

Planning Committee

Council Chamber, Town Hall
19 March 2009 at 6:00pm

This committee deals with

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

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Private Sessions

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.

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Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

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There is wheelchair access to the Town Hall from West Stockwell 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.

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Material Planning Considerations

The following are issues which the Planning Committee can take into consideration in reaching a decision:-

- planning policy such as local and structure plans, other local planning policies, government guidance, case law, previous decisions of the Council
- design, appearance and layout
- impact on visual or residential amenity including potential loss of daylight or sunlight or overshadowing, loss of privacy, noise disturbance, smell or nuisance
- impact on trees, listed buildings or a conservation area
- highway safety and traffic
- health and safety
- crime and fear of crime
- economic impact – job creation, employment market and prosperity

The following are **not** relevant planning issues and the Planning Committee cannot take these issues into account in reaching a decision:-

- land ownership issues including private property rights, boundary or access disputes, restrictive covenants, rights of way, ancient rights to light
- effects on property values
- loss of a private view
- identity of the applicant, their personality, or a developer's motives
- competition
- the possibility of a "better" site or "better" use
- anything covered by other types of legislation

Human Rights Implications

All applications are considered against a background of the Human Rights Act 1998 and in accordance with Article 22(1) of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 there is a requirement to give reasons for the grant of planning permission. Reasons always have to be given where planning permission is refused. These reasons are always set out on the decision notice. Unless any report specifically indicates otherwise all decisions of this Committee will accord with the requirements of the above Act and Order.

Community Safety Implications

All applications are considered against a background of the implications of the Crime and Disorder Act 1998 and in particular Section 17. Where necessary, consultations have taken place with the Crime Prevention Officer and any comments received are referred to in the reports under the heading Consultations.

COLCHESTER BOROUGH COUNCIL PLANNING COMMITTEE 19 March 2009 at 6:00pm

Members

Chairman : Councillor Gamble.
Deputy Chairman : Councillor Ford.
Councillors Chillingworth, Blandon, Chapman, Chuah, Cory, Elliott, Foster, Hall, Lewis and Offen.

Substitute Members : All members of the Council who are not members of this Committee or the Local Development Framework Committee. The following members have undertaken planning training which meets the criteria:-
Councillors Arnold, Barlow, Barton, Bentley, Bouckley, Cook, Dopson, Ellis, Fairley-Crowe, P. Higgins, T. Higgins, Hunt, Lilley, Lissimore, Maclean, Manning, Martin, Pyman, Quarrie, Sykes, Tod, Turrell and 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. An amendment sheet is circulated at the meeting and members of the public should ask a member of staff for a copy to check that there are no amendments which affect the applications 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 on the day 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 off or to silent;
- 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 personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes 1 - 8

To confirm as a correct record the minutes of the meeting held on 5 March 2009.

7. Planning Applications

In considering the planning applications listed below, the Committee may chose 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. 082124 Essex Hall Road, Colchester 9 - 22
(Castle)

Erection of new care home and special needs unit with attendant gardens and car parking and the establishment of approximately 1.35 ha of public open space.

2. 072007 Fields Farm Road, Layer de la Haye 23 - 51
(Birch and Winstree)

Proposed dwelling house in association with established livery and riding school business.

3. 082132 Nayland Road, Great Horkesley 52 - 57
(Fordham and Stour)

Erection of 1 no. one bedroom bungalow.

4. 082152 10 Manor Road, Wivenhoe 58 - 63
(Wivenhoe Quay)

Construction of 2 new bedroom detached bungalow and demolition of existing single garage.

5. 090064 First and Second Floor, 17 Head Street, Colchester 64 - 71
(Castle)

Change of use of first and second floor to A3/A4 use. Ground floor already has A3 use approved.

6. 090078 1 Glen Avenue, Colchester 72 - 78
(Lexden)

Removal of Condition 06 of Planning Permission F/COL/06/0065 (The use hereby permitted shall be for a temporary period,

expiring on 1 March 2009 and shall cease on or before that date unless a further express planning permission has been granted for the use to be continued) in order to allow permanent permission.

- 7. 090081 Daniels House, 146 Straight Road, Colchester 79 - 83**
(Prettygate)

Variation of conditions 02 & 04 of planning permission C/COL/07/0083 to allow respite care (day care only) for 7 children with special needs, and to seek a permanent permission for this use.

- 8. 090126 Former Caretakers Bungalow, Clay Lane Grove, 84 - 90**
Colchester
(St John's)

Variation of condition 04 of planning permission C/COL/03/1841 to extend opening hours from 08:00-16:00 hours to 08:00-18:00 hours on a school day only.

- 9. 081644 Weston Homes Community Stadium, United Way, 91 - 110**
Colchester
(Mile End)

Variation of condition 37 attached to O/COL/01/1622 to allow use of the stadiums internal concourses for the holding of a monthly farmers market on the 3rd Thursday and an annual Christmas fayre and the variation of condition 6 to allow betting on matchdays.

- 10. 082144 104 Oak Road, Tiptree 111 - 115**
(Tiptree)

Infill and conversion of existing garage/car port area to provide consultation offices.

- 8. Legal Agreement // Extension of time for completion, 26 Hythe 116 - 118**
Quay, Colchester

See report by the Head of Environmental and Protective Services

- 9. Deed of Variation to Legal Agreement // St James Park Estate, 119 - 121**
Mile End, Colchester

See report by the Head of Environmental and Protective Services

- 10. 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).

PLANNING COMMITTEE

5 MARCH 2009

Present:- Councillor Gamble* (Chairman)
Councillors Blandon*, Chuah*, Cory, Elliott*, Ford, Foster*,
Hall and Lewis*.

Substitute Members:- Councillor Ellis* for Councillor Chillingworth,
Councillor Martin for Councillor Chapman,
Councillor Sykes for Councillor Offen.

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

216. Minutes

The minutes of the meeting held on 19 February 2009 were confirmed as a correct record, subject to the name of the public speaker in minute no. 214 being corrected to read Theresa Whiting.

Councillors Gamble (in respect of his acquaintance with a close relative of one of the objectors) and Hall (in respect of his acquaintance with the public speaker, Sheila Warren) each declared their individual personal interests in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

217. 081879 25 Green Acres Road, Layer de la Haye

The Committee considered an application for the construction of a detached two bedroom dwelling of one and a half storeys, with off street parking for two vehicles. The Committee had before it a report in which all information was set out, see also Amendment Sheet. The proposed garden area was 100 square metres which exceeded the Essex Design Guide standard and the two parking spaces proposed were considered acceptable in this location.

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.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations.

Richard Shultz addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. Residents in the cul de sac were concerned. Mr Shultz had plans to extend his daughter's bedroom and was concerned that there might be a loss of privacy. There were currently seven vehicles connected with the existing property at no. 25 but the proposal would leave no. 25 with just two parking spaces and he was concerned at the lack of off-street parking for the remaining vehicles. The driveway to the new property would be difficult to access off the private drive. A previous proposal for a garage at no. 25 was approved in 1995 with an attached condition that no trees or shrubs be removed. He was also concerned about light.

Sheila Warren addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. They currently have a number of vehicles but the number would decrease in the not too distant future when family members move on. There would not be any encroaching on any neighbouring properties as the two parking

spaces for each property would be ample for their needs. The access for emergency vehicles would be kept clear. The private drive serves only nos. 23 and 25, not no. 21. The new dwelling was 1 ½ storeys and its design had been carefully considered so that there would be no overshadowing or loss of privacy. The two upstairs windows would be frosted glass to prevent overlooking to no. 27. The siting of the new property had been angled to prevent loss of privacy and to protect trees. Some trees had been lost, one from a lightning strike because it had been deemed unsafe, and another which their tree surgeon had recommended it be removed. Landscaping will be included.

Councillor Bentley attended and, with the consent of the Chairman, addressed the Committee. There were parking issues in the cul de sac. The design of the dwelling was satisfactory but there were concerns about the impact on the neighbourhood. Great crested newts were present in the village pond and at two properties on this estate. He urged the Committee to look at advice from the parish council. He recognised the need for homes but was concerned at the impact on village life.

Members of the Committee reiterated concerns regarding parking and it was suggested that a condition be imposed to prevent the start of construction until the current vehicles in excess of the parking provision for no. 25 be removed. Although the proposed design was considered attractive there were questions about whether it was in keeping with the surrounding development. There are other extensions nearby with dormer windows which may mitigate this proposal. A condition to ensure the storage of construction vehicles and materials on site was requested. Great crested newts were known to exist in surrounding gardens and an environmental impact study was considered appropriate because they were an endangered species. The need for more housing in villages was recognised. A query was raised regarding the construction of new dwellings in front of existing dwellings and whether there were any restrictions. The possibility of a covenant had been raised but the Committee were aware that this was an issue that residents had to raise with their own solicitors.

It was explained that the parking proposal for two spaces exceeded the standard which required a minimum of one space for two bedroomed properties. The Highway Authority raised no objection. It was not possible to impose a condition prohibiting construction until excess vehicles were removed. It was possible for a condition to require additional parking spaces to be provided and for a condition requiring construction materials and vehicles to be parked on site. In respect of trees, the previous permission had not been implemented so the conditions had not come into effect. There were protected trees but these were not within the site. Whilst it was known that there were great crested newts present adjacent to the village pond, there was no evidence of their presence on this site. If this were an undeveloped piece of land there may be more of a case for an environmental impact study. A planning permission exists for a small extension at the front of a neighbouring property and for two storeys at the rear, but the presence of that extension does not affect consideration of this application. On the rear boundary both windows are shown with obscured glazing.

RESOLVED (MAJORITY voted FOR) that –

(a) Consideration of the application be deferred for completion of a Unilateral Undertaking to provide for a contribution towards Open Space, Sport and Recreational Facilities in accordance with the Council's Supplementary Planning Document.

(b) Upon receipt of a satisfactory Unilateral Undertaking, the Head of Environmental and Protective Services be authorised to grant consent with conditions and informatives as set out in the report, see also Amendment Sheet, and an additional condition requiring the storage of materials and contractors' vehicles to be parked on site or at no. 25 Green Acres Road, Layer de la Haye.

218. 082152 10 Manor Road, Wivenhoe, CO7 9LN

The Committee considered an application for the construction of a detached two bedroom bungalow and the demolition of an existing single garage. 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.

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

David Tournay addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He lived opposite the application site. The road comprised well spaced bungalows and houses and terraced houses. He was concerned that the demand for on-street parking was already high because of the twenty four terraced houses opposite the site which did not have off-street parking and the change in demographics meant there were more families. The street was narrow and manoeuvring into existing drives was difficult. The proposed development did not allow sufficient space to turn within the drive. He wanted a more attractive design not this bland one.

There was some support from members of the Committee for the objector's views, particularly in regard to the bland design, and there were suggestions that the applicant be asked to improve the design by the inclusion of detailing.

It was explained that there were a variety of plot widths. This was not the only plot of this size and it was considered that the size of the garden being adequate, the size of the plot being able to accommodate all of the parking and the lack of adverse effect on neighbours were all indicators that this was not an overdeveloped plot. It is a modest bungalow between two properties of similar character. It could be difficult to argue that it did not fit in that area. It was difficult to see how the design could be amended. The footprint, design and rhythm fitted within the street and there was not much that could be done to any elevation, windows or roof. There was not enough space to adjust or accommodate parking.

However members did not like the design, were unable to see any detail in the drawings and considered that it could be improved.

RESOLVED (MAJORITY voted FOR) that consideration of the application be deferred for an improved elevational treatment. The application to come back to the Committee for determination.

219. 090032 Lorkin Daniell Playing Field, Lexden Road, West Bergholt

The Committee considered an application for a variation of condition 09 attached to planning permission F/COL/00/1277 to vary the hours of use in such a way to allow West Bergholt Parish Council to determine the type of sport or recreational function that can be carried out and ensure the hours of use are reasonable; also permitted would be casual and one-off uses as well as regular supervised club use. The recommendation was for a temporary approval for one year. The Committee had before it a report in which all information was set out.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations.

Patricia McSweeney addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She was principally concerned that there would be no restriction on the hours that the facility would be in use. Unfortunately, not having complained has been interpreted as having nothing to complain about. Her house

is 25 metres from this site and she was concerned about the noise from the site which had the potential to disturb her at any time, day or night. She considered that her amenity and that of her neighbours would be impaired. The facility already benefits a number of users and other similar facilities do not have unrestricted hours of use. She considered the proposal to be ill conceived and unacceptable.

John Gili-Ross, Chairman of West Bergholt Parish Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. Last year a policy plan was put in place and a driver of that initiative was to increase the facilities available for the village which included the MUGA facility. The needs of the community had changed over the years and condition 9 was restricting how they wanted to use the facility. The parish council had managed other facilities in the area since 2004 which demonstrated their ability to manage this facility in a similar way.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Committee. The current planning conditions on the MUGA effectively make the Tennis Club an exclusive user. The Policy Plan states clearly demonstrated that in the village there is a need for a wider range of games and facilities amongst younger people and this is well documented as evidence of this demand, but it has to be addressed within the context of its location and the reason for the condition being imposed in the first place. He is of the opinion that it is time to consider how this area is used because the current conditions are too inflexible. He supports the recommendation that the wider use be for a trial period for one year. There would be a need for a sensible management plan by the parish council which has managed other facilities well, but there is a need to demonstrate to residents that it can also manage this facility in such a way that it does not further detract from their quality of life. He asked that consideration be given to the matter of screening and noise prevention to protect neighbouring houses.

Members of the Committee supported the move to make more facilities available for young people, but there was a need to protect the neighbours amenity against any noise and flood lighting in their gardens. The parish council did not have a track record of managing this site with the new conditions and the temporary condition would allow time for the new level of use to be assessed. In other areas with a MUGA there has been an improvement in behaviour generally.

It was explained that the parish council were seeking to address the changing needs of the village for sporting activities. Impact on amenity is a separate issue which the Committee can rightfully consider. Condition 9 concerns fees and times of use; its removal allows unrestricted use in terms of times. Flood lighting could be dealt with separately from the application by consulting with Environmental Control. In respect of screening, there is a hedge along one side but a condition for additional screening can be included to reduce noise nuisance.

RESOLVED that the application to permit the management/use of the MUGA to be controlled by West Bergholt Parish Council as set out in their letter of 29 January 2009 be approved for a temporary period of 12 months together with a condition requiring a natural screen to provide sound attenuation to residents in Lexden Road along the front boundary.

220. 090079 Pond Cottage, Waldegraves Lane, West Mersea, CO5 8SE

The Committee considered an application for a single storey extension to the south of Pond Cottage, a two storey extension connected to the north of the Pond Cottage via a glass link, and an outbuilding to the northern end of the property. 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, see also Amendment Sheet.

221. Withdrawal of Reasons for Refusal // Application 081300, Former Cherry Tree Garage, 17 Blackheath, Colchester, CO2 0AE

The Head of Environmental and Protective Services submitted a report on the proposed withdrawal of reasons 3, 4 and 5 for the refusal of planning permission for the above mentioned development prior to a scheduled appeal against the refusal. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

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

RESOLVED (UNANIMOUSLY) that reasons 3, 4 and 5 for the refusal of planning permission for the above mentioned development be withdrawn prior to the scheduled appeal against the refusal.

222. Legal Action // Application COL/06/1054, Land at Turnpike Road, Old Ipswich Road, Colchester

The Head of Environmental and Protective Services submitted a report seeking authorisation to take legal action against the owners of a parcel of land, identified as Site B at the above location, to secure the removal of unauthorised vehicles and structures thereon in accordance with the terms of a Unilateral Agreement dated 8 November 2006 connected with application F/COL/06/1054. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

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

RESOLVED (UNANIMOUSLY) that legal action be authorised against the owners of a parcel of land, identified as Site B at the above location, to secure the removal of unauthorised vehicles and structures thereon in accordance with the terms of a Unilateral Agreement dated 8 November 2006 connected with application F/COL/06/1054.

223. Enforcement Action // 56 Firs Road, West Mersea, CO5 8JP

The Head of Environmental and Protective Services submitted a report seeking authorisation to take enforcement action against the owners of the above property to secure the cessation of the storage and sale of items from 56 Firs Road, West Mersea. The Committee had before it a report in which all information was set out.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations. It was explained that the sale of items, mostly bicycles but also other items, was taking place in the front garden. Complaints have been received about this use which has been occurring since the summer of last year. The current use is more than an occasional use incidental to the enjoyment of a dwelling.

Paul Tucker addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the request for enforcement action. The occupant has received warnings about the sale of cycles, but it has now got out of hand. The occupant is constantly bringing cycles and other items into his front garden. The view from the speaker's house was akin to a scrap yard. In addition the occupant parks his cars on the grass verge in front of the garden as the driveway is blocked. The occupant is breaking the law by running a business from his garden.; this is a residential area. This action is a last resort.

RESOLVED (UNANIMOUSLY) that enforcement action be authorised for the cessation of the storage and sale of items from 56 Firs Road, West Mersea, with a compliance period of 2 months.

Councillors Ellis (in respect of his part ownership of a property 100 yards from the site) and Gamble (in respect of his acquaintance with the public speaker, David Priest) each declared their individual personal interests in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

224. Telecommunications Mast // Application 082056 for Prior Approval on land at the corner of Norman Way and Lexden Road, Colchester

The Committee had considered the above application at its meeting on 22 January 2009 and resolved that prior approval was required and was refused. In addition the applicant was to be advised that the Local Planning Authority was willing to negotiate to secure a suitable alternative site in the locality. Prior Notification applications give the Local Planning Authority 56 days to consider the siting and appearance of telecommunications equipment. If the Local Planning Authority does not make a decision within that period, the development is considered to be approved and can be implemented.

Vincent Pearce, Planning Service Manager, attended to provide the Committee with details of events leading to the failure to respond to this Prior Notification application as required within the 56 days which had led to the granting of approval by default.

He offered his personal and unreserved apology to the Planning Committee, and his personal and unreserved apology to all the objectors who believed that on 22 January the Committee took a decision to refuse the mast. This Committee believed they had time in which to formally resist the mast but unfortunately an error made by the Planning Service meant that the Committee was out of time in which to resist the mast. That fault sits with the Planning Service and not the Committee. He also wanted to extend an apology to ward Councillors Lewis and Hardy and the Portfolio Holder, Lyn Barton, because there has been a great deal of anger locally, some of which had been directed towards the Committee and ward members, but should rightfully be directed towards the Planning Service.

He had carried out his own investigation and the Audit Section of the Council has also carried out a separate investigation, both of which are now complete and a written report will be sent to the Head of the Service next week. There was a clear process error and a human error, which had compounded the situation with the result that the 56 days was miscalculated. The report goes into details, but effectively the errors deprived the opportunity to the Council to refuse the mast proposal. This appears to be the third occasion that the Council has made an error in respect of masts and this is the third occasion where a mast application has caused difficulty. The previous errors will be explained in the investigation report. It is not satisfactory that the will of the Committee and the views of the people of Lexden have been subverted. He is grateful to O2 and their agents who are willing to find an alternative site for the mast. They are under no compulsion to do so but they accept the feeling locally and wish to find a site that everyone finds satisfactory. He has provided a number of suggested sites which are currently undergoing technical analysis and expects a response within the next fortnight. During this time they will not install the mast and will review that position in the light of negotiations.

In response, the Chairman commented that the whole Committee and everyone who was involved was shocked, saddened and also very sorry about what has occurred. Vincent Pearce and his colleagues were working hard to find a solution.

Mr David Priest addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8. Residents and parents were relieved that common sense and local democracy had prevailed. They had been outraged at the receipt of letters informing them that the mast was approved by default and incredulous at the miscalculation of the dates. Now their focus is to prevent the installation of the mast from going ahead. He was grateful to the Council at senior level for the negotiations with O2 and the inquiry, but in regard to the process failures, he wanted an investigation into the decision by planning officers to recommend the application for approval in the light of the proximity of the site to the conservation area as one of the reasons for refusal. He believed it was usual for there to be a fence around the pole and the cabinet and he was concerned that a fence could be an eyesore; there was no mention of one in the officer report on the application. The immediate area around the cabinet is an emission danger zone which would raise further health concerns as hundreds of students pass daily. The footprint of the beam of maximum intensity had not been provided for this application, and yet it had been provided for the site at the Garrison Church. If the beam of maximum intensity extended to 200 metres this would flood two thirds of the St. Mary's site. He requested that the gathering of evidence leading to the officer's recommendation for approval be scrutinised. Residents were frustrated that there was little chance of a local challenge if negotiations fail; they will be relying on the Council to find another location but they also wanted to prevent any future applications for this site.

Councillor Hardy attended and, with the consent of the Chairman, addressed the Committee. He was grateful to Vincent Pearce for his apology and for the corrective action that has been taken. However, neither he nor Councillor Lewis had been involved in the investigation and there were aspects which involved ward councillors. He had asked the planning officer to inform him when the application had been received, but he had only been made aware of its receipt by a reporter in December. Although the objectors had been informed that the application had been approved by default, he had not. He considered that ward councillors should not be marginalised in this way and left unable to answer residents' questions. He asked that ward councillors be consulted before the remedial action was completed.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Committee. He was of the opinion that there should be confidence in the planning process and in view of the number of occasions when there had been a process failure in this area he called for the resignation of the portfolio holder with responsibility for planning. He also considered it essential that both ward councillors be involved in any follow up from the investigation.

