

Planning Committee

Council Chamber, Town Hall
17 October 2013 at 6.00pm

This Committee deals with

planning applications, planning enforcement, public rights of way and certain highway matters.

If you wish to come to the meeting please arrive in good time. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Attending Meetings and "Have Your Say" at www.colchester.gov.uk

Audio Recording, Mobile phones and other devices

The Council audio records all its public meetings and makes the recordings available on the Council's website. Audio recording of meetings by members of the public is also permitted. The discreet use of phones, tablets, laptops and other such devices is permitted at all meetings of the Council, with the exception of all meetings of the Planning Committee, Licensing Committee, Licensing Sub-Committee and Governance Committee. It is not permitted to use voice or camera flash functionality and devices must be kept on silent mode. Councillors are permitted to use devices to receive messages and to access papers and information via the internet and viewing or participation in social media is at the discretion of the Chairman / Mayor presiding at the meeting 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 Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are located on each floor of the Town Hall. A vending machine selling hot and cold drinks is located on the ground floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Colchester Borough Council, Angel Court, High Street, Colchester
telephone (01206) 282222 or textphone 18001 followed by the full number you wish
to call

e-mail: democratic.services@colchester.gov.uk

www.colchester.gov.uk

Material Planning Considerations

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

The following approach should be taken:

- 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.

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 Colchester’s own Local Plan documents
- Government guidance, case law, appeal decisions, planning history, “fallback” positions
- Design, scale, bulk, mass, appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations such as archaeology, listed buildings or a conservation areas
- Environmental issues such as impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism
- Social issues such as affordable housing, accessibility, inclusion, education, recreation
- The ability to use planning conditions or obligations to overcome concerns

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 including 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
- unless they are “exceptional”, personal circumstances, including hardship

Strong opposition to a particular proposal is a common feature of the planning process. However, in the absence of substantial evidence of harm or support from the Development Plan is unlikely to carry much weight. The same principles apply in reverse where there is strong support for a proposal that is contrary to the Development Plan and there is harm (or lack of substantially evidenced benefit).

Inspectors and Courts (see *North Wiltshire DC V SoS & Clover, 1992*) have established that precedent can be a legitimate consideration, but it is not enough to have a “general anxiety” and there has to be evidence of a real likelihood that similar applications (in all respects) will be submitted.

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 and Considering Reasons for Refusing Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework reinforces this by 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. However, not all development is acceptable and almost every permission will require planning conditions in order to make them acceptable. Some will remain unacceptable and should therefore be refused. Circular 11/95 (The Use of Conditions in Planning Permissions) and Circular 03/2009 (Costs Awards In Appeals And Other Planning Proceedings) set out advice on the government's policy regarding the appropriate use of planning conditions and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to "unreasonable" behaviour. They derive from an interpretation of court judgments over the years and, although not planning law, are important material considerations. A decision to set them aside would therefore need to be well-reasoned and justified.

In terms of the Planning Committee, Circular 03/2009 makes it clear that "*Planning authorities 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*".

The power to impose conditions is an important material consideration in any determination. Circular 03/2009 states that "*Whenever appropriate, planning authorities 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. *The Circular adds that "A planning authority refusing planning permission 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."* Advice on the need to consider whether conditions may make a proposal acceptable which would be otherwise unacceptable is also to be found in Circular 11/95.

Any planning condition imposed on a development must be necessary, relevant to planning, relevant to the development to be permitted, reasonable, precise and enforceable. Unless conditions fulfil these criteria, which are set out in Circular 11/95, 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, Circular 03/2009 makes it clear that planning authorities must "*properly exercise their development control responsibilities, 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 public authorities act fairly and reasonably in executing their decision making functions, and that it is evident to all that they so do.

COLCHESTER BOROUGH COUNCIL PLANNING COMMITTEE 17 October 2013 at 6:00pm

Members

Chairman : Councillor Theresa Higgins.
Deputy Chairman : Councillor Helen Chuah.
Councillors Peter Chillingworth, Stephen Ford, Sonia Lewis, Cyril Liddy, Jackie Maclean, Jon Manning, Philip Oxford and Laura Sykes.

Substitute Members

: All members of the Council who are not members of this Committee or the Local Plan Committee and who have undertaken the required planning skills workshop. The following members meet the criteria:-
Councillors Nick Barlow, Lyn Barton, Kevin Bentley, Mary Blandon, Mark Cable, Nigel Chapman, Barrie Cook, Nick Cope, Beverly Davies, John Elliott, Andrew Ellis, Annie Feltham, Bill Frame, Ray Gamble, Marcus Harrington, Dave Harris, Julia Havis, Jo Hayes, Pauline Hazell, Peter Higgins, Brian Jarvis, Margaret Kimberley, Michael Lilley, Sue Lissimore, Colin Mudie, Nigel Offen, Gerard Oxford, Will Quince, Lesley Scott-Boutell, Peter Sheane, Paul Smith, Terry Sutton, Colin Sykes, Anne Turrell, Dennis Willetts and Julie Young.

Agenda - Part A

(open to the public including the media)

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

An Amendment Sheet is available on the council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Could members of the public please note that any further information which they wish the Committee to consider must be received by 5pm 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.

Pages

1. Welcome and Announcements

- (a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.
- (b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

2. Have Your Say!

The Chairman to invite members of the public to indicate if they wish to speak or present a petition on any of items included on the agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

3. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

4. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

6. Minutes

There are no Minutes to be submitted for approval at this meeting.

