



Colchester  
City Council

# Planning Committee Meeting

**Grand Jury Room, Town Hall, High Street,  
Colchester, CO1 1PJ  
Thursday, 07 September 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!

The Council welcomes contributions and representations from members of the public at most public meetings. At Planning Committee meetings, other than in exceptional circumstances, only one person is permitted to speak in support of an application and one person in opposition to an application. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here:

<https://colchester.cmis.uk.com/colchester/HaveYourSay/HYSPlanning.aspx>.

## Audio Recording, Streaming, Mobile phones and other devices

The Council audio records and streams public meetings for live broadcast over the internet and the recordings are available to listen to afterwards on the Council's website. Audio recording, photography and filming of meetings by members of the public is also welcomed. Phones, tablets, laptops, cameras and other devices can be used at all meetings of the Council so long as this doesn't cause a disturbance. It is not permitted to use voice or camera flash functions and devices must be set to silent. Councillors can use devices to receive messages, to access meeting papers and information via the internet. Looking at or posting on social media by Committee members is at the discretion of the Chairman / Mayor who may choose to require all devices to be switched off at any time.

## Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to the Library and Community Hub, Colchester Central Library, using the contact details below and we will try to provide a reading service, translation or other formats you may need.

## Facilities

Toilets with lift access, if required, are on each floor of the Town Hall. A water dispenser is available on the first floor.

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**COLCHESTER CITY COUNCIL**  
**Planning Committee**  
**Thursday, 07 September 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 15 June 2023 are a correct record.

**2023-06-15 CCC Planning Committee Minutes** 7 - 22

## 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 **231197 Land North of, The Kings Arms, Broad Green, Coggeshall, Colchester, CO6 1Ru** 23 - 32

Application for the layout of gravel and change of use for vehicular parking north of and in association with the Kings Arms Pub and Hotel. Proposed change of use of land from agricultural to domestic residential gardens. (Retrospective)

### 7.2 **231688 The Kings Arms, Broad Green, Coggeshall, Colchester, CO6 1RU** 33 - 40

Application for single storey side extension to existing public house to provide a wheelchair accessible toilet.

### 7.3 **231615 7 North View Cottages, Coach Road, Great Horkesley, Essex, CO6 4AT** 41 - 48

Application for single storey rear extension for disabled adaption to include bedroom and bathroom.

### 7.4 **231370 4 St Botolphs Street, Colchester, CO2 7DX** 49 - 60

Planning permission is sought for replacement of timber sash windows with upvc sash windows which will be painted black. Also new timber door to flats and re-instatement of papapet and clock to front elevation.

7.5	<b>220526 Land Adjacent to 67, Braiswick, Colchester, CO4 5BQ</b>	61 - 100
	Application for approval of reserved matters following outline approval 191522 - erection of 27 dwellings and associated development.	
	<b>Planning Committee Information Pages v2</b>	101 - 112

**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

## 15 June 2023

<i>Present:-</i>	Councillors Lilley (Chair), Arnold, Davidson, Hagon, Hogg, MacLean, Mannion, McCarthy, McLean, and Warnes
<i>Substitute Member:-</i>	Councillor Arnold substituted for Councillor Barton Councillor Hagon substituted for Councillor Tate
<i>Also in Attendance:-</i>	Councillors Barber, Naylor, Scott-Boutell and Willetts

### 994. Site Visits

A site visit was conducted on the 15 June 2023 attended by Councillors Lilley, Hogg, McLean, and Davidson. Members visited the following sites:

- 220526 Land Adjacent to 67, Braiswick, Colchester, CO4 5BQ
- 223013 Bypass Nurseries, Dobbies Lane, Marks Tey, Essex, CO6 1EP
- 222429 Myland Lodge 301a Mile End Road, Colchester, CO4 5EA
- 230380 Land Adj to, 179b Shrub End Road, Colchester, Essex, CO3 4RG

### 995. Minutes

The minutes of the meetings held on the 27 April 2023 and 24 May 2023 were confirmed as a true record.

### 996. 220526 Land Adjacent to 67, Braiswick, Colchester, CO4 5BQ

The Committee considered an application for approval of reserved matters following outline approval 191522 – erection of 27 dwellings and associated development. The application was referred to the Planning Committee as it had been called in by Cllr Sara Naylor for the following reason:

- I doubt that high quality design can be delivered as required with a density of 27 houses.

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

John Miles, 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 north of Braiswick Road, and detailed that the site was currently rough grassland which was next to the A12. It was noted that the outline permission for the site had been granted at appeal

and that the site was part of a wider allocation within the Colchester Local Plan. The Committee were shown plans of the site which included: the layout of the dwellings on site, the types of dwellings on site, the road layout on the site and areas of public open space. The Senior Planning Officer detailed that there would be new tree planting on the site as well as wildflower seeding included as part of the landscaping proposal. The Committee were shown an illustrative street scene of what the application may look like if built as well as the house types which included 2.5 storey buildings. The Committee were shown the street scene elevations which showed the change in topography and steepness of the site down to the A12 border and how the proposed dwellings would sit in the landscape. The Senior Planning Officer concluded by outlining the officer recommendation of approval as detailed in the report.

David Mehigan addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that there were concerns about the proposed density on the site and that the objections regarding the site could not be considered as nimbysism. It was detailed that the proposal would significantly alter the landscape and did not create a distinctive character with the 10% open space that was required on the site. The speaker detailed that the site was riddled with challenges which could not be resolved and that the outline permission of “ up to 27 dwellings” did not mean that 27 dwellings needed to be put on the site. The speaker concluded by asking that the application be refused.

Jack Baron addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that they were the design director for the proposal and that the proposal would create 27 sustainable new homes in Colchester. The Committee were asked to note that the site benefitted from outline permission and that the indicative layout had been taken into account creating the proposal before the Committee which had been subject to pre- application meetings in 2021. It was noted that comments from this had been taken onboard and included in the application before the Committee. The speaker concluded by detailing that the site does lie on a hill and that high quality materials would be used on the site and asked that the application be approved as detailed in the officer report.

Councillor Sara Naylor addressed the Committee as Ward Member for Lexden and Braiswick. The Committee were thanked for visiting the site and drew the Committees attention to the references to topography in the report and detailed that they were convinced by residents that the original design of the proposal was drab and depressing but raised concern that the Council’s Urban Design Officer had given a lukewarm view on the proposal. Members heard that if the site was built as proposed it would just meet the Councils Planning tests and that the Ward Member had concerns over the inflationary costs in the economy and whether this would affect the viability of the proposal. The Ward Member raised concerns that this could lead to the developer reverting to the previous iteration of the site and that there was concern regarding flooding on the site. The speaker concluded by asking the Committee to defer the application on design grounds to seek improvements.

Councillor Lewis Barber addressed the Committee as Ward Member for Lexden and Braiswick. The Committee heard that the Policy HOU1 specified that the quality of design had to be the highest quality and that they echoed the concern from Cllr Naylor regarding the response from the Council’s Urban Design Officer and expressed their view that the design of the site was not of the highest quality which was detailed in the Neighbourhood Plan. The Committee heard that there was still further work to be done on the application with regards to the screening along the A12 and the open space that was on the site and



detailed that the argument for the principle of the development had been decided by the Planning Inspectorate but asked whether the applicant could redesign the site taking into account the density of the proposal.

Councillor Dennis Willetts addressed the Committee as a Ward Member for Lexden and Braiswick. The Committee heard that the planning system balanced the benefits and harms to the locality and that if the development does not represent the expectations of Braiswick then it should not be permitted. The Ward Member raised concern over the trees and hedgerows being destroyed and queried whether the design was up to the standard that the City could be proud of and whether policy DM15 and the enhancement of the area was sufficient for the reserved matters application to be approved. The Ward Member also referred to the comments from the Urban Design Officer and how they had also been lukewarm to the proposal with the Member feeling that the proposal did not create a high enough quality scheme with there being significant impact on the visual impact on the area and immediate environment. The Ward Member concluded by asking that the application be deferred for further consideration on the visual impact of the proposal and how this could be improved.

The Chair addressed the Committee regarding the points of design and read out policy HOU1 so that the Committee were all aware of the policy.

At the request of the Chair the Senior Planning Officer responded that the change of character of the site had been considered including the density and the style of the site, it was noted that this was something that considered by the Planning Inspector when they allowed the site at appeal. The Committee heard that the proposed density of the site was acceptable to Officers and that the scheme did deliver on the quality of design and that there had been significant improvements on this since the application had been submitted to the Council. The Senior Planning Officer detailed that the proposal sat comfortably in the street scene and that the proposal accorded with the Local Plan and the Lexden and Braiswick and that there were existing conditions regarding urban drainage and other conditions. The Committee heard that there was weighting within the National Planning Policy Framework (NPPF) paragraph 135 which protected the development quality and scheme from being eroded between approval being granted and completion of the site. The Senior Planning Officer detailed that the noise created by the A12 was accounted for and that additional insulation required was covered by the outline permission's conditions.

Members debated the proposal with concerns being raised regarding the placement of the open space on site including the Childrens play area, the speed limit along the main access road of the site as well as questions regarding the access to the rest of the allocation in the Local Plan. The Senior Planning Officer responded that the access to the site would be within a 30 MPH zone with new bus stops being added to the area with further confirmation being provided that the visitor parking was in accordance with the minimum standards. Furthermore, it was noted that some properties had a provision above the minimum standards for parking and that there was a condition that the garages on site had to stay as such. It was noted that the road on site had to provide a link to the remainder of the allocation in the Local Plan. The Committee heard that the areas of public open space would be maintained via a private management company and that the Inspector had considered the issue of noise levels at the appeal and that the proposal was not in an area of air quality management.

Members debated the proposal regarding the highest quality of build achievable and whether the tree row and its monitoring for 5 years after the completion was sufficient and whether the extra insulation on the proposals would add to the climate emergency as residents would

need to use air conditioning if they needed to keep their windows closed to stop the noise in their home.

At the request of the Chair, the Senior Planning Officer outlined that the design was subjective, but officers considered the quality of design to be a high standard and that the 5-year monitoring condition of trees was a standard condition from the Council with no previous issues being raised regarding a requirement for additional monitoring. The Committee heard that the proximity to the A12 had been noted but had ultimately been considered at the outline stage and subsequently at the appeal and that the change in ground levels had been considered when designing the proposal.

Members commented on the quality of the design with some Members expressing concern that the proposal did not meet the standards expected in the Neighbourhood Plan as well as concerns regarding the heat during summer and effect on the climate if windows could not be opened and air conditioning used as a substitute.

At the request of the Chair, the Development Manager added that the highest quality had to be balanced against the viability of a proposal in the context of a development and detailed that the frontage of the site would be screened whilst adding that the site was not in a conservation area. The Development Manager concluded by detailing that the Council had recently lost an appeal on a site in Tiptree where quality of design had been a reason for refusal and had thus shown that the Planning Inspectorates concept of highest quality may not align with that of the Councils expectations.

In response to a question raised by the Committee the Senior Planning Officer detailed that there would be obscuring glass on the side of the elevations of the proposed dwellings but that there were no harmful angles of overlooking on the site.

Members continued to debate the proposal with Members welcoming that the design had been improved since the original proposal submitted but that there were still concerns which included the road linkage of the site and why it had not been completed so that residents would not have to drive around the entirety of the site as well as the lack of footpaths near the site. Some Members felt that the entirety of the estate should be re-designed to increase the open space on site and place the larger houses on the south of the site. The debate concluded with the Committee discussing whether to defer the application to seek amendments on the design, layout, and density of the proposal.

A proposal was made and seconded as follows:

That the application be deferred to allow the Development Manager to seek amendments to the design and layout of the site and to consider the danger of the location of the children's play area location, public open space, and connectivity within the site, lack of community space and that a reduction in dwellings would enhance the design.

*RESOLVED (UNANIMOUSLY)* That the application be deferred to allow the Development Manager to seek amendments to the design and layout of the site and to consider the danger of the location of the children's play area location, public open space, and connectivity within the site, lack of community space and that a reduction in dwellings would enhance the design.

## **997. 223013 Bypass Nurseries, Dobbies Lane, Marks Tey, Essex, CO6 1EP**

The Committee considered an application for a change of use of land to B8 storage, retention of portable cabin for ancillary office, retention of earth bunds, proposed buildings for storage. The application was referred to the Planning Committee as the application had been called in by Councillor Ellis for the following reasons:

- The proposal does not accord with the adopted Marks Tey Neighbourhood Plan.
- Notwithstanding ECC Highways comments/ requested conditions, Dobbies Lane is patently unsuitable for the type and quantity of vehicles the proposed use requires/ generates, significantly compromising highway safety for both cyclists and pedestrians. Photographic evidence can easily be supplied by the Parish Council. I would ask for a Committee site visit so that they can fully appreciate the issues with this application. I could continue, but this should be sufficient reasons for “call-in” and we will expand on this at Committee.

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

Eleanor Moss, Principal Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown drone footage of the proposal and detailed that retrospective permission was sought for the office buildings on site with the land classed for business use as detailed in the Marks Tey Neighbourhood Plan. The Committee heard that the proposal sought to create a B8 use on site and with earth bunds and two storage buildings that would have a maximum height of 6.9m metres which allow machinery to load and unload. It was outlined that the landscaping proposal included a wildflower mix and trees. The Committee were shown photos of the site from various locations and noted the proximity to the A12. The Principal Planning Officer concluded by outlining that the site was in close proximity to the A12, that it was officers' view that the proposal was not harmful to the Marks Tey Neighbourhood Plan, that there had been no objection from National Highways as there were no restrictions on Dobbies Lane.

Gerald Wells (Marks Tey Parish Council Chair) addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the site was operating on an area which only a fifth of it had permission for use. The Committee heard that the objections from the Parish Council had been submitted in the written response and drew Members attention to the highways issues associated with the site as well as residents parking. The Committee were asked to note that there were existing issues on Old London Road which led to Dobbies Lane and detailed that the proposed highways conditions from Essex County Council were unenforceable and unworkable. The Parish Chair detailed that some of the issues on Old London Road would be resolved with the de-trunking of the A12, but the Neighbourhood Plan was not being properly considered. The speaker concluded by asking the Committee to defer the application to overcome the objections associated with the applications.

Ben Willis (Agent) addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in support of the application. The Committee heard that the applicant had worked to make sure highway safety could be ensured and worked to make sure that obligations on this had been met.

The Democratic Services Officer read out a statement from Councillors Ellis and Bentley, Ward Members for Marks Tey and Layer as follows:

*“Chairman, Committee members, please accept my apologies for not being here this evening. Both I and Cllr. Kevin Bentley are unable to attend, but please accept this submission on behalf of both of us. Unfortunately I have no control over when an item I have called in comes to committee.*

*Members, this is by no means a straightforward application. Few would argue that the site of the former Bypass Nurseries has not got an employment use nor that it has vehicle access via Dobbies Lane.*

*However, Nustone’s current use of the site and its retrospective planning application, is significantly greater in scale than the previous use, and covers some 5 times more area than the part of the site with existing B8 planning permission. Most of those few support comments on the planning portal speak about the rapid growth of this business and while we are most certainly not anti business, it does need to be carried out in the right location relative to its size and scale. This one, we would suggest, may have outgrown its current site and now requires one with significantly better road infrastructure than a narrow rural lane.*

*We should point out that the application incorrectly states that it is for ‘retention of earth bunds’, as the main bund that separates the site to the south has already been repositioned by Nustone some 30m towards Old London Road. Thus it is wrong to assume that Nustone have lawful use of the site on which they are currently operating. The vast majority of the site is being currently B8 used unlawfully, a fact that this Application is seeking to correct in order to avoid enforcement action. This significant growth of the use of the site if served by Dobbies Lane, is THE main highway threat to the Lane and Old London Road. The previous authorised use generated much fewer vehicle movements with smaller vehicles.*

*Members, this growth of use of the site and consequent greatly increased use of Dobbies Lane, the resultant destruction of its rural character, and risk to pedestrians and cyclists is THE prime concern with this Application. The Highways response simply does not address this and appears to be based on the erroneous assumption that the current use is lawful and as existed. As I have pointed out, it is not and it did not.*

*When challenged the County Council state that ‘The number of pedestrians using Dobbies Lane are not anticipated to be many but those that do will have to be aware of their surroundings and any moving traffic, large and small’. However, it is important for Committee members to know that National Highways proposals for the widened A12 includes a pedestrian/cycling/equestrian bridge over the new road with a connecting footpath that ends opposite Dobbies Lane, together with a new crossing to join to it. Is not the protection of pedestrians an important criteria for the County and City Councils and in this instance the response to this Application is making the situation worse and limiting future walking and cycling potential? Surely we are striving to get people out of their cars and to travel by foot or cycle whenever possible? Why remove the opportunity for the vast majority of Marks Tey residents, those living on the estates, to do just that, in accordance with Marks Tey Neighbourhood Plan policy for Dobbies lane and National Highways aspirations, in favour of a business which is located in the wrong place for the sort of business that it is carrying out? Dobbies Lane may look a short inconsequential lane to some, but when you look at this holistically you’ll understand what an important walking and cycling link it is, and how it becomes even more important after the A12 expansion.*

*The Highways response and CCC’s recommended approach to the Application rely on imposed conditions and one wonders how the required highway access timetable system or other conditions will be monitored or enforced? Especially with a company whose understanding of, or compliance with the rules, seems lacking, as illustrated by its unlawful active current use of the site.*

*We are genuinely concerned that the County Council's Highway Assessment of this Application is based on the incorrect assumption that the current use of the site is lawful, and whilst it is difficult for officers to take this or future National Highways proposals into account, that is precisely the task of this Planning Committee. Decisions such as this is why you make the determination, not officers. We therefore respectfully request that the decision on this Application be deferred and that confirmation be sought from the Highway Authority that its response is correctly based. If you permit this development before we have that response it can never be undone. We believe this is too important a decision for Marks Tey, with long term consequences, for you to do so. Thank you."*

Councillor Lewis Barber addressed the Committee as Ward Member for Lexden and Braiswick and as the County Councillor for Constable Division. The Committee heard that the County Council's Highways Department had not objected to the proposal but detailed their concern about the narrowness of the lane and asked Members to consider the how the proposal interacts with the Neighbourhood Plan. The Committee were asked to defer the application so that the Highways could continue discussions on the access point and as well as consideration of policy MT08 in the Neighbourhood Plan.

The Chair addressed the Committee and commented that they were astonished and horrified by the site work practices in terms of health and safety and use of forklifts and the way that they were being used in an unsafe manner.

At the request of the Chair, the Principal Planning Officer responded to the comments from the Have Your Say Speakers. The Committee heard that the site was currently a Sui Generis use and that the Marks Tey Neighbourhood Plan had designated the area for employment use as MT15 and that the proposal before the Committee was to regularise the use on the site.

Members debated the proposal and commented that it was a shame that a representative from Essex County Council's Highways Department was not in attendance to respond to Highways matters and that Dobbies Lane had been previously unregulated and queried whether there was scope for deferring the application to ask that a Highways Officer attend and advise the Committee.

The Development Manager detailed that the Committee could request the attendance of a representative from Essex County Council's Highways Department.

Members continued to debate the application with Members questioning how the use of the site was acceptable with the area being currently used much larger than the former nursery and the impact that this would have on Old London Road considering the other developments that had been accepted. Some Members felt that a full traffic plan was required before any decision could be made. The debate concluded with Committee Members raising concerns over the proposals relation to the Marks Tey Neighbourhood Plan and how the application had been assessed against this.

A proposal was made to refuse the application but was subsequently withdrawn and a proposal to defer the application for the following reasons was made as follows:

That the application is deferred to seek a site visit with the planning Committee and inviting the Essex County Council (ECC) Highways Officer to attend said site visit and the subsequent committee determination hearing and ask that ECC Highways investigate the use of Dobbies Lane and potential conflicts with pedestrians and cyclists on this key route (MTNP Policy MT08).

*RESOLVED (UNANIMOUSLY)* That the application is deferred to seek a site visit with the planning Committee and inviting the Essex County Council (ECC) Highways Officer to attend said site visit and the subsequent committee determination hearing and ask that ECC Highways investigate the use of Dobbies Lane and potential conflicts with pedestrians and cyclists on this key route (MTNP Policy MT08).