Vincent Pearce responded that he was more than happy to involve both ward councillors in any follow up from the investigation which will be reported early next week. There was no reason why the outcome of the investigation should not be put into the public domain as early as possible to make sure the process is transparent. In terms of the comments from Mr Priest, he accepted the comment that what had happened was not satisfactory. Whilst the error was entirely unintentional and could be fixed, nonetheless he recognised that residents were angry. On the question of the area of greatest intensity, there was information on this matter and it may be discussed in the course of a future application. There was no objection to extending the investigation to include all the points raised by David Priest.

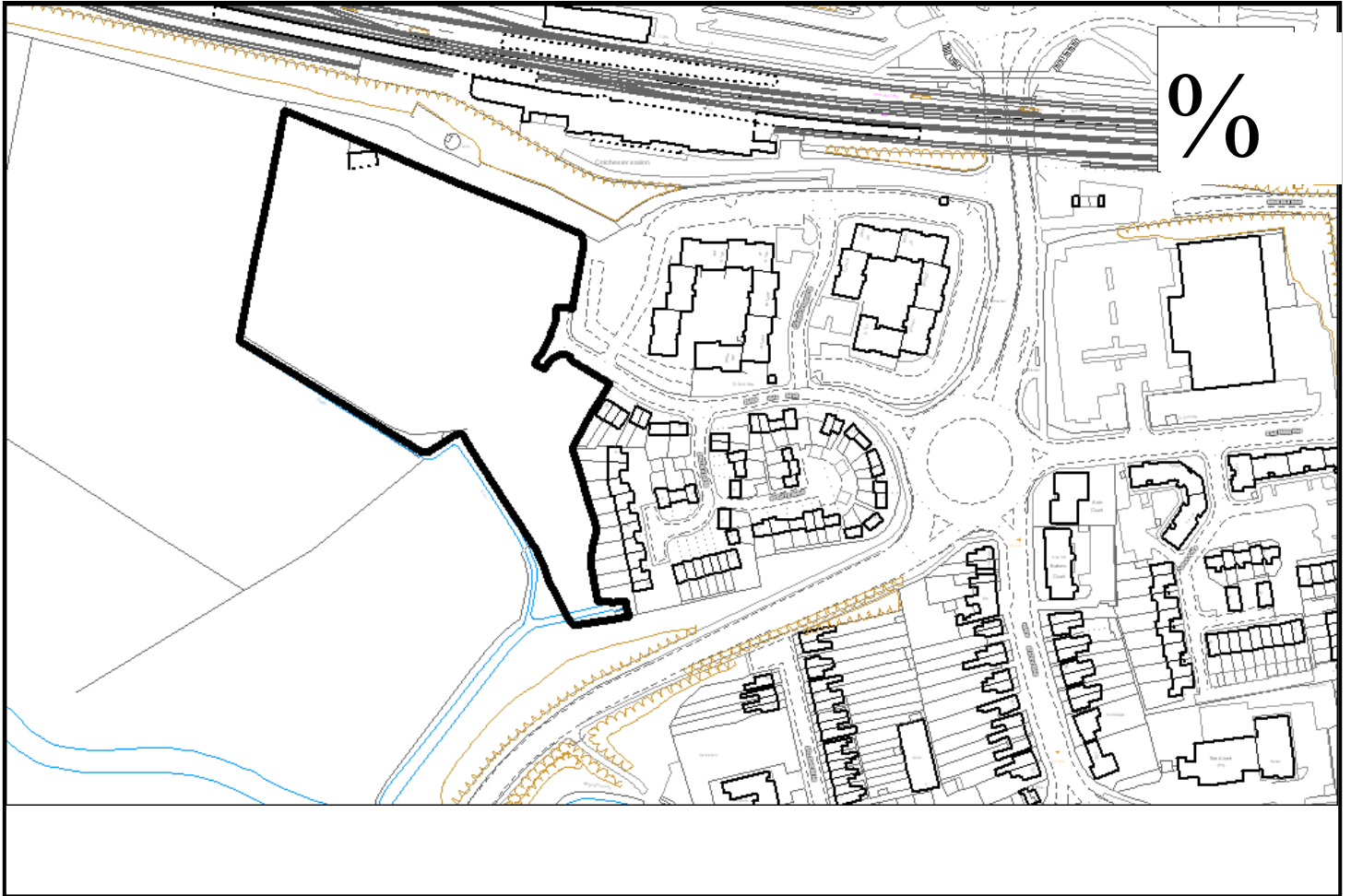
Councillor Lewis thanked Vincent Pearce, David Whybrow and the Chairman for including her in discussions during the past week. She also wanted to reassure the residents of Lexden that she and Councillor Hardy had been in daily contact since the situation came to light. She welcomed the search for suitable alternative sites and understood and respected confidentiality in this respect. If any sites were deemed suitable by O2 they would have to go through the 56 day procedure but before that happened she wanted a meeting for herself and Councillor Hardy with Vincent Pearce to go through the process because in the event of another application they wanted to be aware of all the facts. She considered the previous

decision was a good one and was extremely disappointed at the current situation. She hoped that work would continue to find an acceptable site. She asked whether two smaller masts would be a suitable alternative to one large one. On behalf of herself and Councillor Hardy she thanked the planning team, the Chairman and the Deputy Chairman.

Vincent Pearce explained that he would raise the matter with O2 but he suspected that there would be a loss of cover with smaller masts.

The Chairman commented that Councillors Lewis and Hardy had represented Lexden residents extremely well and a number of residents in turn did a good job in presenting their case through Mr Priest. He stated that whilst it was not possible to guarantee that a suitable alternative site would be found, planning officers were working to try and resolve the situation. He thanked all those who had attended and especially David Priest and visiting councillors.

RESOLVED that the information conveyed by Vincent Pearce, Planning Service Manager, be noted and the views expressed by David Priest, Councillors Hardy and Willetts and the Committee be taken into consideration in the Council's efforts to resolve the matter.



Application No: 082124

Location: Land To The west of Essex Hall Road, Colchester

Scale (approx): Not to scale

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **19 March 2009**
Report of: **Head of Environmental and Protective Services**
Title: **Planning Applications**

Relevant planning policy documents and all representations at the time this report was printed are recorded as BACKGROUND PAPERS within each item. An index to the codes is provided at the end of the Schedule.

7.1 Case Officer: David Whybrow EXPIRY DATE: 25/03/2009 MAJOR

Site: Essex Hall Road, Colchester

Application No: 082124

Date Received: 23rd December 2008

Agent: Arcady Architects Ltd

Applicant: Knight Developments Ltd

Development: Erection of new care home and special needs unit with attendant gardens and car parking and the establishment of approx 1.35 Ha of public open space

Ward: Castle

Summary of Recommendation: Conditional Approval subject to signing of Legal Agreement

1.0 Site Description

1.1 The site comprises 1.8 ha of low-lying land to the west of the Essex Hall development and is accessed via the hammerhead at the western end of Essex Hall Road. It is fringed on its western side by mature trees beyond which lie the Cymbeline Meadows within the valley of the River Colne. The river valley and Hilly Fields to the south offer long views onto the site which is seen beneath the embanked section of North Station and the main railway line.

1.2 The Essex Hall development comprises both 2 storey housing and 3 storey apartments.

1.3 In the Adopted Review Colchester Borough Local Plan the application site is allocated part residential/part private open space but is proposed to be part of the North Station Regeneration Area as defined in the Local Development Framework Core Strategy. This designation is intended to regenerate the North Station gateway, create a new bus interchange, deliver new office development and North-South highway capacity improvements.

2.0 The Proposals

2.1 It is proposed to erect a new care home for the elderly with 60 bedrooms and staff and core accommodation, in an L-shaped block of 2 and 3 storeys constructed around a landscaped courtyard with parking/servicing facilities to the north-east. A detached, single storey, special care unit of 448 sq.m. gross floorspace for people with learning difficulties is proposed on the north side of the courtyard. Additional information on the use of these buildings as provided by Caring Homes Group as part of the planning submission, may be viewed on the planning website along with the contamination report, tree survey, ecological assessment, flood risk assessment and acoustic survey.

2.2 The remainder of the site (1.35 ha in total) is proposed to be laid out as landscaped open space, retaining the large majority of existing trees on the land.

2.3 Architecturally, this is a contemporary styled complex with a variety of finishes, including brick, render, timber cladding and slate roofs with a green, sedum roof to the special care unit.

2.4 The matter has been referred to the Development Team who have noted and agreed the proposals but seek the following planning obligations:-

1. Commuted sum for adopted open space.
2. Provision of a N-S pedestrian and cycle link and associated works.
3. Provision of adequate cycle parking facilities for visitors and staff.
4. Provision of a CCTV contribution, if feasible.

3.0 Land Use Allocation

3.1 Part Residential/Part Private Open Space
TPO 7/85
Flood Zones 2 & 3

4.0 Relevant Planning History

4.1 81/0163 - Construction of stadium, sports centre, petrol filling station, DIY and garden centres, fast food restaurant, carvery restaurant, riverside inn and retail shopping area of 150,000 square feet net together with road improvements, access road and a bus terminal and car parking to serve the proposed uses - Refused 23 September 1981

4.2 84/1524 - Outline application for demolition of existing buildings and redevelopment for Class II offices and/or the erection of residential occupation - Approved with Condition 10 February 1987

- 4.3 84/1524/A - Details of 219 dwellings (flats and houses) and layout and details of roads external works etc - Approved with conditions 27 June 1988
- 4.4 84/1525 - Outline application for demolition of existing buildings and erection of single superstore building with consent for Class I retail use - Refused 23 March 1986
- 4.5 84/1526 - Outline application for demolition of existing buildings and erection of new warehouse or industrial buildings (Use Classes IV or X) - Refused 24 March 1986
- 4.6 84/1527 - Outline application for demolition of existing buildings and erection of warehouse accommodation for Class I but not food retail use - Refused 24 March 1986
- 4.7 84/1528 - Application for erection of residential and/or office development and/or the conversion of existing buildings for residential or office use - Approved with Conditions 20 May 1985
- 4.8 86/0224 - Change of use to temporary public car park (100 spaces) - Withdrawn 4 January 1988
- 4.9 91/1352 - Outline application for residential development (up to 81 dwellings) - Refused 8 December 1994 - Appeal dismissed 18 December 1995
- 4.10 93/0303 - Erection of 60. no houses, garages, road, sewers and ancillary works - Non determination 21 February 1994 - Public Inquiry dismissed 8 August 1994
- 4.11 96/1685 - Proposed erection of 20 houses, garage, estate roads and open space - Non determination 27 October 1997 - appeal Dismissed 23 February 1998
- 4.12 F/COL/00/1025 - Erection of 11 no houses and creation of public open space - Refused 17 October 2000
- 4.13 F/COL/00/1026 - Erection of 11 no. houses and creation of public open space (duplicate application) - Withdrawn 25 September 2006
- 4.14 O/COL/05/1799 - Outline application for the erection of 9 houses and establishment of land as open space - Withdrawn 21 December 2005

5.0 Principal Policies

- 5.1 Adopted Review Borough Local Plan
 - DC1 - General Development Control considerations
 - UEA 11 & 15 - Non residential design and incidental areas of open space
 - P1, P4 - Pollution, contaminated land
 - C01, C04 - Rural resources and natural features
 - H2 - Meeting different needs

6.0 Consultations

- 6.1 The Environment Agency objected to the Flood Risk Assessment submitted with the application on flood risk ground with additional information having been requested.
- 6.2 Anglian Water have made a number of comments and recommend conditions to be attached to any consent granted.
- 6.3 Environmental Control recommend conditions relating to noise, demolition and construction works and land contamination.
- 6.4 Natural England objects to the proposed development on the grounds that insufficient information has been submitted to demonstrate if legally protected species would be affected by the proposal, especially in the case of native reptiles, great crested newts and badgers.
- 6.5 The Highway Authority raise no objection subject to conditions relating to provision and retention of parking areas and main access road, cycle parking, construction of the driveway, surface water drainage and provision of link footpath between the station and Westway.
- 6.6 The Trees and Landscape Officer requires further information before being able to recommend approval with conditions while the Arboricultural Officer is satisfied with the details submitted with the application. He notes that only very few trees are being removed as a result of poor health and the majority of the other trees on the boundaries will be retained with minor works to improve their condition.

Note: The agent has responded to the matters raised by the Environment Agency, Natural England and the Tree and Landscape Officer and any further response will be reported at the meeting.

7.0 Representations

- 7.1 Representations have been received from 16 residents of the Essex Hall development comprising addresses in Essex Hall Road, Claremont Heights, Chiltern Close and Wycliffe Grove. Bob Russell MP has expressed his support for the objections raised.
- 7.2 The main points of concern are paraphrased thus:-
 - 1. The Essex Hall development takes access from one of the most congested roundabouts in Colchester where a continuous stream of traffic often makes it impossible to exit the estate. More traffic will aggravate an already acute problem.
 - 2. The site is in the flood plain and has flooded in the past. Development here would be at risk of flooding and increase risk of flooding elsewhere as a result of raised ground levels. It should remain as open space.
 - 3. Increased visitor parking problems will arise in an already overcrowded area, served by narrow residential streets, subject to illegal parking by commuters. Extra traffic will lead to accidents and restricted access for emergency vehicles. 30 spaces is not sufficient to serve a development of this scale.

4. The development is of excessive density and results in loss of undisturbed green space which is becoming increasingly rare in Colchester. The size of the building is out of keeping with existing development.
5. Further consultation is required on use of open space adjacent Chiltern Close.
6. The site should be preserved as an ancient battleground and wildlife area. As a wetland area, amphibians may be present.
7. Lack of capacity at the sewage pumping station serving the development and adverse effect on existing sewerage system.
8. All previous applications for the site have been refused or withdrawn.
9. Increased traffic activity and noise levels in quiet residential neighbourhood.
10. The facility may house youths with behavioural problems and impact on surrounding residents. Not enough is known about the proposed clientele.
11. The building is too high and should be reduced by one storey to increase late afternoon light to adjacent flats.
12. Access from station onto site will introduce unwelcome pedestrian traffic and encourage use of parking space by commuters.
13. Land contamination and Japanese Knotweed eradication must be properly dealt with.

8.0 Report

- 8.1 There is no basic land use objection to development here within a proposed regeneration area. It is proposed to develop this site in preference to a more poorly located residentially allocated site of equivalent area, immediately to the south. This latter site is low-lying, closer to protected trees and would, if developed, have a direct impact on the outlook of Chiltern Close residents.
- 8.2 In the position proposed the development rounds off the Essex Hall development, closes the vista at the end of Essex Hall Road and has no direct effect on existing residents. Architecturally, too, the scheme has considerable merit with its crisp, contemporary treatment and harmonious palette of external finishes.
- 8.3 That said, the consultation responses and representations raise a considerable number of issues which merit further consideration and these are addressed below:-

1. Traffic and Highway Safety.

- 8.4 This type of care facility cannot be considered traffic-intensive and has attracted a recommendation of approval by the Highway Authority. Conditions requiring improved footway/cycle access and appropriate levels of cycle-parking facilities coupled with a location that is readily accessible by train and bus will encourage staff and visitors to utilise these modes of travel and avoid the congested road network that is quoted by a large number of the objectors.
- 8.5 An additional drawing showing the cycle route and link to Westway indicates that the exact route will need to be agreed with ECC Highways Department. The route runs below a number of protected trees and the drawing notes that in these sections a "no-dig" construction method will be employed. The drawing also includes 10 secure cycle parking spaces in a roofed structure alongside the site's northern boundary.

8.6 Members should be aware that this route could pose a threat to many protected trees and would involve a bridge over a watercourse and ramp up onto the Westway embankment. A more direct route would be preferable in this case but any alternative involving use of third party land could not be established within the time scale of this application.

2. Ecology

8.7 Additional information has been provided by the agent and forwarded to Natural England demonstrating that the clearance and chemical treatment of Japanese Knotweed has largely devalued the ecological value of the site. The only part that has escaped this treatment, the narrow finger of land extending behind Chiltern Close, is outside the area for development and could be securely fenced to prevent entry during construction works. There was no evidence of protected species apart from breeding birds either on or adjacent to the site.

8.8 Natural England have now confirmed they will withdraw their earlier objection.

3. Flood Risk

8.9 Additional information has been produced in the form of surveyed site levels and flood compensation areas and volume calculations as requested by the Environment Agency. Their views are awaited.

4. Sewerage/Drainage Matters

8.10 Although no objections are raised to the scheme by Anglian Water, a condition and series of informative statements have been suggested in the event of planning permission being granted.

5. Trees, Landscape and Open Space

8.11 A landscape strategy and analysis of the impact of this scheme in the wider landscape as requested by the Trees and Landscape Officer have been submitted. Again, any further views expressed as a result of this submission will be reported at the meeting.

9.0 Conclusion

9.1 As described above there is no basic land use objection to this proposal and no direct impact on the outlook, amenity or privacy of existing residents at the Essex Hall development. It is a sustainable location, part of a proposed regeneration area. Notwithstanding the matters raised in the representations and provided that the consultees respond favourably to the additional information submitted it is not considered that any substantive issues have arisen which would justify a refusal of planning permission.

10.0 Background Papers

10.1 ARC; NR; AW; HH; NE; HA; TL; NLR

Recommendation

- (1) The matter be deferred for the drafting of a Section 106 Agreement securing the transfer of the open space with appropriate commuted sum and provision of the N-S cycleway.
- (2) Upon the completion of the legal agreement, the Head of Environment and Protective Services be authorised to grant planning permission under delegated powers, subject to the following conditions:-

Conditions

1 - A1.5 Full Perms (time limit for commencement of Development)

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

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

2 - C3.1 Materials (general)

Before the development hereby permitted commences, the external materials and finishes to be used, which shall be substantially as indicated in the submitted application documents, shall be agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with agreed details.

Reason: To ensure the use of an appropriate choice of materials having regard to the prominence of this site in the countryside and to ensure that the choice of materials will harmonise with the character of the surrounding area.

3 - C10.15 Tree & Natural Feature Protection: Protected

No work shall commence on site until all trees, shrubs and other natural features not scheduled for removal on the approved plans, are safeguarded behind protective fencing to a standard to be agreed by the Local Planning Authority (see BS 5837). All agreed protective fencing shall be maintained during the course of all works on site. 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.

4 - C10.16 Tree & Natural Feature Protection: Entire S

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.

5 - C10.18 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 with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

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

6 - C11.11 Landscape Design Proposals

No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority (see BS 1192: part 4). These details shall include, as appropriate:

Existing and proposed finished contours and levels.

Means of enclosure.

Car parking layout.

Other vehicle and pedestrian access and circulation areas.

Hard surfacing materials.

Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signage, lighting).

Proposed and existing functional services above and below ground (e.g. drainage, power, communication cables, pipelines, etc. indicating lines, manholes, supports etc.).

Retained historic landscape features and proposals for restoration.

Soft landscape details shall include:

Planting plans.

Written specifications (including cultivation and other operations associated with plant and grass establishment).

Schedules of plants, noting species, plant size and proposed numbers/densities.

Planting area protection or decompaction proposals. Implementation timetables.

Reason: To safeguard the provision of amenity afforded by appropriate landscape design.

7 -C11.12 Landscape Works Implementation

All approved hard and soft landscape works shall be carried out in accordance with the implementation and monitoring programme agreed with the Local Planning Authority and in accordance with the relevant recommendations of the appropriate British Standards. All trees and plants shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure the provision and implementation of a reasonable standard of landscape in accordance with the approved design.

8 - C11.15 Details of Surface Water Disposal

Detailed proposals for the disposal of surface water, where they include source control designs shall be submitted to, and approved in writing by the Local Planning Authority before the commencement of development. The agreed details shall be fully implemented in accordance with a timetable to be agreed with the Local Planning Authority.

Reason: To ensure proper consideration and approval of any effects of change in the drainage regime on landscape features.

9 - C11.16 Earthworks

No development shall take place until details of earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with approved details.

Reason: To ensure proper consideration and approval of any effects of change in topography on landscape features.

10 - C11.17 Landscape Management Plan

A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved by the Local Planning Authority prior to any occupation of the development (or any relevant phase of the development) for its permitted use.

Reason: To ensure that due regard is paid to the continuing enhancement and maintenance of amenity afforded by the landscape.

11 - Non-Standard Condition

Prior to the commencement of the development the parking areas and main access road shall be constructed, surfaced and made available for use in agreement with the Highway Authority and shall be retained for that sole purpose.

Reason: To ensure appropriate turning, parking and access facilities are provided so that vehicles can enter and leave the highway in a safe and controlled manner in accordance with policy 1.1 in Appendix G to the Local Transport Plan.

12 - Non-Standard Condition

No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site.

Reason: To avoid displacement of loose material onto the highway and in accordance with policy 1.1 in Appendix G to the Local Transport Plan.

13 - Non-Standard Condition

Prior to occupation of the development details shall be approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained at all times.

Reason: To prevent hazards caused by flowing water or ice on the highway in accordance with policy 1.1 in Appendix G to the Local Transport Plan.

14 - Non-Standard Condition

Prior to occupation of the development a shared use footway/cycleway measuring no less than 3m in width shall be constructed from the north eastern corner of the site to link in to Westway in the south the details of which shall be agreed in writing with the Local Planning Authority and shall on completion be adopted by the Highway Authority.

Reason: To ensure appropriate pedestrian and cycle facilities are provided in the interests of sustainable transportation and having regards to policies 3.3, 3.4 and 4 in Appendix G to the Local Transport Plan.

15 - Non-Standard Condition

The cycle parking/storage facilities as shown on additional drawing no. 06/01/033E shall be provided prior to the occupation of any of the care home accommodation hereby approved.

