

PLANNING COMMITTEE 16 OCTOBER 2008

Present :- Councillor Ray Gamble* (Chairman)
Councillors Nigel Chapman*, Peter Chillingworth*,
Helen Chuah*, Mark Cory*, John Elliott*, Stephen Ford,
Chris Hall and Sonia Lewis

Substitute Members :- Councillor Laura Sykes for Councillor Mary Blandon*
Councillor Richard Martin for Councillor Wyn Foster
Councillor Peter Higgins for Councillor Nigel Offen

(* Committee members who attended the formal site visit.)

124. Minutes

The minutes of the meeting held on 2 October 2008 were confirmed as a correct record.

125. 081203 33-37 London Road, Marks Tey

The Committee considered an application for the demolition of an existing garage and light industrial buildings for the development of thirty-two residential properties, including three blocks of flats, bungalows and houses. The application is a resubmission of 080068. The Committee had before it a report in which all information was set out. The site comprised an overall area of 0.59 hectares.

The Committee made a site visit in order to assess the impact of the proposal upon the locality and the suitability of the proposal for the site.

Bradly Heffer, Principal Planning Officer, attended to assist the Committee in its deliberations.

Councillor Blundell attended and, with the consent of the Chairman, addressed the Committee. Whilst the architects had worked to the development brief she was dissatisfied with the flatted blocks which she believed compared unfavourably with the medium density housing at The Rookeries and the low density of the houses opposite. The flatted element was completely angular in white bricks and its height was totally unsuitable. She requested that the height be reduced and gables added. This is a semi-rural village and she believed this scheme did not respond to the context of Marks Tey. Nearby development has acknowledged the Essex Design Guide with a mix of red and yellow stock bricks, more in keeping with established dwellings in the area. The density of the scheme clearly exceeded the guidelines; the number of frontage flats should be reduced by three. The report states that "frontage blocks do appear different from anything else in the vicinity, but it is inevitable that the character of this part of Marks Tey will change with further development". Change must be for the better and not for the worse, these are not attractive and the design

material should be resubmitted to better fit into the area in which they are sited. She urged the Committee to refuse the application.

Some members of the Committee expressed concern at the height and design of the flatted element and its unsuitability for a semi-rural location; unfavourable comparisons were drawn with the nearby flats known as The Rookeries which were considered to be more in keeping with the area. There was some speculation about whether future development in the area would fit in with this development. However, the scheme had been designed in consultation with planning officers who considered that the design was good. Some members considered it to be an exciting project which included some 'green' elements such as a grey water system and solar heating and ventilation which was to be encouraged. Also the flats were split up into three smaller blocks. Members were also mindful that there was an appeal pending for an earlier scheme with a slightly higher density.

It was explained that the earlier scheme included a more extensive built form on the street frontage which enabled more units to be provided. This scheme differs from the earlier scheme in respect of the gaps between the blocks of flats on the frontage, the treatment of the units and the range of traditional materials which had been used in an innovative way to break up the design. This scheme is the result of negotiation with the applicants from the previous scheme which currently being appealed.

RESOLVED (MAJORITY voted FOR) that –

(a) Consideration of the application be deferred for the completion of a Section 106 legal agreement to secure:-

- affordable housing,
- a contribution towards Open Space, Sport and Recreational Facilities in accordance with the Council's Supplementary Planning Document,
- contributions towards education, highways and community facilities.

(b) Upon receipt of a satisfactory Section 106 legal agreement, the Head of Environmental and Protective Services be authorised to grant consent with conditions and informatives as set out in the report.

(c) Should the applicant not be prepared to enter into the Section 106 legal agreement, the Head of Environmental and Protective Services be authorised to refuse planning permission on the grounds of failure to enter into planning obligations that are appropriate to the scheme.

126. 081527 Homagen, Chappel Road, Great Tey, CO6 1JW

The Committee considered an application for the relocation of an existing timber framed bungalow and its conversion into a barn. The Committee had before it a report in which all information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved with conditions and

informatives as set out in the report.