7. Planning Applications

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

- | | | |
|----|--|----------------|
| 1. | 131568 - Bawley House, Walter Radcliffe Road, Wivenhoe
(Wivenhoe Quay) | 1 - 12 |
| | Change of use of approved 8 office units on the first and second floors of the commercial block poly-function units with associated parking. | |
| 2. | 131809 - 2 Middleborough, Castle
(Castle) | 13 - 19 |
| | Variation of Condition 4 (opening hours) attached to Planning Permission 122147. | |
| 3. | 131676 - 9 Little Foxburrows, Shrub End
(Shrub End) | 20 - 29 |
| | Proposed conversion of existing carport and alterations.
Resubmission of planning application reference 131313. | |

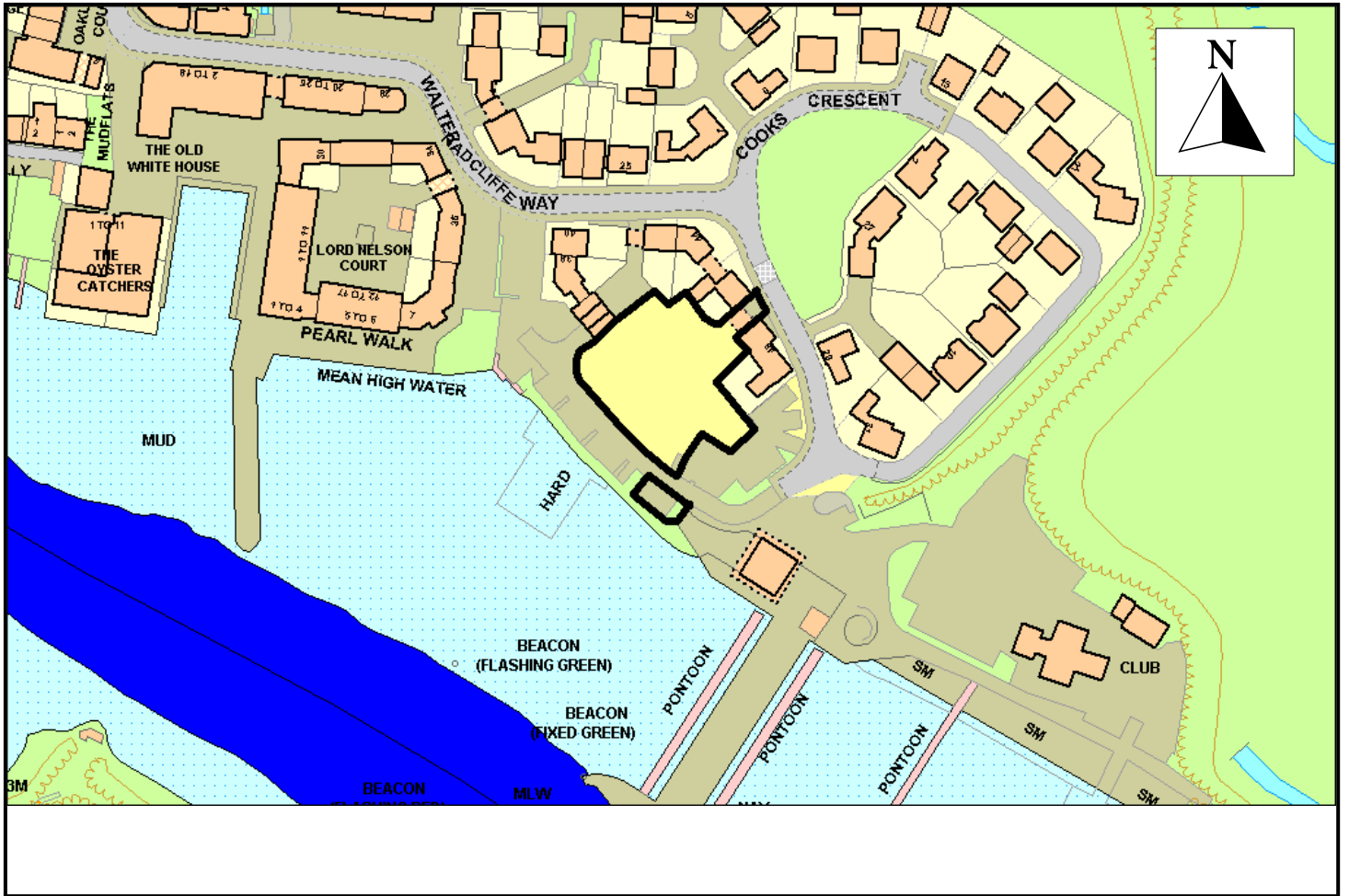
8. Amendment Sheet

30 - 32

Please see the amendment sheet (attached).

9. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).



Application No: 131568

Location: Bawley House, Walter Radcliffe Road, Wivenhoe, CO7 9FG

Scale (approx): 1:1250

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of PO Box 884, Town Hall, Colchester CO1 1FR under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2012



Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **17 October 2013**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: Sue Jackson

OTHER

Site: Bawley House, Walter Radcliffe Road, Wivenhoe, CO7 9FG

Application No: 131568

Date Received: 8 August 2013

Agent: Melville Dunbar Associates

Applicant: Mr Jonathan Frank

Development: Change of use of approved 8 office units on the first and second floors of the commercial block to 8 poly-functional units with associated parking.

Ward: Wivenhoe Quay

Summary of Application: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because of the objections raised by the Town Council.

2.0 Synopsis

2.1 The key issues explored below are the planning history and the comments received from the Town Council.

3.0 Site Description and Context

- 3.1 Bawley House is located on the former Cooks Shipyard site in Wivenhoe. It is on the east side of the town accessed via Anglesea Road or through the historic centre, as the name suggests it was formerly used as a shipyard and has a substantial river frontage.
- 3.2 Bawley House forms the final part of Phase 3, all the residential elements of this phase are now build and the majority are occupied. Bawley House is not built but the planning permission is for a three storey commercial building facing the river.

4.0 Description of Proposal

- 4.1 The three storey building has planning permission for B1 Business space on the 2 upper floors. The ground floor has planning permission for A1 retail use and Members have resolved to grant planning permission for the ground floor to be used for A3 restaurant purposes.
- 4.2 This application is to change the use of upper 2 floors to a total of 8 polyfunctional units. The following explanation is provided:-

“We have continued to explore different options, but we have concluded that with the marketing evidence that we have seen from the Taylor Wimpey built units, along with advice from local Commercial Agents and the fact that no banks will lend for speculative commercial schemes, we need to look at alternative uses for this site.

