from the houses ridge heights being considerably higher than those either side.
- Built position of no. 9 is not in accordance with approved documents. The drawing, entitled Proposed site plan dated Sept/2021revision A 6817/1105, of the planning permission shows a measurement between the houses which promised a distance of 4.888 meters at the closest point. A very specific dimension shown in red. This measurement has now been checked by me and the new house found to be some 0.548 metres (1.8 feet) closer.
- Not known if the daylight calculations were based on actual as built dimensions or those shown on the drawing.
- Height difference is not inconsequential.

- Pictures don't show gaps between properties. □ Object to colour of bricks doors and windows. □ Cttee asked the developer to come up with a proposal to reduce all 3 plots. Recent proposal is now to reduce the height on 2.5 of the plots and not what the Committee requested.
- Hadn't realized this is a gradual negotiation process between planners and the developer to come up with cheapest option to rectify developer's error.
- Plot 3 ridge height on the gable end facing the street remains at 0.587 higher than the adjacent property and has not been reduced. Unfortunately due to the advance location of plot 3 and closer proximity to its neighbouring property the height differential is more pronounced.
- Redesign of these houses is based on an easy fix to cut off the roof ridge, instal a flat roof and disguise the flat roof with false chimneys, which is not the most attractive look and not in keeping with the other houses in the street.
- Bodge job to minimize the cost of the developers mistake. If only the developer had reconsidered the ridge heights in November 2022.
- Suspect the planners will just accept this proposal and the city committee will not have the stomach any further dispute with the developer. This entire process is farcical.

10.3 One letter of observation states:

- Question if additional height significantly affects the appearance of the buildings.
- Appreciate that those living immediately adjacent to the site may feel differently, but new ridge line is not excessively above the adjacent roof lines, certainly nothing like the original plans that were refused.
- To make alterations at this stage will both delay period of construction and are likely to affect the simple lines that currently exist. Rather than carry out major alterations could Developer be asked to offer local community an upgrade in landscaping in and around site?

11.0 Parking Provision

11.1 2 car parking spaces per dwelling.

12.0 Accessibility

12.1 With regards to the Equalities Act, the proposal has the potential to comply with the provisions of Policy DM21 (Sustainable Access) which seeks to enhance accessibility for sustainable modes of transport and access for pedestrians (including the disabled), cyclists, public transport and network linkages.

13.0 Open Space Provisions

13.1 N/A

14.0 Air Quality

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

15.0 Planning Obligations

15.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team. A Unilateral Undertaking is required to secure the appropriate contributions.

16.0 Report

Principle

16.1 The principle of three dwellings on this site has previously been approved under application 212888. Since the time of the previous approval, the new Local Plan has been fully adopted and the former Local Plan fully superseded. However, settlement policies remain essentially the same in respect of this application. Thus the site remains within the settlement limits and Policy SP1 of the Local Plan aims to direct such development to the most sustainable locations such as this site. Accordingly, the proposal should be judged on its planning merits, having regard to the difference between the current application and the previously approved plans. The differences relate to the neighbouring dwellings not being shown at the correct relative height on the approved street scene drawing and the neighbouring dwelling of No.7 not being correctly plotted, as detailed in the introduction section of this report. The layout, scale and design section of this report below will assess these differences and the planning implications.

16.2 It should be noted that the NPPF indicates a presumption in favour of sustainable development (which includes this site). The Council is able to demonstrate a five year housing land supply and as such paragraph 11(d) of the NPPF is not engaged.

16.3 For information, Appendix 1 contains an extract of the Committee report for the previously approved 212888 which explains why it was considered acceptable to develop on this partly open site with the three dwellings.

Layout, Scale and Design in respect of differences between the approved street scene and layout drawings.