127. 081563 and 081564 18 Sir Isaacs Walk, Colchester, CO1 1JL

The Committee considered planning application 081563 for a change of use from A2, Shop, to A3, Restaurant and Cafe, together with a listed building application 081564 for the erection of a painted metal railing above an existing rear garden wall, the removal of an interior wall opposite the front entrance, the laying of a new patio in the rear garden, and the installation of new mechanical extract vent in the preparation area to replace existing air brick/vent. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

RESOLVED (UNANIMOUSLY) that –

In respect of planning application 081563,

(a) The application be approved with conditions and informatives as set out in the report and on the Amendment Sheet.

In respect of listed building application 081564,

(b) The application be approved with conditions and informatives as set out in the report.

Councillor Helen Chuah (in respect of her acquaintance with a close relative of the applicant) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

128. 081572 Westwood Home Farm, London Road, Great Horkesley, CO6 3SE

The Committee considered an application for a change of use of redundant agricultural buildings to Class B1, Offices. The Committee had before it a report in which all information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved with conditions and informatives as set out in the report.

129. 081576 Tesco Store, Highwoods Square, Colchester, CO4 9ED

The Committee considered an application for the installation of a combined heat and power (CHP) unit to provide a sustainable method of powering the store. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

RESOLVED (UNANIMOUSLY) that the application be approved with conditions and informatives as set out in the report and on the Amendment Sheet.

130. 081591 Land adjacent to The Stream, Layer Road, Kingsford, Colchester, CO2 0HT

The Committee considered a retrospective application to retain three temporary storage containers for a period of twelve months. The Committee had before it a report in which all information was set out. Also on this agenda was a report requesting authorisation from the Committee for enforcement action in the event that the Committee were minded to refuse this application.

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

Michael Wheeler addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He asked that the Committee treat this application on its own merits; it was not related to previous issues. His sale of the house was rapid so they have found rented accommodation and the three 20 foot containers were for his belongings whilst he looks for a permanent home; this was a transitional arrangement. He did not know that planning consent would be required for the containers. They were mostly concealed behind a 6' 6" panel fence with the exception of 18" which can be viewed from the public footpath. He was willing to extend the height of the fence or to change the colour of the containers from dark blue to green. The Section 106 of a recent permission required three commercial units to be demolished and once the replacement offices were constructed the containers would be removed. Only one complaint has been lodged and this did not appear to be a serious objection. He considered the reaction was out of proportion to the situation. The containers attracted no traffic or nuisance and could not be seen.

Councillor Hazell attended and, with the consent of the Chairman, addressed the Committee. There did not appear to be any objection; the letter from a neighbour simply stating the fact that the containers had been placed. Mr Wheeler did not know the containers breached the law but as soon as he was aware he applied for permission. The containers were outside the area for the Section 106 agreement; they cause no danger, cannot be seen by anyone apart from the occasional walker and cause no environmental damage. The applicant was willing to paint the containers green or raise the fence and he only needed this facility for a few more months. She queried whether any complaints had been received by the Committee from dog walkers or ramblers.

Members of the Committee were aware that there was a sound policy that the Committee must abide by; if this application was allowed others could quote it as a precedent. However, there were personal circumstances to be taken into account. Members were clear that the applicant needed permission in order to store furniture in the containers but were also aware that this used to be a farm and if the applicant was

using the containers to keep pigs or chickens he would not need planning permission.

It was confirmed that if the containers were for an agricultural use they would not need planning permission but the intended use did require planning permission. There was an environmental impact because the containers affected users of the footpath which was in an area of countryside. It was recognised that there were pertinent personal circumstances but there were many other ways to store personal belongings. In respect of enforcement action, should members wish it would be possible to extend the compliance period, but not for any longer that was necessary.

RESOLVED (MAJORITY voted FOR) that the application be refused for reasons set out in the report.

131. 081624 Coast Road, West Mersea, CO5 8PA

The Committee considered a retrospective application for the retention of a galvanised bow top fence, under one metre high around three quarters of the perimeter of a car park belonging to West Mersea Oyster Bar. The Committee had before it a report in which all information was set out.

The Committee made a site visit in order to assess the impact of the proposal upon the locality and the suitability of the proposal for the site.

John More, Principal Planning Officer, attended to assist the Committee in its deliberations.