#### **998. 222429 Myland Lodge, 301a Mile End Road, Colchester, CO4 5EA**

A short break was taken between 20:08 and 20:20 after the completion of application 223013 but before the commencement of 222429.

The Committee considered an application for part demolition of former horticultural buildings, conversion of a barn to residential use and the erection of 4 no. dwellings with garages and access. The application was referred to the Planning Committee as the application had been called in by Councillor Goss for the following reasons:

- Access to the site is off Braiswick Lane and not in the outline of Mile End Road so the access is down terrible lane by 1, 3 and 5 Braiswick which is unmade road and a tight bend as well as tight road. The access isn't suitable for this amount of housing.
- Dustcarts struggle to get down this lane, so access for building materials will be impossible.
- Over development of the site.
- Human Rights- this will affect the existing residents and affect their quality of life.
- Overlooking houses down Braiswick Lane – the Mersea Homes enclave is affected by both overlooking and access issue.

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

Hayleigh Parker-Haines, Senior Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the layout of the site which took access off of Braiswick Lane and how the access would be serve the new dwellings. Members heard that the proposal had no outstanding objections but was subject to a unilateral undertaking with the officer recommendation of approval as detailed in the Committee report.

Robert Johnstone (Myland Community Council) addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the proposal in different forms had been before the Committee twice before where it had been objected to by Essex County previously and questioned why they had not objected on the current application. The speaker outlined that Braiswick Lane was not a road but was a footpath which continued onto Braiswick Lodge. The Committee heard that there was a conflict between the cars and those walking who would be using the Public Right of Way and commented that there had been deletions of stretches of footpaths 46 and 224. The speaker concluded by detailing that the National Planning Policy Framework (NPPF) should enhance the Public Right of Way.

Robert Pomery (Agent) addressed the Committee pursuant to the provisions of Planning Committee procedure rule 8 in support of the application. The Committee heard that there was a presumption in favour of sustainable development and that the site as a windfall

development would contribute positively to the Council's housing land supply. The speaker outlined Braiswick Lodge had been on site for over a hundred years and that the proposal would incorporate the building as part of the design and layout of the site. The Agent detailed that neighbourhood amenity had been considered with the proposal which would include obscured glazing for the bathrooms. The speaker concluded by detailing that they understood the concerns from residents and Ward Councillors, but that there had been no objections from Essex County Council's Highways Department.

Councillor Martin Goss addressed the Committee as Ward Member for Mile End. The Committee heard that Colchester City Council were currently not serving the area for waste collection on Braiswick Lane as it was not possible to get a vehicle to service the existing dwellings. The Committee heard that there was overdevelopment of the site and that previous iterations of the site had been refused by the Council and detailed that the proposal would impact on the Human Rights of the existing residents who lived in Braiswick Lane and detailed that there were sufficient grounds to defer the application to improve the access to the site. The Ward Member concluded by detailing that if the road access was ridiculous, that the road was not currently being serviced, and that Essex County Council's Highways Department had originally objected but had subsequently withdrawn this.

At the request of the Chair, the Senior Planning Officer addressed the Committee and responded to the points made by the Have Your Say speakers. The Committee heard that Essex County Council's Highways Department did not have an outstanding objection and that the access would be based on the existing junction on Braiswick Lane. It was noted that the Public Right of Way Team had been consulted on the application and did not object on the basis that there would be a conflict between vehicles and pedestrians and that it was proposed there would be a size 3 turning head on site which would allow larger vehicles to exit the site in forward gear. The Senior Planning Officer outlined that officers had not assessed the site as being overdeveloped or that there would be a significant impact on neighbourhood amenity.

Members debated the application and queried whether the issue of the dustcart not being able to access the lane would also mean that a fire engine would also not be able to as well as why the County Council's Highways Department had changed their mind. At the request of the Chair the Senior Planning Officer detailed that the County Council's Highways Department considered that it would be possible to get dustcarts and Fire Engines down the road once completed and that the conditions on the application ensure public safety and would detail the construction management plan and storage of materials on site.

Members debated the application further and queried whether further information was needed to make an informed decision on the application or whether the details could be conditioned. The Senior Planning Officer confirmed that the details could be conditioned with some Members outlining that they did not feel that there was a significant pedestrian conflict.

It was proposed and seconded that the application be approved as detailed in the officer recommendation with the additional details as follows:

- That further details be secured regarding waste collection to ensure that the properties can be serviced.

**RESOLVED (EIGHT votes FOR, ONE vote AGAINST and ONE ABSTENTION)** That the application be approved as detailed in the officer recommendation with the additional condition that further details are secured regarding waste collection to ensure that the

properties can be serviced.

### **999. 230380 Land adj to, 179B Shrub End Road, Colchester, Essex, CO3 4RG**

The Committee considered an application for a new 3-bedroom Art-Deco influenced dwelling and separate garage. (Revised Drawings). The application was referred to the Planning Committee as the application had been called in by Councillor Lissimore for the following reasons:

- Layout and density of building
- Design
- Loss of privacy
- Road Access

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

Hayleigh Parker-Haines, Senior Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the layout and elevations of the site as well as site photos of the area. The Officer detailed that the application was recommended for approval as detailed in the committee report.

Jenny Goldsmith addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that they lived next door to the proposal and if it was approved there would be a detrimental impact on their lives with the main reception room in the proposal only 7 metres away from their house. Members were asked to note that if the proposal was built then it would be unsafe for their children to play outside the front of their home. The speaker noted that Essex County Council's Highways Department said that they could not see an impact but that this would have a large impact on the narrow access to and from the site and that the loss of biodiversity on the area would affect everyone in the area. The Committee heard that the proposal was not in keeping with the surrounding area with further concerns being raised about noise created from the roof terrace.

Councillor Sue Lissimore addressed the Committee as Ward Member for Prettygate. The Committee heard that the proposal would cause Highways issues with the nursery on the access road and that the proposal was overbearing and out of keeping with the area and would overlook existing properties in the area. The Committee heard that this should be considered as back land development and that the design should assist the area and asked the Committee to consider whether the development sat in harmony with the surroundings. The Committee were advised that the proposal did not reflect the local area and that the access arrangements to the new dwelling were inadequate and that the proposal was contrary to policy DP15 and that the site was an integral part of the area and had a large number of animals living in it. The speaker concluded by asking that an archaeological survey be conditioned if approved but asked that Members refuse the application.

At the request of the Chair the Senior Planning Officer responded to the points raised by the Have Your Say speakers. The Committee heard that the proposal was on what had once been a part of the pubs car park, that the site would have to provide 10% Biodiversity net gain with the baseline being the current biodiversity as assessed on the site. It was outlined that the design was a subjective matter and that the proposed dwelling was bigger than those existing but confirmed it was in line with the established building line. The Committee heard that the design features included a circular focal point which reflects the hexagonal feature



of the existing pubs design and that it did incorporate an art deco design and that the roof terrace was addressed in the report.

Members debated the application and queried the ecological data provided as there were no records of badger sets on the site but there were 44 recorded sightings in the area with no further sightings since 2021. Members queried what the timeline was surrounding the ecological surveys and whether there was any evidence of the sets being stopped up.

At the request of the Chair, the Senior Planning Officer detailed that a pre-commencement condition had been agreed and that the standard procedure had been followed regarding the ecological evaluation of the site and that if there was an absence of data the Council would consult with Place Services at Essex County Council.

The Development Manager further clarified that if an ecological report timed out or was no longer assessed to be representative of an area then a new one would be requested from the applicant. The Development Manager confirmed that it was important to ensure this and that an up-to-date evidence base was submitted and that if there was any concern over this then the Council would consult with Place Services as the Senior Planning Officer had detailed. Following a further question, the Development Manager confirmed that the Council did consult with the Badger Group.

The debate concluded with Members discussing the proposal and the ecological impact of the application based off the evidence provided.

*RESOLVED (THREE votes FOR , ZERO votes AGAINST with SEVEN ABSTENTIONS)* That the application be approved as detailed in the officer recommendation.

#### **1000. 230777 Kroonstadt, 63 London Road, Copford, Colchester, CO6 1LG**

The Committee considered an application for a change of use of a section of residential garden into a secure dog exercise field. The application was referred to the Planning Committee as the application had been called in by Councillor Ellis for the following reasons:

- Detrimental impact on neighbouring residential amenity (location, hours of use, nature of use);
- Inadequate size for a dog exercise field

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

Kelsie Oliver, Planning Officer presented the application to the Committee and assisted the Committee in its deliberations. The Committee were shown the proposal of the site and the security features that included 6-foot fencing posts on the neighbouring boundaries, a dog waste bin, and entry details of the site being controlled by a booking system that would mean there would one car on site at any one time. The Committee heard that the site complied with the relevant highways requirements and that a passing place was proposed so that there would not be access issues along the single-track road. Members heard that policy DM6 supported the proposal and that any waste from the site would be removed from the site. The Planning Officer confirmed that the planning conditions proposed could provide security and that the application was recommended for approval as detailed in the officer recommendation.

Nigel Sagar addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the proposal would have a severe impact on the privacy of local residents through the movement of the dogs and that the entrance would compromise security with the entrance being within 2 metres of one neighbour's front door. Concern was raised over the hours of operation on the site as well as the proposal being sited outside of the settlement boundary and that there would be an arms-length booking system which would not offer sufficient security on site. The speaker concluded by detailing that there was no proven local demand and that Copford had an established area for dog field and that the proposal was a dangerous risk to landowners.

The Democratic Services Officer read out a statement from Councillors Ellis and Bentley, Ward Members for Marks Tey and Layer as follows:

*“Again, I apologise for not being with you this evening, as I’ve explained, I had no control over when this was brought to Committee. Once again, this submission should be considered to come from myself and Cllr. Kevin Bentley.*

*I called in this application because it has caused a huge amount of upset and consternation in its local area, was objected to by the Parish Council and Cllr. Bentley and I agreed with many of the objections. I did not expect it to come before committee and fail to understand how a planning officer could see fit to recommend this for approval. It is a dire application using a simple and rather poor business plan as the planning statement and basis for the application.*

*The site area is woefully inadequate for the purpose proposed. The applicant, who lives in Bedford where his business is registered, has we assume failed to find larger more suitable pieces of land closer to his home. Happy K9 Ltd was incorporated in April of this year and has no other dog exercise facilities. This application would be its sole ‘business’. The applicant has, it appears, decided to try to build a business by utilising a piece of land belonging to his father, also domiciled in Bedford. We understand his father also owns the property (no 63) which stands in front of this back land site, which, contrary to para 4.1 of the officers report does not form part of Kroonstadt, 63 London Road. It is an entirely separately registered land holding and is not part of the garden. The proposal is for him to manage the business remotely, and physically visit once a month. Nowhere in the application does it propose providing local rural employment, so why has the planning officer stated that policy DM6 is relevant when it clearly does not meet a local employment need? This application is to provide an income to a single business owner in Bedford. Also contrary to the report, it is not a piece of residential garden, it might look like it, but it isn’t. We’ll repeat, it’s a stand-alone separately registered land holding with no access to water nor electricity, the former being an essential we suspect of an area where dogs are exercised?*

*Neighbouring amenity. Please read para 16.9 of the officers report and reconcile that with the neighbouring elderly residents, one with an adjacent open aspect garden. If you have undertaken a site visit you will understand this issue. Imagine having lots of people you don’t know coming and going at the bottom of your garden from 7.30 in the morning until 9pm? While we sincerely hope that you do not, if committee were minded to approve this application, at least look at and change those hours, taking summer and winter time into account.*

*We note Highways have raised no objections and know that Committee members attach import to Highways recommendations. We imagine sitting at ones desk the proposal might look safe to a highways officer. But try exiting the driveway for real and you will find that to*

*cross the footpath you can't see pedestrians or cyclists approaching from the right until they are upon you. This is due to the brick pier and trees belonging to no.63, outwith the control of the applicant as this belongs to his father and is an entirely separate land holding to the application site. At the very least can Committee check that Highways actually conducted a site visit? If not, defer and request that they do so? This is a busy road and safety should be of paramount importance. A track to access a piece of land used very occasionally by the owner has a very different number of vehicle movements, with their associated risks, than a dog exercise area, we won't call it a field, it isn't one.*

*Committee, we urge you to refuse this application, it is not for local employment, it adversely affects the amenity of neighbouring properties, the entrance/exit onto London Road is not a safe one and it does not sit comfortably with, nor enhance, the area in which it is proposed, one of the prerequisites of any planning application. Thank you."*

At the request of the Chair the Planning Officer responded to the points raised by the have your say speakers. The Committee heard that it was proposed within the application that there would be an electricity and water supply to the site and that the Council's Environmental Protection Team had assessed that the amenity and conditions were appropriate for a small-scale business. The Development Manager added that the proposal was a very low intensity use and with the buffer period built into the bookings system it could almost be considered a domestic scale of use. It was noted that the conditions only allowed 2 dogs at a time.

Members debated the proposal on issues including: the location of the site being close to farmland and outside the settlement boundary, that there was a concern that the proposal would impinge on the quality of life of the existing residents when there was an existing site for this type of activity in Copford, that there was a lack of management of the site to police issues that arose. Members raised further points regarding the contamination of the land from dog excrement as well as the security of the site and suggested whether CCTV would be an appropriate remedy.

Members continued to debate the proposed noting that a dog field was not a passive income stream and that it might be unsuitable if it is near to residential properties as well as some Members raising concerns about the use of CCTV. The Development Manager advised the Committee that should they believe that a permanent permission was not appropriate then a temporary permission with the details of the management strategy to be submitted as a condition could be granted.

A proposal was made and seconded to refuse the application for the following reasons:

That the application is refused due to a lack of on-site management of the facility in a residential area and the close proximity to neighbouring residential properties and consequently the potential for noise and disturbance to their amenities arising from the unmanaged nature of the enterprise contrary to Local Plan policies DM15, DM6, OV2.

**RESOLVED (NINE votes FOR, ZERO votes AGAINST, and ONE ABSTENTION )** That the application be refused for the following reasons as detailed below:

That the application is refused due to a lack of on-site management of the facility in a residential area and the close proximity to neighbouring residential properties and consequently the potential for noise and disturbance to their amenities arising from the unmanaged nature of the enterprise contrary to Local Plan policies DM15, DM6, OV2.

Following the completion of application 230777 it was proposed that the meeting continue and consider the remaining items on the agenda.

*RESOLVED (FIVE votes FOR and FIVE votes AGAINST. The Chair used their casting vote FOR the proposal)* That the meeting continue and that the remaining items on the agenda be considered.

#### **1001. 230775 The Stanway School, Winstree Road, Stanway, Colchester**

**Councillor Arnold chose to speak as a Ward Member for application 230775 and not remain as part of the Committee for the debate or vote.**

**Councillor Lilley declared a non-disclosable interest in application 230775 as a previous Chairman of a football club.**

**Councillor Hagon declared a non-disclosable interest in the application as a Member of Stanway Parish Council. It was noted that Councillor Hagon had not been a part of the Stanway Planning Committee who had had responded to the consultation on the application.**

The Committee considered an application for retrospective stationing of demountable structure to form a clubhouse. The application was referred to the Planning Committee as the application had been called in by Councillor Arnold for the following reasons:

- Residents amenities will be significantly impacted by the light and noise pollution, the operation hours applied for will impact as it is a residential area.
- It appears although not mentioned in the application there is an associated shipping container which is not in-keeping with the street scene. Visitor parking is not contained on the site and spills over onto the highway network with dangerous implications.

The Committee had before it a report and amendment sheet 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 proposal including the access point on the road and the parking restrictions that were on the Winstree Road. The Committee heard that the proposal catered for the teams who played on the school grounds during matches. The Senior Planning Officer outlined that there was concern about the vehicular movements on site but confirmed that it had been assessed that the Clubhouse would not create a significant increase in the area. It was further noted that the proposed traffic plan and thirty car parking spaces did not conflict with parking standards or highway safety. The Senior Planning Officer concluded by detailing that there was proposed to be a traffic management plan condition and that the recommendation was to approve the application as detailed in the officer recommendation.

Robert Pomery (Agent) addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in support of the application. The Committee heard that the proposal and the sports fields they were adjacent to were part of the community with many teams using the pitches during the year which included training sessions. The Committee were asked to note that the proposal was to regularise the unit which had facilities for tea making and that as the proposal was retrospective. The speaker concluded by detailing that the proposal would not generate movements and that it would only be open when a club was

on site and asked that the application be approved as detailed in the report.

Councillor Tracy Arnold addressed the Committee as Ward Member for Stanway. The Committee heard that the proposal would create further car movements in the area and detailed that the car park was not adequate as it was currently used by one hundred and twenty people and was overused. The Ward Member detailed that this would cause more frustration for residents with sheltered accommodation opposite the school. The speaker concluded by detailing that proposal was not in-keeping with the street scene and asked the Committee to defer the application to seek further information.

Councillor Lesley Scott-Boutell addressed the Committee as Ward Member for Stanway. The Committee heard that there were concerns about Highways with drivers parking indiscriminately following the expansion of the school meaning that some busses struggled to access the school. The Ward Member detailed that the club house could be used as a social space for meetings or entertainment purposes when matches were not on. It was noted that the proposal was not in-keeping with the street scene and that there was no mention of the container in the planning application. The Committee heard that this development was creeping beyond what it should and that it had been requested that the car parking situation be reviewed by the North Essex Parking Partnership (NEPP). It was noted that the sports on the field had evolved but questioned why it needed a guard hut and detailed that one objection had been made about the outrageous noise levels. The Ward Member concluded by detailing that the majority of residents had lived in the area before the school was built and that if not complied with this development would cause detrimental harm.

Members debated the application on issues including: the type of development that was being proposed in the context of the area, that the referee was in charge of the games being played, that the parking issues were noted and that further work could be done through the NEPP to remedy issues in the area, that the availability of the sports facilities refreshments would help support the clubs and their longevity.

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

## **1002. Revised Procedures for S106 Developer Contributions**

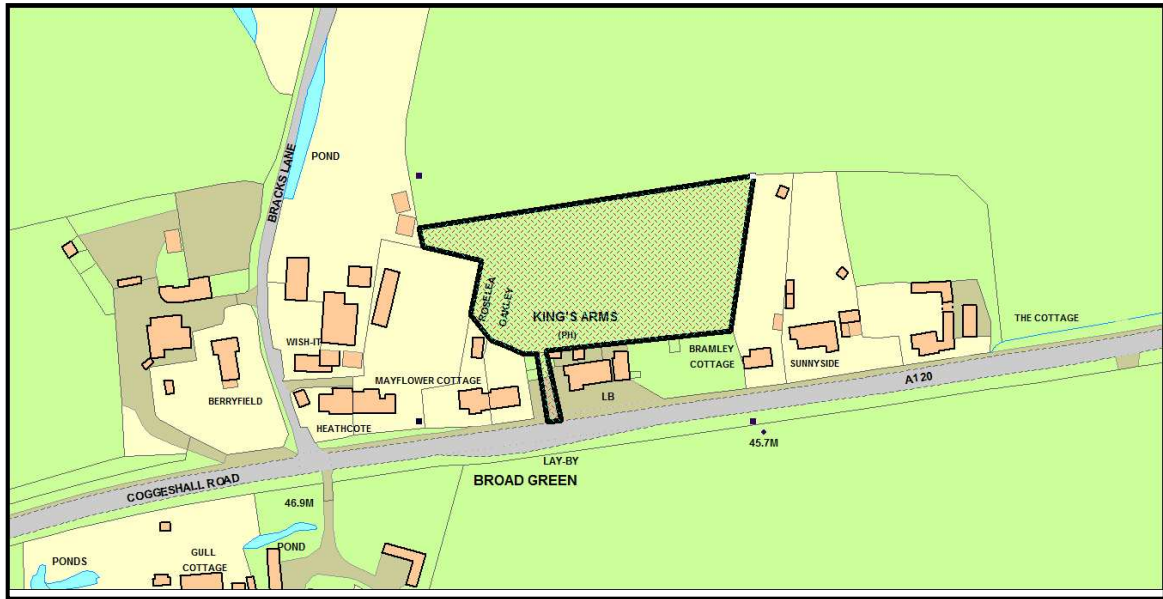
Karen Syrett, Head of Planning, presented the report to the Committee and assisted the Committee in its deliberations. The Committee heard that the report was not seeking to reduce Councillor involvement in the process and that the proposal had been before the Scrutiny Committee in March 2023 with the recommendation for an external audit which had since been conducted and provided recommendations. The Head of Planning detailed that there had always been Councillor involvement for spend release and that in 2021 this had been formalised to ensure that all Councillors were informed when money had been received and confirmed an improvement that if there were any problems or concerns then Councillors could contact the Head of Planning directly. A further improvement was that parishes would be informed and asked to identify spending, noting that this process had begun with requests for information from Parishes so that projects could be front loaded and allocated resources accordingly if projects do not take place. The Committee heard that all major applications consisted of 10 or more units and that some spending was very specific and that the report sought to formalise the process for all applications to ensure that the scheme was transparent.