These Poly-Functional principles were applied to a number of the houses that were built in Phases 1 and 2 at Cooks Shipyard and it is now very interesting to see how many of these units are now being used for quasi-commercial activities. There is a strong artists’ community in Wivenhoe and it is these users that appear to have populated these units. The Shipyard Studios now have regular exhibitions/open weekends where the poly-functional spaces are now used for display and sales.

The granting of the planning consent for the restaurant use on the ground floor was a very positive step and will contribute to the activity on this important and highly visible part of the waterfront. However, as we will show within our submission, the development of this site, even with the restaurant, will be unable to go forward without a more commercially viable for the upper floors. Whilst the obvious way to make the scheme more financially viable is to covert the upper floors to residential use, we would like to continue to the original scheme concepts, so we are applying instead to change the use of the upper floors from B1 Commercial to the poly-functional uses that we have seen work so well already on this site.

The internal design principles will include higher than normal ceiling heights, a central service point, fire-proof compartmentation and higher than normal levels of sound insulation. This will allow the spaces to be used for either commercial or residential uses, depending upon demand at a given time.

Whilst we make no secret of the fact that initially these units could be used as residential, the fact that they have been designed to be adaptable and used as commercial space is the key. We fully anticipate that an office user could operate successfully next door to an artists’ studio or a residential occupier and that the building could provide the right environment for all of these occupiers. This approach is endorsed in the National Planning Policy Statement at paragraph 21:

“Investment in business should not be over-burdened by the combined requirements of planning policy expectations. Planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure, services or housing. In drawing up Local Plans, local planning authorities should:

- *Facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.*

Where current planning policies do not reflect this approach, the Government expects Local Plan policies to be brought into line.

There is a clear indication of the Government’s intention to introduce more flexibility into the planning system to meet the changing requirements of business and support sustainable economic growth.”

- 4.3 The application documents include a planning statement, transport appraisal, marketing information and correspondence from potential lenders to demonstrate why the B1 cannot be delivered.

5.0 Land Use Allocation

- 5.1 Regeneration Area
Conservation Area

A public footpath crosses the site.

The adjacent land is part of the Coastal Protection Belt and Site of Special Scientific Interest.

6.0 Relevant Planning History

- 6.1 O/COL/01/1799 - Outline planning permission approved on 5 November 2004 for erection of houses, flats, offices, fisherman's store and W.C. Refurbishment of wet dock, jetty, slipway and waterfront. Reconstruction of St John's Road and Walter Radcliffe Way.
- 6.2 RM/COL/04/2159 - Phase 1 - Reserved Matters approval for new access road, 1 3-bed house, a 1-bed maisonette, 4 2-bed maisonette, 5 2-bed flats, 19 garages and 28 space parking court
- 6.3 RM/COL/05/1808 - Phase 2 - Reserved Matters approval - Removal of public footpaths, restoration of White House, fisherman's store, 6 commercial units, 12 houses and 42 flats, 7 polyfunctional spaces and associated parking for all the above.
- 6.4 072630 - Reserved Matters approval for access road, play area, dinghy park and public car park.
- 6.5 072248 - Demolition of White House and erection of new dwelling - Refused
- 6.6 072249 - Conservation Area application for the above - refused.
- 6.7 072701 - Reserved matters approval for Phase 3 comprising 32 residential units, affordable housing, commercial units – Planning permission granted
- 6.8 091559 - Full application approved to erect 32 dwellings and class B1 and A1 retail floor space

- 6.9 122122 - Variation of Conditions 2 and 8 of application no. 091559 in order to include A3 restaurant use and to include reference to Drawing Nos. 1369-105 & 1369-102 committee resolution to approve.

7.0 Principal Policies

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
- SD1 - Sustainable Development Locations
 - SD2 - Delivering Facilities and Infrastructure
 - SD3 - Community Facilities
 - H1 - Housing Delivery
 - H4 - Affordable Housing
 - UR1 - Regeneration Areas
 - UR2 - Built Design and Character
 - PR1 - Open Space
 - PR2 - People-friendly Streets
 - TA1 - Accessibility and Changing Travel Behaviour
 - TA2 - Walking and Cycling
 - TA4 - Roads and Traffic
 - TA5 - Parking
 - ENV1 - Environment
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
- DP1 Design and Amenity
 - DP3 Planning Obligations and the Community Infrastructure Levy
 - DP4 Community Facilities
 - DP12 Dwelling Standards
 - DP16 Private Amenity Space and Open Space Provision for New Residential Development
 - DP17 Accessibility and Access
 - DP19 Parking Standards
 - DP20 Flood Risk and Management of Surface Water Drainage
 - DP23 Coastal Areas

- 7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:
- Community Facilities
 - Vehicle Parking Standard
 - Open Space, Sport and Recreation
 - External Materials in New Developments
 - Affordable Housing
 - Cycling Delivery Strategy

8.0 Consultations

- 8.1 Highway Authority: The highway network in Wivenhoe is old and as such is very narrow and tightly surrounded by similarly old buildings. The Highway Authority welcomes any proposal which aims to reduce the vehicular trips associated with the Cook's Shipyard site.

Having regard to the information submitted by the applicant which shows the vehicles associated with the site will reduce, the Highway Authority raises no objection to this proposal as it is not contrary to adopted policies.

- 8.2 Spatial Policy:

"The applicants have submitted information to satisfy policy DP5 and support their application for a change of use, including marketing information and correspondence from potential lenders to demonstrate why the existing B1 allocation cannot be delivered. In light of this information, together with the NPPF, which states that local planning authorities should 'avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose', we are satisfied that a change of use to allow more flexibility would be acceptable in this instance.

While the principle of the change of use is acceptable, on the basis explained above, it is important that any new use does not have a damaging effect on the viability of the A3 groundfloor use. For this reason, it is essential that, if planning permission is granted, conditions are added to ensure that appropriate measures are in place, such as sound proofing, to avoid conflict between uses. It is also important that the flexibility in uses is limited to ensure that the Council retains control over any change of use that could cause concern. The Policy team considers that flexible B1 and C3 uses would be appropriate, together with the option for the groundfloor A3 use to extend upwards (providing it is contiguous with the floor below).