Michael Dawson, owner of the Oyster Bar, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The original fence was 30 cm wooden fence posts with rope between which was constantly being vandalised and was a danger to customers who were driving over the top of the fence and on to the road. Neighbouring children were stepping over the small fence and playing on boards. He was worried about health and safety implications. Dog walkers cut across the low fence and misunderstood about keeping the area as it is. He understood the Conservation Area rules but put his customers' safety first. He erected the fence four to five months ago and all the problems have now stopped. The neighbour who lives opposite has no objection to it and walkers think it attractive and in keeping with the area. He would be willing to paint the fence any colour required.

Members of the Committee considered that the reasons for the fence being erected seemed logical and it had proved very effective. It would be possible to plant a hedge alongside to disguise it. Members had noticed other fences in the area which looked less stable, one such on the other side of the restaurant was about 2 metres high and was held in place by concrete blocks.

It was explained that a more appropriate fence might be something more in keeping such as timber posts and rope; a hedge would not be in keeping with the area. There

was no problem with the height nor was there any objection to defining boundaries, however, the manner of definition was important in order to preserve the character of the area. An Article 4 direction had been put on the area because fencing was being erected. Unfortunately there were no controls which could be applied to temporary fencing not fixed to the ground.

RESOLVED (MAJORITY voted FOR) that the application be approved with a condition that the fence should be painted a colour to be agreed in writing with planning officers.

132. 081634 and 081634 Turkey Cock Lane, Eight Ash Green, CO3 5ND

Consideration of these applications by the Committee was deferred by the Head of Environmental and Protective Services in order to obtain further legal opinion and to allow all parties the opportunity to comment on this opinion.

Councillor Richard Martin (in respect of his membership of the Council's Licensing Committee) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3) and he took no part in the discussion or determination of the following item

133. 081420 and 080830 131 High Street, Colchester, CO1 1SP

The Committee considered planning application 081420 and listed building application 080830 to remove a section of roof and to install a terrace as a smoking area for use by the public using the nightclub; the terrace to be within the existing boundary line. The Committee had before it a report in which all information was set out, see also the Amendment Sheet.

John More, Principal Planning Officer, attended to assist the Committee in its deliberations.

Dimitri Murray addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. His concerns were in connection with the building's listed status which should be regarded seriously; the apparent lack of a fire escape from the terrace; the likelihood of smoke wafting in the air in the middle of the summer; and the fact that Liquid Envy were already a major cause of disturbance to residents. He considered the scheme to be ill advised and would not work. He suggested that the permission be given for a limited period of 12 months and that someone should be positioned permanently on the terrace to stop noise and limit numbers of people using the terrace. He preferred smoking activity to take place at the front of the building as any noise was absorbed into the High Street.

Stuart Trett, architect, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. In respect of

visual impact on the listed building, the only part of the building affected is the non-original metal roof and the original building is maintained. Neither English Heritage nor the Theatres Trust had raised any issues. The location of the terrace would only be visible from a high level and not from a residential location. In respect of noise impact, a great deal of discussion has taken place between consultants and Environmental Control; noise is an issue of measurement, testing and calculation and they considered that the proposal would not result in any sound nuisance. In respect of safety, consultation with the fire authority takes place as part of the licensing process and no issues or concerns have been raised. The terrace would have a fire exit. In summary the terrace would not be visible, would not harm the building, there would be no disturbance and there were no issues regarding safety.

Members of the Committee were primarily concerned about noise and safety. Noise and disturbance need to have been taken into account, particularly mentioned was any noise escaping from the doors giving access onto the terrace and the imposition of conditions to stop such noise leakage with a lobby between the terrace and nightclub. There were also concerns regarding the safety of the proposal, particularly mentioned were concerns that people using the terrace should not be able to climb over the roof and throw objects such as glasses or bottles from the terrace. Also of concern was that an excessive number of people should not be permitted on the terrace. It was suggested that the terrace could be supervised to ensure that the number of people is reasonable. There was also a view expressed that the current situation was unacceptable where smokers were out on the pavement and that owners were right in trying to contain smoking in the building. More information was sought on the construction of the terrace, whether it was open or enclosed and also whether drinking would be permitted on the terrace. There was a suggestion that ventilated mesh over the top of the terrace could be used to prevent objects being thrown.