Reason: To ensure appropriate bicycle parking is provided in accordance with Policy 3.3 in Appendix G to the Local Transport Plan.

16 - Non-Standard Condition

The proposed development shall be designed and maintained so that internal noise levels fully comply with BS8233 and the measures detailed in the acoustic report accompanying the planning application are fully implemented prior to the occupation of the buildings hereby permitted.

Reason: To ensure that occupiers of the proposed development are adequately protected from the effects of externally generated noise.

17 - B6.6 Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) (ii) an assessment of the potential risks to: • human health, • property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, • adjoining land, • groundwaters and surface waters, • ecological systems, • archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s). 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 soil contamination to the future occupants of the development and neighbouring occupiers are minimised, together with those to controlled waters and ecological systems and to ensure that site workers are not exposed to the unacceptable risks from contamination during construction, in accordance with Policy of the adopted Local Plan (date)

18 - B6.8 Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from soil contamination to the future occupants of the development and neighbouring occupiers are minimised, together with those to controlled waters and ecological systems and to ensure that site workers are not exposed to the unacceptable risks from contamination during construction, in accordance with Policy of the adopted Local Plan (date)

19 - B6.9 Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from soil contamination to the future occupants of the development and neighbouring occupiers are minimised, together with those to controlled waters and ecological systems and to ensure that site workers are not exposed to the unacceptable risks from contamination during construction, in accordance with Policy of the adopted Local Plan (date)

20 - B6.10 Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified 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 condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is 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 condition 3.

Reason: To ensure that risks from soil contamination to the future occupants of the development and neighbouring occupiers are minimised, together with those to controlled waters and ecological systems and to ensure that site workers are not exposed to the unacceptable risks from contamination during construction, in accordance with Policy of the adopted Local Plan (date)

21 - B6.13 Validation Certificate

Prior to occupation of any property hereby permitted and the provision of any services the use hereby permitted commencing, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in the above condition. This certificate is attached to the planning notification.

Reason: To ensure that risks from soil contamination to the future occupants of the development and neighbouring occupiers are minimised, together with those to controlled waters and ecological systems and to ensure that site workers are not exposed to the unacceptable risks from contamination during construction, in accordance with Policy of the adopted Local Plan (date)

22 – Any additional condition(s) recommended by Natural England.

23 – Any additional condition(s) recommended by the Environment Agency.

Informatives

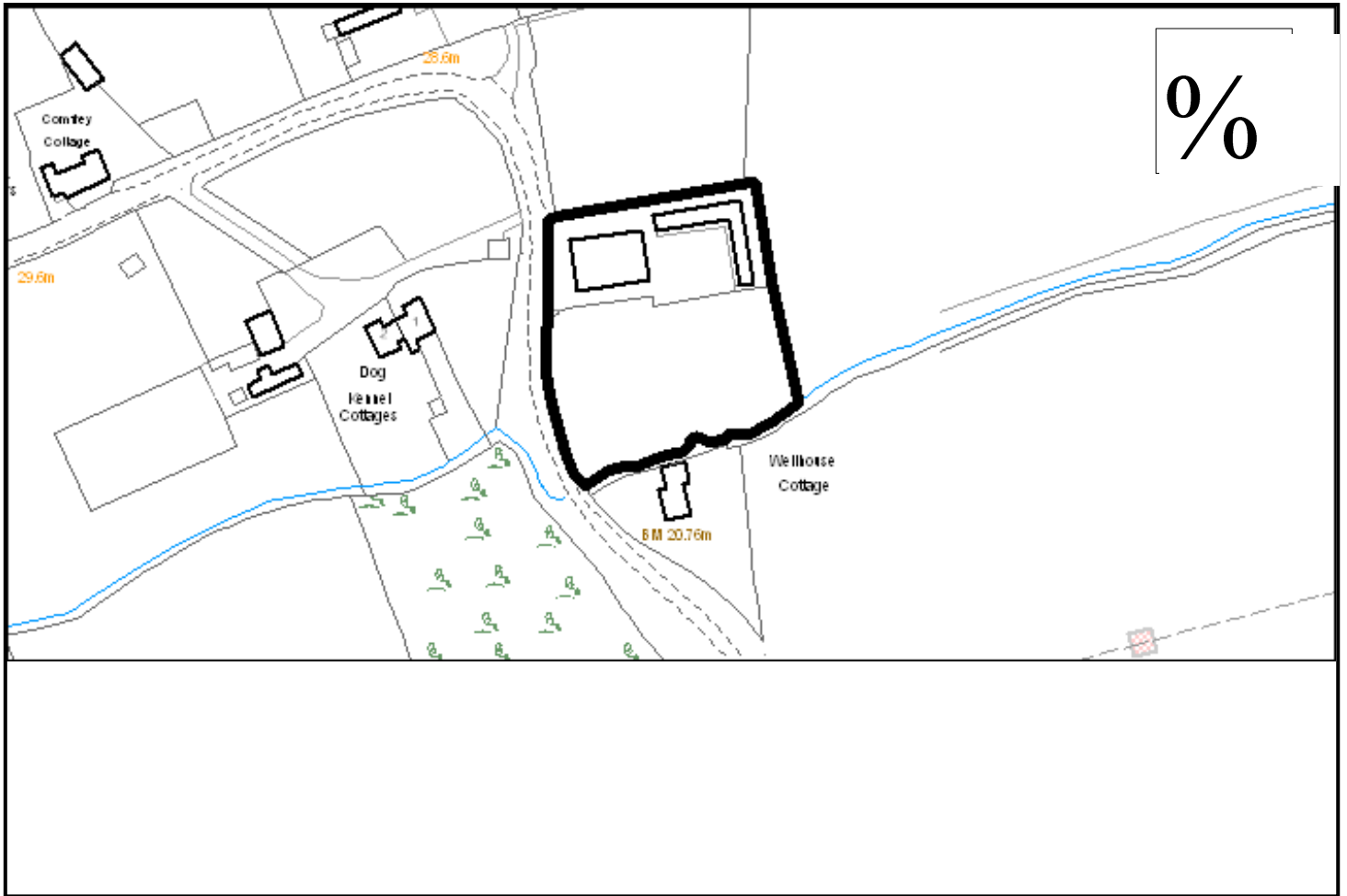
The above conditions 11-15 are required to ensure the proposal complies with the County Council's Highways and Transportation Development Control Policies as originally contained in Appendix G to the Local Transport Plan 2006/2011 and refreshed by Cabinet Member decision dated 19 October 2007.

All works affecting the highway shall be carried out by prior arrangement with and to the requirements and satisfaction of the Highway Authority and application for the necessary works shall be made initially by telephoning 01206 838600.

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

Your attention is drawn to the Anglian Water informative statements contained in the letter ref; 0406/SP50(002) dated 12 January 2009, a copy of which is attached to this planning permission.

With regard to tree protection requirements as agreed by conditions 3-5 above, the construction shall take place solely in accordance with the methodology statement submitted with the application and no other works shall take place affecting trees without further agreement in writing by the Local Planning Authority.



Application No: 072007

Location: Barn Stables, Fields Farm Road, Layer-De-La-Haye, Colchester, CO2 0JN

Scale (approx): 1:1250

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7.2 Case Officer: Vincent Pearce

MINOR

Site: Fields Farm Road, Layer-De-La-Haye, Colchester, CO2 0JN

Application No: 072007

Date Received: 24th July 2007

Agent: Clive Richardson Associates

Applicant: Mrs S Tootal

Development: Proposed dwellinghouse in association with established livery and riding school business.

Ward: The Parish of Layer de la Haye within the ward of Birch and Winstree

Summary of Recommendation: Conditional Approval subject to signing of Legal Agreement

1.0 Site Description

1.1 The site measures approximately 0.3ha, and comprises a group of former farm buildings now used for stabling and livery, and a paddock which borders a small stream. The location is outside of the Layer de la Haye/Malting Green Village Envelope, and is within the Abberton Reservoir Countryside Conservation Area.

1.2 The site has a complicated planning history.

2.0 Description of Proposal

2.1 The above application seeks to achieve planning permission for a two bedroom residential dwellinghouse on site in association with a livery and riding school business operated from part of the site.

3.0 Land Use Allocation

3.1 Countryside Conservation Area
Proposed Area of Landscape Conservation Importance

4.0 Relevant Planning History

- 4.1 87/1161 – Use of calf and horse boxes for stabling horses not owned by the applicant. Approved 7th September 1987.

This permission was subject to a condition specifying:

“This consent relates solely to the building edged red on the application drawing and does not relate to the use of the land for a riding school or schooling horses. The reason for this condition is given as “To avoid doubt as to the scope of the consent hereby granted.”

- 4.2 03/1207- New dwelling and office accommodation to serve livery stables. Refused 9th March 2004

Planning permission was refused for the following reasons:

“In the Adopted Colchester Borough Local Plan and the Colchester Borough Local Plan 2nd Deposit Draft the site lies within the Rural Area, outside the residential areas of the insets for Colchester and Wivenhoe, West Mersea and Tiptree, and the Village Envelopes shown on the Proposal Map, where it is proposed that new development will be concentrated. In line with the Essex and Southend-on-Sea Replacement Structure Plan Policy C5, the Local Plan Policies B/H20 and H8 indicate that new housing development will not normally be permitted and that the Borough Council will seek to safeguard and enhance rural resources in order to give protection to agricultural, forestry and woodlands, nature conservation, archaeological and historic features and attractive landscapes. Policy CO13 of the Colchester Borough Local Plan 2nd Deposit Draft does, however, permit new residential accommodation for existing equestrian establishments in open countryside as an exception where the Council is satisfied that enterprise is financially viable and capable of supporting such accommodation. The Council considers that the viability of the business has not yet been established. In the absence of proven justification the erection of a new dwelling would result in sporadic development in the countryside detrimental to the character and appearance of this rural area.”

The site lies within an area defined as a Countryside Conservation Area in the Adopted and 2nd Deposit Draft Colchester Borough Local Plans. These Plans indicate that Countryside Conservation Areas contain the majority of the Borough’s most important scenic, ecological and historic resources and that these will be given special protection from adverse development which is proposed to be located either within or in the vicinity of these Areas. It is considered that the proposal would result in the consolidation of the existing sporadic development remote from the village centre to the detriment of the character and appearance of the Countryside Conservation Area. It is considered that the proposed development is contrary to the policies B/ENV47 and CO2 of the Adopted and 2nd Deposit Draft Local Plans in that respect.”

- 4.3 F/COL/04/0587 – Erection of mobile home for office and living accommodation for livery stables. Temporary Approval 18th May 2004. This permission was granted subject to a condition requiring the use to be discontinued on or before 31 May 2007.

- 4.4 F/COL/05/1914 – Continued use of barn for riding school and livery clients and change of use of stables for accommodating riding school horses additional to those approved under planning permission COL/1161/87.

Planning permission was refused on 8 March 2006, by the Council for the reasons:

“Policy CO12 of the Adopted Review Colchester Borough Local Plan (March 2004) states:

Planning permission will be granted for the establishment of new, or the extension of existing riding schools and other equestrian establishments provided the following apply:

- (a) the new equestrian development is located in association with existing residential property or, in exceptional circumstances in association with the re-use of existing buildings where the residential element is as a subordinate part of those buildings that is capable of meeting the duties of the manager/supervisor
- (b) there is no adverse impact on landscape character and residential amenity
- (c) there is no damage to or loss of sensitive local wildlife habitats
- (d) the traffic generated can be accommodated without alteration to the existing local highway network
- (e) existing and proposed bridleways and byways and the surrounding road network are suitable and safely located and are able to accommodate horse riders

The existing (unauthorised) riding school does not benefit from a permanent residential presence, and it is held that the lack of bridleways and the surrounding road network are not suitable or safely located to accommodate horse riders. This is contrary to the above policy. Furthermore, the increased on-site and off-site activity has led to a detrimental effect on the residential amenity of nearby residents, and is also contrary to the above policy as well as being contrary to policy DC1(a) and (b).”

An appeal lodged against this refusal was **allowed**, granting permission for the continued use of barn for a riding school and livery clients, and use of stables for accommodating riding school horses additional to those approved under planning permission COL/1161/87.

This decision letter dated 16th May 2007 granted consent subject to the following conditions:

- 1 The riding school use hereby permitted shall not be open to customers outside the times of 0730 and 2100 Mondays to Saturdays, and the times of 0900 and 1800 on Sundays and Bank/Public holidays, and at no times on Christmas Day
- 2 No external light fixtures for any purpose shall be constructed or installed until details of all external lighting proposals have been submitted to and approved in writing by the Local Planning Authority; no external lighting shall be constructed or installed other than in accordance with the approved details.

- 4.5 F/COL/06/1340 – Timber shed/summer house to use as office/reception.
Refused 17th October 2006

- 4.6 072284 – Summerhouse/shed to be used as temporary office for 18 months.
Resubmission of F/COL/06/1340. Planning permission was refused.

4.7 Planning application 071389 – Retention of mobile home for a further 12 months – held in abeyance pending the outcome of the application the subject of this report (072007).

5.0 Principal Policies

5.1 Saved Colchester Borough Local Plan policies:-
DC1 - Development Control Considerations
CO3 - Countryside Conservation Areas
CO13 - Residential Accommodation for Existing Stables
UEA11 - Design
UEA13 - Residential Amenity

and Core Strategy policies:

SD1 – Sustainable Development Locations
H1 – Housing Delivery
UR2 – Built Design and Character
ENV1 – Environment
ENV2 – Rural Communities

Key to the consideration of this application is the question as to how much weight should be given to the financial viability of the holding as set out in Planning Policy Statement 7: Sustainable Development in Rural Areas and is there a 'functional' need for a permanent dwelling?

Annex A to Planning Policy Statement (PPS)7: Sustainable Development in Rural Areas contains specific guidance on this matter – this is repeated below:

Agricultural, Forestry and Other Occupational Dwellings

- 1 Paragraph 10 of PPS7 makes clear that isolated new houses in the countryside require special justification for planning permission to be granted. One of the few circumstances in which isolated residential development may be justified is when accommodation is required to enable agricultural, forestry and certain other full-time workers to live at, or in the immediate vicinity of, their place of work. It will often be as convenient and more sustainable for such workers to live in nearby towns or villages or suitable existing dwellings, so avoiding new and potentially intrusive development in the countryside. However, there will be some cases where the nature and demands of the work concerned make it essential for one or more people engaged in the enterprise to live at, or very close to, the site of their work. Whether this is essential in any particular case will depend on the needs of the enterprise concerned and not on the personal preferences or circumstances of any of the individuals involved.
- 2 It is essential that all applications for planning permission in the countryside are scrutinised thoroughly with the aim of detecting attempts to abuse (eg through speculative proposals) the concession that the planning system makes for such dwellings. In particular, it will be important to establish whether the stated intentions to engage in farming, forestry or any other rural-based enterprise, are genuine, are reasonably likely to materialise and are capable of being sustained for a reasonable period of time. It will also be important to establish that the needs of the intended enterprise require one or more of the people engaged in it to live nearby

3 Permanent agricultural dwellings

New permanent dwellings should only be allowed to support existing agricultural activities on well-established agricultural units, providing:

- (i) there is a clearly established existing functional need (see paragraph 4 below)
- (ii) the need related to a full-time worker, or one which is primarily employed in agricultural and does not relate to a part-time requirement
- (iii) the unit and agricultural activity concerned has been established for at least three years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so; (see paragraph 8 below)
- (iv) the functional need could not be fulfilled by another existing dwelling on the unit or any other accommodation in the area which is suitable and available for occupation by the workers concerned; and
- (v) other planning requirements eg in relation to access, or impact on the countryside are satisfied

4 A functional test is necessary to establish whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times. Such a requirement might arise, for example, if workers are needed to be on hand day and night:

- (i) in case of animals or agricultural processes require essential care at short notice;
- (ii) to deal quickly with emergencies that could otherwise cause serious loss of crops or products, for example, by frost damage or failure of automatic systems

5 In cases where the local planning authority is particularly concerned about possible abuse, it should investigate the history of the holding to establish the recent pattern of use of land and buildings and whether, for example, agricultural dwellings, or buildings suitable for conversion to dwellings, have been sold separately from the farmland concerned. Such a sale could constitute evidence of lack of agricultural need.

6 The protection of livestock from theft or injury by intruders may contribute on animal welfare grounds to the need for a new agricultural dwelling, although it will not by itself be sufficient to justify one. Requirements arising from food processing, as opposed to agriculture cannot be used to justify an agricultural dwelling. Nor can agricultural needs justify the provision of isolated new dwellings as retirement homes for farmers.

7 If a functional requirement is established, it will then be necessary to consider the number of workers needed to meet it, for which the scale and nature of the enterprise will be relevant.

- 8 New permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. A financial test is necessary for this purpose, and to provide evidence of the size of dwelling which the unit can sustain. In applying this test (see paragraph 3(iii) above), authorities should take a realistic approach to the level of profitability, taking account of the nature of the enterprise concerned. Some enterprises which aim to operate broadly on a subsistence basis, but which nonetheless provide wider benefits (e.g. in managing attractive landscapes or wildlife habitats), can be sustained on relatively low financial returns.
- 9 Agricultural dwellings should be of a size commensurate with the established functional requirements. Dwellings that are unusually large in relation to the agricultural needs of the unit, or unusually expensive to construct in relation to the income it can sustain in the long term should not be permitted. It is the requirements of the enterprise, rather than those of the owner or occupier, that are relevant in determining the size of dwelling that is appropriate to a particular holding.
- 10 Local planning authorities may wish to consider making planning permissions subject to conditions removing some of the permitted development rights under Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 for development within the curtilage of a dwelling house. For example, proposed extensions could result in a dwelling whose size exceeded what could be justified by the functional requirements, and affect the continued viability of maintaining the property for its intended use, give the income that the agricultural unit can sustain. However, it will always be preferable for such conditions to restrict the use of specific permitted development rights rather than to be drafted in terms which withdraw all those in a Class (see para 86-90 of the Annex to DOE Circular 11/95).
- 11 Agricultural dwellings should be sited so as to meet the identified functional need and to be well-related to existing farm buildings, or other dwellings.”

6.0 Consultations

6.1 Natural England

Has no objection to the proposal.

Comments on the additional information:

Natural England see no reason to change the advice (dated 8/8/07) regarding this application and continues to have no objection to the application on the grounds of designated sites or protected species.

6.2 Planning Policy comments:

Original response

The application site is in an area allocated as Countryside Conservation Area and outside of the Layer-De-La-Haye Village envelope, Policy CO3 seeks to protect the countryside for its own sake and normally an application for a dwelling in this area would be unacceptable but as this is associated with an established livery and riding school the situation is slightly different.

The Planning Statement submitted by the applicant indicates that a previous owner obtained permission for livery horses in 1986 and the present owner purchased the property in 2001. This information demonstrates that livery uses have been on the site for a significant period of time and is an established use. Permission for a temporary caravan on the site was given three years ago (*the actual use was permitted in 2004, some 5 years ago*) and this has now expired although the principle of residential use on the site has already been permitted. Policy CO13 outlines the Council's position on new residential accommodation for existing established stables. The application is considered to meet the criteria outlined in Policy CO13 and therefore planning policy is able to support the application.

Of slight concern however is the design of the building. It is noted that the building has a large south facing elevation but does not take into consideration any sustainable construction techniques which seek to utilize the buildings orientation. From the plans submitted it appears as though only two small roof lights are being proposed which is and contrary to National Guidance PPS22 and also the recently published Draft Sustainability Construction SPD.

Planning Policy is led to believe that Acorus have been approached to give their opinion on the application. Planning Policy would reserve the right to comment further on any decision and recommendations that Acorus make. After considering the information provided by the applicant although the site is within a Countryside Conservation Area it is considered to be in accordance with Policy CO13 and therefore in principle Planning Policy supports this application.

Comments on the additional information:

Planning Policy and Enterprise and Regeneration have raised the following concerns:

- In spite of number of years in operation, no full time job appears to have been created. Still do not consider that the functional need has been correctly addressed. It appears not yet be a well established agricultural unit
- Enterprise and Regeneration question whether there is adequate grazing on the establishment for the number of horses kept to be a long term viable operation and business
- The property looks rather grand for a 'full time agricultural worker' which raises the question of who the property is ultimately for
- Under the circumstances it is also questioned how the proposed property could be "tied" to the business. Is this enforceable?
- There appear to be several houses for sale in the area comparable to the one proposed in the application

- The house position in the application appears to be strategically placed on the site so that with a change of circumstances there could be a sell off of either the stables or the house.

If no functional need is established, it could be the means of achieving a new residential property in a countryside location which is strongly resisted in the current local plan and the emerging Core Strategy.

Planning Policy is no longer able to support this application.

7.0 Parish Council's Views

7.1 Layer de la Haye Parish Council's original comments:-

"This development is outside the Village Envelope and as such would normally be strenuously opposed by the Parish Council unless there were very exceptional circumstances. In this instance the Parish Council would not raise any objections to this application providing:

- The property is firmly tied to the livery and riding school business now and into the future
- The undertaking is supported by a robust business plan that accurately reflects the viability of the business. The detailed content of the business plan is rightly confidential, but we had the opportunity to make comments on the assumptions behind a previous plan and we felt our local knowledge provided some useful insight, we would like this opportunity again.

We feel strongly about both these conditions because supporting an application for a development outside the Envelope is not something we take lightly.

The Parish Council notes that there is a long and confusing planning history associated with this site and it is obviously more important that the business case relates very precisely to the kind of business that is permitted. It would be good to address the concerns of the objectors by a clear statement of the type of business that is permitted on this site."