Members debated the proposal noting that there had been a challenge and that this had been accepted and looked at by officers with comments and how this could be expanded via portfolio holder decisions for larger schemes.

The Head of Planning responded that spending was tightly controlled over £250,000 and that there was no call in for this process as it would be set out in a legal agreement. Further to this it was noted that the spend- release of funds had to be signed by the Head of Planning and the Monitoring Officer. The Head of Planning responded to further questions that there would be monthly reports and a table showing all the projects on the list including what needed to be added and what needed to come off.

Members continued to debate the proposal on issues including whether there was any appeal system built into the process. The Head of Planning responded that there would not be an appeal process as a decision had to be taken and confirmed that the monies did not have to be spent in the ward of the development site.

*RESOLVED (UNANIMOUSLY)* That the revised scheme of delegation be agreed in relation to the S106 Spend Release Protocol.



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**Item No: 7.1**

**Application:** 231197

**Applicant:** The Kings Arms Partnership

**Agent:** Mr Rory Baker

**Proposal:** The layout of gravel and change of use for vehicular parking north of and in association with the Kings Arms pub and hotel. Proposed change of use of land from agricultural to domestic residential gardens. (Retrospective)

**Location:** Land north of, The Kings Arms, Broad Green, Coggeshall, Colchester, CO6 1RU

**Ward:** Rural North

**Officer:** Hayleigh Parker Haines

**Recommendation:** Approval

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

1.1 This application is referred to the Planning Committee as the Applicant is a City Councillor

## **2.0 Synopsis**

2.1 The key issues for consideration are the principle of development and the impact on the character and appearance of the area.

2.2 The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

3.1 The application site comprises a parcel of land of 1.5 acres, located to the north of the A120 (Coggeshall Road) and outside any defined settlement boundary. To the eastern and western boundaries are residential development with open countryside to the north. Over 100 metres to the north west is a Grade II Listed Building known as Bracks Cottage and again, over 100 metres to the southwest are Grade II Listed Buildings known as Broad Green Cottages. There is a public right of way to the north west along Bracks Lane

## **4.0 Description of the Proposal**

4.1 Partially retrospective planning permission is sought for the change of use of 7398.49m<sup>2</sup> of land, this is to provide an extension of residential curtilage associated with neighbouring properties Oakley and Roselea, and land associated with The Public house itself. This would include the construction of close boarded fence to the residential amenity spaces to be provided and a post and rail fence to the boundary with the field. Also proposed is the planting of additional landscaping.

## **5.0 Land Use Allocation**

5.1 The land in which the application relates was previously agricultural.

## **6.0 Relevant Planning History**

6.1 The relevant planning history is set out below:

**182115** - To demolish an existing outhouse building. To erect x6 bedrooms and x1 managers accommodation within same new build. The proposal is for a single-storey building which will be attached to the existing public house. The existing land is part of the ground to a public house. The use of the development is to be a C1 retaining the existing building as its existing use. The proposal also includes removing existing trees and hedges at the rear of the grounds. - **Approved**

**201204** - Erection of outdoor canopy for pub external drinking area. Erection of 1.8m sleeper fence for pub garden to reduce noise – **Approved**



**223140** – Preliminary Enquiry - Retrospective advice requesting the layout of gravel and change of use for vehicular parking north of and in association with the Kings Arms pub and hotel. Proposed change of use of land from agricultural to domestic residential garden.

**231688** – Single storey side extension – pending consideration, approval recommended

## **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
- 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:

SG3 Economic Growth Provision  
SG4 Local Economic Areas  
SG8 Neighbourhood Plan  
ENV1 Environment  
OV1 Development in Other Villages  
OV2 Countryside  
DM2 Community Facilities  
DM6 Economic Development in Rural Areas and the Countryside  
DM15 Design and Amenity  
DM16 Historic Environment  
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

- 7.5 Some “allocated sites” also have specific policies applicable to them. The adopted local plan policies set out below are of direct relevance to the decision making process:

N/A

- 7.6 The Neighbourhood Plan for Marks Tey is also relevant. This forms part of the Development Plan in this area of the City.

- 7.8 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  
Community Facilities  
Sustainable Construction  
Developing a Landscape for the Future

## 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 Landscape Officer** has raised no objection to the proposal providing the existing low wooden barrier, enclosing the ‘gravel parking area’ that is identified on drawing NC22.747-P202.d is secured for retention under condition

**Environmental Protection** have raised no objection to the proposal, subject to the inclusion of a condition limiting the working hours. However, given the partially retrospective nature of the application it is not considered necessary or relevant to include this in this instance

**The Contaminated Land Officer** has raised no objection to the proposal subject to the inclusion of an informative regarding contaminated land.

**Essex County Council Highways** have raised no objection to the proposal

**The Archaeological Consultant** has raised no objection to the proposal and recommends no conditions in this instance

**National Highways** have raised no objection to the proposal

## 9.0 Parish Council Response

- 9.1 The Parish Council have raised no objections subject to neighbours’ views.

## 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.

- Highway safety – *Discussed below*
- Visual impact on landscape – *Discussed below*
- Retrospective nature -*The Planning system allows for this type of application*
- Unjustified – lack of evidence justifying the need -*Comments noted and discussed below*
- Noise impacts on neighbouring properties from expansion - *Discussed below*
- Lack of community benefits – *Comments noted and discussed below*

## **11.0 Parking Provision**

11.1 The proposal includes additional parking provision on site to accommodate the increasing popularity of the public house and B&B.

## **12.0 Accessibility**

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development does not raise any issues of potential direct or indirect discrimination.

## **13.0 Open Space Provisions**

13.1 The proposed development is not required to provide any open space provisions.

## **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**

The main issues in this case are:

- The Principle of Development
- Design and Impact on the Surrounding Area

### **16.1 Principle of Development**

The site falls outside any defined settlement boundary, and as such in accordance with Policy SG1 of the Local Plan, new development in the countryside will only be acceptable where it accords with policies OV1 and OV2 and will be required to respect the character and appearance of landscapes and the built environment and preserve or enhance the historic environment and biodiversity to safeguard the rural character of the Borough.

The King's Arms is a small public house/B and B already established on site. Within the planning statement it is advised that The Kings Arms has been a small community orientated pub for many years, employing 7-8 local people. The applicant has since secured planning permission for 6 additional rooms to improve the business' long-term viability. The statement goes on to state that a number of public houses along the A120 have closed and therefore, the continued vitality and prosperity of the Kings Arms is vital and that the development would assist in achieving this, by increasing capacity in terms of parking provision and improving the quality of facilities/amenities offered to customers.

The planning statement advises that the enlarged car park is essential to the expansion of the business, the present parking arrangements are considered unsafe due to the small nature of the existing car park and the proximity to the A120, a busy arterial route, leading to cars being double parked when the pub is busy (this was observed during the Officers' site meeting). Without sufficient, safe parking provision patrons are likely to look for other alternatives.

Policy OV2 acknowledges that sustainable rural businesses (amongst other land uses) may require a countryside location. In general terms, proposals for sustainable rural businesses will be supported if they are of an appropriate scale, meet a local employment need, minimise negative environmental impacts and harmonise with the local character and surrounding countryside.

Policy DM6 part (E) goes onto consider proposals to expand an existing employment use into the countryside will only be supported in exceptional cases where there is no space for the required use on the existing site, the need has been adequately demonstrated, and the proposals are essential to the operation of an established business on the site. In all cases new development is expected to have adequate landscape mitigation.

In terms of site specific constraints, concerning parking provision, it is considered that sufficient information has been submitted to support the additional parking, which has already been implemented.

In terms of the significant increase in land associated with the public house and B&B, an addendum to the planning statement was provided on the 3<sup>rd</sup> of July advising that the land will be used as amenity space in association with the use of the pub and patrons, as well as the local community; such as events in conjunction with the pub (falconry display, charity rounders and Childrens football)

Taking into account the above, it is considered that the principle of development is supported, subject to other material considerations which are discussed below.

## **16.2 Design, Layout and Impact on the Surrounding Area**

Policy DM15 Design and Amenity provides that all development, including extensions, must be designed to a high standard, positively respond to its context, achieve good standards of amenity, and demonstrate social, economic and environmental sustainability. In addition, it states that development proposals must respect and, wherever possible, enhance the character of the site, its context and surroundings in terms of its layout, architectural approach, height, scale, form, massing, density, proportions, materials, townscape and/or landscape qualities, and detailed design features. Wherever possible development should positively integrate the existing built environment and other landscape, heritage, biodiversity and Arboricultural assets and remove problems as part of the overall development proposal.

The operational development which has taken place relating to the extension of the car park and the post and rail fence, are considered to be relatively minor works which are not considered to have a detrimental impact on the character and appearance of the site and surrounding area.

The associated respective change of use of this land to provide garden space to the neighbouring properties, has the potential to result in a sprawl of residential paraphernalia into the open countryside, which has the potential to have an unduly negative impact on the character and appearance of the site and wider setting, it is therefore considered reasonable and necessary to remove permitted development rights for Class E and F of Schedule 2, Part 1 of the General Permitted Development (England) Order 2012 (as amended), to prevent the sprawl of built form in the wider countryside.

The proposed 1.2 metre high fencing to the amenity space afforded to neighbouring dwellings would be a visible feature when views from the footpath. However, the planting to the northern boundary of the site is considered to largely mitigate any views offered from this public vantage point, additionally this is a typical boundary treatment for residential properties and would be read in such context. Therefore, there are no objections in this respect.

In terms of the change of use of the arable land, to land associated with the public house, this largely reflects the natural field boundaries alongside neighbouring properties, responding to plot depths and extent of built form and natural enclosure, and therefore, is not considered to have a significantly harmful impact in terms of character of the surrounding area.

It is therefore, considered that the development is acceptable and policy compliant in respect of the impact on the surrounding area.

### **16.3 Landscaping**

The application is supported by a boundary treatments and planting proposal plan (NC22.747.P202), which shows the supplementary planting to be provided to limit the visual impact of the development on the landscape character. A Landscape and Visual assessment has also been provided. The Landscape Officer has raised no objections to the proposal subject to the inclusion of a condition securing these details. Therefore, there are no objections in this respect.

## **16.4 Impact on Neighbour Amenities**

The application site is bordered by a number of neighbouring properties; to the west are Oakley and Roselea which are closest to the site. The existing lawful car park abuts the eastern boundary of Oaklea, therefore it is unlikely that the extension of the car park (which in itself does not result in additional customers) would result in material harm to neighbouring amenity in terms of noise, compared with the existing lawful situation. However, the proposed use of this land by members of the public would result in a significant loss of privacy to these neighbouring occupiers given the current boundary treatments and garden size. However, the proposal includes the extension of these neighbouring gardens to be in-line with that of Mayflower Cottage. The construction of a close boarded fence to the depth of the car park boundary would retain and protect the amenity space afforded to these dwelling. Therefore, it is not considered that the proposal would result in any further adverse noise implications to the detriment of neighbouring amenity than present at the existing site and there are no objections in this respect.

## **16.5 Highway Matters**

The access to the site would and will remain unaltered as part of the works and therefore there are no objections in this respect. The proposal includes additional parking provision on site to accommodate the increasing popularity of the public house and B&B, and from the Officer Observation on site, would improve access and egress from the site. Whilst, the proposal may increase the number of vehicles entering and exiting the site, this application in isolation, would not result in an intensification of the use, and therefore, would be unreasonable to object on Highway grounds. Therefore, there are no objections in this respect.

## **17.0 Planning Balance and Conclusion**

17.1 The erosion of agricultural land to domestic and ancillary to the existing commercial use is regrettable in principle. The adopted local plan seeks to conserve the natural beauty of the countryside and to protect productive agricultural land. In this case, the provision of additional and safe parking provision to serve the existing pub as an important local business and facility and the extension of neighbouring domestic curtilages in mitigation of any associated adverse impacts is considered to represent an economic and social benefit which outweighs the limited loss of agricultural land with any impacts on wider landscape impacts being capable of mitigation through landscape planting.

## **18.0 Recommendation to the Committee**

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following condition:

### **1. 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. Accordance with Approved Plans**

The development hereby permitted shall be carried out and retained in perpetuity in accordance with the details shown on the submitted Drawing Numbers: Block Plan 22-247, Location Plan 22-247 and NC22.747-P202

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

## **3. Removal of Permitted Development (extension of residential curtilage)**

Notwithstanding the provisions of Classes E and F of Part 1 and Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no buildings, enclosures, swimming pools, structures, hard surfaces, oil or gas storage containers, fences, walls, gates or other means of enclosure (other than those shown on the approved drawings) shall be erected on the extended garden area hereby permitted (outlined in blue on plan 22-247) unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to avoid the site acquiring a cluttered appearance in this rural area

## **4. Clarification of Use**

The development hereby approved (as outlined in red on plan 22-247) shall be used solely in association and ancillary to the public house and B&B and for no other purpose.

Reason: This is the basis on which the application was submitted and subsequently considered and the Local Planning Authority would need to give further consideration to the impacts of a different use at this site at such a time as any future change of use were to be proposed

## **5. Landscaping**

The landscape details as shown on the approved drawing(s) NC22.747-P202.d lodged on 25/05/2023, together with a minimum 300mm high low wooden barrier all along the boundary enclosing the identified 'gravel parking area' where it bounds the 'land enclosed as amenity space', shall be carried out in full prior to the end of the first planting/seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority and its implementation shall be in compliance with the recommendations set out in the relevant British Standards current at the time of submission. Any hard or soft landscape works which, within a period of 5 years of being implemented fail, are removed or seriously damaged or seriously diseased shall be replaced, like for like, in the next planting season with others of similar

specification/size/species/mix, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details. No vehicular access will be permitted to the 'land enclosed as amenity space' outside of the 'gravel parking area' as identified on drawing NC22.747-P202.d at any other time other than for maintenance of the area.

Reason: In order to ensure that the landscape is implemented in accordance with the detail submitted within the application and the Council's landscape recommendations.

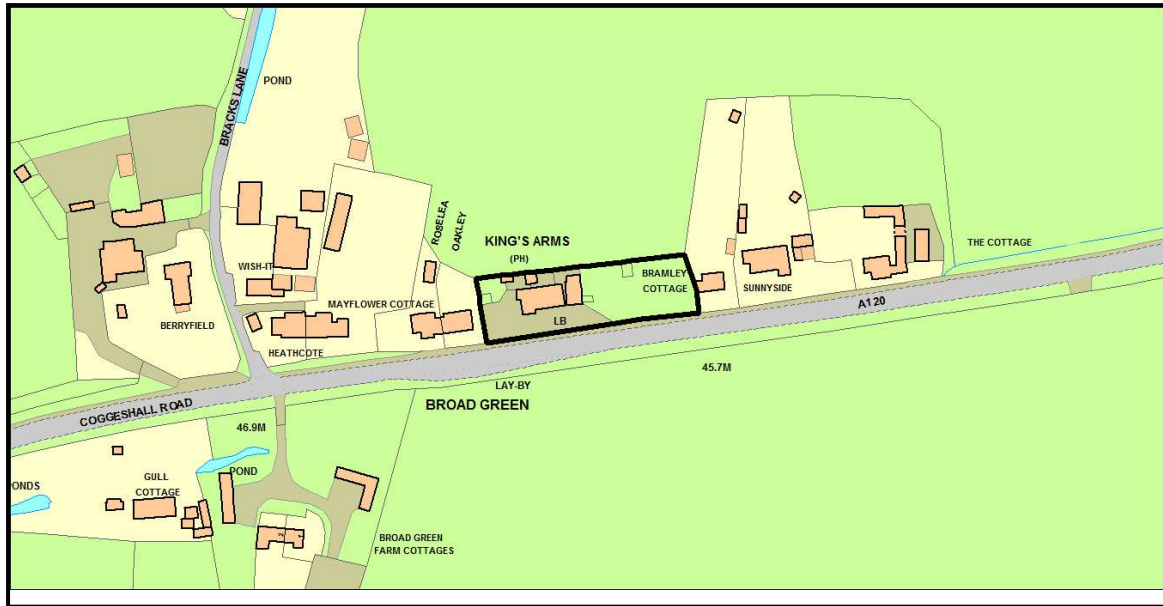
## **19.1 Informatives**

19.1 The following informatives are also recommended:

### **Advisory Note on Works Affecting the Highway**

PLEASE NOTE: No works affecting the highway should be carried out without prior arrangement with, and to the requirements and satisfaction of, the Highways Authority. The applicant is advised to contact Essex County Council on 08456037631, or via email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester, CO4 9YQ with regard to the necessary application and requirements





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**Item No:** 7.2

**Application:** 231688

**Applicant:** Mr W. Sunnucks

**Agent:** Mr Peter Hinchcliffe

**Proposal:** Single-storey side extension to existing Public House to provide a Wheelchair Accessible Toilet.

**Location:** The Kings Arms, Broad Green, Coggeshall, Colchester, CO6 1RU

**Ward:** Rural North

**Officer:** Hayleigh Parker Haines

**Recommendation:** Approval

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

1.1 This application is referred to the Planning Committee because as the Applicant is a City Councillor.

## **2.0 Synopsis**

2.1 The key issues for consideration are the impact of the development on the character and appearance of the site and surrounding area.

2.2 The application is subsequently recommended for Approval.

## **3.0 Site Description and Context**

3.1 The application site is located to the north of the A120 (Coggeshall Road) outside any defined settlement boundary and is occupied by a public house. To the eastern and western boundaries are residential development with open countryside to the north. Over 100 metres to the north west is a Grade II Listed Building known as Bracks Cottage and again, over 100 metres to the southwest are Grade II Listed Buildings known as Broad Green Cottages. There is a public right of way to the north west along Bracks Lane

## **4.0 Description of the Proposal**

4.1 Planning permission is sought for the construction of a modest single storey side extension to an existing outrigger at the front of the public house. This would be single storey in nature and would have a width of 1.65 metres and a depth of 2.53 metres. The proposed extension would provide an accessible toilet.

## **5.0 Land Use Allocation**

5.1 The site as outlined in red, benefits from an established lawful use as a public house and B&B

## **6.0 Relevant Planning History**

6.1 The relevant planning history is provided below:

**182115** - To demolish an existing outhouse building. To erect x6 bedrooms and x1 managers accommodation within same new build. The proposal is for a single-storey building which will be attached to the existing public house. The existing land is part of the ground to a public house. The use of the development is to be a C1 retaining the existing building as its existing use. The proposal also includes removing existing trees and hedges at the rear of the grounds. - **Approved**

**201204** - Erection of outdoor canopy for pub external drinking area. Erection of 1.8m sleeper fence for pub garden to reduce noise – **Approved**

**223140** – Preliminary Enquiry - Retrospective advice requesting the layout of gravel and change of use for vehicular parking north of and in association with the Kings Arms pub and hotel. Proposed change of use of land from agricultural to domestic residential garden.

**231197** - The layout of gravel and change of use for vehicular parking north of and in association with the Kings Arms pub and hotel. Proposed change of use of land from agricultural to domestic residential gardens. (Retrospective) – **Pending Consideration, approval recommended – see agenda.**

## **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:

- 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:

ENV1 Environment  
OV1 Development in Other Villages  
OV2 Countryside  
DM15 Design and Amenity

7.5 Some “allocated sites” also have specific policies applicable to them. The adopted local plan policies set out below are of direct relevance to the decision making process:

N/A

7.6 The Neighbourhood Plan for Marks Tey is also relevant. This forms part of the Development Plan in this area of the City.

- 7.8 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
  - Community Facilities
  - Sustainable Construction

## **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 Archaeological Consultant had not provided a response at the time of writing this report. However, the Officer has followed up on this and will provide members an update should a response be received.