16.4 The absolute heights of the three dwelling are essentially deemed to be virtually the same as previously approved. Just to reiterate, Plots 2 are 116mm taller, and Plot 3 is 3.0mm lower than was approved. Plot 1 would be lower, at 0.3 m above No.7. These minor differences are normally considered as de-

minimis in planning terms, and generally an allowance of up to 300 mm is considered to be de-minimis and not requiring any enforcement action in respect of compliance with approved plans. Accordingly, the height of the dwellings as constructed is deemed to accord with the approved plans.

16.5 The key issue is therefore consideration of the incorrect height plotting of the neighbouring dwellings shown on the previously approved streetscene drawings. The originally approved drawings showed that the ridge height of the three new dwellings would be no higher and very slightly lower than the ridge height of the neighbouring dwellings either side (numbers 7 and 15 Marlowe Way). To reiterate, the dwellings have now been built as follows:

- Plot 1 built to 7.790 m to roof ridge, +0.715m higher than the adjacent No. 7
- Plot 2 built to 7.790 m to roof ridge
- Plot 3 built to 7.671 m to roof ridge, +0.587m higher than the adjacent No. 15

16.6 The subsequent first revision since Committee shows the ridge height of plot 1 to be lowered with a flat roof element, with chimneys either end so that the ridge height would be 0.3 m higher than the ridge height on No.7.

16.7 The second submitted revision since the last Planning Committee of 25.5.23, shows the roof ridge height of the dwelling on plot 2 reduced 0.374m (to 7.420 m) and the main roof ridge on plot 3 reduced by 0.309m (to 7.470m), by the introduction of a flat roof strip along the ridges hidden by chimneys either end.

16.8 The fact that the new dwellings are higher than the neighbouring dwellings is unfortunate as at the time of the previous approval it was considered that having the dwellings no taller in height than neighbouring properties would help them to relate satisfactorily to the character of the street scene and surroundings and help ensure they were not overly dominant in the street scene.

16.9 However, the extent to which the newly constructed dwellings are higher than the neighbouring properties is comparatively small and has been reduced further in respect of the 2 plots (nos.2 and 3) since last Committee. It is considered the dwellings would still visually relate satisfactorily to the character of the area without being visually dominant or intrusive in the street scene. The dwelling on Plot 1 being +0.3 higher than No.7 would still relate well to the scale and height of that neighbouring property and would certainly not tower over it or be overly dominant. Street scenes often contain dwellings that vary in height so there is nothing unusual in a dwelling being slightly higher than an adjacent dwelling. Similarly, the main ridge of the dwelling on plot 3 is now only marginally taller than the ridge of number 15 and the front projection remains

only +0.587m higher than the ridge of number 15 and this too looks visually acceptable in terms of its height and relationship to the neighbouring dwelling in the opinion of officers.

- 16.10 The new dwellings are still comparatively modest in height for two storey dwellings, being between 7.379m and 7.470 m in height with the exception of the forward gable of plot 3 which is 7.6 m high. Often, two storey dwellings are approved between 8.4 - 8.5 metres in height. Nevertheless, the neighbouring dwellings are significantly lower than this so the context of the site clearly needs to be carefully assessed. The constructed dwellings have been viewed on site and it is considered all three dwellings relate satisfactorily to the character of the street scene and that the different height relationship to the neighbouring property does not materially harm the character of the area. The revised lowering of plots 1, 2 and 3 would improve the relationship compared to what is built whilst still being visually acceptable, with chimneys either end hiding the flat roofed ridges. It should be noted that if the ridge height of the new dwellings is lowered further than as now proposed, this could result in shallower pitched roofs which would be a retrograde step in aesthetic visual design terms. Uncharacteristically shallow roof pitches could appear alien and incongruous.
- 16.9 Overall it is considered that the fact that the newly constructed dwellings are modestly higher in ridge height than the neighbouring dwellings does not undermine the character of the street scene in a significant way. They would not be overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings and it is not considered that a refusal can be justified or sustained on the grounds that the new dwellings are between +0.587m and +0.3 metres higher to their ridge than the neighbouring properties.
- 16.10 Other issues remain acceptable as outlined in the original committee report précised in Appendix 1. In particular, there will still be visible separation gaps between the dwellings and between the side boundaries notwithstanding the fact that the dwelling (No.7 Marlowe Way) was plotted slightly further away from plot 1 owing to an ordnance survey error. There is no consequential terracing effect. The difference is +0.548m which does not undermine in a significant way the visual separation between the properties. Accordingly, the proposal will still not appear cramped or represent an overdevelopment.
- 16.11 The rear flat roofed kitchens were also built to a height of 3.3m, 0.6-0.7m higher than approved so the drawings have been corrected. They remain visually acceptable and not obtrusive in the street scene. They also remain acceptable in terms of impact upon the neighbours as will be discussed below.