It was explained that Environmental Control officers had worked with a noise technician to formulate a scheme which was acceptable and a condition has been included. The intended height of the surround to the terrace is 2.5 metres. The terrace cannot be enclosed as it would not then comply with the smoking legislation. A standard lighting condition could be added. There are three sets of doors which are separated by corridors and staircases. The report assumes that even if only one is closed the noise breakout is within acceptable limits which obviates the need for a lobby. One of the tests is that conditions should be enforceable and it may not be possible to have the terrace supervised at all times. Anything being thrown becomes a criminal matter but it would be possible to include an informative note about the Committee's views on this matter. The matter could be deferred for negotiation on the mesh enclosure of the terrace and if it was not possible to obtain the applicant's agreement the applications would come back to the Committee.

RESOLVED (MAJORITY voted FOR) that in respect of Planning Application 081420 and Listed Building Application 080830 –

(a) Consideration of both applications be deferred for agreement by the applicant to the enclosure of the smoking area with mesh or netting to prevent people throwing objects over the glazed screen.

(b) Having secured the agreement of the applicant to enclose the smoking area, the Head of Environmental and Protective Services be authorised to grant permission in respect of planning application 081420 and listed building application 080830 with conditions and informatives as set out in the report together with an additional standard condition regarding light pollution and an informative on the level of supervision and the number of smokers permitted on the terrace at any time to be added to the permission for 081420.

(c) If the enclosure of the smoking area cannot be secured both the applications to be resubmitted to the Committee at which time a copy of the licensing decision relating to Liquid/Envy to be circulated to members together with a copy of the report on noise.

134. 081264 67 Collingwood Road, Colchester, CO3 9AY

The Committee considered an application for a change of use from C3 Residential to D1 Non-residential Institution. The Committee had before it a report in which all information was set out which included responses to the additional information requested by the Committee at its meeting on 4 September 2008 and amended conditions.

John More, Principal Planning Officer, attended to assist the Committee in its deliberations.

Mr Middleton addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He had two main concerns, fencing and noise. In respect of the 6ft fences for privacy, the occupant of no. 69 is adamant that all the other gardens have three 6ft panels and thereafter 4ft panels to the end of the garden. At the end of the garden there is a 6ft panel and gardens follow this pattern of fences. In respect of the boundary with no. 65, the property is rented and the landlord has chosen the fence which currently exists. He noted that three of the neighbours with the 4ft fences also have trampolines and he had observed seven children on different trampolines. He was not sure where the notion of privacy had come from in terms of a 6ft fence. Noise had not been raised as an issue by any of the neighbours. People who live in terraced houses accept there is going to be some noise. He believed that good neighbours should be able to talk about their concerns to resolve them.

Councillor Hardy attended and, with the consent of the Chairman, addressed the Committee. He had three concerns. Difficulties had arisen at another application site and he wanted to avoid a repetition. His first concern was the use of the term disability which was wide ranging and conveyed nothing about the client with that condition and he thought that the community deserved better information about such an enterprise coming into the community. His second concern was in respect of noise. Paragraph 10.1 of the officer's report responded to concerns about noise control and the information provided by Environmental Control which stated that they did not have standards for soundproofing a property and if they received complaints

from neighbours they would not be able to serve abatement notices because the residents would be behaving in the only way they knew how. He was aware that there was evidence of noise from another similar application site. His third point was about the respite care required. The application was originally for a day care centre, then the emergency cover was included. Condition 5 now permits emergency provision for up to two people based on how you interpret respite care. He asked for the application to be deferred to consider these points.

Members of the Committee commented on the increase from one to two people for respite care and wished the application to remain as originally submitted for one person for respite care. The suggestion that the temporary permission be for two years was on the basis of giving the applicant time to recoup the outlay on soundproofing. Now that it appears that it is not possible to require soundproofing there is no necessity to extend the temporary period from one year. To return to a one year temporary permission would ensure that the use and neighbour amenity could be considered further if an application is submitted in the future. Also supported was the fencing to be as stated by the applicant in consultation with the planning officers. There was a query in respect of whether the personal permission would allow the applicant to employ others to work for him or undertake the work in his absence on holiday. The request for a 6ft fence was to protect the privacy of the clients which had been mentioned by local residents. The request to return to the terms of the original application for a day care centre for five clients with respite care during evenings and weekends for one client was reiterated by other members of the Committee who were also content with the fence to start at 6ft from the house and then 4ft thereafter in keeping with the other rear gardens.