## **9.0 Parish Council Response**

- 9.1 The Parish Council have advised that they support the application subject to neighbours views

## **10.0 Representations from Notified Parties**

- 10.1 The application had not resulted in any neighbouring representations having been received at the time of writing this report.

## **11.0 Parking Provision**

- 11.1 The proposed development does not impact on the parking provision required or provided on site.

## **12.0 Accessibility**

- 12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development does not raise any issues of potential direct or indirect discrimination. The provision of an accessible WC facility would remove any existing inequality.

## **13.0 Open Space Provisions**

- 13.1 The proposed development is not required to provide any open space provisions.

## **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**

Given the relatively minor nature of the works, set between existing built form on site alongside the degree of separation from neighbouring residential properties, it is not considered that the proposed development would represent an unneighbourly form of development, or would cause concerns in terms of design, parking, highway safety, tree impacts, flood risk etc... Therefore, the main material consideration is the acceptability in terms of design and impact on the character and appearance of the surrounding area.

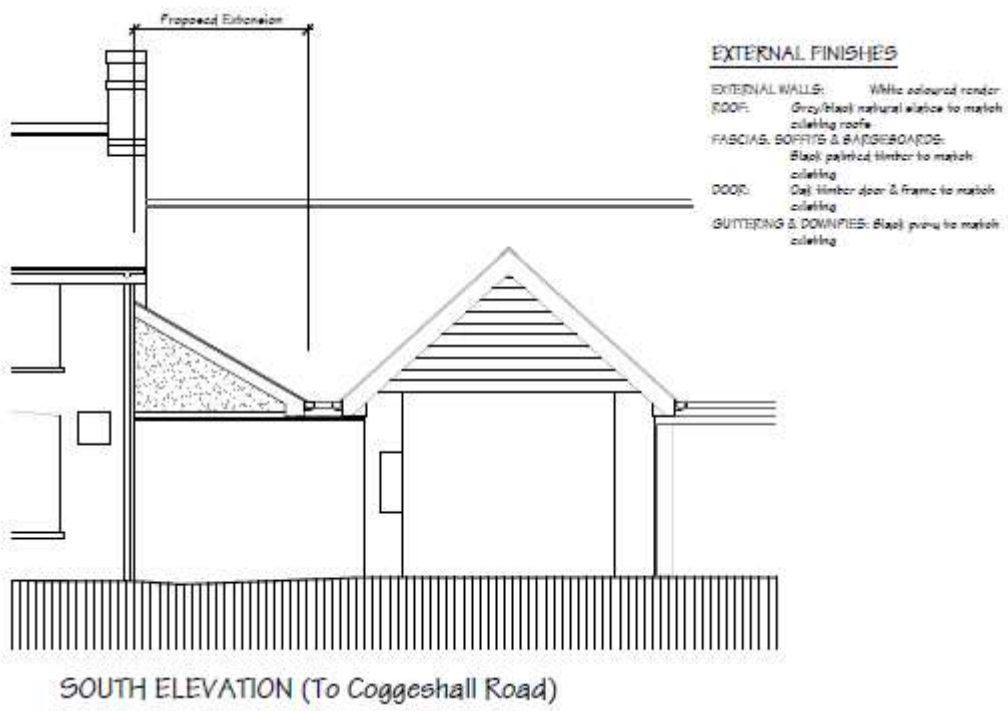
### **16.1 Design, Layout and Impact on the Surrounding Area**

Local Plan Section 1 Policy SP7 requires all development to meet high standards of urban and architectural design, respond positively to local character and enhance the quality of existing places. Section 2 Adopted Local Plan Policy DM15 echoes these sentiments, requiring all development to be designed to a high standard and positively respond to its context, specifying that wherever possible development should enhance the character of the site, its context and surroundings in terms of its layout, architectural approach, height, scale, form, massing, density, proportions, materials, townscape and/or landscape qualities, and detailed design features.

The proposed extension is simple in terms of design and form. However, the proposed roof pitch follows visual cues from the parent building. Similarly, given the single storey nature and minor increase in the footprint of built form would be subservient addition to the site, the extension is proposed to be finished in materials to match the existing building and would therefore integrate appropriately with the site. Furthermore, the mono-pitched roof would be the only visible feature of the extension from the wider streetscene.



Site for new toilet as viewed from covered way to accommodation block



## 17.0 Conclusion

17.1 Taking into account the above, it is considered that the proposed development would be a subservient addition to the built form on site, that would not have a detrimental or material impact on the character and appearance of the site or surrounding area.

## **18.0 Recommendation to the Committee**

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following condition:

### **1. 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. Development Carried out in Accordance with the Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers Site Block Plan 23/007/602 002, Floor Plan Proposed 23/007/602 010 and Elevations As Proposed 23/007/602 011 & 23/007/602 012.

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

### **3. Materials**

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

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







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**Item No:** 7.3

**Application:** 231615

**Applicant:** Mr Gary Pamment

**Agent:** Mr Gary Pamment

**Proposal:** SINGLE STOREY REAR EXTENSION FOR DISABLED ADAPTATION TO INCLUDE BEDROOM AND BATHROOM

**Location:** 7 North View Cottages, Coach Road, Great Horkesley, Essex, CO6 4AT

**Ward:** Rural North

**Officer:** Daniel Bird

**Recommendation:** Approval

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

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

## **2.0 Synopsis**

2.1 The key issues for consideration are the design of the proposed development, as well as its impact on neighbouring amenity in terms of outlook, light and privacy.

2.2 The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

3.1 The site contains a single semi-detached residential property (see site plan for layout, orientation and relationship to neighbouring properties). The site lies within the a predominantly residential area where development such as that proposed is considered to be acceptable in principle.

## **4.0 Description of the Proposal**

4.1 Single storey rear extension for disabled adaptation to include a bedroom and bathroom.

## **5.0 Land Use Allocation**

5.1 The application site is a domestic dwellinghouse therefore is characterised as C3 use.

## **6.0 Relevant Planning History**

6.1 There is no site history that is particularly relevant to the decision regarding this proposed development.

## **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
- 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:

- DM13 Domestic Development
- DM15 Design and Amenity
- DM19 Private Amenity Space
- DM22 Parking

### 7.4 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

## 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.

## 9.0 Parish Council Response

9.1 The Parish Council have not objected to this application.

## 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.

No letters of representation were received.

## 11.0 Parking Provision

11.1 The Essex Parking Standards - Design and Good Practice SPD (2009), require that a dwelling of this scale features a minimum of two off street parking spaces. The driveway at the host dwelling can accommodate three vehicles, therefore the dwelling complies with the adopted standards.

## 12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development would support a disabled resident by providing a ground floor shower room, enabling the disabled person to access such a facility and manage their personal hygiene with assistance. The scale and specifications of the proposal have been designed by an independent assessor to the relevant British standards for accessibility. As a result, the provision of this proposal would enhance the usability of the dwelling by the occupant, in line with the requirements of the Equality Act 2010.

## 13.0 Report

13.1 The main issues in this case are:

- Design and Layout
- Scale, Height and Massing
- Impacts on Neighbouring Properties
- Private Amenity Space Provision
- Parking Provision

## 13.2 Design and Appearance

One of the core planning principles of The National Planning Policy Framework (NPPF) as stated at paragraph 130 is to always seek to secure high quality design. Adopted Policy DM13 states “Domestic development Residential alterations, extensions and outbuildings Residential alterations, extensions and outbuildings will be permitted, provided the proposal meets the following criteria:

- (i) The proposal is compatible with the scale, appearance and character of the original dwelling including taking into account the cumulative impact of such development;
- (ii) The proposal does not result in the over-development of the site, and demonstrates design in scale with its surroundings, taking into account the footprint of the existing dwelling and the relationship to neighbouring site boundaries;
- (iii) Proposals for extensions and outbuildings are subordinate to the original dwelling in terms of design and setting;
- (iv) The proposal will not result in unacceptable adverse impacts on the amenities of neighbouring residential properties, including on privacy, overbearing impact, overshadowing or loss of light;
- (v) The proposal will not result in adverse impact to the appearance of the street scene and character of the area.

13.3 The proposed extension would be single storey, feature a flat roof, with red brickwork walls and two white UPVC windows. It would measure 5.8 metres in depth by 4 metres in width, with an overall height of 3 metres. It would accommodate a bedroom and bathroom on the ground floor to improve the accessibility of these facilities to the disabled occupant of the dwelling. Whilst the proposed brick finish would contrast with the pebble dashed exterior of the

host dwelling, as this addition would be located to the rear, this variation in finish is considered acceptable.

13.4 In terms of scale, it is noted, that the proposal would be consistent with the requirements of permitted development *Class A Part 1 of Schedule 2 – enlargement, improvement or other alteration of a dwellinghouse* as outlined within the General Permitted Development Order, if prior approval was provided. The proposal would also be set in from the shared neighbouring boundary and feature a reduced single storey height. As a result, the scale and design of the proposed extension is considered acceptable in the context of the dwelling and surrounding area.

#### **14.0 Impact on Neighbouring Amenities**

14.1 Paragraph 17 of the NPPF states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy DM15 part (V) of the adopted plan states that development will “Protect and promote public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight;”

14.2 The proposed extension would be set in from the shared boundary with number 8 and would be single storey. Applying the 45 degree guidance outlined in the Essex Design Guide, the extension would not intercept the mid-point of the adjacent dwelling rear window. As a result, the proposal would not result in a materially harmful impact to this adjacent dwelling in terms of loss of daylight provision. The proposal would feature two windows, with one facing the rear garden and the other, onto the north-eastern boundary fence line. Owing to the single storey nature of the proposal, coupled with the windows serving a bedroom and bathroom, the proposal is not considered to compromise the privacy to neighbouring dwellings.

14.3 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.

14.4 Additionally, the proposal does not include any 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.

14.5 Finally, in terms of other planning considerations (e.g. damage to trees or highway matters), the proposed development does not raise any concerns.

#### **15.0 Planning Balance and Conclusion**

15.1 Evidence of the need for this development has been supplied by the applicant to support this application. The provision of these facilities will enhance the quality of life

of the occupant by making the property more accessible, therefore this has been afforded significant weight in the determination of this application.

15.2 The scale, design and finishing materials are considered appropriate within the context of the application site and would be sympathetic to the host dwelling. The amenities of neighbouring dwellings are not deemed to be compromised and no letters of objection have been received.

15.3 To summarise, the proposed development fully accords with the Council's policy requirements and would enhance the usability of the dwelling for the disabled occupant.

## **16.0 Recommendation to the Committee**

16.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission 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**

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

10 and 02

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

### **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.

## **17 Informatives**

17.1 The following informatives are also recommended:

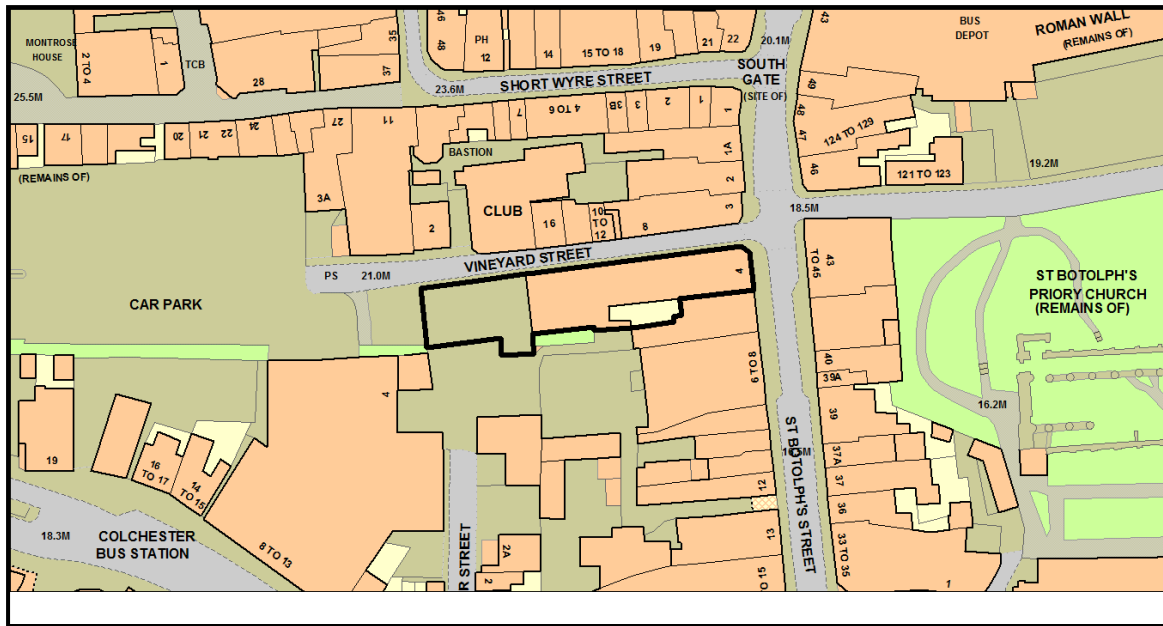
### **WA1 – Application Approved Without Amendment**

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently

determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.







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**Item No:** 7.4

**Application:** 231370

**Applicant:** Mr Osman Rasih

**Agent:** Mr Wilton Ndoro

**Proposal:** Planning permission is sought for replacement of timber sash windows with upvc sash windows which will be painted black. Also new timber door to flats and re-instatement of parapet & clock to front elevation.

**Location:** 4 St. Botolphs Street, Colchester, CO2 7DX

**Ward:** Castle

**Officer:** Hayleigh Parker Haines

**Recommendation:** Approval

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

- 1.1 This application is referred to the Planning Committee in the interests of transparency, given the number of local representations having been received.

## **2.0 Synopsis**

- 2.1 The key issues for consideration are the impact of the works on the character and appearance of the conservation area and the significance of the locally listed building.

- 2.2 The planning merits of the case are assessed leading to the conclusion that the proposal is acceptable on balance. The below report details how this recommendation has been reached. The application is subsequently recommended for approval.

## **3.0 Site Description and Context**

- 3.1 The application site is a corner plot which sits to the west side of St Botolphs Street and the south of Vineyard Street and is occupied by a grand locally listed Victorian building within the Colchester Area No.1 (City Centre) Conservation Area.

## **4.0 Description of the Proposal**

- 4.1 Retrospective planning permission is sought for the replacement of the previous timber sash windows with UPVC sash windows. At the time of the previous application 230533, it was observed during a site visit that the windows had been replaced and therefore, a separate application was invited to regularise these works and for an appropriate assessment to be undertaken given the proposed finishing.

- 4.2 Planning permission is also sought for the reinstatement of the parapet detail to the front elevation at roof level, this was removed due to being in a state of disrepair and is claimed to have represented a dangerous structure. It is also proposed to reinstate a clock to this feature, as was historically present. These works are currently underway. Also proposed in the installation of a timber door to the ground floor northern elevation to replace the existing opening.

## **5.0 Land Use Allocation**

- 5.1 The application site benefits from a lawful, business, commercial and service use (class E – nightclub) at ground floor and residential use (flats) to the first and second floors.

## **6.0 Relevant Planning History**

- 6.1 The site benefits from recent planning applications for the conversion of the upper floors to residential units:

230533 – Conversion of part of Nightclub to provide 5 flats – Approved

230407 – NMA for internal reconfiguration of flats approved under 171871 - Approved

171871 - Proposed conversion of part of Silk Road into 3 no flats – Approved

## **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
- 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:

ENV1 Environment  
DM15 Design and Amenity  
DM16 Historic Environment

7.4 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):  
The Essex Design Guide  
External Materials in New Developments  
St Botolph's Masterplan

## **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 Historic Buildings and Areas Officer has identified that the replacement windows have resulted in less than substantial harm to the character of the

Conservation Area and has recommended additional details in terms of the detailing of the parapet and replacement door are sought should the application be approved

Colchester Civic Society have objected to the replacement windows due to the impact on the character of the locally listed building, conservation area and the potential precedent which could be set.

## **9.0 Parish Council Response**

9.1 The site is within an area that is Non-Parished

## **10.0 Representations from Notified Parties**

10.1 The application has not resulted in any letters of objection from neighbouring properties.

## **11.0 Accessibility**

11.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development does not raise any issues of potential direct or indirect discrimination.

## **12.0 Air Quality**

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

## **13.0 Planning Obligations**

13.1 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.

## **14.0 Report**

14.1 The main issues in this case are:

- Design and Impact on the Surrounding Area, Conservation Area and the significance and fabric of a locally listed building.

### **14.2 Design and Impact on the Surrounding Area, Conservation Area and the significance and fabric of a locally listed building.**

14.2.1 Policy ENV1 seeks to conserve and enhance Colchester’s natural and historic environment. Policy SP6 seeks to promote and secure high quality design and provide buildings that exhibit individual architectural quality within well-considered public and private realms. Policies DM15 states development must

be designed to a high standard, positively respond to its context, achieve good standards of amenity, and demonstrate social, economic and environmental sustainability. Great weight will be given to outstanding or innovative designs which help raise the standard of design more generally in the area. Poor design will be refused including that which fails to take the opportunity for good design or improving the local area. This policy also sets out design criteria that new development must meet. These require new development to be of a high quality, respect the character of the site and its context and help establish a visually attractive sense of place for living, working and visiting through good architecture and landscaping.

14.2.2 Furthermore, given the sites location within the Conservation Area alongside the building itself being regarded as a Non-Designated Heritage Asset (NDHA). Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to pay special regard to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

14.2.3 The National Planning Policy Framework (2021) is an additional consideration. Section 16, Par. 199 determines that when considering the impact of a proposed development on the significance of a designated heritage asset, (*Conservation Area*) great weight should be given to the asset's conservation. Par. 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Para. 202 clarifies that where a development proposal will lead to less than substantial harm to the asset's significance, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Additionally, Para. 203 requires that the determination of applications should consider the effect on the significance of a non-designated heritage asset and when applications directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

14.2.4 The above legislation and national policies for the protection of Conservation Areas and non-designated heritage assets are reflected in Colchester Local Plan 2017-2033-Section 2 Policies ENV1-Environment and DM16- Historic Environment which seek to protect Colchester's built heritage and enhance the historic environment. Policy DM16 reflects the provisions of the NPPF and clarifies that, where development will lead to less than substantial harm to the significance of Conservation Areas, this harm should be weighed against the public benefits of the proposal. The Policy also stresses that the conservation of Colchester's historic environment will be ensured by the protection and enhancement of existing buildings which do not have Listed Building status but have a particular local importance or character which it is desirable to conserve.

- 14.2.5 St Botolph's Street is a continuation of Queen Street, sloping down from the site of the former South Gate to the junction with Osborne Street and Magdalen Street at the area of St Botolph's Circus. The street still retains much of its 19<sup>th</sup> century mercantile character, although the appearance of the buildings is sometimes better retained on the upper floors; the ground floors accommodate commercial uses and the street frontage is characterised by shopfronts and signage of varying design and quality.
- 14.2.6 The application property is situated on the west side of the street which comprises a mix of two and three-storey buildings, mostly of mid and late 19<sup>th</sup> century date. The scale tends to decrease towards southern end of the street and the most prominent buildings are the application building on the corner with Vineyard Street and no 6-8, an imposing building with classical detailing.
- 14.2.7 The removed timber sash windows were original features that made a significant contribution to the architectural interest of the locally listed building. By virtue of their material, profile, design and details, the replacement uPVC windows fail to replicate accurately the appearance of the historic sashes. The use of regular rectangular sashes in arched windows (where the profiles of the historic windows matched the geometry of the opening) results in a jarring effect, while the use of visible trickle vents draws additional attention to the recent replacement of the windows and detracts further from their appearance.
- 14.2.8 The use of vertical glazing bars to the windows which were not previously subdivided in this manner is inaccurate but generates lesser concerns. By virtue of their size and proportions, the windows lend themselves well to this subdivision. The use of the glazing bars is perhaps more detrimental when the windows are viewed from the interior of the building and it becomes apparent that they are not traditional, integral glazing bars but applied on the face of the glass. This detail makes more noticeable the fact that the windows are modern, double-glazed units. However, when seen from street level, this detail does not stand out and as such, the use of the vertical glazing bars is a less problematic aspect of the proposal.
- 14.2.9 For the reasons set out above, the loss of the original timber fenestration and its replacement by uPVC windows is regrettable and has an adverse impact on the significance of the locally listed building. The alteration detracts from its character and appearance and this detrimental change reflects adversely on the authenticity of the street scene, having thus a negative impact on the designated Conservation Area that amounts to a level of harm identified as *less than substantial*, as per the classification used in the NPPF.
- 14.2.10 Due to these concerns, the application was amended in order to seek some mitigation of this harmful impact. For the revised reiteration, the white uPVC windows shall be painted black and the visible trickle vents shall be removed. At the time of writing, the proposed change has been carried out to certain windows and was inspected externally prior to the preparation of this report. Wider experience of the successful use of non-white uPVC windows suggests that the use of a different colour finish, especially of a dark shade, has a positive effect on their appearance. The white colour is more reflective and makes their texture and extruded materials more conspicuous whereas a dark colour has a more muted effect. Moreover, the use of dark colour masks some

details that make the material of the windows more obvious, such as the fake joints which stand out when the windows are white. Furthermore, double glazed uPVC windows have heavier profiles in comparison to single glazed timber windows; a dark shade helps to create an impression of slimmer profiles.