- 16.12 The positioning and layout of the three dwellings remains very similar to the density of other development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DM19. Glimpses of Lexden Manor beyond will still also be possible. It should be noted that Lexden Manor is neither Listed nor Locally Listed and, as before it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF. In planning terms, there is no duty to provide glimpses of an unlisted property set to the rear of a residential development outside a conservation area.
- 16.13 As before, two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will once again be applied and so the site would retain a significant element of open, green spaciousness. It was concluded previously that the existing open space is not of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety and this view is maintained having regard to the latest adopted Local Plan. The loss of this open space did not form part of the original refusal reason (210304) as the Planning Committee overall did not object in principle to its development.
- 16.14 Overall, in terms of layout, design and impact on surroundings it is still considered the proposal would therefore comply with adopted Local Plan Policies SP7, DM15 and DM17 which provide that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.
- 16.15 The proposal remains compliant with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well-designed places.

Garden space:

- 16.16 As before, adequate amenity space for the new dwellings has been shown to be provided in accordance with Policy DM19, unchanged from the original approval. Indeed, garden space compares favourably with neighbouring properties. Policy DM19 provides that for dwellings with four or more bedrooms, a minimum of 100m² should be provided and in this case the dwellings are provided with over 100m² each (ranging from 136-150m²) which further emphasises that this is not an overdevelopment of the site.

Impact on Neighbour Amenities:

- 16.17 As previously concluded, it is not considered there is a significant adverse impact upon neighbouring residential amenity resulting from the development

as built. The dwellings are positioned in the approved location, which is far enough from the side boundaries of neighbouring properties to avoid an overbearing impact. The Council policy sets out that a 45-degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved and it is considered that this proposal satisfies this requirement. This includes an assessment of the corrected position of number 7 Marlowe Way which is +0.548 closer than as shown on the originally approved plans.

- 16.18 There are also no concerns with regard to loss of light to neighbouring properties. The new dwellings have essentially been constructed as previously approved with only minor differences as previously clarified that are deemed de minimis. The combined plan and elevation tests are not breached, and the proposal therefore satisfies the Council's standards for assessing this issue as set out in the Essex Design Guide.
- 16.19 A Daylight/Sunlight report has been submitted which has been undertaken by a chartered surveying company "following the guidelines of the RICS." The report states that "The assessment is limited to assessing daylight, sunlight and overshadowing to neighbouring windows, gardens and open spaces as set out in section 2.2, 3.2 and 3.3 of the Building Research Establishment (BRE) Guide" further to a site visit undertaken on 9 January 2023.
- 16.20 The report concludes the following: "All neighbouring windows (that have a requirement for daylight or sunlight) pass the relevant BRE diffuse daylight and direct sunlight tests. The development also passes the BRE overshadowing to gardens and open spaces test. In summary, the numerical results in this assessment demonstrate that the proposed development will have a low impact on the light receivable by its neighbouring properties. In our opinion, the proposed development sufficiently safeguards the daylight and sunlight amenity of the neighbouring properties."
- 16.21 Given the conclusions of this Daylight/Sunlight report that has been undertaken by Chartered Surveyors in accordance with BRE guidelines, it is not considered that an objection can be raised in terms of the impact from the development upon the amenity provided by daylight and sunlight to the existing neighbouring properties.
- 16.22 As concluded previously, the development does not include any additional new windows at first floor level that would offer an unsatisfactory angle of overlooking that harmed the privacy of the neighbouring properties, including their protected sitting out areas as identified in the above SPD. There is no change in this respect compared to the previous approval. The first floor windows on the side elevation of plot 3 would face onto the blank gable of the neighbouring property rather than look into private amenity space or habitable rooms. With regard to first floor openings on the side elevation of plot 1, a condition imposed as before can be applied to ensure that openings are obscure glazed and non-opening where they are not above 1.7 m above floor