In conclusion, there is no policy objection to the principle of the proposal on the basis that the requirements of policy DP5 are satisfied. This is providing that there are no objections from the Transport Policy team in relation to highway and parking issues, that issues of flood risk are adequately addressed, and that appropriate conditions are added. It is also important that, if granted, planning permission is worded carefully, in a way which would ensure that the Council would retain control over any change of use that could be a potential cause for concern."

- 8.3 Environmental Control has no objection.

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

9.0 Parish Council Response

9.1 The Parish Council have stated that This falls below the minimum car parking standards, private space amenities, and access constraint. Additionally, concerns lead towards the fact that residential properties above the restaurant will eventually jeopardise the future of the business.

If the developer continues to have difficulties in finding investors in the 1st and 2nd floor business units, then the Wivenhoe Town Council would accept a single storey building as a restaurant.

10.0 Representations

(2 of support 1 objection)

10.1 Two representations supporting the application make the following comments:-

- it will make the offices more accessible to small businesses due to no longer attracting VAT and being eligible for domestic / buy-to-let mortgages which are easier to get than commercial mortgages
- the existing poly-functional unit in the Cooks Shipyard are being used as they were intended, no reason to think additional units would be abused and used simply as residential.
- poly-functional units encourage local enterprise and will attract artists and similar, and self employed people looking for a workspace without the overheads of business rents
- could expedite the completion of the whole building
- traffic flows would be lower than those to offices that workers would commute to and from each day.
- There is much support for the restaurant in Wivenhoe and if this change in plans accelerates the construction of the building, the restaurant should open sooner, which will be of benefit to the area.

10.2 One representation commenting:-

“As 8 parking spaces will be given over to the residential units, wondered where the parking will be for the restaurant, especially as yellow lines are due to come into force in our roads”

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

11.0 Parking Provision

11.1 This is one of the main issues raised by this application and is discussed in the main report section.

12.0 Open Space Provisions

12.1 There is no public open space provision.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a “Major” application but it was reported to the Development Team because of the potential uplift in the number of residential units on the larger Cooks site. A financial appraisal was considered and accepted by the Development Team. On the basis of the financial appraisal a contribution of £40, 000 was proposed for the Council to decide where it should be spent. As the Cooks Shipyard site includes areas of open space and did not require a community facilities contribution the Development Team agreed this contribution should be used towards affordable housing. This will be secured in a Unilateral Undertaking.

15.0 Report

- 15.1 The approved design and location of the building is unaffected by this application. The main issues are the loss of commercial floorspace and parking.
- 15.2 Members will be aware of recent applications for the change of use of commercial floorspace on phase 2. Planning permission was recently granted for units to be used for residential purposes. They will also be aware of announcements by the government regarding flexibility in the planning system and changes to the Use Classes Order. The latter allows the change of B1 office space to residential use (subject to certain restrictions). Members will note the policy team accepts the submitted information and raises no objection to the application. The information in respect of deliverability has also been considered and agreed by the Development Team.
- 15.3 Your officer considers that in the current economic climate and with the government commitment to economic and viable development this application offers the best opportunity to secure some mixed use element on the upper floors of this building

Parking

- 15.4 The Highway Authority has raised no objection and commented traffic generation is likely to be less.
- 15.5 The parking area is to the rear of the building and each unit is to be allocated 2 parking spaces. Visitor parking is available in a visitor’s car park adjacent to the building. Whilst this satisfies the parking standard it does reduce the number of spaces available for the restaurant. The total number of spaces has not reduced 25 to the rear of the building, a 21 space public car park next to the building and a further 9 spaces available for public use. Provision is also made for 34 cycle spaces and 2 motorcycle spaces.
- 15.6 However whilst commercial uses have a maximum parking standard residential uses have a minimum parking standard as this application has the potential to create 8 residential units 2 spaces per unit are allocated to each unit removing 16 shared spaces which would have previously been available for the restaurant.

15.7 The restaurant has 50 covers and your officer considers the public spaces are adequate for this use in particular as the public car parks are likely to be less used of an evening.

Other Matters

15.8 The town council has commented on the lack of private amenity area. Three units will have a balcony area of 6 sqm, 2 a terrace of 17sqm, 1 a balcony of 8 sqm and a balcony of 3 sqm and 2 a balcony of 3 sqm. These areas are acceptable. The units also face the river and public realm space. There is an area of public open space and children's play area close to the site.

15.9 A single storey building would not provide a satisfactory townscape.

15.10 Any one occupying the building for residential purposes should be aware the units could be used for B1 purposes and aware of the permission for a restaurant on the ground floor.

15.11 In addition to the unilateral undertaking to secure the financial contribution a linking agreement is also required linking this application to a legal agreement in respect of application 091559 which secures the construction of this building within a specified time period.

16.0 Conclusion

16.1 The application is considered acceptable and planning permission is recommended.

17.0 Recommendation

17.1 APPROVE subject to the signing of a unilateral undertaking within 6 months from the date of the Committee meeting to secure the financial contribution and a linking agreement to the legal agreement in respect of application 091559 to secure the erection of the building. In the event that the unilateral undertakings are not signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the undertakings.

17.2 On completion of the legal agreements the Head of Environmental and Protective Services be authorised to grant planning permission subject to the following conditions:

18.0 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 1418-104, 100 and 103 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Non-Standard Condition/Reason

The units shall only be occupied as polyfunctional units within Class B1 and Class C3 of the Town and Country Planning (Use Classes) (Amendment) Order 2005

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

4 - Non-Standard Condition/Reason

The consent shall be implemented in accordance with the conditions on planning permission 122122 and the conditions relating to this building on planning permission 091553.

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

5 - Non-Standard Condition/Reason

Prior to the commencement of development a scheme to sound insulation the building between each floor and between each unit shall be submitted to the local planning authority for approval. The development shall be implemented in accordance with the approved scheme prior to any of the units being first bought into use.

Reason: To protect the amenity of the occupiers of the units.