7.2 Layer de la Haye Parish Council's comments dated 10th June 2008 in respect of additional information:

"The Parish Council would like to re-iterate its previous comments on this application: We would normally strenuously oppose a development outside the Village Envelope. However, as this application is in support of an apparently viable rural business the Parish Council has not objection to the application providing that the proposed property remains tied to the riding school business, now and in the future. A key factor is that the business case must be robust and we expect the Council to make the necessary enquiries to ensure that this is indeed the case.

The Parish Council also trusts that the points made by objector will be taken into account when the Planning Committee determines the application."

8.0 Representations

8.1 No 2 Dog Kennel Cottage – object

If successful this will lead to a succession of applications to increase the size of the business, causing more problems to the neighbours.

8.2 Summary of objections from Wellhouse Cottage

- It is not considered that the PPS7 functional test has been met.
- Contradictory Additional Financial information

In reaching a conclusion Brown & Co has used some of the originally submitted information together with further information that was eventually obtained from the application. Some of this additional information contradicts that supplied last year. It has taken over 18 months to reach the current, and in our view still unconvincing statement of the financial business case for Barn Stable site.

None of the submitted accountants are audited or verified by a chartered accountant. Brown & Co have therefore described the figures as “indicative only” and has been obliged to produce their own version. It is of concern that the applicant’s personal accountant makes no reference to 05/06 and 06/07 achieved figures and does not confirm that they have been audited and submitted for taxation purposes.

The objector has raised particular concerns over the income projections for 08/09, particularly would to the number of riding school horses available to for lessons. Stating that in early summer three of the seven riding school horses were apparently sold and three yearlings purchased. Yearlings not being suitable for riding lessons.

- New Income Streams

Included with the recently supplied information are “additional” income streams that have been incorporated into the business. Income, costs and any cost apportionment from these elements should be clearly identified and shown separately.

- Grazing Land

The owned grazing land is stated as 0.23 hectares (0.6 acres), if the house is built this will be reduced to 0.12 hectares (0.3 acres).

It is obvious that more grazing land is essential because for many years there have been 12 horses kept on site. Various pieces of grazing land in the vicinity have been lent and /or rented. These facilities have been changed around and /or withdrawn over time.

It is apparent that the Malting Green grazing has been in use since 2007. However I am surprised that security of tenure can be held until 2011 at a rent of £0.01.

Fields Farm Road grazing (amounts to 80% of the grazing land) is not the subject of any formal agreement. The applicant does not have, and never has had exclusive use of this land, but had a limited temporary use over the summer months.

- Horse Trading

This is now apparently a feature of the equine business operation from the site. This appears to be a totally new activity. The consultant has in our view correctly questioned whether it should form part of the applicant's business case. The applicant claims that the horses (used for horse sales) are actually brought on through the stables as working animals. The consultant has therefore taken into consideration the profitability from these sales as part of his consideration, despite the sales remaining a "current year" element with no proven profitability and no ongoing realistic assessment.

This would result in working horses at the stable being very young stock, with no continuity for riders. A yearling would not be broken and schooled easily within the year, which means that unless additional stock is brought through the business, the stable working stock will diminish. This reflects negatively on the business income. We also note that 3 yearlings are currently being offered for sale on the applicant's website. This means that the applicant's claim that they are brought on for the stable appears to be untrue.

- Business Operation from the Site

Since May 2004, our client has repeatedly sought clarification of the approved composition of business in the site. The question was last put directly to the Council at the suggestion of the Planning Inspectorate in February 2008. No definition has been provided.

There is clear evidence that has been to the Council indicating that income from other means (the letting agency) has been included in income statements and probably the apportionment of some costs between two separate site business activities.

The equine business thus has to bear only a share of the site costs not, as it should the entire burden.

Even if the two sets of accounts have been kept separately, each mutually benefits the other. This has been the case since at least March 2006 when evidence emerged that the appellant was running the letting agency from the site. The council have to-date sought to address this point.

- Mortgage offer

The applicant previously provided to the Council details of a 30 year mortgage quotation (not an offer) to finance the dwelling. Repayments were to be taken directly from the equine business profits and would have presumably continued until the application is 84 years old! It is unlikely that a lender would lend on this basis.

The applicant has chosen not to pursue the matter further declining to respond to the request from Brown & Co for details.

A mortgage quotation would only be offered if the applicant had satisfied the lender that the business was soundly based and financially viable. A lender would require audited accounts and verification. Any mortgage offer is unlikely to be for a term of more than 10 years and a substantial deposit derived from the past equine profits would be required.

The consultant's projections are unlikely to support such a repayment scheme. A "notional mortgage repayment amount" of £8,775.00 p.a. has been suggested. No explanation has been offered as to how this figure has been obtained or whether it is based upon the prepayment of a deposit. This "notional mortgage" repayment amount appears to be in the region of half what it should realistically be. It is also noted that the applicant still owes £10K from the original site purchase. This does not appear to have been taken into account.

It is apparent that the proposed dwelling cannot be financed from approved equine business profit. Therefore the proposal does not accord with development plan policy.

- Planning Policy C013

This policy requires that the accommodation must be provided from the approved equine business income. In May 2008 Brown & Co considered it necessary to request a current mortgage quotation. This appears not to have been received, or has been overlooked.

The report now states that the dwelling is to be financed from the sale of an existing property. This is contrary to policy.

- Drawings

The lack of any historic "drawing" from the business does not support the business case viability. The applicant apparently takes very little salary from the equine business whilst choosing to work within it almost full time. This further assists the business to appear more financially viable than it really is. It is unrealistic for the applicant to state she can live on such little income. Income must be derived from an alternative source; thereby supporting this business. The two businesses must be coexisting to support the applicant financially.

- Cost of New Dwelling

The dwelling is quoted as costing the applicant only 57% of the consultants realistic estimate, on the basis that family and friends would participate in the build. There is no verification of a fixed price quotation for this amount and no contingency has been built in.

- Running costs

The applicant states that the running costs of the Barn Stables site in respect of feed, bedding and veterinary bills, are considerably less than the running costs of similar equine businesses. However, she is unable to justify to Brown and Co this assertion.

- Projected Profitability

The use of untested projections for the current year and the two sets of projections for the subsequent years seek to rely on unsubstantiated financial data to justify the proposal. This is not in accordance with the requirements of PPS7 nor of the council's own Development Plan policies. The figures are not supported by any actuality that these projections can satisfactorily be achieved. Half year audited accounts would have demonstrated this.

The new elements introduced into the business case represent a huge change to the profitability of the business which is not demonstrated through achieved profitability. This must surely mean that given the changed nature and highly uncertain composition of the business now supporting this application the financial viability test has not been demonstrated.

- Consultant's conclusions

Brown & Co are unable to confirm that the necessary functional and financial tests for the application are met. They state that they *can be met* and that given the applicants drive and enthusiasm for development and expansion the projected profitability can be exceeded both in current and subsequent years. Given the lack of verifiable evidence, total absence of any definition of what constitutes approved commercial activity, coupled with largely unsubstantiated, and in some cases contradictory, claims for historic income, costs and profit, this conclusion must be highly dubious and does not arise from a balanced view of what is stated in the body of the report. Accordingly the business case is fragile.

- Conclusion

In our view it is premature to grant planning permission for this proposal. A new agriculturally tied dwelling cannot be justified by this flawed and inadequately verified business case. The case shows rapid and overly optimistic business growth projections includes activities outside the lawful business at the site and is based on contradictory and incorrect information.

The grant of a permanent planning permission would in our view be contrary to government and local plan policy: accordingly permission should be refused.

Alternatively, if the council is uncertain as to the credibility and reliability of the business plan and wishes to give the applicant the opportunity to provide that the figures are not, as they appear to us to be inflated and unrealistic we suggest the Council considers granting a further temporary permission for one year. During that time, the Council and the public would have the opportunity to monitor activities at the site. After that time, the viability of the business could be properly assessed based on actual figures and actual profits.

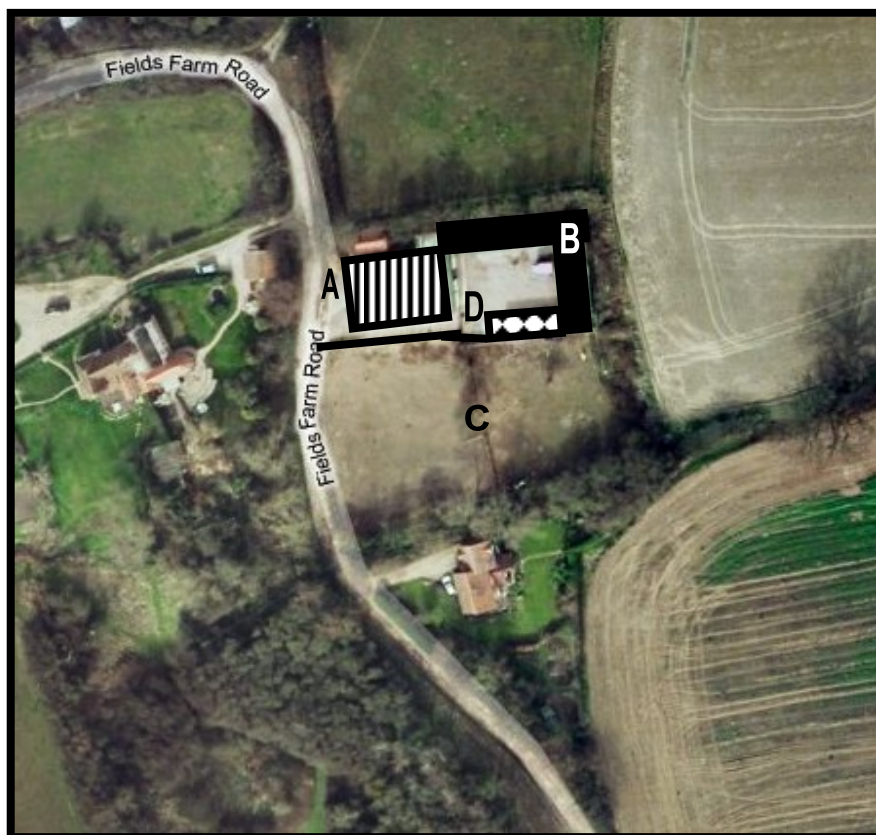
9.0 Planning Report

- 9.1 Members will see from the length of the report just to get to this point that the proposal has raised some seemingly complex issues. There continues to be a lack of agreement between the applicant and the principal objector as to the 'facts' of the case and the proper interpretation of material submitted.
- 9.2 The difficult task facing Committee members here is first to pick a way through all the claims and counter claims and identify what are the salient key planning arguments. This report will help provide passage through the fog that has drifted into the field of view.
- 9.3 Committee members must then dispassionately have regard to all these material planning considerations and give what they feel is the appropriate weight to the various planning elements in order to reach a reasonable planning decision.
- 9.4 It is fair to say that since the application was received in July 2007 it and the material submitted has been exposed to intense questioning and challenge. Further supporting material has been presented by the applicants as a result of, and in order to counter, that challenge.
- 9.5 It would now appear to be time to address matters by determining the application.

What uses are occurring?

- 9.6 For the purpose of this report the site has been divided into 4 parts, which for the sake of convenience, we shall call A, B, C & D. The applicants inform the Council that the following equestrian related activity occurs within the specified parts:-
- A. A barn within which riding school use and riding lessons are given and equine and 'stables' related events held
- B. Stables. Some horses are liveried, some of the liveried horses are also used for the riding school use/lessons and some are owned by the applicant and used for riding lessons
- C. Field that slopes southwards to a stream and is laid to grass. Horses are let out to exercise in this field. They may or may not also graze but this land is not essential as the horses have access to other rented grazing land and are given horse feedstuff in their stable.

D. Mobile home associated with the equine business



A = barn B = stables C = grassed area D = mobile home

9.7 It is alleged that other uses may also be occurring in that:-

1. horses are sold – does this need permission
2. a letting agency business is being run from the site (mobile home) – does this need planning permission?

9.8 A question has also arisen about “ should any related dwelling sit within the riding school, livery and stable use planning unit?”

9.8 This is where matters begin to become increasingly and, to some degree, unnecessarily complex. The principal matters to draw out at this stage are

1. Does location C benefit from any planning permission to be used for equine business purposes.

9.10 The view of the Planning Service which is accepted by the applicants agent is that it does not. Therefore is, as the Planning Service believes, the use of this field for any purpose associated with the lawful equine business unauthorised? The Council has sought counsel opinion on this issue and that confirms this view:-

9.11 Counsel advice dated 13 January 2009 given to the Council concludes:

“In my opinion the result of the Appeal and decision of the Inspector was to grant the planning application (No 2005/1914) in respect of use of the barn for riding school and livery clients and change of use of stables for accommodating riding horses additional to those originally approved in 1987. I do not believe the Appeal decision contradicts that of the 1987 planning permission **as the use of the paddock for a riding school is still not permitted.**”

9.12 ***The red line for the permanent dwelling includes sites A, B, C & D and the application describes the proposal as “proposed dwellinghouse in association with the livery and riding school business”. Clearly the implication is that if planning permission was to be granted for the current dwelling proposal it might be claimed that whole of site C would then benefit from riding school, livery and stable use. It is felt that had the proposal been expanded and described differently it would have helped to avoid some of the confusion that has arisen.***

9.13 ***The use of site C for riding school and/or livery and/or stable use is therefore unauthorised and sits outside of the area allowed on appeal for such uses.***

9.14 Whilst the mobile home approved temporarily on 18th May 2004 sits outside of the site that benefits from planning permission granted on appeal for a riding school and livery clients, and use of stables for accommodating riding school horses additional to those approved under planning permission COL/1161/87 it was clearly intrinsically linked to the equine business.

9.15 ***That consent has however expired (31 May 2007) and so the mobile home is currently unauthorised.***

9.16 ***An application, received 8th May 2007, to renew that consent is however in abeyance pending the outcome of the application for a permanent dwelling now before members.***

2. Is the alleged letting agency use a breach of planning control?

9.17 Members are advised that ordinarily an alleged breach of planning control is a matter that requires separate investigation and that debate should not form part of the consideration of a planning application for in this case a dwelling. That said there is a relationship if such a business is indeed being run and is subsidising the financial test within a business case for a dwelling. As to whether such a use requires planning permission in the first place when run from a persons home, that is however ordinarily a question of fact and degree. This report therefore will not consider the enforcement implications of the allegation but will consider whether it makes a contribution to the business case for the equine use.

3. The 'sale' of horses.

- 9.18 This is perhaps an allegation that is unnecessarily clouding the water. It is not unreasonable to expect horses to occasionally be sold and such activity is considered to sit comfortably within the lawful use of sites A & B. Here the objector counters that the buying and selling of horses results in the undermining of the viability of the riding school use as animals brought in might be inexperienced for riding school use whereas the ones being sold might have been fully trained.
- 9.19 Whilst this may have an impact on the financial test in terms of predicted riding school income it misses the point that the Council has no control over the proportion of horses that can be used for riding school use. If the applicant chose to concentrate more on the livery aspect of the use and less on the riding school element she could. Depending at which time you carried out a financial appraisal it would be subject to the natural fluctuations of the market and an appraisal can only represent a snap shot (albeit over 12 months). How many appraisals should an applicant in circumstances such as the one here be expected to keep presenting a financial appraisal? The answer is simple. Until the evidence of a viable business having been being established has been demonstrated and qualified by an appropriate expert in the relevant field.
- 9.20 No matter what the horses are used for there is an animal welfare case to be made for a 24 hour on-site (rather than in the same village) presence.

4. Grazing & exercising

- 9.21 The applicants claim that horses at Barn Stables are turned out into field C for some exercise on occasion but riding school use never occurs within that area as the sloping ground means it would not be safe for horses to be ridden.
- 9.22 Currently the applicant rents additional land in the area within which the horses are let out to graze and exercise. They are either ridden there along the highways and byways or taken by horse box.
- 9.23 The question as to whether or not the applicants have formal arrangements to use these areas seems on the face of it to be immaterial. From the planning point of view the applicant has a lawful use for the stables in use at Barn Stables. It is accepted that the site itself does not have sufficient land to provide adequate grazing. (whether use of field C is authorised or unauthorised). It is difficult to see how with legislation in place that requires licensing of the stables and provides a framework for the enforced prevention of cruelty the applicant would be allowed keep horses in a way that meant they could not be properly exercised and/or fed – presumably horses are not able to graze naturally in winter and are fed on brought-in feedstuff.

The mobile home and the original business case for a permanent dwelling

- 9.24 This site has a complex site history. The first application submitted for a permanent dwelling was refused in March 2004 as being contrary to policy due to the unsubstantiated viability of the business. The full reasons for refusal are contained in paragraph 4.2 above.

9.25 In accordance with PPS7 advice planning permission was granted (F/COL/04/0587) for a temporary mobile home on the site whilst the business was established. This permission was granted in May 2004 expiring on 31 May 2007. An application for the renewal of this permission has been submitted but held in abeyance pending the outcome of this application.

9.26 The business case submitted with the application for the mobile home (F/COL/04/0587) outlined the applicants' intentions to develop the business as follows:-

SUMMARY OF BUSINESS IDEA

The business is a Riding School and Livery Yard.
It will provide riding tuition for both adults and children from complete beginners to Novice competition level.

Livery from DIY to full Livery will be available offering a flexible service for particularly for professional people who want peace of mind that their animals are being looked after properly leaving them free to concentrate on their working day and have their animal fit and well to enjoy in their leisure time.

The yard being competition orientated it will appeal to customers wishing to have their animals prepared for the show ring, show jumping and dressage.
The indoor arena is of particular importance for exercise during the winter months for horses who will be either hunting or eventing.

MAIN PRODUCTS AND SERVICES

RIDING SCHOOL
LIVERY YARD
PRODUCTION OF YOUNG STOCK
SCHOOLING COMPETITION HORSES
COMPETITION HORSE AND PONY SALES

9.27. Therefore at the time the Council was assessing a fledgling business which needed time to prove itself viable.

Policy Framework

9.28 The site lies within the countryside in a location where new dwellings are not normally permitted unless on basis of agricultural justification.

9.29 Saved Local Plan policy DC1 has particular relevance when considering that all proposals need to:-

(b) ...be well designed having regard to local building traditions and should be based on a proper assessment of the surrounding built and natural environment...

(e) It will not lead to the loss or degradation of important..... rural resources....

9.30 **Saved Local Plan policy CO13; Residential Accommodation for Existing stables is directly relevant. It states:-**

“Planning permission for residential accommodation for existing equestrian establishments will be granted subject to the following:-

- a. New accommodation is located adjacent to or physically adjoining the stables so as to create one complex of buildings;***
- b. The accommodation can be provided from business income. A business plan verifying the viability of the business to achieve this will be necessary and the accommodation is the minimum required to meet the needs of the business.***
- c. There is no adverse impact on the surrounding countryside; and***
- d. In all cases where residential use is permitted a standard occupancy condition will be attached for the planning permission.”***

Consideration of Criterion (a)

9.31 In respect of (a) the proposed site for the new dwelling is adjacent to the stable block, does allow line-of-site supervision and will form one complex of buildings arranged around the yard.

9.32 **Therefore the proposal satisfies criterion (a).**

Consideration of Criterion (b)

9.33 In respect of (b) the advice contained in Planning Policy Statement 7, and in particular Annex A is also key in providing advice as to how the applications meets this particular criterion. Consequently regard has also been given to this guidance in this particular section of the report and the overall handling this application.

9.34 This site has a complex site history. The first application submitted for a permanent dwelling was refused in March 2004 as being contrary to policy due to the unsubstantiated viability of the business. The full reasons for refusal are provided in section contained in paragraph 4.2 above.

9.35 In accordance with PPS7 advice planning permission was granted (F/COL/04/05087) for a temporary mobile home on the site whilst the business was established. This permission was granted in May 2004 expiring on 31 May 2007. An application for the renewal of this permission has been submitted but held in abeyance pending the outcome of this application.

9.36 The business case submitted with the application for the mobile home (F/COL/0587) as described earlier outlined the applicants' intentions to develop the business.

9.37 It must therefore be assumed that by granting this temporary permission the Council had taken the view that there was an argument in principle for there being a residential use associated with and directly linked to the equine use or why else entertain the granting of a temporary permission for a mobile home. Clearly achieving the predicted business outcomes of the originally submitted business plan must be a material determinant of what happens next.

9.38 As Members will be aware, the Planning Service does not have the expertise in-house to undertake a financial assessment of agricultural holding and therefore the Council appointed Brown & Co to undertake this work. An earlier assessment was carried out for the applicant by Acorus was considered to be inadequate for this purpose.

9.39 In terms of the 'Functional test' Brown & Co. were of the view that:-

"The business requires at least one full-time employee to be located at the premises to ensure that there is always labour available outside of normal working hours to undertake such tasks as are required to maintain the integrity of the business". (which were described earlier in the Brown & Co report as management / horse & pony maintenance / general health & welfare of horses & ponies / security / business growth)".

9.40 The Brown & Co report of May 2008 as prepared for the Council, after looking at the accounts of the applicant (such as there were as the business is not required to need annually audited figures), concludes:

"We consider that the functional and financial tests necessary to support the granting of planning permission for a permanent occupational dwelling at Barns Stables, Layer-De-La-Haye can be met and that there is essential need for the dwelling to be located contiguous to the existing stables to support the future development of the facility. Given the applicants' drive and enthusiasm for the development and expansion of her equestrian business, we consider that the levels of profitability projected for the period to 31st March 2009 can be exceeded in both this and subsequent years. We consider that the application is fully supported by the Local and Structure Plan policies."