level. These serve a landing and bathroom. The same condition can be applied to the rear first floor openings on Plot 1-3 plot 3 (which have been minimised in any case) in order to avoid overlooking the amenity space of Lexden Manor and its rear windows. The residential amenity of the occupants of the new dwellings would still be acceptable with the application of the obscure glazing condition at 1.7 m.

- 16.23 The rear flat roofed kitchens were also built to a height of 3.3 m, 0.6-0.7 m higher than approved so the drawings have been corrected. They remain of an acceptable height and far enough away from neighbouring properties to avoid a detriment to neighbouring residential amenity, including loss of light. They do not breach the 45-degree angle of outlook from the mid-point of the nearest neighbouring windows as they are still single storey and are some way off the neighbouring boundary. The relevant test for impact upon neighbouring properties would consequently be satisfied.
- 16.24 Overall, in term of impact upon neighbouring residential amenity, the development thus complies with policy DM15 which provides that all development should avoid unacceptable impacts upon amenity (part V), including the protection of residential amenity with regard to noise and disturbance and overlooking.

Highway Matters:

- 16.25 As before, the Highway Authority have raised no objection to the scheme which is unchanged in respect of layout so the previous conditions will be applied. The proposal thus still complies with Policy DM22, with space for 2 car parking spaces for each dwelling.

Impact Upon Vegetation:

- 16.26 As previously concluded, the proposal is considered acceptable in terms of its relationship to the two TPO trees at the front of the site and the scheme is unchanged in this respect. Once again a condition can be applied to secure a schedule of arboricultural monitoring and site supervision. The scheme complies with adopted policy DM15 i).

Wildlife issues:

- 16.27 The application does not have any additional implications for wildlife so does not conflict with Local Plan Policy ENV1 which aims to protect and enhance biodiversity.
- 16.28 A RAMs wildlife payment can be referenced in a new Unilateral Undertaking as new dwellings would be created in a Zone of Influence for coastal sites subject to national designations as required by the Habitat Regulations to mitigate any adverse impacts. This payment will need to be made prior to

commencement of development. An appropriate Habitat Regulation assessment has been undertaken.

Unilateral Undertaking:

- 16.29 The contributions required under the original Unilateral Undertaking have already been made so a new Unilateral Undertaking to secure developer contributions for community facilities and sport & recreation facilities is not required.

Environmental and Carbon Implications

- 16.30 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives. The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that, on balance, the application can contribute to achieving sustainable development. The site is considered to be in a sustainable location and would minimise carbon emissions from trips generated to access services.

Other

- 16.31 Finally, in terms of other material planning considerations, the proposed development does not raise any concerns.
- 16.32. It should be noted that there has been a reconsultation undertaken on additional plans that have been submitted recently in response to the deferral of the item at the last committee showing the revised proposed height for plot 1 and newly annotated heights of the street scene drawings and any further consultation responses received will be reported to the Committee.