6 - Non-Standard Condition/Reason

Prior to the first occupation of the development hereby permitted, 16 parking spaces shall have been laid out within the site in accordance with details that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority. The agreed parking spaces shall thereafter be maintained free from obstruction and available for parking use at all times.

Reason: To ensure that a suitable parking layout is agreed and that there is satisfactory parking provision at the site at the time when the development becomes occupied.

7 -Non-Standard Condition/Reason

No windows, doors or any other form of opening shall be formed above ground floor level in any elevation of the building without the prior written approval of the local planning authority.

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

8 - Non-Standard Condition/Reason

The internal design of the units shall incorporate the design principles; higher than normal ceiling heights, a central service point and fire-proof centralization; as set out in the planning statement and letter dated 5th August submitted with the application.

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

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

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

(3) ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

20.0 Positivity Statement

20.1 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.



Application No: 131809
Location: 2 Middleborough, Colchester, CO1 1QS
Scale (approx): 1:1250

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of PO Box 884, Town Hall, Colchester CO1 1FR under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2012

7.2 Case Officer: Carl Allen

Due Date: 07/11/2013

OTHER

Site: 2 Middleborough, Colchester, CO1 1QS

Application No: 131809

Date Received: 12 September 2013

Agent: Colliers International

Applicant: Papa Johns (GB) Ltd

Development: Variation of a condition 4 -(opening hours) attached to planning permission 122147

Ward: Castle

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because Councillor Frame has called it in, due to concerns over noise and disturbance to residents.

2.0 Synopsis

2.1 The key issue explored below is that of amenity and how the proposed variation would impact upon amenity. It is considered that the location in a mixed use area and the delivery hours for pizzas are acceptable and would not result in any amenity issues. Approval is recommended.

3.0 Site Description and Context

3.1 The site is an end unit on the corner of St Peter's Street and North Hill and was formerly the Pasha restaurant and is now a Papa John's Pizza takeaway. Planning consent (122147) was given in February 2013 for a change of use from A3 (restaurant/café) to A5 (hot food take-away). Of the seven conditions attached to the consent there were two that concerned hours:

(3) The use hereby permitted shall not operate/be open to customers outside of the following times:

Sundays to Thursdays: 11am – 11pm,

Fridays to Saturdays: 11am – midnight and

Sundays and Public Holidays: 11am to 11pm.

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

- (4) No deliveries shall be received at, or dispatched from, the site outside of the following times:
Weekdays: 7am – 7pm,
Saturdays: 7am – 7pm,
Sundays and Public Holidays: 11am – 11pm.
Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site, and for the avoidance of doubt as to the scope of this permission.

4.0 Description of the Proposal

- 4.1 The proposal is to vary Condition 4 to allow takeaway deliveries to match the operation hours in Condition 3. The hours for the delivery of raw materials would remain as in Condition 4.

5.0 Land Use Allocation

- 5.1 Mixed use.

6.0 Relevant Planning History

- 6.1 COL/01/1209 – Change of Use from betting office to A3. Approved.
- 6.2 COL/05/1316 – variation of hours (02/1209) 7am – 12.30am Sunday – Wednesday, 7am – 1.30am Thursday – Saturday. Approved.
- 6.3 122147 – Change of Use from Class A3 to Use Class A5. Approved.

7.0 Principal Policies

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

CE2a – Town Centre

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

DP1 Design and Amenity

7.4 Further to the above, the adopted Site Allocations (2010) policies set out below should also be taken into account in the decision making process:
n/a

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

8.0 Consultations

8.1 Environmental Protection, requested that the conditions read:

No supply deliveries shall be received at the site outside of the following times:

Weekdays: 8am -7pm

Saturdays: 8am – 5pm

Sundays and Public Holidays: Not at all

No pizza deliveries shall be despatched from, the site outside of the following times:

Sunday to Thursday 11am – 11pm

Fridays and Saturdays: 11am - midnight

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

9.0 Parish Council Response

9.1 n/a

10.0 Representations

10.1 Nine objections received. Object due to:

- already in breach of the condition
- noise from staff who congregate at the rear of the building is excessive and intrusive
- staff smoke, spit and make noise outside
- smells and noise from the building are detrimental to the amenity.
- cars park in front of the billboards and on double yellow lines.
- not directly impacted upon but the business has increased the erratic driving on the road.
- delivery and collections made at 4.30am and 5am have had noise from trucks, banging doors and refuse collection and is unacceptable.
- noise from motorbikes and customer vehicles adds to the pollution in the area.
- adds to the 'grottification' of St Peter's Street.
- space around the premises is too small to accommodate the delivery drivers.
- has 25 members of staff and expanding.
- the first junction to the historic town of Colchester is now a collection of pizza mopeds and parked cars. Would like a bank of conifers or tall fence enclosing the back area to reduce noise and light.
- people the worse for wear from alcohol from pubs and bars are a concern.

- they pay a higher than normal Council Tax due to living in a premium area.
- residents are very close by – 2 to 6 metres from staff areas.

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

11.0 Parking Provision

11.1 No change.

12.0 Open Space Provisions

12.1 n/a

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 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 (S106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 The site is in a defined mixed use area with several commercial uses and residential properties. The main consideration is whether the requested variation of hours for the delivery of pizzas from the unit would be detrimental to the amenity of residents. Many residents have commented that the use of the unit has resulted in noise being generated by employees at Papa Johns. However, staff outside the unit that are talking, smoking, spitting etc cannot be controlled by planning. The real consideration regarding noise and the impact on amenity is the noise from the delivery vehicles – which are mostly scooters/mopeds.

15.2 The location of the unit on a corner plot with two reasonably busy roads (St Peter's Street and North Hill) in very close proximity to the unit and nearby residential neighbours means that there will always be a fair amount of noise from vehicles using the highway in the evening/night. With this consideration the impact of delivery vehicles on the overall noise in the area would be minor.