- 14.2.11 Moreover, the use of the dark colour that blends with the glazing makes the rectangular windows that were inserted into the arched openings somewhat less conspicuous. Additionally, the original windows were cream-coloured and matched the rendered surrounds. The use of the white colour had an unsympathetic effect because it appeared almost as a mistake, a failure to select the right shade to match the surrounds. The use of an entirely different shade reads as an aesthetic choice rather than an unfortunate mismatch. Furthermore, the use of brilliant white is historically inaccurate; during the early 18th century broken white was the most popular finish for sash windows but in the late 18th century, the use of alternative paint finishes for window frames, including green, grey, brown, black, and grained, rose in popularity, especially in the context of light-coloured stucco or stone facades. Off-white window frames became standard again in the late 19th century but, in the case of the site, the use of the black colour for the frames appears more contextually appropriate than the initial bright white which was never in use historically.
- 14.2.12 The proposed modifications (change of colour and removal of the visible trickle vents) have the potential to improve the appearance of the windows and secure some mitigation of their adverse impact on the appearance of the building and its surroundings. Although it does not fully reverse the adverse impact to the significance of the locally listed building and the harm to the significance of the Conservation Area, this harm would be moved lower in the spectrum of *less than substantial harm*.
- 14.2.13 The application also proposes the reinstatement of the parapet detail on the corner of the building; the parapet was modified during recent external repair works. The tall segmental pediment with the large, decorated keystone and the roundel that once accommodated a clock was an imposing decorative feature that enhanced the appearance of the building and stressed its importance as a corner building which makes a notable contribution to the street. Its loss is detrimental to the appearance and significance of the locally listed building and has an adverse impact on the Conservation Area designation as well. The proposal for its reinstatement, together with the clock that was removed at an unknown date, is welcome. However, the details of the work need to be informed carefully by historic and more recent photographs to ensure that this architectural feature will be replicated accurately and to appropriate standards. The proposed use of plywood roundel is acceptable on balance but a planning condition that requires large scale drawings of the parapet detail would be pertinent should the application be approved.
- 14.2.14 The application proposes a new door to the entrance of the flats on the Vineyard Street elevation. The model that was submitted in 18/03/2023 is a timber door of contemporary generic design that is better suited to a modern development but is entirely inappropriate for the age, character and context of the host building. Since the use of the new door is acceptable in principle, the details of the works can be secured by a planning condition should the

application be approved. The works represent an opportunity to enhance the side elevation of the building that has been marred by unsympathetic alterations in the past and mitigate further the harm from the loss of the timber windows. Images of the site from Google Street View in 2009 show the original door surround with pilasters and projecting cornice with dentils. These details of the door surround should be reinstated like-for-like in rendered masonry, as seen in the old images of the building, together with a traditional timber door of appropriate design.

14.2.15 In conclusion, the removal of the original timber sash windows and their replacement by uPVC sash windows has an adverse impact on the significance of the locally listed building through loss of original features and unsympathetic alteration to its appearance. The alteration reflects poorly on the street scene and has negative impact on the designated Conservation Area that amounts to a less than substantial level of harm to its significance. The modification of the windows with the use of black colour and the removal of the visible trickle vents would mitigate this harm to a certain extent, moving the harm lower in the spectrum of less than substantial. Having regard for the provisions of the NPPF (Par.202) and the Local Plan (Policy DM16) which require that any harm to the significance of designated Conservation Areas should be weighed against the public benefits of the proposal (should this harm be identified as less than substantial), this assessment will be undertaken below.

## 15.0 Planning Balance and Conclusion

- 15.1 The National Planning Policy Framework (2021) is an additional consideration. Section 16, Par. 197 (a) states that the determination of applications should take into account the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. Par. 202 requires any harm to the significance of designated Conservation Areas to be weighed against the public benefits of the proposal.
- 15.2 Although the building is not afforded listed status; it does form part of Colchester's Local List and has sufficient heritage interest for its age, and contribution to the wider streetscene to be regarded as a non-designated heritage asset. The works were undertaken due to the previous windows being in a state of disrepair and to improve the thermal efficiency of the building as a whole, whilst the loss of timber windows, within the conservation area is regrettable, as discussed above, this is considered to have resulted in *less than substantial harm* to the character and appearance of the conservation area. Furthermore, other material considerations such as retention of facilities within the Town Centre, active use of upper floors of commercial buildings and improved thermal and acoustic performance need to be considered alongside retaining and sustaining the significance of non-designated heritage assets also weigh in the assessment.
- 15.3 It is clearly desirable to see active residential use of upper floors return to the city centre. Residents spend in the local economy and help sustain businesses and services. The loss of historic fenestration is always as discussed above,



regrettable and has had an adverse impact on the conservation area. The preamble to Policy TC3 of the Local Plan states that at St. Botolph's, the Council is actively pursuing a co-ordinated scheme for redevelopment of the outdated buildings and vacant land in line with long-standing Council objectives for the area to achieve a mixed-use development with a focus on leisure and related uses. The overarching principle is to enhance and create an attractive Town Centre to enhance vitality and viability. The proposed works, indirectly ensure that the leisure/commercial aspect is retained at ground floor whilst providing an active use to the upper floor to effectively utilise the land accordingly.

- 15.4 It is also pertinent to note that no enforcement complaints had been received at the time the replacements were installed or as part of the previous application, whereby it was noted by Officers that this had taken place. Given the lack of comments, it is considered, whilst of little weight, that the replacement windows were not overly prominent or alien. Prior to receipt of the retrospective application no representations had been received from the Civic Society. The upper floors of a number of commercial premises fronting Queen Street/St Botolph's are sadly now marred by poor quality plastic replacements. The windows as installed are sliding sashes and being plate glass involve a lesser loss of detail than if the originals were small paned or marginally glazed sashes and therefore, are comparatively, due to the detailing of the original windows, more sympathetic.
- 15.5 Furthermore, there is a heritage deficit associated with the cost of maintenance and repairs to period timber windows and the immediate area suffers as a consequence from inappropriate materials and detailing whenever interventions occur. The planned uplift in this key regeneration area may help to reverse this trend but at the present time grant support is probably needed to deliver works to an appropriate conservation standard.
- 15.6 Taking into account the above, it is considered there is a *less than substantial harm adverse impact* on the conservation area designation, whereby the public benefits of securing a commercial property within the Town Centre, active upper floors of this premises alongside the retention of the locally listed building, in a suitable manner alongside the reinstatement of the parapet detailing, when weighed up are considered on balance to outweigh the *less than substantial harm* to the conservation area.
- 15.7 It is noted that a very detailed objection from the Civic Society has been received whereby it is opined that the nightclub business is not one that is desirable for retention. However, this is considered to be an important footfall driver in a regeneration area and an important part of the night time economy with Leisure, food, and beverage uses increasingly important in an age of shrinking demand for retail floorspace.
- 15.8 The objection also relays concerns in relation to the precedent this applications approval could set for other business and homeowners in the area that benefit from timber windows. It should be noted that each application is and should be determined on its own merits. It is considered, as

discussed below, that this application provides specific benefits that overcome the less than substantial harm identified.

15.9 Given the specific circumstances of the proposal described above, the preservation of a non-designated heritage asset, the less than substantial harm to the character and appearance of the conservation area, the proposed development would not conflict with Policies SP7, DM15, DM16 or ENV1 of the local plan which seek to conserve and enhance Colchester's natural and historic environment, promoting high quality design to a degree that would warrant the refusal of the application. Whilst the replacement of timber windows with UPVC are not normally supported within historic areas, planning approval is justified due to the particular circumstances of this application which have enabled a change of use to take place within a building that has some historic value, promoting active usage of the upper floors of a commercial unit, in a regeneration area. Furthermore, the proposal includes the reinstatement of a clock, which was a historic feature of the building and therefore, the conservation of the non-designated heritage asset is in accordance with national policy and should be given considerable weight. The environmental aspects of the application are considered to have an adverse impact however given the proposal will provide social and economic benefits by retaining a commercial ground floor and as such providing a community leisure/commercial facility, it is considered to outweigh the harm identified to the historic environment. Consequently, a conditional approval is recommended on balance.

## **17.0 Recommendation to the Committee**

17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

### **1. 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. Development to Accord with Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: B56-100- REV02, B56-505-REV02

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

### **3. Additional Details – Door and Parapet**

Notwithstanding the details shown on the approved drawings, prior to implementation of the works hereby approved, additional drawings that show details of the proposed external door and doorcase on Vineyard Street, (including pilaster and entablature details), and the roof parapet by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings within six months of the date of this decision notice.

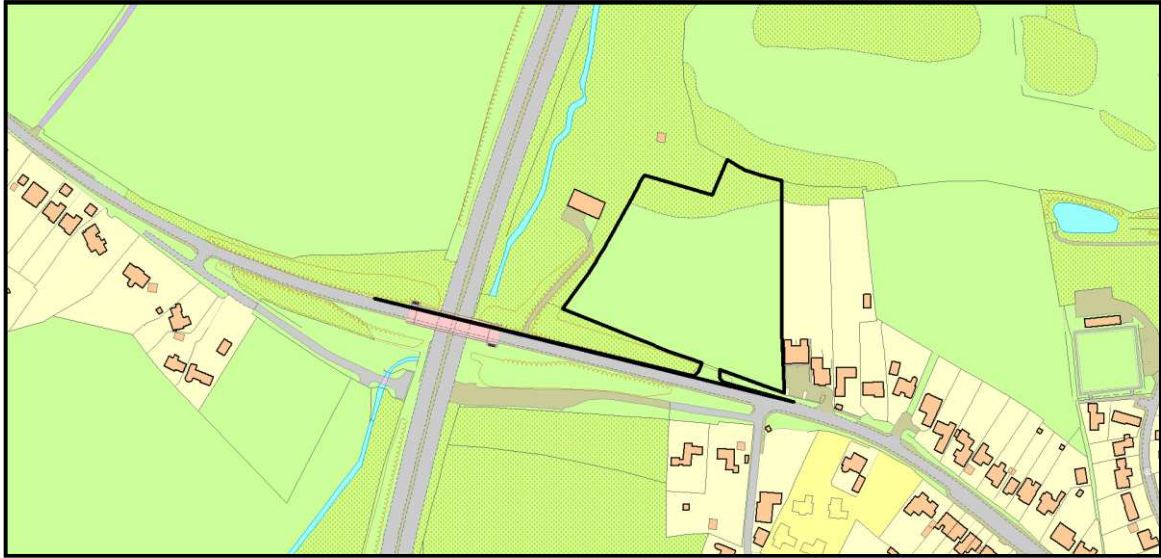
Reason: There is insufficient detail with regard to these architectural features to protect the special character and architectural interest of the conservation area and integrity of the building in accordance with the requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in conformity with policy DM16 of the Colchester Local Plan.

#### **4. Clarification regarding Window finish**

For the avoidance of doubt, within 3 months of the date of this permission, all replacement windows to the upper floors of the building as outlined in red on plan ref: B56-100- REV02 shall be finished in a matt black and retained as such in perpetuity.

Reason: In order to preserve the historic character and appearance of the locally listed building and wider surrounding Conservation Area.





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**Item No:** 7.5

**Application:** 220526

**Applicant:** Arbora Homes

**Agent:** Nikki Dawney

**Proposal:** Application for approval of reserved matters following outline approval 191522 - erection of 27 dwellings and associated development.

**Location:** Land Adjacent To 67, Braiswick, Colchester, CO4 5BQ

**Ward:** Lexden & Braiswick

**Officer:** John Miles

**Recommendation:** Approval subject to conditions

## **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 Cllr Sara Naylor for the following reason:

*I doubt that high quality design can be delivered as required with a density of 27 houses.*

## **2.0 Synopsis**

- 2.1 The site forms part of a wider allocation for residential development under the adopted local plan. The principle of this development has been established through the outline planning approval (with all matters except access reserved) granted at appeal, following an appeal against the decision of the Council to refuse application 191522.
- 2.2 The key issues for consideration under this application are appearance, landscaping, layout and scale, namely “the reserved matters” and how these relate to wider material planning considerations, including design, the character and appearance of the surrounding area and residential amenity.
- 2.3 The application has been previously considered by members at the Planning Committee meetings on both 15<sup>th</sup> June 2023 and 17<sup>th</sup> August 2023.
- 2.4 Following deliberations at the committee meeting on 15<sup>th</sup> June the application was deferred for the following reasons:

*Deferred to allow the Development Manager to seek amendments to the design and layout of the site and to consider the danger of the location of the children’s play area location, public open space, and connectivity within the site, lack of community space and that a reduction in dwellings would enhance the design.*

- 2.5 Following the deferral on 15<sup>th</sup> June the applicants provided a response to each of the matters raised in the reasons for deferral, a copy of which is held on the planning file. The proposed site layout plan was also updated to confirm that public stepped access is provided across the south of the site, while level access to the main area of public open space is also provided across the north of the site. Supplementary consideration of issues around the location and form of the proposed public open space, connectivity within the site and the number of dwellings proposed is provided at Paragraphs 16.59 - 16.75 of this report.
- 2.6 The application was further considered by members at the committee meeting on 17<sup>th</sup> August, where it was deferred to negotiate urban design improvements to the layout to consolidate the area of public open space. Further dialogue on this matter is included in the main body of the report, at Paragraphs 16.76-16.78.
- 2.7 Consistent with the conclusions drawn within the report previously presented to members, it is considered that the scheme, as revised since the original submission, achieves an acceptable quality of design, on balance, and is for the reasons outlined in the main body of the report otherwise acceptable with

regards to wider material planning considerations. On that basis the application is subsequently recommended for approval.

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

3.1 Braiswick Road (B1508) runs in a north-west direction from the centre of Colchester leading to the village of West Bergholt and ultimately Sudbury. The application site lies to the north of Braiswick Road just before it crosses the A12. The site is located on the outskirts of Colchester City but inside the A12 which provides a firm border around the north of the City.

3.2 There is frontage development along Braiswick Road to the east of the application site, on both sides of the road. Further to the east there is recent development in the form of a residential estate along Keepers Green. There is also a bowling green. South of Braiswick Road, opposite the application site, is Westhouse Wood which has a public footpath along its western boundary alongside the A12. To the east of the woodland is development in depth behind the frontage housing. To the north of the application site is Colchester Golf Club.

3.3 The site itself is rough grassland sloping steeply down to the north and northwest into a wooded area lying alongside the A12 which is raised above the lowest land at this point. St. Botolph's Brook runs along the western boundary of the site adjoining the A12. Within the wooded area there is a commercial building with access leading down a steep track from Braiswick Road. This lower area - beyond the application site's boundary - is susceptible to localised flooding.

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

4.1 The application seeks reserved matters approval for the erection of 27 dwellings and associated development: namely the matters of appearance, landscaping, layout and scale.

### **5.0 Land Use Allocation**

5.1 The site is allocated for residential development.

### **6.0 Relevant Planning History**

6.1 As identified the outline permission for the development was granted at appeal (Ref: APP/A1530/W/20/3245754), following the refusal of application 191522.

6.2 The appeal was allowed on 15th October 2020 and outline permission granted for up to 27 dwellings on the application site.

### **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
- 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 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
- 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
- DM8 Affordable Housing
- DM9 Development Density
- DM10 Housing Diversity
- DM12 Housing Standards
- DM13 Domestic Development
- 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. In this case adopted local plan policy NC3 is of direct relevance to the decision making process:



## *Policy NC3: North Colchester*

### *Land at Braiswick*

*In addition to the infrastructure and mitigation requirements identified in policy PP1, development will be supported on land within the area identified on the policies map, which must be comprehensively planned setting out how any proposal will provide:*

- (i) Up to 70 dwellings, and*
- (ii) Access from Braiswick (road), and*
- (iii) Contributions to highway improvements on the local road network, in particular at North station, and*
- (iv) The retention and enhancement of existing tree belts within the site in addition to a landscape appraisal to look at opportunities to further improve other landscape features within the site, and*
- (v) Effective noise mitigation measures, and*
- (vi) No residential development in the area of site within Flood Zone 3, and*
- (vii) Retention and improvements to the existing Public Right of Way which runs along the eastern boundary of the site.*

Paragraphs 14.41 and 14.42 set out some context to the policy also.

7.5 The Neighbourhood Plan for Myland and Braiswick is also relevant. This forms part of the Development Plan in this area of the City. The following NP policies are considered particularly relevant:

- HOU1
- ENV1
- SPL2
- DPR1

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

The Essex Design Guide  
EPOA Vehicle Parking Standards  
Backland and Infill  
Affordable Housing  
Community Facilities  
Open Space, Sport and Recreation  
Managing Archaeology in Development.  
Myland Parish Plan and Myland Design Statement

## **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 Archaeological Advisor**

No objection.

### 8.3 **Arboricultural Officer**

No objection raised.

### 8.4 **Contaminated Land Officer**

No objection.

### 8.5 **Environmental Protection**

No objections, subject to conditions, including conditions covering the provision of a construction method statement, limits to hours of work and internal noise levels.

### 8.6 **Essex County Fire & Rescue Service**

No objection - Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13. This development appears to meet the provisions detailed in ADB Vol 1 B5 for Fire Service Access. More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.

### 8.7 **Essex Place Services Ecology (4<sup>th</sup> July 2022)** (response on document specified below):

We have reviewed the Ecological Mitigation and Enhancement Strategy (ACJ Ecology, May 2022) relating to the likely impacts of development on designated sites, protected species and Priority species & habitats and identification of appropriate mitigation measures. This meets the details of Condition 32 of the outline decision notice issued following being allowed at Appeal so would support partial discharge by design.

We are now satisfied that the revised documentation contains sufficient ecological information for the determination of this Reserved Matters application.

This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in the Ecological Mitigation and Enhancement Strategy (ACJ Ecology, May 2022) should be implemented in full. This is necessary to conserve and enhance protected and Priority species particularly reptiles and bats.

We also support the proposed reasonable biodiversity enhancements, which have been recommended to secure measurable net gains for biodiversity, as outlined under Paragraph 174d of the National Planning Policy Framework (2021). The reasonable biodiversity enhancement measures have been outlined with in Ecological Mitigation and Enhancement Strategy (ACJ Ecology, May

DC0901MWeV9.3

2022) and should be implemented in full. If the developer wishes to improve the biodiversity onsite further, we recommend the addition of flowering lawns, log pyramids and a wildlife pond.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006. Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013.

We recommend that submission for approval and implementation of [the mitigation and enhancement measures outlined in the submitted Ecological Mitigation and Enhancement Strategy and a Reptile Receptor Agreement] should be a condition of any planning consent.

#### **8.8 Essex Police**

No objection - would like to see the applicant seek to achieve a Secured by Design award in respect of this development and are willing to provide impartial service to the applicant to support them to achieve the requirements to gain the nationally acknowledged Secured by Design accreditation.

#### **8.9 Essex SuDs**

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the reserved matters planning application, we do not object to the granting of planning permission:

We have no comments on this application, the drainage conditions will need to be discharged at the DOC stage.

#### **8.10 Highway Authority**

All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all purpose access) will be subject to the Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway by the ECC.