17.0 Conclusion

- 17.1 In conclusion the proposal is considered acceptable for the following reasons:
- The site is within the settlement limits and is in a sustainable location so remains in accordance with latest adopted Local Plan settlement Policy.
 - On the previously approved scheme, the neighbouring properties were drawn taller than they exist and the street scene drawings showed the three new dwellings with roof ridge heights no higher than the neighbouring dwellings. This application corrects these inaccuracies in the approved

street scene plan and also proposes the lowering of the roof ridge height on plot 1. It is considered the fact that the newly constructed dwellings are now shown correctly as modestly higher than the neighbouring dwellings does not undermine the character of the street scene in a material or significant way. The dwellings are not overly dominant in the street scene and would still be of relatively modest height for two storey dwellings. The issue has arisen because the heights of the neighbouring properties were drawn incorrectly on the street scene drawings as approved and is not considered that a refusal can be justified on the grounds that the new dwellings are between +0.3 (plot 1) and 0.587 (front gable only on plot 3) metres higher than the neighbouring properties.

- The rear kitchens, being built at 3.3 m, which is approximately 0.6-0.7 m higher than as approved remain acceptable in terms of their impact upon visual and neighbouring amenity.
- Other issues relating to the application including impact upon neighbouring residential amenity, layout, design, impact upon vegetation, provision of amenity space and highway issues remain acceptable.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

Approve subject to consideration of any further consultation responses received and subject to the following conditions (restated from the previous approval and adapted where necessary to reflect subsequently cleared details.)

1. ZAM – Development In accordance with Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: To be confirmed.

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

2. ZBC- Materials

Only materials approved under condition 3 of 212888 shall be used in the development.

Reason: In order to ensure that suitable materials are used on the development.

3. Non Standard Condition- Vehicular Access

Prior to first occupation of the proposed development, each of the proposed vehicular accesses shall be constructed at right angles to the highway boundary and to a width of 5.5 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway.

4. Non Standard Condition - Visibility Splays

Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

Reason: To ensure that the future outward growth of the hedge does not encroach upon the highway or interfere with the passage of users of the highway and to preserve the integrity of the highway, in the interests of highway safety.

5. Non Standard Condition - Parking/Turning Area

The development shall not be occupied until such time as the car parking areas for each dwelling, indicated on the revised drawings on application 221288 has been hard surfaced and sealed. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

6. Non Standard condition - Cycle storage.

The approved bicycle storage facility agreed under clearance of condition application 221184 shall be provided prior to the first occupation of the proposed development hereby permitted within the site and shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport.

7. Non Standard Condition- Travel Information Packs.

Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of Residential Travel Information Packs for sustainable transport for the occupants of each dwelling, approved by Local Planning Authority, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

8. Non Standard condition- No Unbound Materials

No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.

9. ZPA Construction Method Statement

The approved Construction Method Statement agreed under clearance of condition application 221184 shall be adhered to throughout the construction period.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable and in the interest of highway safety.

10. Non Standard Condition - Construction and Demolition No demolition or construction work or delivery of materials shall take place outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

11. Non Standard Condition - Refuse and Recycling

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with the submitted details agreed under clearance of condition application 221184. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

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

12. ZFI- Tree or shrub planting

The tree and/or shrub planting and an implementation timetable agreed under clearance of condition application 221184 shall be complied with and 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.

13. Z00 – Electric Charging Points

Prior to first occupation of the dwellings, one electric vehicle charging point shall be provided for each dwelling and thereafter retained as such.

Reason: To encourage the use of sustainable transport.

14. ZDF- Removal of PD- Obscure Glazing.

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the 1st floor windows in the West side elevation of plot 1, the rearmost first floor window in the East elevation of plot 3 and the rear first floor windows of plots 1-3 shall be non-opening and glazed in obscure glass to a minimum of level 4 obscurity both to a level a minimum of 1.7 m above floor level before the development hereby permitted is first occupied and all shall thereafter be permanently retained in this approved form. Reason: To avoid the overlooking of neighbouring properties in the interests of the amenities of the occupants of those properties.