9.41 The findings of this report have been questioned by the objector and so Brown & Co. were asked to comment on the following:-

"1. Land for grazing

Concern has been raised over the security of tenure over the land used for grazing. Your report specifies in paragraph 3.8 that:

"We are advised by the Applicant, that in addition to the paddocks at Barn Stables, extending to circa 0.233 hectares, as shown on the attached plan as Appendix 6, two further small fields of Field Farm Road and Malting Green Road totaling 1.61 hectares, have been made available to her at a rent of £1,300 per annum. A plan showing these field is attached as Appendix 7."

It has been raised that the land at Fields Farm Road was used on a very temporary basis during the summer, with no formal arrangement in place and that this land is no longer available to the applicant.

When raised with the applicant, the agent has responded as follows:

“1. The applicant rented land for grazing horses in the locality of the site since she purchased Barn Stables. None of these sites have been rented on leases but that has not caused concern as experience has proved it is possible to readily secure land beyond the village envelope for grazing purposes, at modest rents, and convenient to Barn Stables.

Four areas of land have been rented:-

5 acres at Field Farm during 2000 - 2005

5 acres at Comfrey Field 2005 - 2007

3.5 acres at Pickard Farm Road and 1.5 acres at Malting Green Road 2007 to date.

Naturally the applicant has not sought leases as she does not wish to commit herself for a long period until planning permission is secured for a house at Barn Stables. When that is achieved she will have certainty and can justify purchasing or leasing land for grazing purposes.”

The agent later corrected an error in this statement in that:

“the location of land rented for grazing; the 3.5 acres rented at Pickards Farm Road should be Fields Farm Road.”

The point raised by the objector is that it is understood that the land at Fields Farm is no longer available to the applicant and that represents a significant part of the grazing land associated with this business. The land owned by the applicant being reduced further should a dwelling be constructed. It is also alleged that no rent has been paid from the use of this land, raising doubts as to the confidence of the financial information provided.

In this respect, I would appreciate your views on the following:

- (i) Does this lack of security around the grazing land associated with the premises alter the recommendations made in your report?
- (ii) Does the lack of secure grazing land raise doubts about the long term viability of this holding?

2 Riding school ponies

In paragraph 3.7 of your report you refer to the holding consisting of providing stabling for 12 horses/ponies and then provide a breakdown for occupancy specifying 7 Riding school horses.

The objector maintains that during the summer, three of the riding ponies were sold and replaced by three yearly which it is now understood are up for sale. I understand it is not possible to use these young horses for lessons.”

9.42 Brown & Co responded, saying:-

“Dealing with the queries raised in your letter, I comment as follows in the same numeric order;

1. Land for Grazing.

(a) You have asked me to clarify whether or not the 'lack of security' around the provision of grazing land associated with the premises would alter the recommendations made in my report.

Whilst clearly the provision of grazing would be seen as an important (but not necessarily critical) facet of a livery business, for the purposes that the applicant has sought consent; i.e. the running of a riding school. then so long as the premises have been 'Licensed ', which I understand to be the case, then I do not agree that the removal of this particular area of grazing would therefore be detrimental to the business, so long as the horses were kept regularly exercised.

For budgetary purposes, I would normally anticipate that suitable grazing for horses can be sourced for between £150,00 to £250.00 per acre depending upon the facilities available, the condition of the fencing, etc. There are a number of grass paddocks in the locality and I remain of the opinion that. subject to agreement of terms, the applicant would be able to secure alternative grazing if required . In my experience, most such arrangements are normally documented by an annual grazing licence, rather than a formal lease.

(b) With regard to the 'lack of secured grazing raising doubts about the long term viability of the holding ', then I would refer you back to my comments above regarding the Licensing of the Premises. If it were considered by the Licensing *Officer* that the applicant was contravening any health and safety or animal welfare issues, then they would not Licence the Premises.

I would however accept that for the business to grow, as opposed to achieve the current projected returns, then additional grazing to help underpin the livery element of the business may be required.

2. Riding School Ponies

I note the comments of the objector that three of the riding ponies were sold and replaced by yearlings, This appears to be at odds with the responses that you have received from the applicant, re-affirming that these ponies are still in-situ. In answer your specific question, then 'yes' if three ponies were sold and replaced by untrained yearlings then this would in my opinion effect the business. But, if they were sold and replaced with younger trained ponies or alternative ones of a similar standing, then this would be seen as a natural development of the business.

With regard to the general points raised by Linda Russell in her letter to the Planning Department dated 24th September, I would make the following observation regarding Points 5 & 8. As was outlined in the report, the applicant does not require a mortgage to proceed with the construction of the new dwelling and therefore a 'notional mortgage' was proposed.

In Point 5, she states that 'the consultants view of a 'notional mortgage repayment' is unrealistically low and unsubstantiated'. I would refer you to my letter to Mrs Tootle dated 21 st July which forms part of Appendix 16 of the Report which quite clearly shows that this figure was based on a build cost of £130,000 and an interest only payment calculated at a rate of 6,75% which I consider is neither unrealistically low nor unsubstantiated.

The construction cost of £130,000 is based on current (at the time of the report) build costs for a property of the size proposed.

I trust that this additional information will help facilitate the conclusion of this matter but, should you have any further queries, please do not hesitate to contact me.”

9.43 Therefore the Counsel’s specialist agronomist has satisfactorily answered the outstanding questions and continues to point towards a viable business being operated. This would appear to resolve the mis-match between the Planning Policy and Enterprise Service comments.

9.43 In view of all the above the proposal satisfies criterion (b).

Consideration of criterion (c)

9.44 Will the proposed dwelling have an adverse impact on the surrounding countryside? The comments of the planning policy service are noted when they refer to the design of the south facing elevation of the proposed dwelling and particularly the insertion of roof lights which are not as sustainable as taking advantage of solar energy. The additional comments from the enterprise team about the appearance of the dwelling being “rather grand for an agricultural worker.”

9.45 Members should note that the applicant has been encouraged to minimise the incidence of southward looking windows in the rear elevation in order to prevent any overlooking and/or overlooking issues arising for the principal objector who lives to the south from an elevated first floor level in the new dwelling. The roof lights are required to provide natural light to the staircase and first floor landing.

9.46 Is the proposed new dwelling ‘grand’ for an agricultural worker and is this a material consideration?

9.47 The size and scale of the new dwelling is material in that ordinarily a new dwelling would not be permitted in the countryside and so it must be sympathetic to such a setting if to be agreed exceptionally on the basis of agricultural need. Should an agricultural worker be expected to live in an unreasonable small dwelling or would a reasonable level of comfort and convenience be expected. The agricultural worker in this case is the stable owner. The proposed dwelling provides a reasonably sized master bedroom (approx. 4m x 5m), a modest second bedroom (approx. 3m x3m) on the first floor with an en-suite wc.bathroom and separate wc/bathroom. The ground floor comprises an open void living room, dining room, kitchen and small office.

- 9.48 The design is in the traditional Essex cottage idiom with a nicely and narrowly proportioned main element built in brick (ideally soft red bricks) with a plain clay tile roof and substantial end flank chimney. An weatherboarded (ideally painted cream) outshot at the rear with a cat slide roof in slate and a single storey boarded side extension provide additional space in a form that will harmonise with the traditional vernacular styling of the house.
- 9.49 The site contains adequate parking space for cars associated with the house but the relevant areas do need to be identified, made permanently available and retained for parking and a condition requiring this is suggested if members are minded to grant permission.
- 9.50 **Similarly the extent of domestic curtilage needs to be identified as the submitted drawings do not identify a garden and merely refer to the remainder of what has been described in this report as area C as paddock. (divided into two sections). It is important to clarify and define this aspect as it is recommended that all permitted development rights be removed by condition (if planning permission is forthcoming) from the domestic curtilage in order to safeguard the neighbouring property from visual intrusion from ancillary buildings and associated activity. It is also important to control the use of the paddock areas as these are the ones which the Council would not wish by default to acquire use rights for riding school, livery or stable purposes. The recommendation will reflect the need for such clarification.**
- 9.51 The design and character of the proposed dwelling are consider entirely appropriate within a countryside setting.
- 9.52 **The proposal therefore satisfies criterion (c).**

Consideration of criterion (d)

- 9.53 It is suggested that in order to satisfy criterion (d) an obligation under S106 of the Town & Country Planning Act 1990 (as amended) needs to be satisfactorily entered into requiring that the occupation of the house (if members are minded to grant planning permission) be tied to the lawful activity being undertaken on the remainder of the site (as conditioned), prior to the grant of any planning permission.

Relevant SPD

- 9.54 The application is eligible to pay the Council's Open Space, Sports and Recreational Facilities contribution as required by it's SPD of the same name. The amount required will be calculated on the basis that the proposal creates two bedrooms. This needs to be secured by way of a unilateral undertaking which has yet to be offered.

Design & Access

- 9.55 The design implications of the proposal have been addressed in the planning policy section of this report under consideration of section (c) of Local Plan Policy CO13. Additional details of the stepped access area to the rear of the property need to be supplied via condition (if planning permission is granted) as it is not clear whether this area would also provide a raised patio deck which could provide a platform from which overlooking/disturbance might occur.
- 9.56 The building is required to comply with Building Regulations and no particular planning objection is made to the scheme on access grounds. It is noted that because of the gradient of the land access from the rear of the property (living room & kitchen) to the garden is via steps. Consideration to a ramp should be given

Highways

- 9.57 The proposal will not raise any new highway issues as the site is currently being lived on by the applicants.

Mobile Home

- 9.58 In the event that members are persuaded that the case for a permanent dwelling has now been made and in the event that the recommendation made at the end of this report is agreed then it to be expected that the case for approving the application to renew the temporary consent for the mobile home (currently in abeyance pending the outcome of the proposed dwelling application) for a period until completion of the permanent dwelling will be strengthened.

CONCLUSION

- 9.59 Based on the evidence submitted it is now considered that the case for a permanent dwelling has been adequately demonstrated. The siting and design of the proposed dwelling is compatible with a countryside setting and the proposal is subject to an appropriate legal agreement to make provision for the payment of the appropriate Open Space, Sports and Recreational Facilities contribution sum and subject to completion of an appropriate legal agreement tying occupation/ownership of the new dwelling to the equestrian business on the associated site and subject to the applicant identifying the area of land to form the domestic curtilage of the dwelling and this being considered satisfactory by the Council and subject to appropriate conditions the proposal is considered acceptable.

10.0 Background Papers

ABLP
CS
Planning Policy
Appraisal by Brown & Co. for CBC of May 2008
PTC
NLR
Highway Authority comments
English Nature
Environment Agency

Recommendation

That in the event of:-

First

The applicants identifying an area of land required to form the domestic curtilage of the proposed house on an appropriately scaled drawing which also shows the extent and position of the new house and that this is to the satisfaction of the local planning authority.

and then

Secondly

An appropriate obligation/s under S106 of the Town & Country Planning Act 1990 (as amended) is/are satisfactorily entered into to ensure that;

- (a) occupation and ownership of the proposed house is only by persons owning and operating the associated equestrian business on the adjacent site and the equestrian business is not sold, let or otherwise disposed of independently of the permitted house was implementation of that planning permission has commenced; and
- (b) provision is made for the appropriate Open Space, Sports and Recreational Facilities SPD contribution payment

THEN

The Head of Environmental & Protective Services be authorised to grant planning permission subject to the following conditions:-

1 – A1.5 (Time Limit for Commencement

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

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

2 – Non Standard Condition

The occupation of the dwelling hereby approved shall be limited to a person/s owning Barn Stables, Fields Farm Road, Layer de la Haye and operating an equestrian business from the site of that name and whilst they survive any residential dependents. The equestrian business at the property known as Barn Stables, Fields farm Road, Layer de la Haye shall not be sold, let or otherwise disposed of separately from the house hereby permitted once such a house has been commenced.

Reason: The Council would not ordinarily permit a new dwelling in this location but it has regard to the associated equestrian business and the functional and financial case made for such a dwelling. The Council has no wish to see the house or business operated independently as the justification for the dwelling would no longer exist.

3 – Non Standard Condition

Notwithstanding the provisions of the Town & Country Planning (General Permitted Development Order) 1995 (as amended by the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A-H of Part 1 of Schedule 2 of the Order (ie: enlargement, improvement or alteration to the dwelling, alteration or addition to the roof, porch, ancillary out-buildings/fuel tanks, hard surfacing, additional chimney, flue, soil or vent pipe, microwave antenna) shall take place without the prior written permission of the Local Planning Authority.

Reason: To safeguard the visual amenity of the area, to protect the amenity of adjoining residents and to prevent the construction of unsympathetic development in this countryside setting by controlling future extensions, alterations and associated development.

4 - C10.16 (Tree and Natural Features)

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 protecting amenity

5 – C10.18 (Trees and Hedge protection)

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 with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

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

6 – C3.21 (Hard Surfacing)

Prior to the commencement of the development hereby permitted details of all materials to be used for hard surfaced areas within the site including [roads/driveways/car parking areas/courtyards/etc] shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: To harmonise with the character of existing development in the area.

7 – Non Standard Condition

Notwithstanding the details submitted of windows and door details further drawings at a scale of 1:20 shall be submitted to and approved by the local planning authority prior to any work associated with the implementation of this permission commences. Thereafter such detail as shall have been approved shall be implemented and permanently retained.

Reason: To ensure that the appearance of the development does not prejudice the character and/or appearance of the countryside hereabouts.

8 – C3.1 (Materials)

Before the development hereby permitted commences, the external materials and finishes to be used, shall be agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with agreed details.

Reason: To ensure that the appearance of the development does not prejudice the character and/or appearance of the countryside hereabouts.

9 – Non Standard Condition

No window/s, openings or other apertures other than those hereby permitted shall be installed, inserted or otherwise placed into any part of the building (wall or roof) without the prior written consent of the Local Planning Authority.

Reason: To protect the amenity of adjoining residents and to ensure that alterations to the appearance which might not ordinarily constitute development are controlled so as not to prejudice the character and/or appearance of the building and/or that of the countryside hereabouts.

10 – Non Standard Condition

Notwithstanding the detail submitted further details shall be submitted to and approved by the Local Planning Authority at an appropriate scale of the access from rooms at the rear of the property to the garden level prior to any work associated with the implementation of this planning permission commencing. Thereafter such detail as shall have been approved shall be implemented and permanently retained without alteration unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenity of adjoining residents from unacceptable overlooking and in order to ensure that the appearance of the development does not prejudice the character and/or appearance of the countryside hereabouts.

11 - Non Standard Condition

Notwithstanding the detail submitted further details shall be submitted to and approved by the Local Planning Authority at an appropriate scale of the location, number and appearance of parking areas for the house hereby permitted prior to any work associated with the implementation of this planning permission commencing. Thereafter such detail as shall have been approved shall be implemented and permanently retained without alteration unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure adequate provision for off street parking is made and retained and that the appearance of such areas is sympathetic to its rural surroundings.

12 – Non standard Condition

Prior to occupation of the house hereby permitted a pedestrian vision splay measuring 1.5m x 1.5m on both sides of the access where this meets the public highway. There shall be no obstruction above a height of 600mm as measured from the finished surface of the access within the area of the visibility splays thereafter.

Reason: In the interest of highway safety.

13 – Non Standard Condition

The extent of the domestic curtilage hereby permitted to accompany the permitted house shall be as shown edged green on the plan returned herewith only.

Reason: For the avoidance of doubt as to the scope of this planning permission and in order to avoid any confusion in the future as of condition 03 of this planning permission.

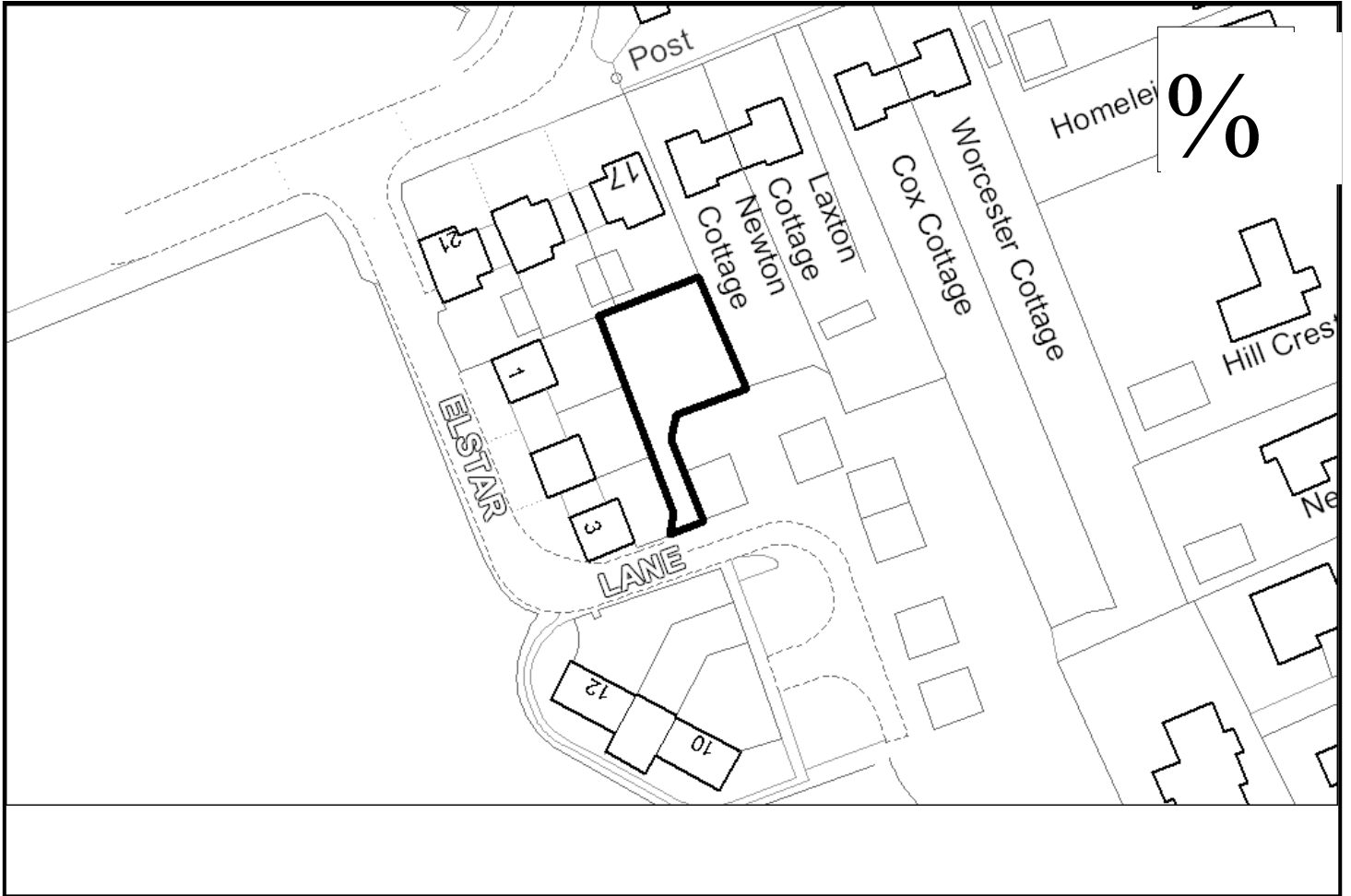
14 – Non Standard Condition

The area edged yellow on the plan returned herewith shall only be used for the exercise and/or grazing of horses stabled at Barn Stables, Fields Farm Road only and no other purpose. No animal shall be ridden, trained, shown or otherwise exposed to any other activity within the area edged yellow. Furthermore no shelter, building, jumping obstacles or any other device, equipment or structure, save for a water trough and any boundary enclosure that may otherwise be permitted shall be erected, installed or otherwise placed on the land edged yellow. The site edged yellow does not benefit from planning permission or establish rights to be used for any riding school, livery or stable use. In the event that the applicant wishes to use the area edged yellow for such a purpose/s then a further planning permission will be required.

Reason: The Council wishes to ensure that use of the area edged yellow does not result in a harmful impact on the amenity of the adjoining residential property to the south and has restricted its use accordingly. In addition the Council wishes to be clear that the site edged yellow does not enjoy use rights for riding school, livery or stable use as it wishes to avoid any confusion as to the true planning status of this land. The Council wishes to avoid any claim being made in the future that such uses have been permitted as a result of the description of proposal made by the applicant.

Informative

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



Application No: 082132

Location: Land at Tile House Farm, Nayland Road, Great Horkesley, Colchester

Scale (approx): 1:1250

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7.3 Case Officer: John Davies

EXPIRY DATE: 18/02/2009

MINOR

Site: Nayland Road, Great Horkesley, Colchester

Application No: 082132

Date Received: 23rd December 2008

Agent: Adp Limited

Applicant: Mersea Homes Ltd

Development: Erection of 1no. one bedroom bungalow.

Ward: Fordham & Stour

Summary of Recommendation: Conditional Approval subject to signing of Legal Agreement

1.0 Site Description

1.1 This is a small backland site that has been created to the rear of properties fronting Tile House Lane to the north, Elstar Lane to the west and south and adjoining the garden of a property in Tile House Lane to the east.

1.2 The land forms part of the Tile House Farm development now under construction and known as Horkesley Green. Under the original planning approval the plot was intended as part of the gardens of those plots to the north and west. These have been implemented, however, with smaller gardens and boundary fences have been positioned so as to create this additional plot.

2.0 Proposal

2.1 The proposal is for the erection of a 1 bedroom bungalow with a side garden and vehicular access from Elstar Lane, which is one of the new estate roads.