- 15.3 The proposed pizza delivery hours would match the approved operational hours and not considered to be excessive. The latest time for pizza delivery would be midnight on Fridays and Saturdays and 11pm on the remaining nights and this is considered acceptable for the mixed use location and the proximity to vehicular highways. Environmental Protection has indicated that the proposed variation of delivery hours would not raise any new concerns, and that its original comments that formed Condition 4 of 122147 were intended to control the delivery of *raw materials* to the unit, not the delivery of pizzas *from* the unit. However, the wording on Condition 4 does not make it clear and so it can be interpreted that the applicant is in breach of the condition.
- 15.4 The Council has been in contact with the applicant and the waste collector (prior to this variation application being submitted) and the collection time for waste from the unit has been altered to comply with the condition. Given these considerations, the proposed variation is acceptable for a mixed use area and would not result in any additional amenity issues and accords with CE2a and DP1.
- 15.5 Although many objectors have commented that vehicles making visits to the unit are parking on the double yellow lines in front of the unit, this is not a consideration for planning as it is an issue controlled by other measures. However, the agent has been informed of the issue (again prior to this application being made) and is feeding back to the delivery lorry drivers about obeying the parking restrictions in place at the site. Likewise, the standard of driving on the highway is a matter that cannot be controlled by planning.
- 15.6 The application to vary the hours for delivery would not have any impact on smells from the unit.
- 15.7 The site is within a Conservation Area and the proposed variation of delivery hours would have very little impact on the designation. The suggestion that a bank of conifers or a high fence at the site would improve the site cannot be agreed with as these would be reasonably permanent features that would be detrimental to the Conservation Area.
- 15.8 The comments that people in the streets are the worse for wear from alcohol from pubs and bars has no particular relevance to the application in hand, although it illustrates the night time economy in the area. Likewise the comment about the level of Council Tax is not a consideration.

16.0 Conclusion

- 16.1 It is therefore concluded that the proposed variation of delivery hours is acceptable and would not result in any unacceptable amenity issues.

17.0 Recommendation - APPROVE subject to the following conditions.

18.0 Conditions

1 - Non-Standard Condition/Reason

No supply deliveries shall be received at the site outside of the following times:

Weekdays: 8am -7pm

Saturdays: 8am – 5pm

Sundays and Public Holidays: Not at all

No pizza deliveries shall be despatched from, the site outside of the following times:

Sunday to Thursday 11am – 11pm

Fridays and Saturdays: 11am - midnight

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site.

19.0 Positivity Statement

- 19.1 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.



Application No: 131676

Location: 9 Little Foxburrows, Colchester, CO2 7UG

Scale (approx): 1:1250

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of PO Box 884, Town Hall, Colchester CO1 1FR under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2012

Case Officer:	Nadine Calder	HOUSEHOLDER
Site:	9 Little Foxburrows, Colchester, CO2 7UG	
Application No:	131676	
Date Received:	21 August 2013	
Agent:	Mr Stuart Moncur	
Applicant:	Ms Sutheera Ashley-Mead	
Development:	Proposed conversion of existing car port and alterations. Resubmission of planning application reference 131313	
Ward:	Shrub End	
Summary of Recommendation:	Conditional Approval	

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it has been called-in by Councillor Pauline Hazell for the following reason: "Encroachment onto boundary and overpowering impact of neighbouring property at No. 22 Abbey Field View".
- 1.2 On 3 October 2013, the Planning Committee deferred this application to a future Committee with the request for further information relating to whether the original planning permission granted for the erection of the housing estate along Little Foxburrows and Abbey Field View included conditions that restricted the open carports to be turned into accommodation or for garage doors to be installed.
- 1.3 Application Reference RM/COL/04/1951 (which is the Reserved Matters Application following Outline Approval Reference O/COL/01/0009) granted permission for the erection of 284 no. dwellings, including No. 9 Little Foxburrows. There are two conditions that relate to carports, namely Condition 14 which required detailed plans and elevations to be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development and Condition 26 which reads as follows:-

26. *There shall be no fitting of doors or gates on the highway approach side of any carports or other form of covered parking area.
Reason: In the interests of highway safety.*

1.4 Given that there is no explicit condition on the original dwelling restricting the conversion of existing carports, the main planning considerations for the assessment of this proposal remain the design of the proposed development and its potential impacts upon the character and appearance of the area and on the residential amenities of the neighbouring properties. As concluded below, the proposal is not considered to result in any design or amenity issues and is in compliance with national and local policies requirements including parking standards. The application is therefore recommended for approval subject to conditions.

2.0 Synopsis

2.1 The key issues explored below are the design of the proposed development as well as its impact on neighbouring amenity and the character and appearance of the surrounding area. It is considered that the proposal would not result in any design or amenity issues and accords with national and local policy requirements. The application is therefore recommended for approval subject to conditions.

3.0 Site Description and Context

3.1 The application site comprises an L shaped two storey dwelling with an existing carport providing two off road parking spaces to the rear of the property. An existing driveway serves the carport along the eastern side of the dwelling. The southern boundary of the site abuts the rear garden of No. 22 Abbey Field View while to the west lies the rear garden of No. 11 Little Foxburrows.

3.2 Directly adjacent the driveway lies a small public open space and a protected tree while a public footpath runs along the open space linking residential properties along Little Foxburrows with properties in Abbey Field View. The application site is located within a fairly new estate where most properties were allocated open carports rather than garages. However, many properties have since enclosed their carports by installing garage doors.

4.0 Description of the Proposal

4.1 Planning permission is sought for the change of use of the existing carport into additional living accommodation in the form of a bedroom with en-suite bathroom and a dressing room. As part of the conversion the existing garage doors would be replaced with two windows and rendered blockwork infill panels to match the existing render finish. The western elevation (facing the applicant's garden) would provide patio style doors and an additional window with the remainder being rendered. To the rear (south), it is proposed to remove two existing wooden panels and to infill the pillars with facing brickwork. Apart from the changes to the three elevations of the carport there would be no other physical external alterations as part of this proposal.