15.ZCL- Surface Water Drainage

No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage as approved under clearance of condition application 221184 has been fully installed and is available for use. Reason: To minimise the risk of flooding.

16. ZDD- Removal of RD Rights-

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and reenacting that Order with or without modification), no additions, roof alterations, outbuildings or enclosures or other structures (the latter that are forward of the houses hereby approved) shall be erected except in accordance with drawings showing the design and siting of such structures/alterations res which shall previously have been submitted to and approved, in writing, by the Local Planning Authority. Reason: In the interests of avoiding an overdevelopment of the site preserving the open character of the front of the site.

17. Arboricultural Monitoring

Prior to commencement of development, precise details of a shall be submitted to and agreed in writing by the Local Planning Authority. The approved schedule of arboricultural monitoring and site

supervision details agreed under clearance of condition application 221184 shall thereafter be complied with in their entirety.

Reason: In the interests of protecting the amenity value provided by the trees on the site.

18.0 Informatives

18.1 The following informatives are also recommended:

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 work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:
SMO1 – Development Management
Essex Highways Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
Essex
CO7 7LT

3. PLEASE NOTE: This application is the subject of a Unilateral undertaking legal agreement and this decision should only be read in conjunction with this agreement.

4.ZTB - Informative on Any Application With a Site Notice

PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

5. **The applicant is advised to ensure that existing verges and grassed areas in the vicinity of the site should not be damaged by vehicles associated with the construction works hereby approved.**

Appendix 1 Extract from previous Committee Report of 212888:

Layout, Loss of open space, Design and Impact on the Surrounding Area

- 16.4 With regard to the planning merits of the proposal, it should be noted that the Planning Committee at the time of the previous refusal (210304) decided to refuse the proposal on the design, scale and form of the dwellings being harmful to the character of the street scene. It did not refuse the scheme on the grounds of the loss of the open space itself or the principle of residential development on the site. It is considered that this revised proposal now represents an acceptable layout that is in keeping with the character of the area and does not represent an overdevelopment of the site. Again, the positioning and layout of the three dwellings is similar to the density of other development in the vicinity and garden sizes comply with and indeed exceed the standards outlined in Policy DP16 (eLP DM19). The dwellings have been designed and positioned so that there will be visible gaps between the dwellings and between the side boundaries so the proposal will not appear cramped or represent an overdevelopment. Glimpses of Lexden Manor beyond will also be possible. It should be noted that Lexden Manor is not Listed nor Locally Listed and it is not considered that the proposal could be refused on the grounds of the proposal's impact upon its setting, particularly having regard to the presumption in favour of sustainable development embodied in the NPPF.
- 16.5 As with the previously refused scheme, there will clearly be some loss of open space although there will still be significant grassed areas retained at the front of the site, punctuated by the driveways. The two TPO trees at the front will also be retained and protected. A condition to ensure the front areas are not fenced off will also be applied and so the site would retain a significant element of open, green spaciousness. It is not considered that the existing open space is of such significance in the street scene in terms of its amenity value or contribution to the character of the area that would warrant its retention in its entirety. The loss of this open space did not form part of the previous refusal reason as the Planning Committee overall did not object in principle to its development. The proposal would therefore not conflict with Policies DP1 and DP15 (eLP Policies SP7 and DM15) in this respect.
- 16.6 Consideration of the design, scale and form of the dwellings needs particular care given that they are somewhat visually different from the designs of the surrounding properties. Overall, the dwellings are considered acceptable in this respect. The height of the dwellings has been reduced compared to the previous scheme so that the new dwellings would be the same height as the existing dwellings either side of the plot. One of the dwellings has a gable

facing the road and the other too have front facades and this is considered to give the dwellings an appropriate level of variety. Gable widths have also been narrowed during this submission so that they are similar to gable widths of existing dwellings in the vicinity.