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

Prior to the first occupation of the development, the proposed estate road, at its bellmouth junction with Colchester Road Braiswick shall be provided with 10m radius kerbs returned to an access road carriageway width of 5.5m and flanking footways 2m in width returned around the radius kerbs and extending 25m westwards and eastwards. The new road junction shall be constructed at least to binder course prior to the commencement of any other development including the delivery of materials.

Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority.

All carriageways should be provided at 5.5m between kerbed footways or 6.0m where vehicular access is taken but without kerbing.

All footways should be provided at no less than 2.0m in width.

All off street car parking shall be provided in precise accord with the details contained within the current Parking Standards being provided within the site. Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, 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.

Each internal estate road junction shall be provided with a clear to ground level visibility splays with dimensions of 25m by 2.4m by 25m on both sides. Such visibility splays shall be provided before the road is first used by vehicular traffic and shall be retained and maintained free from obstruction clear to ground thereafter.

Prior to the occupation of the proposed development the applicant/developer shall provide a village gateway feature at or in the vicinity of the existing speed restriction signage west of the proposed development site erected on both sides of the carriageway of Colchester Road, Braiswick to alert drivers and highlight the change in speed limit from derestricted to 30mph, incorporating appropriate signage and any associated measures of a design that shall be approved in writing by the Local Planning Authority.

Prior to the occupation of the proposed development the applicant/developer shall provide:

A) One new bus stop in the vicinity of the proposed vehicular access to the site eastbound

including 1x new shelter, raised kerbs, timetables, post and flag

B) The provision of 1x bus stop west bound opposite and adjacent the vehicular access including level entry kerbing, new post, flag and timetable and pedestrian waiting hardstanding. Both new bus stops will require pram crossings to connect to each other and should be included.

## 8.11 Landscape Advisor

In order to accord with the Council's Landscape strategy for development sites the landscape deposit needs to fully comply with the Council's Landscape Guidance Notes LIS/C (this available on this CBC landscape · Colchester Borough Council under Landscape Consultancy by clicking the 'read our guidance' link), in particular the following clauses of LIS/C (*with additional site*

specific comments added in blue) need to be addressed:

**3.10** Hard landscape/external works:

- Details (type & manufacturers product reference or detail illustrative drawings) and location/line of all artefacts, enclosure and structures (railings, walls, fences, furniture, bollards, litter/dog/cigarette-end bins, other storage units, signage, lighting etc.) need to be clearly identified on the proposal drawing and included within its 'key'. These need to be compatible to the sensitivities of their location, robust (e.g., wooden bollards need to be specified as hardwood) and generally clearly illustrated as being set within complementary hard landscape to simplify future maintenance. – *Detail drawings or manufacturers ref for all enclosure and street furniture needs to be submitted, including for the bow-top fencing. – No landscape objection to applicants' suggestion this be addressed under bespoke condition provided this is achievable in planning terms.*

- All lighting positions (including those to be adopted by Highways) need to be identified on plan.

All lighting, where proposed, requires these notes against the lighting symbol(s) key confirming (verbatim) that:

*'All lighting proposals comply with Colchester Borough Council's External Artificial Lighting Guidance 2012;* and

- *'Where unacceptable light incursion into adjacent units is identified (particularly to bedroom windows) shuttering sufficient to minimise light incursion will be implemented.'*; - include on drawing AH013\_305\_08.

Lighting columns need to be clearly set outside the mature crown spreads of any existing and/or proposed trees.

– *No landscape objection to applicants' suggestion the above lighting detail/positions/specifications be addressed under bespoke condition provided this is achievable in planning terms.*

- It needs to be confirmed with a (verbatim) note on plan that:  
*'All over-ground or underground service routes (including those for lighting) have been designed to not conflict with and lie outside the Root Protection Areas of any retained trees/hedges and the mature crown spreads of retained or proposed trees/hedges on or adjacent to the site'*

Where this is not the case this needs to be clarified and any conflicting service run areas will then need to be supported through an Arboricultural Impact Assessment submitted for agreement, this in accordance with BS 5837 Recommendations. – *this standard clause needs to be included on drawings JBA.21/311-03.H & 04.H unless agreed otherwise by the Arboricultural Officer.*

- 3.18** Clear proposals need to be made when specifying specific items, ambiguous terms such as 'or similar' (in the drawings key, specifications, etc.) will not be permitted. This as revisions to specific items within the landscape proposals post condition discharge can only be made with the LPA's agreement so as to help prevent unauthorised value engineering that might be detrimental to the landscape. – *consider revising any 'or similar' note to "or similar with LPA consent" – Planning Officer to take a view on the validity of the*

*applicants' planning justification for not complying with this standard CCC requirement.*

**4.1** An Implementation and Monitoring Programme (IMP) needs to be submitted and agreed, either on the drawing(s) or as a separate specific document (generally a simple A4 sheet).

*– No landscape objection to applicants' suggestion this be addressed under bespoke condition provided this is achievable in planning terms.*

**5.1** A landscape management plan needs to be submitted and agreed,

*– No landscape objection to applicants' suggestion this be addressed under bespoke condition provided this is achievable in planning terms.*

1.3 In addition to the above generic requirement(s) the following site-specific requirement(s) need(s) to be applied to any revised proposals in order to allow reserved matters to be agreed:

1. As recommended at application stage, the trees to the POS bounding the western access road will need to form a comprehensive linear feature of large broader crowned native trees all along that western boundary, the number and spacing of proposed *Car bet* will need to be increased to fulfil this requirement. This in order to help protect, conserve and enhance views into the site from the west by, at maturity, filter screening the development whilst complementing the sites wooded ridge setting.

Planning Officer response: The changes, additional information and clarification requested have either been carried out and/or or provided or are to be controlled through suitably worded conditions.

## 8.12 National Highways

No objection.

## 8.13 Natural England

A Habitats Regulations Assessment (HRA) is required to secure any necessary mitigation.

## 8.14 Planning Policy

### **Colchester Local Plan**

Section 1 of the Colchester Local Plan provides a shared strategic policy context and addresses cross boundary matters for North Essex together with Braintree and Tendring Councils. This was adopted by Colchester Borough Council on 2 February 2021. Section 2 of the Colchester Local Plan 2017-2033 provides the policy framework, site allocations and development management policies for the Borough up to 2033. This was adopted by Colchester Borough Council on 4 July 2022.

Section 2 of the Local Plan allocates land to meet the housing targets up to 2033 in accordance with the Spatial Strategy set out in Policy SG1. The site subject to this application forms part of an allocation in the Local Plan as outlined in Policy NC3 North Colchester. Policy NC3 supports development on Land at Braiswick

within the area identified on the policies map for up to 70 dwellings. The outline permission for the site prescribes the site area, the point of vehicular access and the maximum number of units (up to 27 units).

Policy NC3 states:

In addition to the infrastructure and mitigation requirements identified in policy PP1, development will be supported on land within the area identified on the policies map, which must be comprehensively planned setting out how any proposal will provide:

- (i) Up to 70 dwellings; and
- (ii) Access from Braiswick (road); and
- (iii) Contributions to highway improvements on the local road network, in particular at North Station; and
- (iv) The retention and enhancement of existing tree belts within the site in addition to a landscape appraisal to look at opportunities to further improve other landscape features within the site; and
- (v) Effective noise mitigation measures; and
- (vi) No residential development in the area of site within Flood Zone 3; and
- (vii) Retention and improvements to the existing Public Right of Way which runs along the eastern boundary of the site.

In addition to Policy NC3, other Colchester Local Plan Development Management Policies are relevant including (but not limited to):

Policy DM8: Affordable Housing – which requires 30% of new dwellings on housing developments of 10 or more dwellings (major developments) in urban areas should be provided as affordable housing (normally on site).

Policy DM9: Development Density – this policy requires all residential development to be at an appropriate density and massing, having regard to a number of factors including the character of the site and its immediate surroundings, as well as the wider locality and the existing landscaping, trees and hedgerows on the site and the need for further landscaping.

Policy DM12: Housing Standards – supports residential development where high standards of design and layout are promoted. The policy sets out a number of criteria that the LPA will have regard to in considering proposals for new residential development.

Policy DM15: Design and Amenity – requires all development be designed to a high standard, positively respond to its context, achieve good standards of amenity and demonstrate social, economic and environmental sustainability. Criteria is included to help achieve high quality design.

DM18: Provision of Public Open Space – all new residential development will be expected to provide new public areas of accessibility open space.

Policy DM19: Private Amenity Space

Policy DM21: Sustainable Access to Development – all new developments should seek to enhance accessibility for sustainable modes of transport.

Policy DM23: Flood Risk and Water Management

Policy DM24 – Sustainable Urban Drainage Systems  
Policy DM25: Renewable Energy, Water, Waste and Recycling

### **Myland and Braiswick Neighbourhood Plan**

The Myland and Braiswick Neighbourhood Plan is also relevant to this application. The Myland and Braiswick NP was adopted in December 2016 and covers the plan period 2016-2032. The Myland and Braiswick NP forms part of the Development Plan and therefore the proposal should be in accordance with all relevant policies in the adopted Colchester Local Plan and the Myland and Braiswick Neighbourhood Plan. A number of Myland and Braiswick NP policies are relevant to this proposal including (but not limited to):

*HOU1 – ‘Housing in Myland and Braiswick will have a variety of choices, design and living styles that meet the needs of residents, including the elderly, and respect the scale and character of the existing street scenes and environment. Developers should achieve the highest quality of design commensurate with current national and local design guidance.’*

ENV1 – Environment policy that includes criteria that attention should be given to in order to maximise opportunities for the creation, restoration, enhancement, expansion and connectivity of Green Infrastructure within and between development sites.

*SPL2 - ‘As amenities that facilitate both sustainable transport and bringing benefit to health and well-being, Myland and Braiswick footpaths and public rights of way will be maintained and protected (if necessary by authorised diversion) and new rights of way, including bridleways, encouraged commensurate with the Essex Public Rights of Way Improvement Plan. This will include Public Rights of Way suitable for vulnerable users.’*

*DPR1 - ‘Developments will aim to attain the highest quality and design standards and where appropriate encourage the use of relevant national standards by developers in order to achieve the highest possible levels of overall sustainability in the design and layout of new developments.’*

### **Review of the Myland and Braiswick Neighbourhood Plan**

A Review of the Myland and Braiswick Neighbourhood Plan has commenced, and a Regulation 16 consultation was held between 27 March 2023 and 15 May 2023. As the Myland and Braiswick Neighbourhood Plan Review is not sufficiently advanced in its progress, limited weight can be given to the Review Neighbourhood Plan at this stage. This will increase once an Examiner has issued a Final Report on the Review Plan and either confirmed that the modifications are appropriate and not so substantive that they change the intent of the Plan, or it can proceed to a referendum if one is required.

Although at the present the Draft Review NHP is a relevant material consideration which can only be afforded limited weight it is helpful to refer to following policies (or extracts) which are relevant to this application:

Draft Policy HOU1 sets out some specific considerations identified as being locally important. The supporting text in the draft plan refers to the relevance of these

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policy considerations in relation to a matters including development on the site allocated in the Local Plan at Braiswick (including this site).

**HOU1** – *Housing in Myland and Braiswick will have a variety of choices, design and living styles that meet the needs of residents, including forms of sheltered housing for the elderly. There will be respect for the scale and character of the existing street scenes and environment by matching the predominant use of brick and tile construction such that they blend with the existing design and skyline. This includes the use of predominantly pitched roofs, sufficient off-street parking, and housing extensions that are also sympathetic to the surrounding street scene and design materials. Developers should achieve the highest quality of design commensurate with current national and local design guidance. This to address the challenge of climate change and improving sustainability by, for example, electric charging points and alternative fuel sources such as air-source heat pumps that do not impact on existing neighbouring residents.....*

Policy HOU3 of the draft Myland and Braiswick Neighbourhood Plan Review is more specifically related to the site allocation under policy NC3 of the CLP. states:

*‘Sites for housing proposals in Braiswick should be comprehensively planned as set in Colchester Local Plan Policy NC3 to respect the scale and character of the existing street scenes and environment and should protect existing public open spaces and bowling green.’*

## **Planning Balance and Conclusion**

The proposal site, which has outline planning permission for up to 27 dwellings, forms part of an allocation in the adopted Colchester Local Plan and Policy NC3 provides the policy requirements for the site. The principle of development on this site at this scale has already been established through the outline planning permission already granted.

Policy NC3 applies to the whole site area subject to the allocation for up to 70 houses overall. Whilst the intention of the policy and preferred approach would be to consider proposals for the site as a whole comprehensively, it has to be acknowledged that the opportunity to follow such an approach for the whole site is limited as a result of the appeal decision resulting in the outline consent (191522).

To be afforded support from Policy NC3 the proposal needs to ensure it meets the listed criteria where it is relevant including; Access from Braiswick (road) (already established as part of the outline consent); Contributions to highway improvements on the local road network, in particular at North Station; The retention and enhancement of existing tree belts within the site in addition to a landscape appraisal to look at opportunities to further improve other landscape features within the site; Effective noise mitigation measures; No residential development in the area of site within Flood Zone 3; and Retention and improvements to the existing Public Right of Way which runs along the eastern boundary of the site. It is also important that the layout of the development does not preclude development coming forward on the remaining part of the allocated site. It is not appropriate to make any judgement about the density which may be suitable on the remaining allocation and the capacity for the site to deliver up to the total anticipated 70

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dwellings as part of this application. This will be for future applications to address and the suitability to be tested against evidence and policies prevailing at that time.

The other policies in the CLP listed above provide the test for the suitability of the proposed development in respect of detail. The consideration of issues related to density, design and layout and high-quality design are particularly important and the views of Specialists in respect of this to inform the consideration of any adverse impacts are central to a decision.

The adopted Neighbourhood Plan and the emerging Review NHP both contain policies which are relevant. In respect of the adopted Plan, in order for support to be afforded, it is necessary for the proposal to demonstrate that it will *achieve the highest quality of design commensurate with current national and local design guidance, respect the scale and character of the existing street scenes and environment and deliver enhancements to the environment and green infrastructure as well as deliver opportunities that facilitate both sustainable transport and bringing benefit to health and well-being.*

The emerging Review NHP is more specific in respect of this site and the need to not only achieve high quality design and to respect the scale and character of the existing street scenes and environment and also to protect existing open spaces and bowling green.

Consideration of these matters is a relevant consideration although only limited weight can be afforded to the relevant policies at this time due to the stage of progression of the Review NHP.

## 8.15 Urban Design Officer

Due to the homogeneity of the proposed layout and built environment the proposal lacks several significant features that contribute positively to placemaking. However, proposed built form broadly complies with policy requirements in terms of form and materiality, but fails to achieve a high degree of visual interest or distinctive character and identity across the wider scheme. Nevertheless, the permeability of the proposal has been increased and improvements have been made to the proposed built environment, increasing its consistency. Additionally, the accessibility and functionality of the POS has been enhanced, and an appropriate level of amenity appears deliverable. Notwithstanding issues regarding levels, it is therefore considered the proposal could establish an adequate sense of place.

## 9.0 Parish Council Response

9.1 Responses have been received from both Myland Community Council and West Bergholt Parish Council.

### **Myland Community Council:**

This application falls within the Myland and Braiswick Neighbourhood Plan Area and the following comments are made on that basis.

1. It is noted that Essex Highways have no objection to the development but it is unclear how cyclists are specifically catered for. This is confusing because the Design and Access Statement Part 1 page 18 states "Vehicle access is achieved

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by a single main access point from Bury Road. However, pedestrians and cyclists have the option to use a designated pathway providing safe and direct access onto the Village Green". This appears to be an extract from another development and does not therefore provide any clarity on how cyclists in particular will be catered for at St Botolphs Farm.?

2. It is noted that Fire and Rescue comments raise concerns that plots 07 and 08 are outside the 45m requirement, there is an inadequate turning point and additional fire hydrants will be required.

3. Whilst the design of individual properties may be in-keeping with the locality, the density of the development is less so and bearing in mind the point at 2 above, a reduction in house numbers should be considered. It should also be noted that the appeal decision on this application suggested a reduction in housing density. This could also be an important factor on vehicle numbers accessing Bergholt Road if other potential development sites in Braiswick are activated. This application fragments Colchester Borough Council's original desire to see all 'call for sites' submissions in Braiswick dealt with as a single development plan. Dealing with individual sites in close proximity to each other is an ineffective way of ensuring developments are compatible with their surroundings.

4. The attention to climate change considerations is welcomed, e.g., electric charging points, heat pumps high performance insulation etc.

5. The mitigation measures for affected animals, i.e., bats and common lizards are welcomed.

6. The Design and Access Statement Part 1 page 12 refers to an area adjacent to the development site where there are opportunities for creation of new footpath links, wildlife corridors, mitigation and biodiversity gain. The Neighbourhood Plan Steering Group remains in place and would be pleased to engage on these opportunities.

Officer response: As outlined in the section above, further consultation comments have been received from both the Highway Authority and Essex Fire and Rescue, since the consultation comment from Myland Community Council. Both consultees have confirmed they have no objections and Essex Fire and Rescue have confirmed the scheme, as revised, makes suitable access provisions from their perspective.

#### **West Bergholt Parish Council:**

This proposed development lies outside of the parish of West Bergholt, but the Parish Council would recommend that Colchester Borough Council listens to any concerns raised by Myland Community Council.

### **10.0 Representations from Notified Parties**

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties, and in respect of both the original and revised proposals. These consultation exercises resulted in 34 objections. 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.

Objections:

- Noise from the A12

- Loss of privacy for neighbours
- Noise and disturbance being caused to neighbours
- Vehicles often speed along Braiswick Road
- The scheme is too dense
- Building on open space
- The proposal is not “Arcadian” in style
- Impacts on wildlife, including the ‘wildlife corridor’
- Landscape impacts
- Street lighting has not been addressed, potential issues with light pollution.
- How will access by emergency vehicles be ensured?
- Increased pressure on local facilities (doctors, schools etc.)
- Lack of infrastructure
- Loss of view
- Urbanising impacts
- Impacts on the road network (congestion)
- Highway safety concerns (proposed access)
- Lack of parking
- Internal roads too narrow
- Poor design
- Need for surface water drainage and sewage infrastructure
- Lack of green spaces
- Need for affordable housing met elsewhere

## **11.0 Parking Provision**

11.1 The scheme is held to meet the adopted standards in terms of on-plot and visitor parking.

## **12.0 Accessibility**

12.1 In considering the application due regard has been given to the Local Planning Authority’s duties under the Equality Act 2010. Representations received have not identified any specific equality implications potentially arising from the proposed development and requiring additional consideration. The proposal does not give rise to any other concerns from an accessibility or equality perspective more widely.

12.2 All of the proposed affordable housing will meet Part M4 (2) Building Regulations and so will 2 of the market houses.

12.3 While the site has some challenging topography, efforts have been made to minimise gradients and avoid stepped access where possible. Car parking is also considered to be conveniently located in relation to the home it serves. These matters are also discussed further in the main body of the report.

## **13.0 Open Space Provisions**

13.1 The proposed development is considered to provide open space provisions in accord with the minimum 10% requirement.

## **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 As a “Major” application, there was a requirement for this proposal to be considered by the Development Team. Contributions are already secured under the Section 106 agreement completed pursuant to the outline permission and Development Team have confirmed that no further contributions are required, beyond those already secured. Contributions secured by the Section 106 agreement already in place includes 30% affordable housing.

## **16.0 Report**

16.1 The main issues in this case are:

- The Principle of Development
- Design, layout and impact on the Character of the Area
- Landscaping and Public Realm
- Residential Amenity
- Arboriculture and Canopy Cover
- Biodiversity Net Gain, Ecology and Climate Change
- RAMS
- Flood risk
- Highways and Parking
- Other Matters
- Previous Reasons for Deferral

### Principle

16.2 Policy SP3 of the Section 1 Plan sets out the Spatial Strategy for Colchester which retains the urban area of Colchester as a focus for growth. Policy SG1 of the Section 2 Plan sets out the Council’s strategy for delivering housing ensuring that developments are directed towards accessible locations and also to ensure the character and vitality of villages is sustained. Policy SG2 sets out how this will be delivered with the majority of new housing development located in Colchester with a smaller proportion within the villages.

16.3 Notwithstanding that the application site is within the settlement boundary of Colchester, in a highly sustainable location, close to both public transport links, shops and other facilities, as already noted, the proposal site has outline planning permission for up to 27 dwellings. This extant outline planning permission and the site’s allocation for residential development under Policy NC3 of the adopted Colchester Local Plan establishes the principle of development.