3.0 Land Use Allocation

3.1 Village Envelope

4.0 Relevant Planning History

4.1 F/COL/05/1558- Erection of 149 houses, garages, provision of means of access, site roads, access to St John's Church, church car park and change of use of 6.02 ha from farmland to public open space- Approved 20 February 2006

5.0 Principal Policies

- 5.1 Adopted Review Colchester Local Plan:
DC1- Development Control considerations
UEA11- Design
UEA13-Residential development

6.0 Consultations

- 6.1 Highway Authority - no objection

- 6.2 Environmental Control raise issues associated with possible ground contamination and recommend standard conditions.

Officer comment - this land was previously surveyed and found to be clean as part of the main Horkesley Green development. It is therefore not necessary to require this work to be done again. However a condition regarding unexpected contamination may be imposed.

- 6.3 Landscape Team- no objections

7.0 Parish Council's Views

- 7.1 None received

8.0 Representations

- 8.1 Letter of objection received from occupier at 17 Tile House Lane (to north of application site) raising the following issues:

- Proposed bungalow is only 1 metre from adjoining boundaries causing harm to amenity in terms of privacy and sunlight and daylight. It will be visually intrusive and un-neighbourly.
- Building in gardens should be resisted
- Impact on ability to sell my property in future

9.0 Report

- 9.1 The main issues in this application are layout and design, impact on neighbours and access.

- 9.2 The principle of development for housing is acceptable on this plot insofar as the site is within the Great Horkesley Village Envelope and was part of the approval granted to Mersea Homes for 149 dwellings in 2006. Furthermore, the plot is considered large enough to provide a small one bedroom bungalow with private amenity space (75m²) and parking. The proposed garden area is L shaped with a depth of 4 metres along its longest length.

- 9.3 The site has been formed by an amalgamation of some of the garden areas to the surrounding properties, one of which at Plot 74 was 201m² in area and well above the normal minimum standard. Other gardens of properties to the west of the plot were also reduced in order to provide a vehicular access. Garden areas have been reduced to below 100m² for these units, but they range from 60m² to 92m² in area.
- 9.4 The developer's justification for this is to make best use of and maximize the developable potential of the site, which accords in principle with Government guidance so long as the resulting development is otherwise satisfactory in planning terms. The first issue to consider therefore is whether the formation of the plot has resulted in a reduction in amenity areas that unreasonably harms the amenity and living conditions of the occupiers. Firstly, whilst the reductions take the garden areas below 100 m² for 3 bedroom houses these areas would be consistent with draft Development Plan Policies for open space provision currently under consultation i.e. a minimum of 60 square metres for 3 bedroom houses. This reduced standard reflects the fact that many estate developments have been approved in recent years with below standard gardens. A further factor in this case is the proximity of a large area of public open space provided as part of the Horkesley Green development. For these reasons it may be difficult to resist this development on the grounds of its effect on reducing surrounding garden areas.
- 9.5 The objections raised by the neighbour to the north are noted. Whilst it is acknowledged that the development site is highly enclosed by surrounding two storey development the proposal is only for a bungalow. As such it is normally accepted that this form of development within a plot enclosed by fencing, would not give rise to problems of overlooking, loss of light or have an over-bearing impact. In this case it is accepted that the side wall of the bungalow is only 1 metre from the boundary of the objector but the roof has a low pitch (30 degrees) and would therefore not be prominent above the fence line. The reality is more likely to be the other way round. However, in the circumstances it is not considered that the impacts on the bungalow from existing surrounding development are such as to warrant refusal. Any future purchaser would be aware of the relationship of the surrounding development.
- 8.6 Taking into account the above considerations Officers consider that this proposal would provide an additional small unit on the estate which, by reason of its context, would not be to everyone's liking. However, on balance the reduction in garden areas and impacts on neighbours are not considered so serious as to warrant refusal.

9.0 Background Papers

- 9.1 ARC; HA; HH; TL; PTC: NLR

Recommendation

The application be deferred in order that a Unilateral Undertaking is completed whereby a contribution to Open Space, Sport and Leisure is made in accordance with the Council's Supplementary Planning Document. Once completed, the Head of Environmental and Protective Services be authorised to grant planning permission for the proposed development, subject to the following conditions:-

Conditions

1 - A1.5 Full Perms (time limit for commencement of Development)

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

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

2 - C3.3 Samples to be Submitted

Samples of the materials to be used on the external finishes shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The development shall only be carried out using the approved materials.

Reason: To harmonise with the character of existing development in the area.

3 - A7.4 Removal of ALL Perm Devel Rights (residential

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A to E of Part 1 of the Schedule of the Order (any extension, outbuilding, garage or enclosure) shall take place without the prior written permission of the Local Planning Authority.

Reason: To safeguard the visual amenity of the area, to protect the amenity of adjoining residents and to prevent the overdevelopment of the site by controlling future extensions, alterations and associated development.

4 - C11.11 Landscape Design Proposals

No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority (see BS 1192: part 4). These details shall include, as appropriate:

Existing and proposed finished contours and levels.

Means of enclosure.

Car parking layout.

Other vehicle and pedestrian access and circulation areas.

Hard surfacing materials.

Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signage, lighting).

Proposed and existing functional services above and below ground (e.g. drainage, power, communication cables, pipelines, etc. indicating lines, manholes, supports etc.).

Retained historic landscape features and proposals for restoration.

Soft landscape details shall include:

Planting plans.

Written specifications (including cultivation and other operations associated with plant and grass establishment).

Schedules of plants, noting species, plant size and proposed numbers/densities.

Planting area protection or decompaction proposals. Implementation timetables.

Reason: To safeguard the provision of amenity afforded by appropriate landscape design.

5 - C11.12 Landscape Works Implementation

All approved hard and soft landscape works shall be carried out in accordance with the implementation and monitoring programme agreed with the Local Planning Authority and in accordance with the relevant recommendations of the appropriate British Standards. All trees and plants shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure the provision and implementation of a reasonable standard of landscape in accordance with the approved design.

Informatives

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

All works affecting the highway shall 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 initially by telephoning 01206 838600.



Application No: 082152

Location: Land Adjacent To, 10 Manor Road, Wivenhoe, Colchester, CO7 9LN

Scale (approx): NOT TO SCALE

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7.4 Case Officer: Mark Russell

EXPIRY DATE: 19/03/2009

MINOR

Site: 10 Manor Road, Wivenhoe, Colchester, CO7 9LN

Application No: 082152

Date Received: 22nd January 2009

Agent: Mr Ross Bain

Applicant: Rusden Ltd

Development: Construction of new 2 bedroom detached bungalow and demolition of existing single garage

Ward: Wivenhoe Quay

Summary of Recommendation: Conditional Approval subject to signing of Unilateral Undertaking

1.0 Planning Report Introduction

1.1 This item was deferred from Committee on 3 March for in order for Officers to negotiate improved elevational treatment. My previous report is produced below.

2.0 Site Description

2.1 The site comprises part of the garden to the side of 10 Manor Road, Wivenhoe, and is between two existing bungalows.

3.0 Description of Proposal

3.1 The proposal, as described above, is to construct a 2-bedroom bungalow. Space for this will be created by removing an existing garage.

4.0 Land Use Allocation

4.1 Residential

5.0 Relevant Planning History

5.1 WIV/22/73 - House or bungalow with garage (with resiting existing garage). Refused 31st May 1973;

5.2 88/1968 - Outline application for erection of bungalow/chalet bungalow. Refused 6th December 1988.

6.0 Principal Policies

- 6.1 Adopted Review Colchester Local Plan:
DC1- Development Control considerations;
UEA11 – Design;
UEA12 – Backland Development;

Local Transport Plan.
Policy 3.5 in Appendix G

7.0 Consultations

- 7.1 The Highway Authority did not object, but asked for drawings showing one of the parking spaces to be larger as a nearby fence may restrict its use.
- 7.2 Environmental Control did not object, but requested a condition that a 1.8 metre high close-board fence be placed between the new and existing properties. It asked that an advisory note on demolition and construction be included.

8.0 Town Council's Views

- 8.1 Comments from Wivenhoe Town Council are awaited.

9.0 Representations

- 9.1 Two representations were received. An objection from 47 Manor Road expressed concern about Manor Road already being overcrowded, and that the unit would increase on-road parking. The second, from 11 Stanley Road reads as follows:

“As we are on the spur coming off Manor road for the electricity supply and have experienced difficulties with this, I trust that the additional dwelling will not have an adverse affect on the supply and that any upgrade necessary will be agreed before the building work commences. We would also like to see restrictions on the hours that work is permitted on site as part of the conditions of approval and that the council properly 'police' the conditions rather than expect the local residents to do the job for them.

With recent experience of the planning department, the individuals involved and the process which is clearly flawed and weighted totally in favour of the applicant, any objection is a waste of time and suggesting that a valid objection can be made is totally misleading.”

10.0 Report

- 10.1 The principle of infill development is not unacceptable, but the specifics of the proposal do need close examination.

- 10.2 The site, as seen from the road, and from above, can fall in to the category of “marginal” in terms of being acceptable as an infill development site. Our Urban Designer has commented as follows: “This proposed dwelling is over intensive use of the site, evident in the lack of appropriate parking accommodation. The unmitigated domination of the frontage of both the existing and proposed dwelling is not satisfactory. The plot ratio and especially the mass in relation to the width of the plot is too much development. This creates a constrained rhythm in the streetscape that does not look appropriate in the suburban context. I notice that the plot adjacent has the same size and proportions and accommodated an extension and garage in a far more satisfactory design; this would be a more acceptable approach on this site.”
- 10.3 Members may be aware of other infill developments in the vicinity which have been allowed in recent years in surrounding roads, such as at 21 Belle Vue in 2007. Indeed, over the years many have been allowed which do not strictly comply with the existing rhythm of development.
- 10.4 Regarding the comments from objectors, it is unclear why the objector from 11 Stanley Road has made such remarks. Members are reminded that it is not good practice to place hours of work conditions on developments such as this as the Demolition and Construction advice notes and Environmental Control legislation are far more effective. It is not realistic for a local authority to police hours of work, and by-and-large, being informed by residents is the speediest and most efficient way of being informed of any breaches. Matters relating to electricity are not relevant to planning.
- 10.5 Regarding the comments about parking, whilst these are noted it must be recalled that two parking spaces for each house are being proposed. Whilst cars will be more in evidence than previously, this is the trade off for avoiding on-road parking. A sensitive boundary treatment can assist, in some ways, in softening the effect.
- 10.6 Whilst the design of the bungalow is bland and lacking in invention, the scheme is held, on balance, to be acceptable.
- 10.7 Improved elevational treatment is anticipated prior to Committee. Details of this will appear on the Amendment Sheet

11.0 Background Papers

- 11.1 ARC; HA; HH; NLR

Recommendation

The application be deferred in order that a Unilateral Undertaking is completed whereby a contribution to Open Space, Sport and Leisure is made in accordance with the Council's Supplementary Planning Document. Once completed, the Head of Environmental and Protective Services be authorised to grant planning permission for the proposed development, subject to the following conditions:-

Conditions

1 - A1.5 Full Perms (time limit for commencement of Development)

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

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

2 - A2.2 Development to Accord With Revised Plans

The development hereby permitted shall be implemented in all respects strictly in accordance with the revised plans 499/1/A, dated December 2008, received 16th February 2009.

Reason: The parking space at the existing dwelling was of insufficient proportions.

3 - C3.1 Materials (general)

Before the development hereby permitted commences, the external materials and finishes to be used, shall be agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with agreed details.

Reason: The application has insufficient detail for approval to be given to the external materials; and [to ensure that the development does not prejudice the appearance of the locality/to ensure that the development has a satisfactory appearance in order to protect and enhance the visual amenity of the area).

4 - A7.5 Rem of Perm Dev Extens Rel to Erect Bldngs et

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking and re-enacting that Order with or without modification), no extensions shall be constructed (other than any expressly authorised by this permission or any other grant of express planning permission), or freestanding buildings erected on any part of the site or an access/hardstandings created without the prior written permission of the Local Planning Authority.

Reason: To safeguard the visual amenity of the area, to protect the amenity of adjoining residents and to prevent the overdevelopment of the site by controlling future extensions, alterations and associated development.

5 - C12.2 (Details of Walls or Fences)

Prior to the commencement of the development details of screen walls/fences/railings /means of enclosure etc shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the position/height/design and materials to be used. The fences/walls shall be provided as approved prior to the occupation of any building/commencement of the use hereby approved and shall be retained thereafter.

Reason: To ensure a satisfactory form of development and in the interests of visual amenity.

6 - C3.21 (Hard Surfacing)

Prior to the commencement of the development hereby permitted details of all materials to be used for hard surfaced areas within the site including roads/driveways/car parking areas/courtyards/etc shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: To ensure that the development does not prejudice the appearance of the locality.

7 - C11.14 (Tree/Shrub Planting)

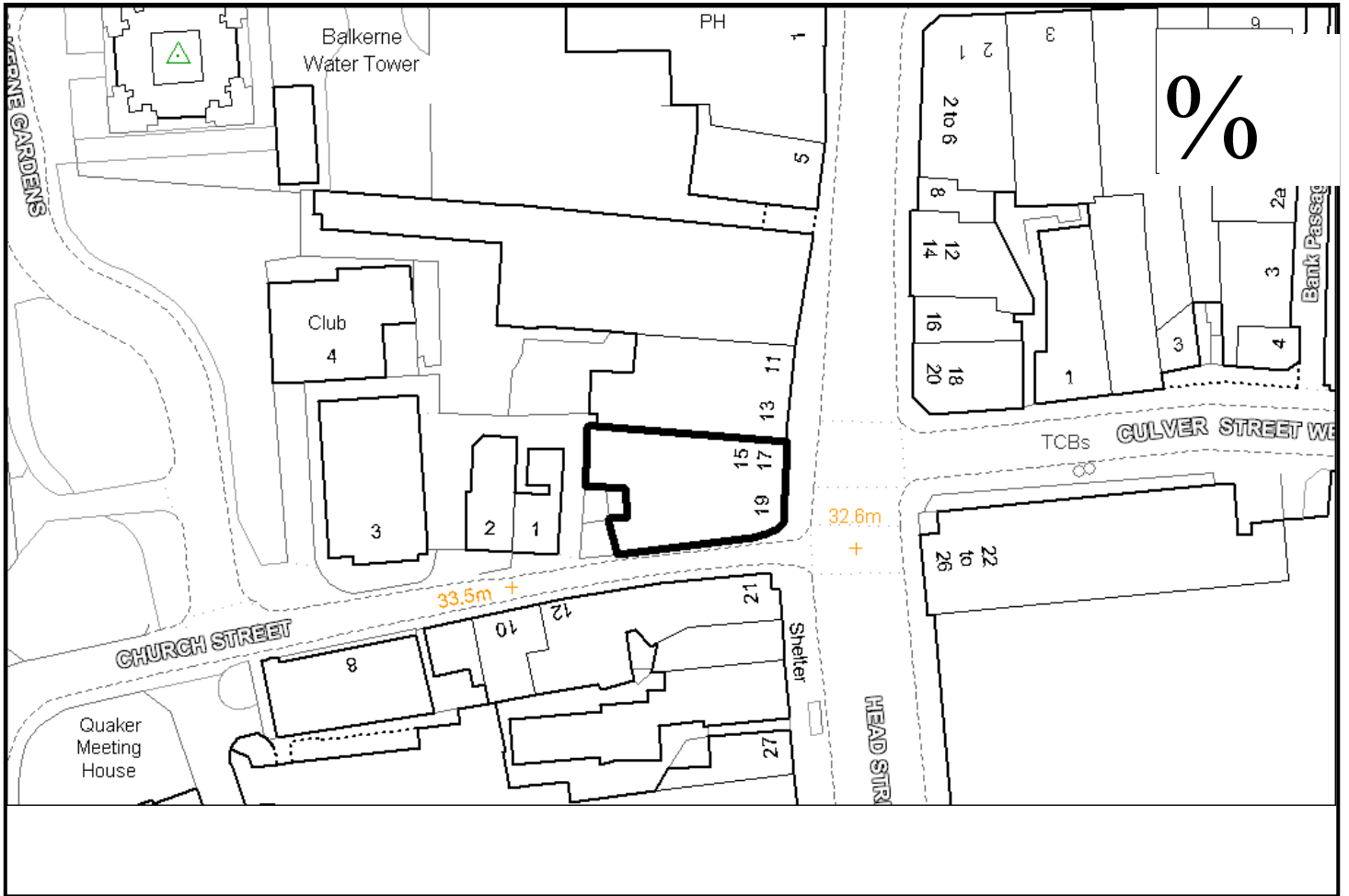
Before any works commence on site, details of tree and/or shrub planting and an implementation timetable shall be submitted to and approved in writing by the Local Planning Authority. This planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure an appropriate visual amenity in the local area.

Informatives

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

All works affecting the highway are to 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 initially by telephoning 01206 838600.



Application No: 090064

Location: First & Second Floor, 17 Head Street, Colchester, CO1 1NX

Scale (approx): 1:1250

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7.5 Case Officer: Mark Russell

EXPIRY DATE: 27/03/2009

OTHER

Site: First & Second Floor, 17 Head Street, Colchester, CO1 1NX

Application No: 090064

Date Received: 30th January 2009

Agent: Whybrow Chartered Surveyors

Applicant: Mr Carl Howells

Development: Change of use of first and second floor to A3/A4 use. Ground floor already has A3 use approved.

Ward: Castle

Summary of Recommendation: Conditional Approval

1.0 Site Description

1.1 The site comprises the upper floors of 19 Head Street. This is on the western side of Head Street, on the corner with Church Lane, and is predominantly surrounded by commercial properties.

2.0 Description of Proposal

2.1 The proposal, as described above, is to expand usage into the upper floors and for this usage to be related to the sale of alcohol as well as the consumption of food on the premises.

3.0 Land Use Allocation

3.1 Mixed Use

4.0 Relevant Planning History

4.1 96/1336 – Change of use from shop to restaurant and external alterations including new shop front. Refused 28th November 1996;

4.2 97/0990 - Change of use to A3 (food and drink) and provision of replacement shop-front. Refused 14th August 1997. Allowed at appeal 20th January 1998;

4.3 F/COL/05/1303 - Variation of condition 6 of paragraph 24 of application no. COL/97/0990 which limits the hours of opening between 0700 and 2400 (midnight). Approved 26th September 2005.

5.0 Principal Policies

- 5.1 Adopted Review Colchester Local Plan:
 - DC1- Development Control considerations;
 - P1 – Pollution
 - TCS5 – Mixed Use Area A
 - UEA1 – Conservation Area
 - TCS10 – Leisure, Entertainment, Food and Drink

6.0 Consultations

- 6.1 Environmental Control did not object, but asked that, should permission be granted for the development, conditions be imposed for control of fumes and odours, grease traps, restriction of amplified music and also asked for site boundary noise levels to be within specification, for external plant, equipment and machinery to be insulated, for doors to be self-closing and for refuse and recycling facilities to be provided and for refuse removal and litter control to be adequately managed.
- 6.2 Licensing comment as follows:-

“Given the lack of information that has been supplied with the application in terms of proposed operating hours for the sale of alcohol and whether or not licensable activities are likely to take place on either the first or second floor of 19 Head Street (e.g. music and dancing), it is extremely difficult for me to comment on this application in regard to any potential effects that it might have on the four licensing objectives contained within the Licensing Act 2003 and which are the Prevention of Crime and Disorder, the Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm.

For example, the operating hours and type of entertainment offered can potentially have a huge impact on the age group of the customers that might be attracted to a premises and therefore the overall social awareness and social responsibilities of that age group, particularly in terms of problems associated with the licensing objectives for the Prevention of Crime and Disorder and the Prevention of Public Nuisance.

I note that it is intended to change to A3/A4 use which also means that the application could potentially see the premises turning solely into a public house or bar.

The Council’s Statement of Licensing Policy which was produced in accordance with the requirements of the Licensing Act 2003, expresses concern that premises which are primarily or exclusively used as drinking establishments for the sale and consumption of alcohol only and which are also known as High Volume Vertical Drinking Establishments (HVVDs), can become the focus for crime and disorder and public nuisance both on and off the premises.

Therefore the Statement of Licensing Policy gives the following guidance on such premises:

High Volume Vertical Drinking Establishments (HVVDs)

- 3.20 These are premises that have high customer capacities, little or no seating for customers and are used primarily or exclusively for the sale and consumption of alcohol for what is termed as “vertical drinking” and are sometimes called High Volume Vertical Drinking establishments (HVVDs). There is also usually either a

limited range of food, or no food at all, offered or consumed in such premises, particularly during the evening and night-time hours.

Such premises can be the focus for crime and disorder and public nuisance both on the premises and in the immediate vicinity of the neighbourhood surrounding it.

3.21 Research by the Home Office over a 25 year period (“Alcohol & Crime: Taking Stock” by Ann Deehan Home Office Crime Reduction Series No 3, www.crimereduction.gov.uk/drugsalcohol8.hem shows that the environment created within these establishments can have a significant bearing on the likelihood of crime and disorder arising from flash points. These include matters such as disorder from frustrated customers who are unable to get served because of overcrowding and the admittance to the premises of already drunk and therefore potentially disorderly persons. In addition, there is an enhanced risk of nuisance and disorder as such customers then exit into the street.

3.22 If there is evidence that such premises have become the cause or focus of nuisance or crime and disorder, local residents or responsible authorities may apply for a review of the licence. In such a case the Licensing Authority will scrutinise the evidence with particular care. Its powers then include the attachment of further conditions to the Premises Licence, curtailing the trading hours or revocation of the licence, if necessary to promote the licensing objectives.