- 16.7 The dwellings are considered to have their own contemporary detailing and styling whilst still relating well to the overall character and scale of existing dwellings on this part of the estate. With the use of high quality materials, it is considered that these dwellings would represent good design that would not detract from the character of the street scene and surroundings. The precise details of materials can be conditioned and there is the potential to introduce a little variety.
- 16.8 Overall, in terms of layout, design and impact on surroundings the proposal it is considered the proposal would therefore comply with Policy UR2 (eLP SP7) of the Local Plan Core Strategy which provides that the Borough Council will secure high quality and inclusive design in all developments to make better places for both residents and visitors.
- 16.9 The proposal is considered to comply with Policy DP1 of the Local Plan Development Policies document adopted 2010 (with selected Policies revised July 2014) which provides that all development must be designed to a high standard and respect the character of the site, its context and surroundings including in terms of layout. Policy DM15 of the emerging Local Plan has similar provisions.
- 16.10 The proposal is considered to comply with the provisions of the Backland and Infill SPD and is in general accordance with the Essex Design Guide. It is also considered to comply with the revised NPPF section 12 which promotes well- designed places.
- 16.11 It should be noted that if the scheme is implemented, the previously approved scheme for the conversion of Lexden Manor to flats (192337) could not be implemented as the sites overlap and the required communal garden could not be provided for the flats. However, it is understood that it is the approved dwelling within the grounds (210331) that is being implemented.

Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require (in law) that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.

Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

The following approach should be taken in all planning decisions:

- Identify the provisions of the Development Plan which are relevant to the decision and interpret them carefully, looking at their aims and objectives
- Identify and consider relevant material considerations for and against the proposal
- Consider whether or not the proposal accords with the Development Plan and, if not, whether material considerations warrant a departure from the Development Plan.

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

When applying material considerations the Committee should execute their decision making function accounting for all material matters fairly, reasonably and without bias. In court decisions (such as *R v Westminster CC ex-parte Monahan 1989*) it has been confirmed that material considerations must relate to the development and use of land, be considered against public interest, and be fairly and reasonably related to the application concerned.

Some common material planning considerations which the Planning Committee can (and must) take into consideration in reaching a decision include:-

- Planning policies, including the NPPF and our own Development Plan
- Government guidance, case law, appeal decisions, planning history
- Design, scale, bulk, mass, visual appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations; archaeology, listed buildings and conservation areas
- Environmental issues; impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism and viability
- Social issues; affordable housing, accessibility, inclusion, education, recreation

The above list is not exhaustive

The following are among the most common issues that are **not** relevant planning issues and cannot be taken into account in reaching a decision:-

- land ownership issues; private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses

- matters specifically controlled through other legislation

Strong opposition to large developments is a common feature of the planning process but whether or not a development is popular or unpopular will not matter in the absence of substantial evidence of harm (or support from the policies within the Development Plan). It is the quality of content, not the volume that should be considered.

The law also makes a clear distinction between the question of whether something is a material consideration, and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case but provided it has given regard to all material considerations, it is for the Council to decide what weight is to be given to these matters. Subject to the test of “reasonableness”, the courts (or the Local Government Office) will not get involved in the question of weight. Weight may be tested at appeal.

Planning Obligations

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are:

1. necessary to make the development acceptable in planning terms
2. directly related to the development, and
3. fairly and reasonably related in scale and kind.

These legal tests are set out as statutory tests in the Community Infrastructure Levy Regulations and as policy tests in the National Planning Policy Framework.

Human Rights, Community Safety and Equality and Diversity Implications

All applications are considered against the background and implications of the:

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council 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.

Using Planning Conditions or Refusing Planning Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG) reinforce this, stating that “Planning should operate to encourage and not act as an impediment to sustainable growth”. Therefore, development should be considered with a positive approach. Where a condition could be used to avoid refusing permission this should be the approach taken.