16.4 The proposed development is therefore considered acceptable in principle, subject to further consideration in respect of wider material planning considerations, as outlined below.

### Design, layout and impact on the Character of the Area

16.5 Government guidance on design is provided by the National Design Guide and National Model Design Code, both of which form part of the governments Planning Practice Guidance. The National Design Guide seeks to deliver

places that are beautiful, enduring and successful by setting out the characteristics of well-designed places and outlining what good design means in practice. Whilst the National Model Design Code sets out clear design parameters to help establish what good quality design looks like and provides a common overarching framework for design. These documents are intended to help create beautiful and distinctive places, with a consistent and high quality standard of design. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance recognise the importance of good design, with specifically paragraph 130 of the NPPF requiring planning decisions to ensure development is visually attractive as a result of good architecture. Paragraph 126 states that the creation of high quality and beautiful buildings and places are both fundamental to what the planning and development process should achieve.

- 16.6 At a local level, Section 1 Policy SP7 states that all new development should respond positively to local character, provide buildings that exhibit individual architectural quality, and enhance the quality of existing places, while Section 2 Policy DM15 sets similar requirements for high quality design.
- 16.7 Myland and Braiswick Neighbourhood Plan [MBNP] Policy HOU1 also requires housing in Myland and Braiswick to respect the scale and character of the existing street scenes and environment and achieve the highest quality of design commensurate with current national and local design guidance. MBNP Policy DPR1 states developments will aim to attain the highest quality and design standards and where appropriate encourage the use of relevant national standards by developers in order to achieve the highest possible levels of overall sustainability in the design and layout of new developments.
- 16.8 The scheme has evolved since first submitted following negotiations and in response to comments from Council Officers, including the Council's Urban Design Officer.
- 16.9 One significant change to the scheme since originally submitted is changes in the layout to the south of the site, including orientating dwellings to face Braiswick Road. As well as improving permeability through establishing pedestrian access around the periphery of the site, these changes establish a clear frontage to Braiswick road. As part of this new built frontage, the revised proposal also now includes a 'gateway pair' of dwellings either side of the access road, forming a legible entrance to the site.
- 16.10 Notwithstanding the screening of the site from Braiswick/Colchester Road which will be provided by existing retained trees to the site's southern boundary, the revised scheme is considered to establish an appropriate frontage to Braiswick/Colchester Road, with the proposed dwellings on the site's southern boundary considered to adopt appropriate scales, forms and materiality, such that they relate satisfactorily to surrounding existing development and the established character of the area.
- 16.11 Across the site as a whole, as well as wider revisions to form and layout, the revised proposed dwellings also include a number of pleasant detailed design features to improve visual interest and help contribute to site identity,

including, but not limited to, additional brickwork features, rafter and eaves detailing and feature bay windows and chimneys. The main proposed external materials include red clay tiles, facing brick and timber cladding.

- 16.12 It is recognised the Council's Urban Design Officer considers the scheme could potentially go further in terms of visual interest and achieving a distinctive character. However, taken as a whole it is considered the proposed dwellings through their use of positive modelling and additive design features, coupled with both the dwellings' general form and materiality, will achieve an acceptable quality of design, site identity and ultimately will relate satisfactorily to the character and appearance of the surrounding area, on balance.
- 16.13 The proposed scheme is also considered to provide acceptable public and private amenity provisions and a good standard of public realm, which incorporates appropriate landscaping. These issues are considered further in the sections below.
- 16.14 While it is considered it has been generally demonstrated that the dwellings proposed, their associated amenity spaces and public spaces can be set at appropriate levels within the site and achieve acceptable relationships with one another and the surrounding landscape, with the site to include some significant changes in levels, with associated and observed practical challenges, it is therefore recommended a condition is imposed covering the submission of additional information on existing and proposed levels and how the transition between levels will be achieved, prior to commencement. This will ensure that any changes in levels can only be taken forward where they do not undermine the quality of the public realm, or are otherwise to the detriment of amenity, including residential amenity and the visual amenity of the wider area. It is considered the challenges with regards to levels is symptomatic of the challenging topography of the site and not specifically as a result of the density.
- 16.15 In this regard it is noted that concerns have been raised in representations received about the proposed density. The issue of density was one of the main subjects of discussion under the appeal proceedings for the outline scheme and the below text is an extract from the Inspector's report, under which the appeal was ultimately allowed, and outline permission granted:

*Whilst Policy ENV1 seeks to protect the countryside, the Council does not have an objection to the proposed scheme on landscape grounds in line with the policy. Despite the Council's requirement for a landscape led approach to deliver an 'Arcadian' style of development, in line with the Essex Design Guide with densities of around 8 dwellings per hectare (dph) it has suggested that a density of between 10-15dph would be appropriate for this site resulting in up to 20 dwellings. It is my understanding that an Arcadian design would be predicated on the dispersal of dwellings through natural features. However, this site does not immediately lend itself to this form of development as the central part of the site is open with tree coverage confined to its 3 boundaries.*

*I heard contrasting evidence on density calculations based on the site's constraints and its net developable area. However, when all matters on this issue are taken into account the difference between the parties is around 7 dwellings. I do not think that this difference is excessive given the site area and its location. I acknowledge, however, that making the most effective use of land in line with paragraph 123 of the Framework is not just about increasing densities but also seeking an appropriate form of design which reflects local context. However, even with the site's constraints the proposed scheme could be provided to an acceptable design and would not appear out of place subject to careful consideration of outstanding of reserved matters.*

- 16.16 Therefore, while the wording of the original consent specifies 'up to' 27 dwellings, the fact that the maximum number of dwellings permitted under the outline permission has now been proposed is not in and of itself a reason for refusal. Furthermore, it is important to note that the density of the site up to 27 dwellings was accepted by the Inspector, albeit subject to a detailed scheme of an acceptable design being provided, to ensure the development would not appear "out of place".
- 16.17 While the quality of the design is ultimately a matter of planning judgement, taking into account the proposed built form, existing natural features and the proposed landscaping (considered further below) it is not considered the proposed development will appear "out of place" or will otherwise be harmful to the character and appearance of the wider area.
- 16.18 In conclusion, following careful consideration by Officers, when taken as a whole and for the reasons outlined above the scheme, as revised, is considered to be acceptable in design terms, on balance.

#### Landscaping and Public Realm

- 16.19 Policy SP7 requires development to respond positively to local character and protect and enhance assets of natural value, while Policy DM15 requires development to positively integrate with landscape assets. Paragraph 130 of the National Planning Policy Framework [NPPF] requires planning decisions to ensure development is sympathetic to local character, including landscape setting.
- 16.20 The submitted landscaping plans include new tree planting and hedgerow planting and, as well as the more strategic areas of POS, smaller incidental grassed areas, some of which are proposed to be finished with wildflower seeding. The proposed scheme of planting and soft landscaping appears broadly acceptable, while any required changes and final details can be secured by condition, including the provision of a more significant tree belt to the site's western boundary.
- 16.21 Plans submitted detail brick boundary walls to the most sensitive public facing boundaries and a mix of estate rail facing and timber bollards to areas of open space - both incidental and the more strategic formal public open space areas. A majority of hard surfaces are proposed to be finished in block



paving (with the exception of the main access road), to limit the use of tarmac, recognising the contribution the form of hard surfacing can make to site identity and improving the quality of the public realm.

- 16.22 Exact details on the above aspects of the scheme and in recognition that some details require further consideration (including in areas where there are more significant changes in ground levels) are recommended to be secured by condition.
- 16.23 Overall, the proposal is considered to either provide appropriate landscaping in terms of the details submitted or, where required, additional details can be secured by way of condition, to ensure any final detailed scheme suitably address any outstanding comments from the Council's Landscape Advisor, and that the proposed development ultimately successfully integrates with the surrounding landscape and achieves a high quality public realm.

#### Residential Amenity

- 16.24 Paragraph 130 of the NPPF (2021) requires, amongst other things, planning decisions to ensure development promotes health and well-being and provides a high standard of amenity for existing and future users.
- 16.25 Section 2 Policy DM12 states residential development will be supported where high standards of design, construction and layout are promoted, and sets general amenity standards for new dwellings, while Policy DM19 sets specific private amenity space standards. Section 2 Local Plan Policy DM12 and DM15 also require all development to protect the amenity of existing and future residents, including with regards to loss of light, overbearing impacts and overlooking.
- 16.26 In terms on neighbouring amenity, the nearest neighbouring properties are the flats beyond the east of the site. Taking into account the position, scale and orientation of proposed built form the proposed development is not expected to result in material harm to neighbouring amenity through a loss of light, outlook, or through affording unsatisfactory angles of overlooking, with due regards to the relevant tests for assessing these issues, as set out in the Essex Design Guide SPD.
- 16.27 In terms of future occupier amenity it is important to note that the site is located close to the A12. The provision of detailed acoustic information and appropriate acoustic mitigation measures (where found to be required) are however covered by conditions of the outline permission and a further noise levels condition is also recommended to be included to ensure there is appropriate mitigation in place to avoid materially adverse impacts to future occupier amenity from noise. Taking into account these measures and the consultation responses received by Environmental Protection, who have raised no objection to the application, it is not considered residents will be exposed to excessive noise and it is considered suitable levels of amenity will be afforded in this regard.

- 16.28 All the proposed dwellings have internal floor areas that meet or are in excess of Nationally Described Space Standards and while there are some notable changes in levels across the site, it is considered all dwellings can be afforded acceptable levels of light and outlook to all habitable rooms.
- 16.29 The proposed scheme includes private amenity space provisions for each dwelling in accord with minimum size requirements. While the topography of the site also presents challenges in terms of differences in levels between gardens and a subsequent need for retaining walls in addition to standard boundary treatments, conditions are recommended covering both finished levels and further details on proposed boundary treatments to ensure appropriate relationships between gardens are demonstrated and the differences in levels do not unacceptably undermine the quality or functionality of any of the proposed amenity spaces.
- 16.30 Taking into account the size, orientation and shape of the amenity spaces proposed it considered that, subject to the aforementioned conditions covering final site levels and boundary treatments, it can be ensured the scheme delivers private amenity space provisions of an acceptable quality and which are afforded an acceptable degree of privacy.
- 16.31 The proposal includes areas of Public Open Space [POS] and is considered to meet the policy requirement for a 10% minimum of the site area to be POS. The main POS area while located on the site's periphery is considered to remain accessible and will otherwise provide a functional amenity space for residents, while also benefiting from natural surveillance from the proposed properties to the east. The proposed main POS also includes a Local Equipment Area for Play [LEAP].

#### Arboriculture and Tree Canopy Cover

- 16.32 Section 2 Policy ENV1 requires development to conserve and enhance Colchester's natural environment. Policy DM15 requires development to respect and enhance the landscape and other assets that contribute positively to the site and the surrounding area. Section 1 Policy SP7 requires development to protect and enhance assets of historical or natural value. Central Government guidance on conserving the natural environment is set out in the NPPF. MBNP Policy ENV1 requires the protection of mature trees, shrubs and historical hedgerows and important features that define the local landscape character.
- 16.33 The submitted Arboricultural Impact Assessment details the removal of some of the existing trees within the site, however the Council's Arboricultural Officer has not objected, with the trees proposed to be removed of a relatively low quality, predominantly Class C (low quality) and Class U (unsuitable for retention). The highest quality Class A trees are detailed to be retained, as is the main tree belt to the south of the site. The protection of the existing trees shown to be retained can be ensured through the implementation of appropriate construction and tree protection methods, which can be controlled by condition.

- 16.34 While the proposal does include new planting, including a number of new street trees and trees to areas of POS, the tree canopy cover assessment submitted confirms that on site, the application falls short of meeting the 10% increase in Tree Canopy Cover required by Policy ENV1. This policy does however make provision for the uplift to be delivered off-site, where it cannot be accommodated on site. This approach has been accepted by officers and securing the necessary tree planting can be controlled through recommended condition 18 which requires the submission, implementation and subsequent management of a detailed scheme for achieving the necessary uplift.

#### Biodiversity Net Gain, Ecology and Climate Change

- 16.35 Section 40 of the Natural Environment and rural Communities Act 2006 [NERC] places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity and a core principle of the NPPF is that planning should contribute to conserving and enhancing the natural environment. Paragraph 174 of the NPPF specifically, states development should contribute to and enhance the natural and local environment and minimise impacts on biodiversity, with appropriate ecological surveys required when there is reason to suspect the presence of protected species.
- 16.36 Policy ENV1 seeks to conserve or enhance biodiversity of the Borough and sets a requirement for development to achieve a 10% Biodiversity Net Gain [BNG], where appropriate.
- 16.37 While the proposed development will undoubtedly affect an area which has a biodiversity and habitat value, the change in the main function of the site has been accepted both through the site's allocation and the outline permission.
- 16.38 It is however still important that any proposal suitably protects existing wildlife and takes appropriate opportunities for biodiversity enhancement and mitigation, in order for the scheme to accord with the above policy and statutory requirements.
- 16.39 In this respect the application is supported by an Ecological Mitigation and Enhancement Strategy. This document has been reviewed by Essex Place Services Ecology who confirm they are satisfied that the document contains sufficient ecological information for the determination of the application and with the mitigation measures secured by condition, it can be ensured the development will acceptably mitigate impacts on designated sites, protected and Priority species & habitats.
- 16.40 While it is understood that in this instance it has not been possible to demonstrate measurable biodiversity net gain of at least 10% on site, it is proposed by the applicant's that biodiversity net gain is achieved through a combination of on and off-site provisions. While there is a presumption that measurable net gain in biodiversity is made onsite wherever possible, there are provisions for off-site compensation to be used in both policy and

emerging legislation. Taking into account the circumstances of the case the use of off-site provisions is accepted by Officers. Subject to a pre-commencement condition to secure exact details of such and the provision of an appropriate legal agreement to provide certainty and security around proposed off-site provisions and their long-term management and maintenance, the proposal is considered acceptable from a biodiversity net gain perspective and is in accordance with Policy ENV1 in this regard.

- 16.41 In terms of supporting the transition to a low carbon future and mitigating and adapting to climate change, all dwellings are to be served by dedicated EV charging points and air source heat pumps, while the provision of a detailed SuDS scheme is covered by condition under the outline permission.

#### RAMS

- 16.42 Development proposals must not have an adverse effect on the integrity of habitat sites. Section 1 Policy ENV1 states that development proposals that have adverse effects on the integrity of habitats sites will not be supported.

- 16.43 A Recreational disturbance Avoidance and Mitigation Strategy (RAMS) has been completed as part of the local plan in compliance with the Habitats Directive and Habitats Regulations. Further to Section 1 Policy SP2, contributions are required from qualifying residential development, within the Zones of Influence as defined in the adopted RAMS, towards mitigation measures identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The proposed development has been considered in line with Natural England guidance, which concludes that the whole of Colchester is within the zone of influence for the East Coast RAMS and that, unless a financial contribution is secured (to fund avoidance and mitigation measures in line with the RAMS), the proposed development is likely to have a significant effect upon habitat sites through increased recreational pressure, when considered in-combination with other plans and projects.

- 16.44 A proportionate contribution towards the Essex Coast RAMS is included as part of the existing Section 106 agreement and the proposed development is therefore considered to be in accordance with Policy SP2, ENV1 and is acceptable in respect of its impact upon habitat sites, with appropriate mitigation secured, in accordance with the conclusions of the Habitats Regulation Assessment [HRA] undertaken.

#### Flood risk

- 16.45 Policy DM23 states the Local Planning Authority will seek to direct development away from land at risk of flooding in accordance with the National Planning Policy Framework and the Planning Practice Guidance. Development will only be supported where it can be demonstrated that the proposal meets flood management requirements in the NPPF, the PPG and Policy DM23.

- 16.46 The application site is located within Flood Zone 1 which has a very low risk of flooding from rivers or the sea (less than 0.1%) according to Environment Agency Long Term Flood Risk Information. The site is also outside any areas at risk of flooding from reservoirs. The site is not, therefore, considered to be particularly susceptible to flooding.
- 16.47 With no residential development proposed in either Flood Zone 2 or 3 the development accords with Policy NC3 in this regard, as well as wider policy requirements in respect of directing development towards areas at a lower risk of flooding.
- 16.48 In terms of surface water flooding, the scheme would result in an overall increase in structures and hard surfacing (the new build and associated pathways/driveways). The provision of an appropriate detailed SuDS scheme is however secured through the conditions of the outline consent and there are therefore no concerns with regards to surface water flooding, or that the proposal will unacceptably increase flood risk elsewhere.

#### Highways and Parking

- 16.49 Paragraph 111 of the NPPF provides that development may be refused on highways grounds if there would be unacceptable impact on highway safety. Paragraph 112 of the NPPF states that, within this context, applications for development should create places that are safe, secure... [and] minimise the scope for conflict between pedestrians, cyclists and vehicles.
- 16.50 Section 2 Local Plan Policy DM22 relates to parking standards in association with the Vehicle Parking Standards SPD. Section 1 Policy SG1 states that development that reduces the need to travel will be encouraged. Policies DM15, DM20 and DM21 have similar requirements with particular emphasis on enhancing accessibility for sustainable modes of transport.
- 16.51 The scheme provides dedicated parking for each dwelling and visitor parking spaces across the wider site, with the level of both in accord with adopted standards. It is therefore considered that the scheme has sufficient parking to serve the development and will not cause materially harmful on-street parking, either within this site or elsewhere.
- 16.52 The Highway Authority has confirmed that they have no objections to the proposal on highway safety grounds subject to conditions covering the site access, estate roads and footway details, parking, provision of travel packs, bus stop improvements and a new village gateway feature to alert drivers and highlight the change in speed limit from derestricted to 30mph. With the exception of the proposed access junction condition and bus stop condition (which are already imposed on the outline permission), all conditions requested by the Highway Authority are included in the list of recommended conditions. It is also important to note that the site's access onto the B1508 has been established under the outline permission.
- 16.53 Taking into account the above there are no concerns from a parking, highway safety or highway capacity perspective.

## Contamination

- 16.54 Section 2 Policy ENV5 states proposals will be supported that will not result in an unacceptable risk to public health or safety, the environment, general amenity, or existing uses due to the potential of air pollution, noise nuisance, surface / ground water sources or land pollution. Development proposals on contaminated land, or where there is reason to suspect contamination, must include an assessment of the extent of contamination and any possible risks.
- 16.55 Potential contamination risks are addressed under conditions of the original outline permission (conditions 7, 8, 9, 10, 11 and 12) and sufficient information has already been submitted pursuant to the discharge of these conditions, as confirmed by the Council's Contaminated Land Officer and there are therefore no concerns in this regard, with no further contamination work, required at this time. Condition 11 of the original outline consent (reporting of unexpected contamination) provides further security in respect of contaminated land matters, moving forward.

## Other Matters

- 16.56 It is noted that comments have been received in respect of the application's bearing on the remainder of the allocation and in particular the possibility for the development to preclude development to the remainder of the allocation. In this respect it should be noted that the outline permission is subject to a Unilateral Undertaking which imposes, amongst other things, covenants on the landowner in respect of the main road within the site which runs south to north-east, and which is referred to within the legal agreement as 'the Access Road', with the area between the Access Road and the remainder of the allocation the 'Easement Corridor'. The covenants imposed by this legal agreement include the following:

*Not to Occupy or permit the Occupation of any Dwelling until the Access Road has been constructed and is Practically Complete to an Adoptable Standard.*

*To use its reasonable endeavours to procure the adoption of the Access Road by the highway authority pursuant to the Requisite Consents.*

*Following construction of the Access Road and upon the request by the Adjoining Land Owner and the payment of a reasonable consideration (to be agreed between the parties acting reasonably) by the Adjoining Land Owner to enter into a deed of easement to permit the Adjoining Land Owner and all persons authorised by that Adjoining Land Owner (including but not limited to its employees, consultants and all visitors to the Adjoining Land) a right to use the Access Road and the Easement Corridor for the purposes of access and egress between Braiswick and the Adjoining Land for all purposes (by vehicle and on foot) and at all times (subject to appropriate obligations to contribute towards the maintenance of the Access Road) until such time as the Access Road has been formally adopted by the relevant*

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*highway authority and for the purposes of connecting into any connections for Services located in the Access Road and the Easement Corridor (subject to capacity) for the purpose of providing Services to the Adjoining Land.*

- 16.57 Simply put, the agreement provides a legal mechanism to ensure that the development does not preclude development on the remaining part of the allocated site.
- 16.58 Finally, in terms of other material planning considerations including, but not necessarily limited to, archaeology and heritage impacts, these matters are either suitably addressed under the conditions of the outline permission or there are otherwise no concerns in these regards.