I am sorry that my response cannot be more specific when commenting on this particular Planning application, but in the absence of any other relevant information such as operating hours etc, it is unfortunately very difficult to do anything other than give general guidance on how the Councils Licensing Policy might relate to it. Nevertheless, I hope that the response I have made on behalf of the Licensing Authority will still assist with the determination of this application.”

7.0 Representations

7.1 Colchester Civic Society objected on the following grounds:

“Colchester Civic Society objects to that part of the application requesting A4 (drinking establishment) usage; we do not object to A3 (restaurant) use.

We note that there is no attempt in the application to justify the expansion of this bar.

There are already 3 large bars very close to Nineteen and we can see no logic in allowing a further increase in the amount of bar space in this part of the town centre.

If the town centre is to flourish at night it need a wider range of uses and the bars are driving older people away from the town centre in the evenings, as well as causing annoyance to nearby residents.”

8.0 Report

8.1 The site lies within Mixed use Area A, which seeks to maintain a certain amount of A1 (retail) usage. However, this unit is already non-A1, and, critically, these policies relate to ground floor usage only. There are therefore no policy reasons in principle for refusing this application.

- 8.2 Regarding residential amenity, our Revenue Services department has advised that there are no Council Tax payers in adjacent properties, and as advised above, Environmental Control has suggested conditions which would heavily reduce any potential noise nuisance. For these reasons, there does not seem to be an issue of residential amenity.
- 8.3 Nor can it be argued that the Conservation Area would be unduly affected, other than indirectly as discussed below, as no external works are proposed.
- 8.4 Any reason for refusal would, therefore, seem to rest on opposing the proposal on the grounds that it might cause nuisance along the lines described above by Colchester Civic Society.
- 8.5 The Civic Society has stated that it has no objection to the A3 (restaurant) use, but opposes any A4 (public house/wine bar) use. Their fear, of course, is that alcohol will predominate, adding to the perceived pre-existing night-time problems.
- 8.6 The applicant has advised that the use will be a mixture of the two, and therefore there will be a food element. Any potential problems would depend on how the establishment was run. Your Officer is content that these matters can be dealt with by the Licensing Authority which will apply the four Licensing objectives - the prevention of crime and disorder; public safety, the prevention of public nuisance, the protection of children from harm. This, combined with the noise prevention measures proposed by Environmental Control, should reduce any impact of the increased number of users. Members are also reminded that this is effectively an expansion of an existing use, rather than the establishment of new premises.

9.0 Conclusion

9.1 The proposal is considered to be acceptable.

10.0 Background Papers

10.1 ARC; HH; NLR

Recommendation - Conditional Approval

Conditions

1 - A1.5 Full Perms (time limit for commencement of Development

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

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

2 - Non-Standard Condition

The use hereby permitted shall not commence until there has been submitted to and approved in writing by the local planning authority a scheme for the control of fumes and odours. This shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such fume/odour control measures as shall have been approved shall be installed prior to use hereby permitted commencing and thereafter be retained and maintained to the agreed specification and working order.

Reason: To prevent odour nuisance.

3 - Non-Standard Condition

Foul water drains serving the kitchen should be fitted with grease traps maintained in accordance with the manufacturer's instructions.

Reason: To prevent blockage of foul water drains.

4 - Non-Standard Condition

A competent person shall ensure that the rating level of noise emitted from the site plant, equipment, machinery shall not exceed 5dBA above the background prior to the use hereby permitted commencing. The assessment shall be made in accordance with the current version of British Standard 4142. The noise levels shall be determined at all boundaries near to noise-sensitive premises. Confirmation of the findings of the assessment shall be provided in writing to the local planning authority prior to the use hereby permitted commencing. All subsequent conditions shall comply with this standard.

Reason: In the interests of residential amenity.

5 - Non-Standard Condition

Any plant, equipment or machinery on the premises shall be constructed, installed and maintained so as to comply with the initial noise condition. The noise generated by such equipment shall not have any one 1/3 octave band which exceeds the two adjacent bands by more than 5dB as measured at all boundaries near to noise-sensitive premises.

Reason: In the interests of residential amenity.

6 - Non-Standard Condition

Bottles should not be put in an outside area outside of the hours 08.00-19.00.

Reason: In order to protect residents in the area from noise at unsocial times.

7 -Non-Standard Condition

All doors allowing access and egress shall be self-closing and maintained as such, unless agreed in writing by the council.

Reason: In the interests of residential amenity.

8 - Non-Standard Condition

The level of internally amplified sound shall be restricted by the installation and use of a noise-limiting device. The level shall be set in consultation with Environmental Control and any unauthorised adjustment of the level will not be permitted. Details of the device shall be submitted to and approved by the Local Planning Authority prior to the commencement of any activities involving the emission of amplified sound.

Reason: To ensure that the permitted development does not harm the amenities of the area by reason of undue noise emission.

9 - Non-Standard Condition

Prior to the development hereby approved being brought into use, refuse storage facilities shall be provided in a visually satisfactory manner and in accordance with a scheme which shall have previously been submitted to and approved in writing by the Local Planning Authority. Such facilities shall thereafter be retained to serve the development.

Reason: In the interests of visual and residential amenity.

10 - Non-Standard Condition

Prior to the development hereby approved being brought into use, facilities for the collection of recyclable materials shall be provided on the site and thereafter retained in accordance with a scheme submitted to and agreed by the Local Planning Authority.

Reason: In the interests of visual and residential amenity.

11 - Non-Standard Condition

The refuse storage facilities indicated on the approved plans returned herewith shall be provided and made available to serve the proposed development/use hereby approved before the development/use is occupied or becomes operational. Such facilities shall thereafter be retained to the satisfaction of the local planning authority.

Reason: In the interests of visual and residential amenity.

12 - Non-Standard Condition

All waste shall be removed from site on a regular basis by a licensed waste carrier and disposed of at a licensed disposal site.

Reason: To ensure that adequate facilities are provided for refuse storage and collection and the collection of recyclable materials.

13 - Non-Standard Condition

The use hereby permitted shall not commence until the provision has been made within and in the vicinity of the site for the disposal of litter resulting from its use. Such provision shall be in accordance with details agreed in writing with the Local Planning Authority.

Reason: In the interests of the amenity of nearby properties.

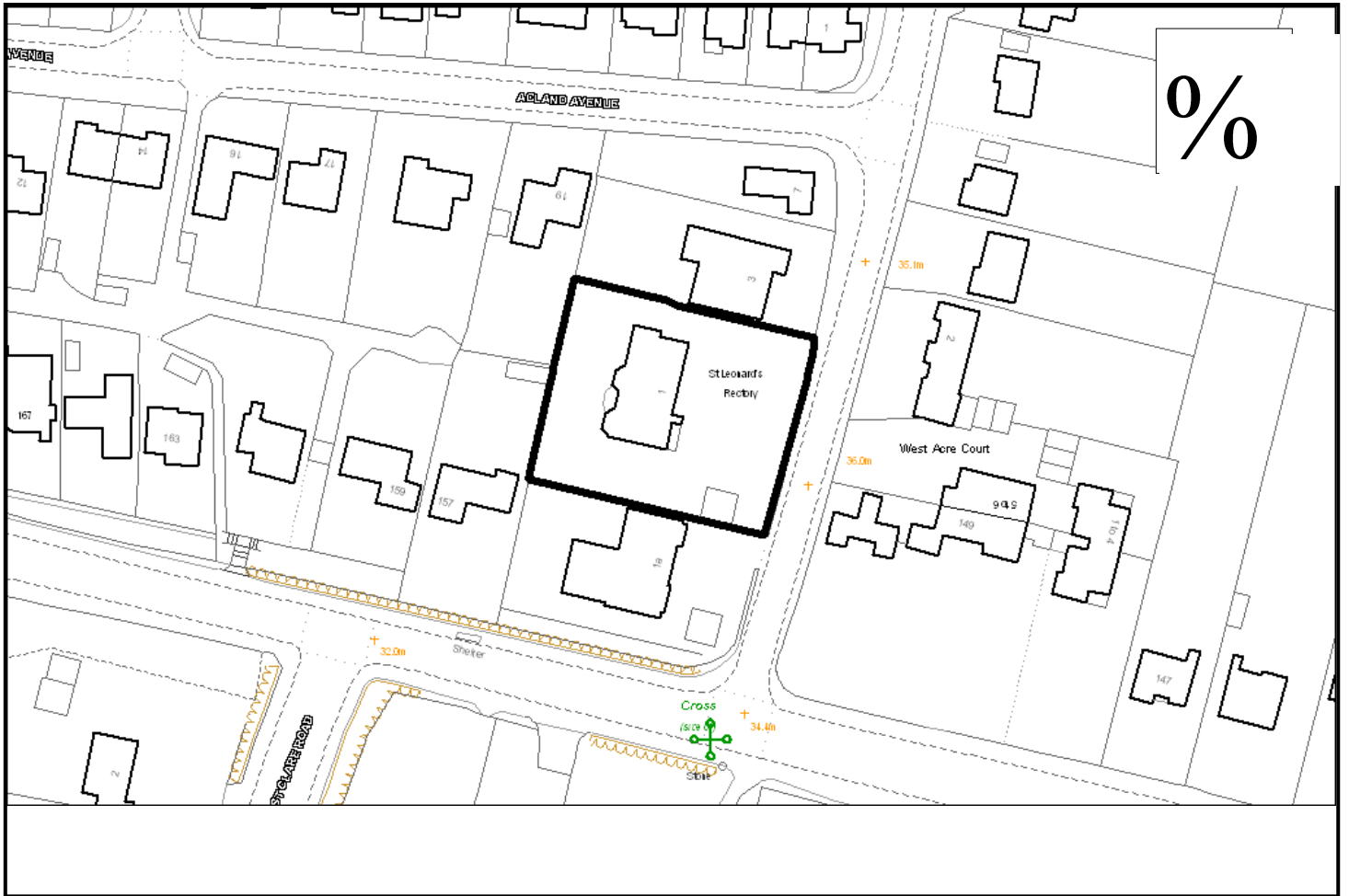
14 - Non-Standard Condition

The hours of use of the proposal hereby permitted shall comply with those for the ground floor and basement.

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

Informatives

A competent person is defined as someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience.



Application No: 090078

Location: 1 Glen Avenue, Colchester, CO3 3RP

Scale (approx): 1:1250

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7.6 Case Officer: Andrew Huntley

EXPIRY DATE: 25/03/2009

OTHER

Site: 1 Glen Avenue, Colchester, CO3 3RP

Application No: 090078

Date Received: 28th January 2009

Applicant: Mrs Heather Castillo

Development: Removal of Condition 06 of Planning Permission F/COL/06/0065 (The use hereby permitted shall be for a temporary period, expiring on 1 March 2009 and shall cease on or before that date unless a further express planning permission has been granted for the use to be continued) in order to allow permanent permission.

Ward: Lexden

Summary of Recommendation: Conditional Approval

1.0 Site Context and Description of Proposal

- 1.1 The application site has been used as a residential care home operated by the Haven Project, who care for people suffering personality disorders – provision of day care and residential support. The property is located close to the junction of Glen Avenue and Lexden Road. The use has been operating for 4 years under temporary planning permissions and are now seeking permanent permission.
- 1.2 A letter submitted in support of the application is appended.
- 1.3 Removal of condition 6 allowing temporary permission of planning application F/COL/06/0065 in order to allow permanent permission.

2.0 Land Use Allocation

- 2.1 Residential
Archaeological Area 02
Grade 2 Listed Building

3.0 Relevant Planning History

- 3.1 C/COL/99/0622 - Continued use of premises as small residential care home (increase from six to eight residents) - Temporary Approval 1 July 1999
- 3.2 F/COL/99/1322 - Infill existing ground floor veranda with glazed panels. Infill 2 No. 1st floor windows - Approved 30 September 1999
- 3.3 F/COL/04/1859 - Additional use of small residential care home to include therapeutic work for non residents - Temporary Approval 22 November 2004

3.4 F/COL/06/0065 - Continued use of premises as residential care home with removal of condition 1 attached to COL/04/1859 (temporary consent) and creation of 2 additional parking spaces

4.0 Principal Policies

4.1 Adopted Review Borough Local Plan
DC1 - Development Control considerations
H2 - Meeting different needs
P1 - Pollution
UEA5 - Listed buildings

Planning Policy Statement 1

5.0 Consultations

5.1 ECC Highways: No objections

5.2 Environmental Control: No objections

6.0 Representations

6.1 Two letters of objection have been received including one from the Ward Councillor. The objections relate to the possibility of a detrimental impact if management or ownership of the site was to change.

7.0 Report

Introduction

7.1 The main consideration within this application is whether the removal of the temporary permission condition is acceptable on its planning merits.

Background

7.2 Section 73 of the 1990 Act provides that application may be made for planning permission without complying with conditions applied to a previous permission. It is stated that local authorities may decide whether to grant permission subject to differing conditions, remove the conditions altogether or refuse to alter conditions. Thus it is possible to apply for conditions to be struck out, or for their modification or relaxation. The section makes it clear that in considering such an application a local planning authority may only consider the question of the conditions. It is not possible to make a conventional application for planning permission for the removal of a condition, as no development is involved. However, in terms of decision making a sec.73 application should be treated just like any other application, and due regard paid to the development plan and other material considerations.

- 7.3 Brief ministerial advice, on the question of the planning considerations to be applied when dealing with an application for the removal or modification of existing conditions is found in Circular 11/95. At para.15 it is stated that a condition should not be retained unless there are sound and clear cut reasons for doing so. In *Reid & Another v SOS* 2002 it was held that when issuing a permission after a condition had been removed or amended, that permission should refer to all the terms of the original permission, to avoid the possibility of the new permission being interpreted as having no conditions or only those that were amended.

Appraisal

- 7.4 Application F/COL/06/0065 was a renewal of a previous temporary consent and officers recommended permanent approval. Members of the Development Control Committee gave approval subject to a further temporary consent. Since that application, Environmental Control has not received any complaints in regard to the use of the site.
- 7.5 Ministerial policy is not over enthusiastic about the use of limited period conditions and in Circular 11/95 paras.108-113 extensive advice is given relating to the circumstances in which temporary conditions are not appropriate.
- 7.6 First, it is stated that it will rarely be necessary to give temporary permission to an applicant who proposes to carry out development conforming to a development plan.
- 7.7 Secondly, it is stated that a temporary condition should not be imposed where it would have no effect e.g. if the aim is to protect the amenity of an area. Warning is given that a temporary condition is not to be imposed where a use is acceptable but it is felt that the character of the management may change in the future.
- 7.8 Circular 11/95 allows several circumstances where a temporary permission may be admissible. The first of these is where a building or use is clearly short term in that a site is required for another purpose in the future, and the example of a site affected by road improvements is cited. Another is where a temporary permission is felt to be appropriate is where a trial run is necessary to see whether in practice a use which is potentially detrimental, turns out so to be.
- 7.9 Circular 11/95 also advises that a second temporary permission should not normally be granted and states that a trial period should be set sufficiently long for it to be clear by the end of the first permission, whether a permanent permission or refusal is the right answer. However, it is conceded that a second permission may be justified where highway or redevelopment proposals have been postponed, or in cases of hardship where temporary instead of personal permission has been granted for a change of use.
- 7.10 From the above it is clear that there is no justifiable planning reason for permanent consent not to be granted. A refusal of this application could not be sustained at appeal and could be considered to be unreasonable. This could lead to a costs award against the Council.

Other Considerations

- 7.11 Two objections have been received including one from the Ward Councillor. These objections relate to the fact that while there are no problems with the site at the moment, a change in management/ownership could lead to a greater impact on residential amenity. Condition 2 restricts use of the site to a small residential care home and Crisis Centre operated by the Haven Project. Therefore another operator would need to obtain planning permission if the Haven Project vacated the business.

8.0 Conclusion

- 8.1 The application to remove the temporary consent and allow permanent consent is acceptable and should be approved subject to the conditions set out in application F/COL/06/0065.

9.0 Background Papers

- 9.1 ARC; HA; HH; NLR

Recommendation - Conditional Approval

Conditions

1 - Non-Standard Condition

Except as may be required for the modification of the vehicular access as required by Condition 1 of consent F/COL/06/0065, the existing frontage hedge shall be retained and maintained at a height of not less than 1.5m.

Reason: In the interests of visual amenity and to safeguard the setting of the listed building.

2 - Non-Standard Condition

The premises shall be used for a small residential care home for no more than 6 residents, for therapeutic classes for non-residents and as a crisis centre service operated by the Haven Project and for no other purpose (including any other purpose in Classes C2 or D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987,) or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

Reason: For the avoidance of doubt as to the scope of the permission and in order to safeguard local amenity.

3 - Non-Standard Condition

The therapeutic classes for non residents shall be held on Mondays to Fridays between the hours of 9.00 a.m. and 5.00 p.m. only and at no other time including any time at the weekend with the exception of one additional weekend class.

Reason: For the avoidance of doubt as to the scope of the permission and in order to safeguard local amenity.

4 - Non-Standard Condition

No additional parking spaces shall be provided above that already existing for the premises and required by Condition 1 of consent F/COL/06/0065.

Reason: For the avoidance of doubt as to the scope of the permission and in order to safeguard local amenity.



The Haven Personality Disorder Services

The Haven Project

**1 Glen Avenue
Lexden
Colchester
CO3 3RP**

Tel/fax 01206 287316

**Email: the.haven@thehavenproject.org.uk
www.thehavenproject.org.uk**

19th January 2009

The Planning Committee,
Colchester Borough Council,
P.O. Box 889,
Town Hall, Colchester, C01 1FL

090078

Dear Sirs,

Re: Application to request the removal of condition 6 - Planning Application F/COL/06/0005

1 Glen Avenue, Lexden, Colchester, Essex

The enclosed application form is to request the removal of condition 6 in order to allow permanent planning permission for The Haven, 1 Glen Avenue, Lexden. Temporary, conditional planning permission was granted for three years on 7th March 2006. Within a period of three months from that date, The Haven was required to widen its entrance, provide adequate parking and turning for 12 vehicles, and to modify its vision splay. This work was completed within the time accorded and was approved by Colchester Borough Council Planning Department.

We are now applying for Planning Permission for the third time. It was first granted for one year and subsequently for a further three years, as outlined above. We would like to be granted permanent planning permission this time as we believe four years has been ample time to assess the impact of The Haven on the neighbourhood.

We do believe we have been model neighbours and we have established good relationships with the local neighbourhood and St. Leonard's Church. Twice yearly we write to nearest neighbours to ask whether they have any concerns and none have been forthcoming. For the past two years we have been part of Lexden Open Gardens and have received visitors amounting to 147, many from the local area. We usually invite nearest neighbours to call in at Christmas time and this year some of them joined us for the carol service at The Haven, held by St. Leonard's Church Junior Choristers.

While writing, I would like to take the opportunity to say that we ask all our staff, clients and visitors to park in our car park and not in Glen Avenue. However other members of the public still do park in Glen Avenue, despite two polite signs we have affixed to our front walls. Parking in Glen Avenue causes an obstruction to traffic in a busy road and we wonder why Colchester Borough Council does not put double yellow lines down the road, at least to the Aeland Road junction.

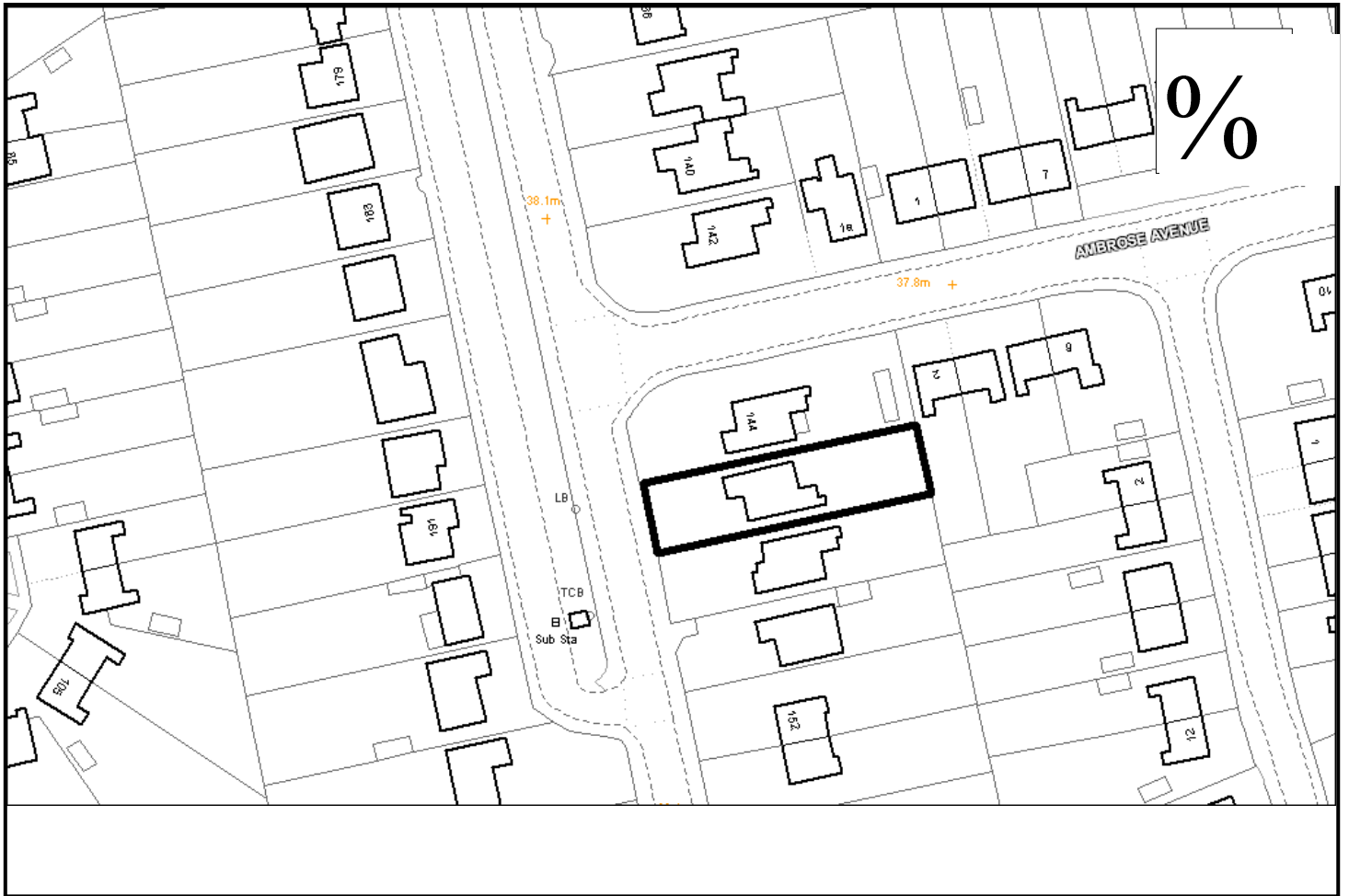
Thank you for your attention to this matter.