The PPG sets out advice from the Government regarding the appropriate use of conditions, and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. Interpretation of court judgments over the years is also an important material consideration. Reasons why a Planning Authority may be found to have acted unreasonably at appeal include lack of co-operation with applicants, introducing fresh evidence at a later stage, introducing a new reason for refusal, withdrawal of any reason for refusal or providing information that is shown to be manifestly inaccurate or untrue.

In terms of the Planning Committee, Members are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.

Whenever appropriate, the Council will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. Failure to do so on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.

Any planning condition imposed on a development must pass 6 legal tests to be:

1. Necessary
2. Relevant to planning
3. Relevant to the development permitted
4. Reasonable
5. Precise
6. Enforceable

Unless conditions fulfil these criteria they are challengeable at appeal as ultra vires (i.e. their imposition is beyond the powers of local authorities).

If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted. In considering the reasons for that refusal, the Council must rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that the Council acts fairly and reasonably in executing our decision making functions, and that it is evident to all that we have done so.



Colchester Borough Council Development Management

Highway Safety Issues

When considering planning applications, Colchester Borough Council consults Essex County Council Highways Authority on all highway safety issues. They are a statutory consultee, and a recognised expert body. This means that they must be consulted on planning applications, by law, where the proposed development will involve a new access to the highway network, create “material” changes in traffic movement, or where new roads are to be laid out. Where developments affect the trunk road network Highways England become a statutory consultee.

When the Highway Authority is consulted they are under a duty to provide advice on the proposal in question as the experts in highway matters. Their opinion carries significant weight upon which the Local Planning Authority usually relies. Whilst this Council could form an opinion different to the Highway Authority, it would need to provide counter-evidence to justify an argument that the expert body was incorrect. That evidence would need to withhold challenge in appeal or through the courts. Failure to do so would result in a costs award against the Council for acting unreasonably (see other notes pages within this Agenda). Similarly, if the Highway Authority were unable to support their own conclusions they may face costs being awarded against them as the statutory consultee.

Officers of Essex County Council Highway Authority conduct their own site visits to each site in order to take account of all highway safety matters. They also consult their own records and databases, traffic flow information and any other relevant material that may be available, including any submitted documents within planning applications.

Parking Standards

Although the Highway Authority has some remit over parking in so far as it relates to highways safety issues, parking itself is a matter for the Local Planning Authority to determine against national policy and our own adopted standards. Like the other Essex Authorities, Colchester Borough Council has adopted the Essex Planning Officer’s Association Parking Standards. These standards set out that:

- 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.

For residential schemes:

- 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.
- A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.
- One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development and where there is good walkable access to shops, service and public transport, such as town centres.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction and 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.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops

Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office)
- which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments

Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways

Use for the sale of hot food for consumption off the premises.

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for any industrial process,
- being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions

Any use not including a residential use —

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,

(b) as a crèche, day nursery or day centre,

(c) for the provision of education,

(d) for the display of works of art (otherwise than for sale or hire),

(e) as a museum,

(f) as a public library or public reading room,

(g) as a public hall or exhibition hall,

(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

(a) a cinema,

(b) a concert hall, (c) a bingo hall or casino,

(d) a dance hall,

(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

Examples of sui generis uses include (but are not exclusive to):

theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyard or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3

For the purposes of Class C3(a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004.

Interpretation of Class C4

For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004

Supreme Court Decision 16 October 2017

CPRE Kent (Respondent) v China Gateway International Limited (Appellant).

This decision affects the Planning Committee process and needs to be acknowledged for future reference when making decisions to approve permission contrary to the officer recommendations.

For formal recording in the minutes of the meeting, when the Committee comes to a decision contrary to the officer recommendation, the Committee must specify:

- Full reasons for concluding its view,
- The various issues considered,
- The weight given to each factor and
- The logic for reaching the conclusion.

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

If Councillors require more information, or minor amendments to be explored, then the item should be deferred.

If no more information or amendment is desired Councillors will proceed to propose a motion.