5.0 Land Use Allocation

5.1 The site is located within the defined settlement limits and within a predominantly residential area.

6.0 Relevant Planning History

6.1 Earlier this year, planning permission was sought for the conversion of the existing carport to the rear of the property into additional living accommodation and the construction of a new carport adjacent to the existing one (reference 131313). Due to a high volume of objection, this application was withdrawn. The current application has omitted the construction of the new carport and only seeks planning permission for the conversion of the existing carport into additional living accommodation.

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and an environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

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

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

8.0 Consultations

8.1 Environmental Protection has this site recorded as being on or within 250 metres of former Ministry of Defence land. Consequently, should permission be granted for this application, Environmental Protection and the Contaminated Land Officer recommend conditions and informatives to be included.

8.2 The Arboricultural Officer has not raised any objection to this proposal subject to conditions relating to the protection of the nearby tree.

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

9.0 Parish Council Response

9.1 N/A

10.0 Representations

10.1 Four letters of objection have been received, two from local residents and two from local Councillors. The main concerns are summarised below:

- Creation of a new intrusive carport to create extra bedroom/living space in a house with already 4/5 bedrooms?
- Existing drive can already accommodate 5 medium-sized cars
- Local community would be disproportionately impacted by this building on a small attractive green space. There would be drainage/damage issues to large tree.
- Concerns regarding noise: “The ground level window and doors at the back of the bedroom are very close to my garden. Someone who works at night and sleeps during the day could complain if I cut my grass while they are sleeping”.
- Turning a large carport into accommodation would impact further on the serious parking difficulties that already exist in this estate. This project could set a precedent for others with carports on the development to apply for planning for the same reason. This would be very dangerous and mean even more overflow car parking on the narrow roads which is already intolerable.
- This extension is too close to the nearby property and will exacerbate the parking problems already being experienced on this estate.
- This new application has just changed the design from that of the previous application 131313, but the negative impact such an extension would create is exactly as it was under the previous application.
- The resident at No 22 Abbey Field View will be particularly affected through loss of light and an intrusive building close up to the fence of her small garden.
- If this Application were to succeed, all the local residents would be affected by the size of the property overshadowing and impacting on this compactly designed Estate which was built in such a way as to provide no room for further development of this kind.

10.2 Where the above are planning matters, these are addressed within the assessment below. It is noted however that several of the comments relate to the construction of a new carport. As this does not form part of the current application, these concerns are not planning matters and have therefore not been addressed.

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

11.0 Parking Provision

11.1 At least two parking spaces will still be available – this complies with guidance.

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

- 14.1 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 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Note regarding Ownership Issues

- 15.1 During the course of the application concerns have been raised by the occupier of the neighbouring property at No. 22 Abbey Field View in relation to the ownership of the boundary that separates the garden area of that property from the carport at the application site. Currently this part of the boundary is defined by two wooden fence panels which are fixed to the existing three brick pillars which support the carport. Whilst attempts have been made to obtain legal clarification as to who this boundary belongs to, at the time of writing this report, this has not been clarified. However, this dispute is a civil matter between the respective owners and does therefore not interfere with the proposal subject of this application.

Design and Impact on Surrounding Area

- 15.2 Core Strategy Policy UR2 states that the Borough Council will promote and secure high quality and inclusive design in all developments while Development Policy DP1 requires all development to be designed to a high standard, and to avoid unacceptable impacts on residential amenity.
- 15.3 Whilst the carport is located to the rear of the property, there is a public footpath running along the public open space adjacent to the site from which the carport can be seen. It is therefore important to ensure that the proposed external alterations in the elevation visible from public viewpoints would not detract from the character and appearance of the host dwelling and the surrounding area.
- 15.4 The proposed windows and doors would be of the same design and proportions as existing openings within the property. On the eastern elevation, the only external alteration would be the replacement of the two existing garage doors with two windows and render finish to match the appearance of the original dwelling. This alteration is visually acceptable and would not detract from the appearance of the original dwelling. Consequently, the design does not have any negative impact on the surrounding area either.

15.5 To the rear, there are two wooden panels fixed to the existing carport pillars. The wooden fence currently marks the boundary to the neighbouring property at No. 22 Abbey Field View. It is proposed to replace the wooden panels with facing brickwork matching the bricks used for the pillars. It is acknowledged that the occupier of the neighbouring property objects to this proposal and that there are discrepancies as to who this boundary belongs to or whether it is jointly owned. However, as stated above, this dispute is a civil matter which has to be solved between the respective owners of the two properties, and does not influence this decision. This section solely assesses the proposed development on its design and appearance, which in this case are considered to be satisfactory. Using the same external materials as the original dwelling and existing pillars ensures that the development is not detrimental to the character and appearance of the host dwelling itself or the surrounding area as a whole. The proposal therefore complies with the requirements of Policies UR2 and DP1 as well as the requirement for good design as set out within the NPPF.

Impact on Neighbouring Properties

- 15.6 Concerns have been raised that the proposed development would have a negative impact upon the residential amenities of the occupier of No. 22 Abbey Field View as a result of loss of light, overshadowing and overpowering. However, the current proposal does not propose to add any bulk to the carport and as such, the neighbouring property would not suffer from any loss of light, neither would the conversion result in any overbearing or overshadowing impacts. The only physical external alterations include the provision of windows and doors in the eastern and western elevation of the carport with the remaining area being rendered and infilled with bricks. However, the proposed windows and doors would not give any rise to overlooking or loss of privacy to the neighbouring properties and their amenities.
- 15.7 Furthermore, comments regarding the potential for future occupiers to complain when the neighbour cuts her grass during the day are unsubstantiated and in any case are not planning considerations. Consequently, there is no potential for the amenities of the neighbouring properties to be materially affected as a result of the proposal. As such, the proposed development complies with the requirements as set out within DP13 and is acceptable.

Highway Issues

- 15.8 It is acknowledged that the conversion of the carport into additional living accommodation would result in the loss of two parking spaces and that concerns have been raised regarding that loss by local residents and Councillors. However, it is noted that the existing driveway along the eastern elevation of the property provides off street parking for at least two vehicles. Development Policy DP19 and guidance within the Vehicle Parking Standards set out that dwellings with two or more bedrooms require a minimum of two parking spaces. As this is the case, the proposal complies with current parking standards and does not therefore raise any concerns on highway safety grounds.