It was explained that most of the fencing in the area was the same, but any resident in the area could erect fencing up to 2metres in height. It is correct that the term disability does cover a very wide range and it would be very difficult to be more specific. Environmental Control had confirmed that there were no specific standards for soundproofing a property so any soundproofing requirement would not be enforceable. The word emergency had been removed from Condition 5 because it was a vague term whereas respite care was a generally accepted term. In response to a query about the sleeping arrangement for respite care clients, officers confirmed they did not have details of the layout but had presumed that clients would sleep in the bedrooms. Respite care would be from 5pm to 9pm in the evenings and throughout the weekend period.

It was explained that the style of fencing that prevailed in the area was three panels at 6ft high from the house and the remainder in 4ft panels. A condition could be imposed so that no clients would be permitted on site until the fencing was in place.

RESOLVED (MAJORITY voted FOR) that the application be approved as recommended but with variations to conditions as follows:-

- Standard condition for time limit,
- one year temporary consent,
- personal permission to the applicant,
- a maximum of five persons with learning disabilities,

- a maximum of one person with one supervisor for respite care outside the approved hours,
- prior to commencement of the development, fencing to be erected on site details of which to be agreed in writing with the Local Planning Authority prior to erection.

Councillor Nigel Chapman (in respect of having worked in the licensing trade) declared a personal interest in the following item which is also a prejudicial interest pursuant to the provisions of Meetings General Procedure Rule 7(10) and left the meeting during its consideration and determination

135. 081522 111 High Street, Colchester, CO1 1TB

The Committee considered an application for a variation of Condition 3 attached to planning permission F/COL/00/0871 to allow opening of the premises for customers between the hours of 0900 and 0130, incorporating a 30 minute drinking up time, on Thursdays to Saturdays. The Committee had before it a report in which all information was set out, see also the Amendment Sheet.

John More, Principal Planning Officer, attended to assist the Committee in its deliberations.

Andy Lonergan addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He had done all he could to protect the environment in Swan Passage and keep it as clear as possible, sweeping up once or twice a week. He has brought in extra bins which were kept inside after 9pm and informed all staff not to empty bins after 9pm. The bins were placed in the passageway and to reduce overflowing extra bins were brought in. He confirmed that he had taken all measures necessary to reduce noise.

Members of the Committee mentioned that there were two flats in Swan Court and the disturbance can be considerable at night. It was very difficult to complain to Environmental Health because complainants had to be sure of what they were reporting. They were pleased to hear the manager confirm that he would care for the area and there would be no disturbance. In response to a request that the doors remain closed, it was suggested that an informative only be added as this may be something covered by other legislation.

It was explained that there was no knowledge of any current public nuisance in this area.

RESOLVED (MAJORITY voted FOR) that the application be approved with conditions and informatives as set out in the report, together with an additional informative regarding the rear doors to be kept closed so far as is practicable to avoid undue noise outbreak.

136. Enforcement Action // Land Adjacent to The Stream, Layer Road, Colchester, CO2 0HT

The Head of Environmental and Protective Services submitted a report seeking authorisation to take enforcement action for the removal of three unauthorised storage containers on land adjacent to The Stream, Layer Road, Colchester with a period of compliance of 28 days. Also on this agenda was a retrospective application for 12 months temporary permission to retain the storage containers. Immediately prior to consideration of the request for enforcement action the Committee had refused the application for temporary permission to retain the three containers for a period of 12 months.

David Whybrow, Principal Planning Officer, attended to assist the Committee in its deliberations.

Members of the Committee were minded to authorise enforcement action with a compliance period of 6 months to assist the applicant until he had purchased a permanent home.

RESOLVED (SEVEN votes FOR and SIX votes AGAINST, the Chairman having exercised his casting vote FOR) that enforcement action to remove three storage containers on land adjacent to The Stream, Layer Road, Colchester be authorised with a compliance period of six months.