Reasons for Deferral (15<sup>th</sup> June) – Supplementary Information

- 16.59 As outlined in this report's synopsis, the application was deferred by members at the Planning Committee meeting on 15th June 2023. The reasons for deferral are considered to focus on four main issues. These are outlined below, with corresponding additional consideration provided in response to the matters raised.

*Danger of the Location of the Children's Play Area*

- 16.60 One area of concern raised was potential danger from the location of the proposed dedicated play area, specifically the Local Equipment Area for Play [LEAP]. Pedestrian access to the play area is afforded by one of two potential routes, the stepped path to the south of the site and/or the sloped shared surface to the west and north of the site.
- 16.61 Particular concerns were raised about potential conflict arising from the use of the shared surface. In this regard it is important to note that shared surfaces are by no means uncommon features within urban environments and the use of shared surfaces are not expected to give rise to any safety concerns in this instance, in what is anticipated to be a relatively calm traffic environment, where the shared surface is not expected to be heavily trafficked, taking into account the modest number of dwellings proposed to be served by the shared surface.
- 16.62 If it were to be considered that the issue of safety is a highway safety issue, as per Paragraph 111 of the NPPF development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be *severe*. In this regards it is important to note that the Highway Authority have raised no objection to the application, on either the grounds of impacts on highway safety, or capacity.
- 16.63 In terms of safety more widely it is also noted that the main strategic area of public open space and the proposed play area benefit from a good degree of natural surveillance, with dwellings facing towards these areas and providing natural surveillance, which is desirable from both a placemaking and safety perspective.

- 16.64 Taken as a whole Officers do not considered that the location of the children's play area/LEAP as proposed presents a specific or material danger to children, or the safety of members of the public more widely.

Provisions of Public Open Space/Community Space

- 16.65 As outlined under Paragraph 16.31 the proposal includes areas of Public Open Space [POS] and is considered to meet the policy requirement for a 10% minimum of the site area to be POS. The proposed main POS also includes a Local Equipment Area for Play [LEAP] which will be accessible to both residents and members of the wider community, with resulting benefits for the wider community in terms of improved local play provisions. Following the committee meeting on 17<sup>th</sup> August, revisions to the scheme's public open space provisions are expected, as outlined at Paragraph 16.77 of this report.

Connectivity

- 16.66 There is vehicular and pedestrian north-south connectivity through the site via the main north-south access road to the east of the site and the shared surface to the west of the site. Connectivity east-west is provided by one of two potential routes: the stepped path to the south of the site which provides pedestrian connectivity, and/or the slopped shared surface to the north of the site which provides both a pedestrian and vehicular connection across the site.
- 16.67 Concerns were raised at the previous Committee meeting that vehicular access was not provided across the site at its southern edge and that the pedestrian access in this location is detailed to be partly stepped.
- 16.68 It is important to note however that the site is relatively steeply sloped and for vehicular and/or step free pedestrian access to be provided, suitable gradients for such would need to be achievable. In this regard, while it is not ideal that a direct step free and vehicular access route cannot be provided across the south of the site, the longer proposed route along the main access road and west along the shared surface provides a longer distance over which the changes in ground levels across the site can be accommodated, in order to form a relatively gradual slope.
- 16.69 The applicant has advised that the changes in levels between the main POS to the south-west of the site and the access point onto Braiswick road, coupled with the relatively short distance between the two, means that it is not feasible to accommodate sloped access across the southern boundary of the site, as it would not be possible to achieve an acceptable gradient.
- 16.70 For additional context the applicant has advised Officers that their engineers have modelled the possibility of providing slopped access across the south



of the site and if the currently stepped access to the south of the site were instead to be sloped the gradient would be 1 in 7.5 (a 1 metre change in height per 7.5 metres across). This is understood to be well in excess of the generally accepted maximum road gradient of 1 in 12.5 (a 1 metre change in height per 12.5 metres across). It is understood that the maximum acceptable gradients for wheelchair access, depending on the length of gradients, is between 1:12 and 1:20 (a 1 metre change in height per 12-20 metres across) (see for example Approved Document M, 2010).

- 16.71 While the absence of vehicular access across the south of the site means vehicles looking to reach the plots to the west will need to use the main access road through the site, it is not considered the absence of a southern vehicular link across the site will place undue pressure on the proposed access roads, or otherwise result in material harm in highway or amenity terms. It is also important to note that the wider allocation is allocated for up to 70 dwellings and the wider allocation is anticipated to be served by the main access road through the current application site and has been designed to accommodate the anticipated vehicle movements associated with such additional development.
- 16.72 Taken as a whole, for the reasons outlined above and in the main body of the report the site is considered to provide sufficient connectivity, while mindful of the site's constraints, and the proposed access arrangements are not anticipated to result in material harm from a residential amenity or highways perspective.

#### Reduction In Number of Dwellings

- 16.73 Part of the deferral reasons on 15<sup>th</sup> June included the possibility of reducing the number of dwellings proposed on the site. Following the deferral, the applicants have however confirmed that they wish for the application to be determined on the basis of the plans submitted (in terms of dwelling numbers).
- 16.74 A scheme for 27 dwellings is proposed and this is therefore the scheme that needs to be considered, on its own merits.
- 16.75 For the reasons outlined in the main body of the report Officer's remain of the view that the proposals, as revised since first submitted, are acceptable in planning terms, when assessed against relevant policies of the development plan and taking into account other wider material planning considerations.

#### Reasons for Deferral (17<sup>th</sup> August) – Supplementary Information

- 16.76 As outlined in this report's synopsis, the application was deferred by members at the Planning Committee meeting on 17<sup>th</sup> August 2023 to negotiate urban design improvements to the layout, in order to consolidate the area(s) of public open space.

- 16.77 Following the resolution to defer to seek revisions to the submitted scheme, the applicants have advised Officers that in response to members' comments they intend to make amendments to the layout to the north of the site (including the parking arrangements serving Plot 15) with a view to provide a larger, more centrally located area of public open space. At the time of writing amended plans detailing these proposed changes have not yet been received. However, updated plans are anticipated to be received in advance of the posting of the agenda for the committee meeting on 7<sup>th</sup> September. Any amended plans will be indexed to the planning file when received, in addition to any further material submitted by the applicants. An update detailing the revisions will then be provided on the amendments sheet and verbally at the committee.
- 16.78 In terms of the design of the development more widely, the applicant has agreed to the rewording of recommended Condition 5 (Architectural details), to include the provision of further detailed architectural design features, beyond those shown on the submitted plans. Specifically, it has been agreed that Condition 5 is reworded to secure the provision of splayed brick lintels and stone cills to the front and highway facing side elevations of units with a proposed brick finish. These additional details, to be secured by condition, are considered to further enhance design quality, through providing improved and enriched visual interest and thereby contributing to site identity and enhanced character.

## 17.0 Planning Balance and Conclusion

- 17.1 National policy requires planning to be genuinely plan-led. The proposal is considered to accord with the adopted local plan. The National Planning Policy Framework (the Framework) makes it plain that the purpose of the planning system is to contribute to the achievement of sustainable development and identifies three dimensions to sustainable development: economic, social and environmental.
- 17.2 In respect of the first of these, **the economic role**, the current proposal would provide economic benefits, for example in respect of employment during the construction phase, as well as support for existing and future businesses, services, and facilities by introducing additional residents that would make use of them and provide future spend in the local economy.
- 17.3 The **social role** of sustainable development is described as supporting strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being.
- 17.4 The proposal is considered to meet these objectives as it would contribute towards the number of dwellings required to support growth in the north of Colchester, including balanced communities through the delivery of 30%

affordable housing, is located within walking distance of a number of key local services and facilities required for day-to-day living and will make an important contribution to the Councils' housing land supply. Significant weight should be given to this in the planning balance.

- 17.5 In respect of the third dimension, the **environmental role**, the proposal will provide housing in a sustainable location so that future residents would not be wholly reliant on private car, being able to walk, cycle or use public transport to access necessary services and facilities, thereby minimising environmental impacts. Ecological enhancements and biodiversity net gain can also be secured by condition.
- 17.6 There is also sufficient evidence to be confident that overall the development would not cause material harm to the amenity of nearby residents or have a severe impact upon the highway network. The scheme as amended is held to constitute an acceptable standard of design. Whilst the proposed development would have an impact on the existing character of the site (i.e., by introducing built development where there is none currently) through a general suburbanising effect on the wider setting, which carries some weight against the proposal, notwithstanding that such impacts have been accepted in principle through the outline consent, the positive economic and social effects, as well as the sustainability of the proposal would weigh in favour of this scheme as does the significant weight afforded to the supply of new homes in the Framework.
- 17.7 In conclusion, it is considered that the benefits of the scheme convincingly outweigh any adverse impacts identified and the planning balance tips in favour of an approval.

## **18.0 Recommendation to the Committee**

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

### **1. Reserved matters application time limit**

The reserved matters planning permission hereby granted is given in accordance with the terms of the outline planning permission reference 191522 (APP/A1530/W/20/3245754) relating to this site and the conditions attached thereto remain in force.

Reason: In order to comply with Section 91 (1) and (2) of the Town and Country Planning Act 1990 as amended by section 51 of the Planning and Compulsory Purchase Act 2004.

### **2. Development to accord with approved plans (subject to other conditions)**

Notwithstanding the provisions of any other conditions attached to this permission, the development hereby permitted shall be carried out in accordance with the details shown on the submitted drawing numbers:

AH013.300.27

AH013.301.11

AH013.302.10

AH013.303.10

AH013.304.14  
AH013.310.05  
AH013.311.05  
AH013.312.05  
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AH013.323.06  
AH013.324.05  
AH013.325.05  
AH013.326.05  
AH013.340.05  
AH013.341.05  
AH013.342.05  
JBA 21-311-03 REV J  
JBA 21-311-04 REV J

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

### **3. Site levels**

Prior to the commencement of any development detailed drawings illustrating the existing and proposed levels across the site, by way of appropriate spot heights and finished floor levels, shall be submitted to and approved, in writing, by the Local Planning Authority. Where levels are proposed to be altered adjacent to site boundaries, the details should evidence levels on the adjacent land beyond the site boundary. In instances where the details illustrate substantial variances in the proposed levels, details shall be submitted that demonstrate how the transition between the levels will be facilitated. The development shall thereafter be carried out in accordance with the approved details.

Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact on placemaking, public amenity or residential amenity.

### **4. Material details**

No external facing or roofing materials (including surfacing materials and any means of enclosure) shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and colours of these have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

Reason: In order to ensure that suitable materials are used on the development in the interests of good design and visual amenity as there are insufficient details within the submitted planning application.

### **5. Architectural Detailing**

Notwithstanding the details submitted, no works shall take place (above ground floor slab level) until additional drawings that show details of the architectural detailing of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Details shall include window detailing (including details of the depth of reveal and any dormer features); roof lanterns; doors, cills, lintels, eaves, verges, ridge, brickwork /stone work detailing (including brick bond and mortar profile, and splayed brick lintels and stone cills to the windows to all front and highway facing side elevations of dwellings which have an external brick finish), chimneys; porches, bay windows and any rainwater goods to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: To ensure high quality architectural detailing, in the interests of achieving a high quality of design and as there is currently insufficient information with regards to these details.

### **6. Utilities**

No works shall commence (above ground floor slab level) until details (including position) of all new plant, extract ducts, vents, grilles and meter housings have been submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: In the interests of good design and visual amenity.

### **7. Boundary Treatments**

Notwithstanding the approved plans, prior to their construction precise details of the position and composition of all boundary treatments shall have been submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: In the interests of good design and visual amenity.

### **8. Additional landscaping details**

Prior to commencement of any development detailed drawings or manufacturers specification illustrating all enclosure, street furniture and hard surfaces (railings, walls, fences to include bow- top fencing, furniture, bollards, litter/dog/cigarette-end bins, other storage units, signage, driveways, pavements, roads and shared surfaces) shall be submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: In order to ensure that suitable materials are used on the development in the interests of good design and visual amenity as there are insufficient details within the submitted planning application.

### **9. Landscaping (external lighting)**

Prior to commencement of any development detailed drawings illustrating the position of all proposed external lighting and manufacturers specification shall be submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details. Where unacceptable light incursion into adjacent units is identified (particularly to bedroom windows) shuttering sufficient to minimise light incursion will be implemented. The submitted scheme shall also demonstrate proposed lighting columns are set outside the mature crown spreads of any existing and/or proposed trees.

Reason: As there is insufficient information submitted with this application and in the interests of visual and residential amenity.

#### **10. Landscaping revisions**

Notwithstanding the provisions of any other conditions attached to this permission, prior to the commencement of development a revised landscaping plan which is broadly inline with drawings JBA 21-311-03 REV J and JBA 21-311-04 REV J, but which includes a linear tree belt to the western boundary of the site, while retaining the functionality of the proposed public open space and avoiding conflict with means of enclosure and street furniture, shall have been submitted to and approved, in writing, by the Local Planning Authority. The trees to the POS bounding the western access road shall form a comprehensive linear feature of large broader crowned native trees all along that western boundary. The approved revised landscaping plan(s) shall subsequently be implemented as approved and otherwise in compliance with the provisions of other conditions attached to this permission.

Reason: To ensure appropriate tree planting is implemented in this location to help protect, conserve and enhance views into the site from the west by, at maturity, filter screening the development whilst complementing the sites wooded ridge setting.

#### **11. Landscaping Implementation, monitoring and management**

No works shall take place above slab level until an Implementation and Monitoring Programme (IMP) and a Landscape Management Plan for agreed landscaping works and any landscaping works subsequent agreed pursuant to the discharge of Conditions 7, 8, 9 and 10 of this permission have been submitted to and approved, in writing, by the Local Planning Authority. The landscape works shall thereafter be implemented and managed in accordance with the details approved and in perpetuity.

Reason: To ensure the implementation of a suitable scheme of landscaping and to safeguard the continuity of amenity afforded by the approved landscape scheme.

#### **12. Obscure glazing**

Prior to occupation of each dwelling hereby approved, the side facing windows to each dwelling at first floor and above shall be glazed in obscure glass to a minimum of level four on the Pilkington scale and shall be restricted in opening to no more than 200mm. The windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority.

Reason: To protect residential amenity.

#### **13. Removal of PD - extensions, alterations, outbuildings and raised platforms**

Notwithstanding the provisions of Classes A, B, C, and D of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, improvement or other alteration to any dwelling shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority. With the exception of the dwellings identified on the approved plans as Plots 14 and 15, notwithstanding the provisions of Class A, E and F of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order) no provision of buildings, enclosures, swimming or other pool, or raised external platforms of any height shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity, to ensure the development avoids an overdeveloped or cluttered appearance and in the interests of neighbouring amenity, particularly when taking into account the topography of the site.

#### **14..Removal of pd – means of enclosure between elevations and highway**

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of enclosure, other than those approved in writing by the Local Planning Authority, shall be erected in advance of any wall of the dwelling to which it relates (including a side or rear wall) which faces a highway (including a footpath or bridleway) unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of visual amenity with regard to characteristics of the site, in the interest of place making.

#### **15. Garages retained for parking**

The garages hereby approved shall be retained for the parking of motor vehicles at all times and shall not be adapted to be used for any other purpose, including other uses ancillary to the residential use, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: To retain adequate intentional on-site parking provision in the interest of public amenity and highway safety.

#### **16. Ecological Enhancements**

All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Mitigation and Enhancement Strategy (ACJ Ecology, May 2022) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations

2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

### **17. Receptor Site Agreement**

A copy of the signed agreement between the landowner and the developer shall be submitted to and approved by the local planning authority to ensure the receptor site is funded, managed and monitored for the conservation of reptiles. This shall include provision of offsite mitigation to compensate the loss of any reptile territories.

Reason: To allow the LPA to discharge its duties under the NERC Act 2006 (Priority habitats & species).

### **18. BNG and Tree Canopy Cover**

Prior to the commencement of development schemes to deliver 10% uplift in biodiversity (calculated in line with the latest Natural England Biodiversity Metric) and a 10% uplift in tree canopy cover through on and/or off-site provisions shall have been submitted to and approved, in writing, by the Local Planning Authority. Such schemes shall in the first instance include on-site provisions, wherever possible. The submitted schemes shall also include a long-term management plan and be supported by an appropriate legal agreement to secure the off-site habitat creation/enhancement/management and/or tree planting and its future management. The approved schemes shall thereafter be delivered during the first planting season, or in accordance with an alternative timeframe which has previously been agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the impact of the development on the natural environment is mitigated having regard to policies ENV1 and CC1 of the Section 2 Local Plan 2017-2033 and Section 40 of the Natural Environment and Rural Communities Act 2006.

### **19. Updated AIA**

No works shall take place until an updated Arboricultural Impact Assessment which reflects the changes made to site layout post submission of the current AIA (Arboricultural Planning Statement Land at Colchester Road, Braiswick, Dated January 2023, Version H), but is broadly inline with current submitted AIA, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter take place in accordance with the approved updated AIA, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows which are to be retained.

### **20. Tree and hedgerow protection**

All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a

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period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

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

### **21. Limits to hours of work**

No demolition or construction work 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.

### **22. Noise levels**

Where the internal noise levels exceed those stated in the current version of BS8233 with windows open, enhanced passive ventilation with appropriate sound insulating properties shall be provided to ensure compliance with the current version of BS8233 with windows closed and that maximum internal noise levels at night do not exceed 45dBA on more than 10 occasions a night. Where exposure exceeds the noise levels of 60dBLAeq 16 hours (daytime, 07:00-23:00, outside), 55dBLAeq 8 hours (night, 23:00-07:00, outside) enhanced ventilation will be required.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the future residents by reason of undue external noise where there is insufficient information within the submitted application.

### **23. Estate roads**

Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority. All carriageways should be provided at 5.5m between kerbed footways or 6.0m where vehicular access is taken but without kerbing. All footways should be provided at no less than 2.0m in width. All off street car parking shall be provided in precise accord with the details contained within the current Parking Standards being provided within the site.

Reason: To protect highway efficiency of movement and safety.

### **24. Travel packs**

Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, 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 the environment and promoting sustainable transport options.

### **25. Estate road junctions**

Each internal estate road junction shall be provided with a clear to ground level visibility splays with dimensions of 25m by 2.4m by 25m on both sides. Such visibility splays shall be provided before the road is first used by vehicular traffic and shall be retained and maintained free from obstruction clear to ground thereafter.

Reason: To protect highway efficiency of movement and safety.

### **26. Village gateway feature**

Prior to the occupation of the proposed development the applicant/developer shall provide a village gateway feature at or in the vicinity of the existing speed restriction signage west of the proposed development site erected on both sides of the carriageway of Colchester Road, Braiswick to alert drivers and highlight the change in speed limit from derestricted to 30mph, incorporating appropriate signage and any associated measures of a design that shall be approved in writing by the Local Planning Authority.

Reason: In the interests of highways safety.

## **19.1 Informatives**

19.1 The following informatives are also recommended:

PLEASE NOTE that the outline planning permission reference number 191522 together with this approval constitute the planning permission for this development. All of the conditions imposed on both the outline permission and this approval must be complied with.

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.

PLEASE NOTE: It is likely that a protected species may be present at the site, which are fully protected by the Wildlife and Countryside Act (1981). Further advice on surveys and compliance with the legislation can be obtained from Natural England, Eastbrook, Shaftesbury Road, Cambridge CB2 8DR, Tel. 0300 060 3787.

Essex County Fire & Rescue Service Informative: There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy. Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk-based approach to the

inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.

Highways Informative 1: The applicant should open dialogue with Essex Highways via the link below and submit drawings for Technical Approval (TA) for the Approval of details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage).

Highways Informative 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](mailto:development.management@essexhighways.org).

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

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](http://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.



## 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 scrapyards 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.*