16.0 Conclusion

16.1 The proposal is considered to be in accordance with national and local planning policies. The proposed development is acceptable in terms of its design as it would not adversely affect the character of the host dwelling or that of the surrounding area and would not have a detrimental impact upon neighbouring amenities. Furthermore, adequate provision of off street parking is not compromised as a result of the proposal and therefore, the application is acceptable in this instance.

17.0 Recommendation - APPROVE subject to conditions and informatives.

18.0 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 Drawings SAM/SM/Resub/01, SAM/SM/Resub/02, SAM/SM/Resub/03, SAM/SM/Resub/04, SAM/SM/Resub/05 and SAM/SM/Resub/06 dated August 2013 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Materials as Stated in Application

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

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

4 - Non-Standard Condition/Reason

In the event that contamination that was not previously identified is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of the Local Planning Authority and where remediation is necessary, a remediation scheme must be prepared, in accordance with the requirements of, and subject to the approval in writing of, the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the approved remediation scheme. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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

5 - Tree and Natural Feature Protection: Protected Areas

No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans shall have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

6 - Tree and Natural Feature Protection: Entire Site

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

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

7 -Tree and Hedgerow Protection: General

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

19.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

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

(3) ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) Non Standard Informative

The applicant is advised that the site to which this planning permission relates is recorded by Colchester Borough Council as being Ministry of Defence or former Ministry of Defence land.

Prior to the commencement of the permitted development, the applicant is advised to undertake a suitable and sufficient site investigation and any necessary risk assessment to ensure the land is free from significant levels of contamination. The LPA should be given prior notification of any proposed remediation scheme. The applicant is advised that this must be conducted in accordance with current official guidance, including Approved Document C of the Building Regulations, DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

The LPA has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

Reason: The site lies on former (or suspected) Ministry of Defence land and Environmental Protection wishes to ensure that development only proceeds if it is safe to do so. This informative should not be read as indicating that there is any known danger from Ministry of Defence land in this locality.

20.0 Positivity Statement

20.1 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.

AMENDMENT SHEET

Planning Committee
17 October 2013

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.2 131809 – 2 Middleborough, Colchester

Additional site history:

131033 – New shop front in metal, rear part of building to be demolished to form more space for car parking. REFUSED.

A further three residents have objected to the proposal, one including a CD of 80 photographs of vehicles parked on double yellow lines and staff standing outside the unit. Of the concerns stated these are the issues that had not previously been raised:

- Inaccuracies in the applicants original Design and Access Statement for 122147 concerning the location of residential neighbours and bins (unlocked).
- delivery vehicles are not mainly scooters/mopeds there are a significant number of deliveries made by cars with slamming doors/boots and radio noise.
- waste collection is now after 7am, but delivery vehicles are from 4.30am onwards.
- location is not appropriate for use as a takeaway. The mistake in granting planning permission should not be visited on residents by extending the hours.
- delivery motorbikes whizz past my property without regard that it is a quiet residential area.
- do not see how Council could give planning permission for a free delivery service when there is nowhere to park.
- area is very quiet and inactive in the evenings.

Officer's comments on additional comments received by residents:

Comments regarding inaccuracies in the applicant's original change of use planning application do not concern this application to vary the delivery hours. The proximity of residents was taken into consideration during the original application and was not based on information within the applicants Design and Access Statement.

The slamming of vehicle doors and radio noise whilst maybe inconsiderate, are not uncommon in either residential or mixed use areas. Planning cannot control these annoyances.

Whilst it is good to hear that the waste collection issue at the site has been resolved (as in 15.4) it is a concern that very early morning deliveries could be taking place. Planning Enforcement has been alerted and is investigating the matter.

The location for the takeaway use as granted under 122147 was considered to be acceptable for a mixed use area. Environmental Protected have considered the delivery hours as requested to be acceptable in regards to residential amenity.

Free delivery within certain distances of a unit is a fairly common practice within the takeaway sector. The Enforcement team are currently investigating the matter of vehicles (both scooters and cars) parking underneath the advertising hoarding.

It has been stated that the area is quiet and inactive in the evenings. Again it should be noted that this is a mixed use area within the defined Town Centre with nearby pubs, bars and restaurants on North Hill. There are also many takeaways located on North Station Road. It is also noted that St Peters Street is the main exit for vehicles using Nunn's Road NCP car park which opens at 6.30am and closes at 11pm.

7.3 131676 – 9 Little Foxburrows, Colchester

Two late letters of representations objecting to the proposal were received since the last Planning Committee on 3 October 2013. In summary, the objections relate to the following:

- To allow the carport to be used as additional living accommodation would cause further parking congestion in an already congested residential estate.
- Allowing this application to go through could cause major parking issues for the estate in the future, should more properties decide to convert their garages/carports into residential additions.

The Highway Authority has been consulted and has provided the following response:

“The footway and their land in front of their wall measures in excess of 2 metres. In this regard the visibility splays are perfectly adequate.

The site at present affords plenty of parking and on-site turning ability.

I am not sure that converting the carport will retain the turning area; this obviously will increase the occurrence of vehicles reversing into the highway.

However, taking the position of the speed table into account (approx. 6m to the east), which means traffic speeds are very low, the fact that vehicles would reverse into the highway would not be an issue.

Further, the car ports opposite the site do not have the ability to turn on-site. Were this Authority to object on these grounds I would have to provide evidence as to why this access were more dangerous than the existing situation opposite which would obviously not be feasible.

The Highway Authority would not raise any objections to the proposed conversion of the cart lodge to residential accommodation.”



Colchester Borough Council Development Control

Advisory Note on Parking Standards

The following information is intended as guidance for applicants/developers.

A parking space should measure 2.9 metres by 5.5 metres. A smaller size of 2.5 metres by 5 metres is acceptable in special circumstances.

A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.

The residential parking standard for two bedroom flats and houses is two spaces per unit. The residential parking standard for one bedroom units is one space per unit. One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction & Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control

If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.

The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control

All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

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.