Yours sincerely,

**Heather Castillo,
Chief Executive**

LODGED
28 JAN 2009

VALID/REGISTERED
28 JAN 2009
CORRECT FEE RECEIVED



Application No: 090081

Location: Colchester Childrens Day Care Centre, Daniels House, 146 Straight Road, Colchester, CO3 5DT

Scale (approx): 1:1250

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7.7 Case Officer: Mark Russell

EXPIRY DATE: 27/03/2009

OTHER

Site: Daniels House, 146 Straight Road, Colchester, CO3 5DT

Application No: 090081

Date Received: 30th January 2009

Agent: Pps Ltd

Applicant: Colchester Childrens Day Care Centre

Development: Variation of conditions 02 & 04 of planning permission C/COL/07/0083 to allow respite care (day care only) for 7 children with special needs, and to seek a permanent permission for this use.

Ward: Prettygate

Summary of Recommendation: Refusal

1.0 Planning Report Introduction

1.1 This application has been called in by Councillor Lissimore.

2.0 Site Description

2.1 This site is on the eastern side of Straight Road and comprises a bungalow and garden between two other bungalows, near to the junction with Ambrose Avenue.

3.0 Description of Proposal

3.1 The application seeks permanent permission for "respite care (day care only)", and to increase from four to seven the number of children cared for at this establishment. The description of the on site use is confusing, and this is discussed in the report section. The application seeks to amend Conditions 2 & 4 of planning permission 070083. Condition 2 limits the use to 4 children and 4 carers on site at any one time. Condition 4 limited the permission to 2 years from 1 May 2007.

4.0 Land Use Allocation

4.1 Respite care (day care only) for children with special needs. Temporary Permission had been granted in 2005 for respite care (overnight stays/stays of several days) for three children with special needs. This permission was never enacted.

4.2 The site was previously residential. Although the site had been used as a residential care home previously, this did not require planning permission and is in the same use class as a residential dwellinghouse due to the modest (less than 6) number of residents.

5.0 Relevant Planning History

- 5.1 88/0675 - Alterations and extensions. Approved Without Conditions, 12 May 1988
- 5.2 91/1320 - Lounge extension. Approved Conditional, 24 October 1991
- 5.3 95/0231 - Front and rear extensions. Approved Without Conditions, 20 April 1995
- 5.4 C/COL/04/2045 - Change of use from residential care to day care for six children. Refused 11th January 2005, Appeal dismissed 1st September 2005;
- 5.5 C/COL/05/0630 - Change of use from dwelling house to respite care for three children with special needs - Resubmission of application. Temporary Approval 24th May 2005.
- 5.6 C/COL/07/0083 - Change of use from respite care for 3 children with special needs for night and day care to respite care for 4 children with special needs day care only. Temporary Approval 7th May 2007.

6.0 Principal Policies

- 6.1 Adopted Review Colchester Borough Local Plan
DC1 Development Control Considerations;

7.0 Consultations

- 7.1 The Highway Authority (HA) stated on 26th February that it did not wish to object to the proposals as submitted.

8.0 Representations

- 8.1 Four letters of objection were received. Objections were raised on the grounds of:
 - 1) Parking
 - 2) Increased vehicular movement
 - 3) Highways safety given the proximity to Ambrose Avenue and the mini-roundabout
 - 4) 146 Straight Road being residential
 - 5) Anticipated noise and nuisance
 - 6) The original description and intended use of the premises being very different to what is taking place on site now;
 - 7) The oak tree has been neglected;
 - 8) At times, more than one parked car is on site;

9.0 Report

- 9.1 This is the fourth similar application on this site in five years, for clarification the history needs to be analysed.

- 1) The first application C/COL/04/2045 was for: Change of use from residential care to day care for six children.

9.2 This was refused for the following reasons:

“The proposed educational use of this bungalow, which is surrounded on three sides by residential dwellinghouses, is a non-conforming, incongruous element in a residential area, likely to cause disturbance in terms of human and vehicular activity, and is thus contrary to Adopted Review Colchester Borough Local Plan policies DC1 UEA11 and UEA12.

The proposal would be liable to result in an increase in the volume of slowing and turning vehicles in the carriageway of Straight Road at this point between and in the immediacy of two opposing road junctions, contrary to the interests of highway safety. The proposed second vehicular access would introduce an additional and unnecessary point of traffic conflict into the public highway, contrary to the interests of highway safety. In addition, the proposal fails to afford the proposed new access with the required standard of vehicle/pedestrian inter-visibility and would be contrary to the interests of highway safety, contrary to Adopted Review Colchester Borough Local Plan policies DC1 UEA11 and UEA12.

The proposed second vehicular access would be liable to undermine the amenity of the protected oak tree (fronting the site) as excavation and disturbance could occur within its protection zone, that is to say within six metres of its main stem. Vehicles passing on either side of the tree at close proximity could also undermine its long-term amenity. This is contrary to Adopted Review Colchester Borough Local Plan policies DC1b and CO4.”

This refusal was then upheld at appeal.

- 2) The applicant then submitted a different application Ref: C/COL/05/0630 offering respite care along the lines of children staying at the address overnight and perhaps for several days, as a way of respite for their parents and carers. Given the reduced amount of activity that this entailed, the Highway Authority and Local Planning Authority recommended and Committee granted approval for this activity on a temporary basis.
- 3) The third application, 070083 was, perhaps, misleading in its description, as it contained the word 'respite' like that which succeeded in gaining permission under C/COL/05/0630, whereas it was in fact seeking permission for the type of activity that was refused under C/COL/04/2045. Therefore, that application was considered by Committee in that light, and temporary permission was granted.
- 4) This current application seeks to make permanent the permission already granted, and to increase the number of children from four to seven.

9.3 The description of the use as “respite care (day care only)” is, in your Officer’s view, misleading. From the publicity material produced by Daniels House, it appears that it is being run as a day care centre or day nursery, and is for children of all abilities, including those with special needs. The word “respite” may be misleading.

- 9.4 The original permission was specifically for respite care, and the impression given was that this would include overnight stays in the interests of both respite for children with special needs (autism was often mentioned) and for their parents. Whilst the principle of “respite care (day care only)” was sanctioned on a temporary basis in 2007, clearly the actual use now is different to that initially granted in 2005, especially as it appears that the centre is generally available to all-comers rather than being restricted to those with special needs.
- 9.5 Regarding the objections, the generality of these have been based on highways concerns. With this in mind, your Officer surveyed traffic movements on the morning of 2nd March between 07:45 and 09:30. Whilst the front area was free of any parked vehicles, it was noticeable that one car reversed out of the site, and two others crossed the traffic to access and exit the site (in one case, a car actually stalled whilst in the road and had to be pushed on to the site). These were inconveniences, but whilst there was only one car using the site, they were not critical (notwithstanding the fact that one vehicle reversed out on to Straight Road). This was due to the small amount of vehicles. With seven children, potentially all with carers, it could be argued that the risk of highway nuisance would increase if more than vehicle were present at the same time.
- 9.6 It must be recalled, however, that the Highway Authority (HA) did not object. The HA did, however, state that that it objected to “the proposals as submitted”. As discussed, the proposal as submitted is misleading, and it would seem fair that all parties should be given a chance to comment on the proposal as it truly is, rather than what it is claimed to be.
- 9.7 For this reason the application is recommended for refusal.

10.0 Background Papers

10.1 ARC; HA; Licensing; NLR

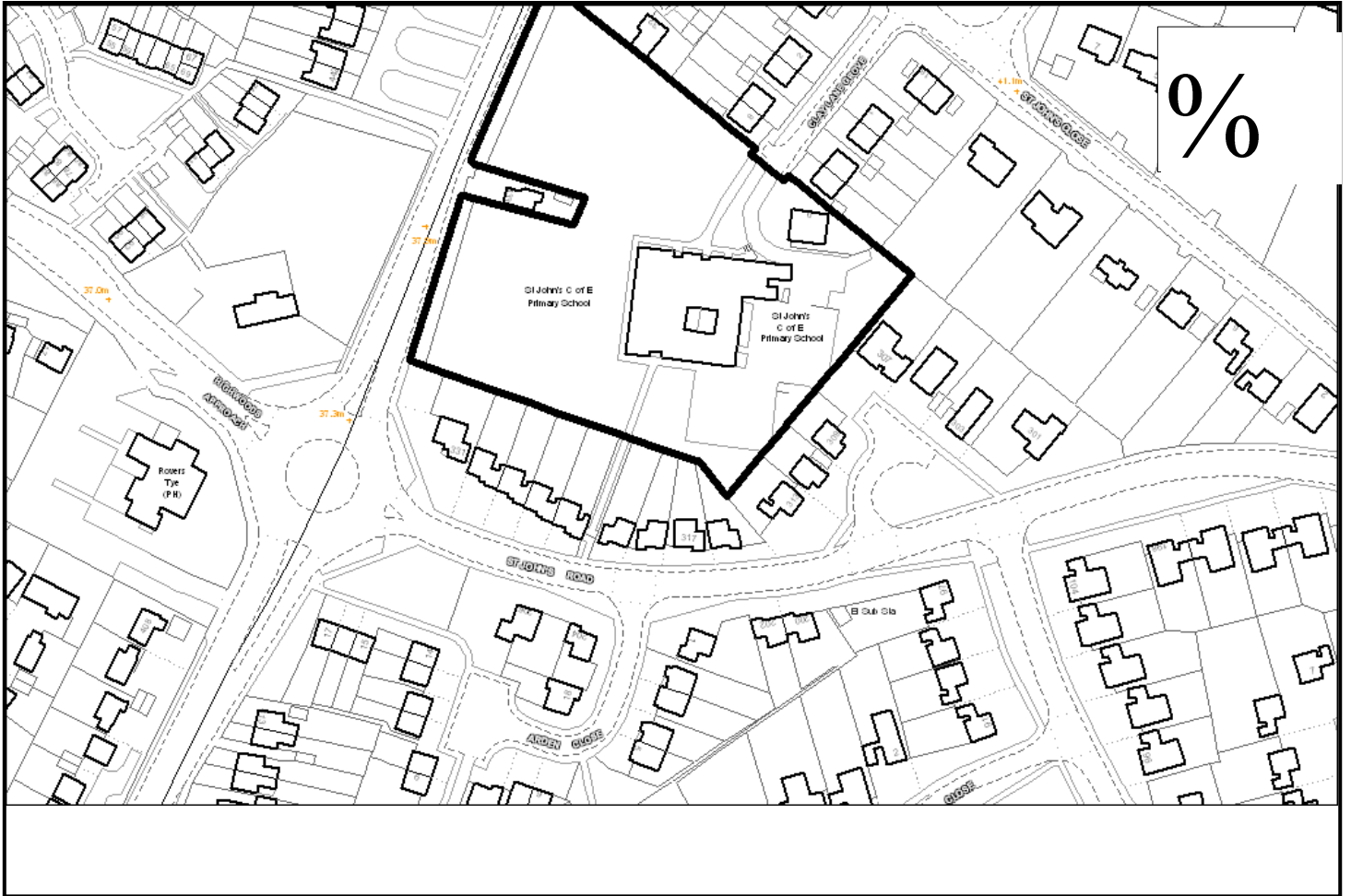
Recommendation - Refusal

Reasons for Refusal

1 - The applicant has failed to fully explain the level and type of activity relating to the proposed intensification, and permanence, of use. Such intensification could cause nuisance to Highway safety and residential amenity. This is contrary to policy DC1 a) and d) of ARCBLP (March 2004).

Informatives

The applicant is invited to submit a planning application which fully states the level and type of use applied for, so that all parties including neighbours and the Highway Authority, may be consulted and a reasoned conclusion may be reached.



Application No: 090126

Location: St Johns C of E Primary School, Former Caretakers Bungalow, Clay Lane Grove, Colchester, CO4 0HH

Scale (approx): 1:1250

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7.8 Case Officer: Andrew Tyrrell

EXPIRY DATE: 06/04/2009

OTHER

Site: Former Caretakers Bungalow, Clay Lane Grove, Colchester, CO4 0HH

Application No: 090126

Date Received: 9th February 2009

Agent: Mr Michael Dyson

Applicant: School Governors

Development: Variation of condition 04 of planning permission C/COL/03/1841 to extend opening hours from 08:00-16:00 hours to 08:00-18:00 hours on a school day only.

Ward: St Johns

Summary of Recommendation: Conditional Approval

1.0 Planning Report Introduction

1.1 This application is presented to the committee as a consequence of an unresolved objection from a neighbouring resident.

2.0 Site Description

2.1 St Johns Primary School is located on Clay Lane Grove. To the west the site is bound by the Ipswich Road, with the properties along the northern side of St Johns Road adjacent to the southern school boundary. The caretakers bungalow is located in the north east corner of the site, immediately on the left upon entrance to the school grounds. There is a car park to the eastern side of the site, this has been extended over the last few years.

3.0 Description of Proposal

3.1 The proposal is to change the use of the caretakers bungalow to a nursery. This proposal is similar to that previously approved by the committee on 21 October 2003, although the decision notice was dated 24 February 2004 and had a 5 year time limit. The decision reference is C/COL/03/1841. The previous permission has expired.

3.2 The proposed hours are now longer, being from 8am to 6pm on schooldays. However other than this there are so significant differences. There are no physical works proposed as part of the application, nor are there any additional car parking spaces, although those previously requested have already been implemented and are in use.

4.0 Land Use Allocation

4.1 Residential

5.0 Relevant Planning History

5.1 As stated above, a similar proposal (with shorter hours) was approved in 2004. This permission has expired during the course of this application and was never implemented, however it is still a material consideration given the comparison with the current application. Whilst it does predate current Local Plan policies the overall policy stance has not changed significantly.

6.0 Principal Policies

6.1 The key Local Plan policies are:
DC1 – General Development Control Considerations
P1 – Pollution (General)
CF5 – Reusing Surplus Education Facilities

6.2 The Core Strategy policies listed below are also relevant:
SD3 – Community Facilities

7.0 Consultations

7.1 The Highways Authority previously raised no objections; therefore they have not been consulted formally on this application. They advise informally that they would not raise an objection based on previous responses.

7.2 Again, the Environmental Control team did not raise any concerns over noise during consultation on the previous application. They were approached about this again, but have advised that at these times of day and with the school as a consideration there would be no issues.

8.0 Representations

8.1 One letter of objection has been raised by a neighbouring resident. Whilst they are pleased that the old caretakers bungalow is being put to constructive use they have asked to reiterate the concerns set out in their previous letter relating to the previously approved application.

8.2 They add that the hours were previously limited to school hours and extended hours would affect their right to quiet enjoyment of their home and garden. They then ask if these hours are necessary given that the new church community hall is in the pipeline.

8.3 They end their letter by stating that the 4 parking spaces provided already are often taken up and they would be concerned about where people will be parking to drop off children and turn, which they see as an existing safety issue at the school. They also feel that traffic is generally a problem with the morning and afternoon school run, with congestion being compounded by longer hours of 0800-1800.

9.0 Report

Use

- 9.1 The proposal has been previously approved and there is a presumption that, as such, it remains acceptable. There have been no significant policy changes since the previous approval and there is general support for such community uses in sustainable locations. This facility is obviously complimentary to the existing school itself, and would serve a local community.
- 9.2 On this basis, the proposal is considered to be acceptable in principle. Attention then turns to matters of detail, with the main issues that fall to be considered are those raised by the objecting neighbour. Specifically, the key points raised relate to noise generation for longer hours, traffic congestion and parking.

Noise Generation for Extended Hours

- 9.3 The issues of noise from children at the school would be an existing matter not to be considered herein. Therefore, any argument raised on noise grounds can relate only to the extra children on site as a direct consequence of this application. This is a limited number of children, allowed to be no more than 20 by other regulations because of the floorspace of the bungalow. On this basis, the scale of the use is not likely to generate significant levels of noise over and above the school.
- 9.4 Additionally, the hours proposed are hardly considered to be unsociable. Consideration has to be given to what quantitatively measured harm there would be from a small amount of time in the morning and late afternoon. The background noise from the school would be greater, therefore less weight is given to the hours of 0830/0900 through to 1500, which do not seem to have been raised as an issue by the objector.
- 9.5 With regard to the additional hours, standard planning condition controls relate to times before 7am and after 11pm, which are not applicable herein. It would therefore seem unreasonable to seek to limit hours through a planning condition.
- 9.6 In the same way, the objector mention a potential project for a community hall at the nearby church. This is not a material consideration for several reasons. Firstly, it is a speculative development that might never happen. Therefore, it would be unreasonable to refuse planning permission on the basis of unsubstantiated circumstances that might never materialise. The case should be considered against the situation at the current time only. Furthermore, it is not the purpose of planning to restrict competition of favour one proposal over another.
- 9.7 On this basis, there are considered to be no significant planning issues relating to noise that need to be addressed or that warrant refusal.

Traffic and Parking

- 9.8 The first issue raised is that of traffic congestion. This is an existing problem, therefore careful consideration should be given as to what control needs would actually stem from the proposed development rather than the existing school. It would not be acceptable to impose conditions on a new use that are actually a consequence of existing school traffic.
- 9.9 The objection is that the nursery use would increase traffic congestion. That might have held more weight against the previous application, where it was still considered to be acceptable, however as the proposed hours are now longer herein then it is considered that an equal argument could be that traffic would actually be dispersed. The likelihood is that parents would deliver and collect their children in combined journeys to work; therefore the bulk of the main school traffic should be avoided by a natural staggering of arrivals.
- 9.10 No issues have been raised with regard to traffic congestion in the past decision, which approved a similar proposal. The changes to the proposal do not relate to the amount of children or, hence, traffic. Therefore, it would also seem unreasonable to raise this as an issue now when it has been previously approved. If more children were ever proposed then this issue would need to be revisited, however the number of children is limited by Ofsted regulations and can be controlled by planning condition in case these regulations change.
- 9.11 Likewise, in consideration of the amount of parking area required, these have also been previously agreed. The prior approval conditioned that additional spaces be provided before the nursery use commenced. Although the permission was never implemented, these spaces were indeed constructed and have been brought into use. Therefore, the requirements for parking at this site previously set have not been met and would not require a new condition on any decision notice other than to ensure that these were made available for the use of staff and visitors to the nursery.
- 9.12 The current cycle parking standards would require that a minimum of 2 cycle spaces are provided for the additional staff/children. This can be addressed through condition, and would help ensure that there is provision for alternative transport methods to private vehicles.

10.0 Conclusion

- 10.1 To conclude, whilst the views of the neighbours are understood, these are concerns that do not raise any material planning consideration significant enough to warrant the refusal of planning permission in your officers opinion. Daytime noise from the nursery is not considered to be significant over and above the school, or to be sociably unacceptable. The traffic congestion is not considered likely to be materially heightened by the nursery and there has been a provision of car parking spaces already laid out that would need to be retained for the use of staff and visitors to the nursery by condition.

11.0 Background Papers

- 11.1 ARC; HA; HH; NLR

Recommendation - Conditional Approval

Conditions

1 - A1.5 Full Perms (time limit for commencement of Development)

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

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

2 - Non-Standard Condition

The premises shall be used for child day care, child day nursery, or other child education purposes only and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

Reason: For the avoidance of doubt as to the scope of the permission and to protect the amenities of the surrounding area as a change to other uses within Class D1 of the Use Classes Order, such as a place of worship, museum or training centre would need to be given further consideration in the event that any such change of use was ever proposed.

3 - Non-Standard Condition

The use hereby permitted shall be limited to a maximum of 20 children at any one time unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of the permission, as this was the basis on which the application has been considered based upon details previously agreed and no other information to the contrary has been provided to suggest that other numbers should be considered in relation to the amenities of the surrounding neighbours.

4 - Non-Standard Condition

The use shall only take place between the hours of 0800 and 1800 on any one day that St. John's C of E Primary School is also open to children for schooling and at no other time whatsoever, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of the permission, as this was the basis on which the application has been submitted and consequently considered, where other hours would need further consideration at such a time as these were ever proposed.

5 - Non-Standard Condition

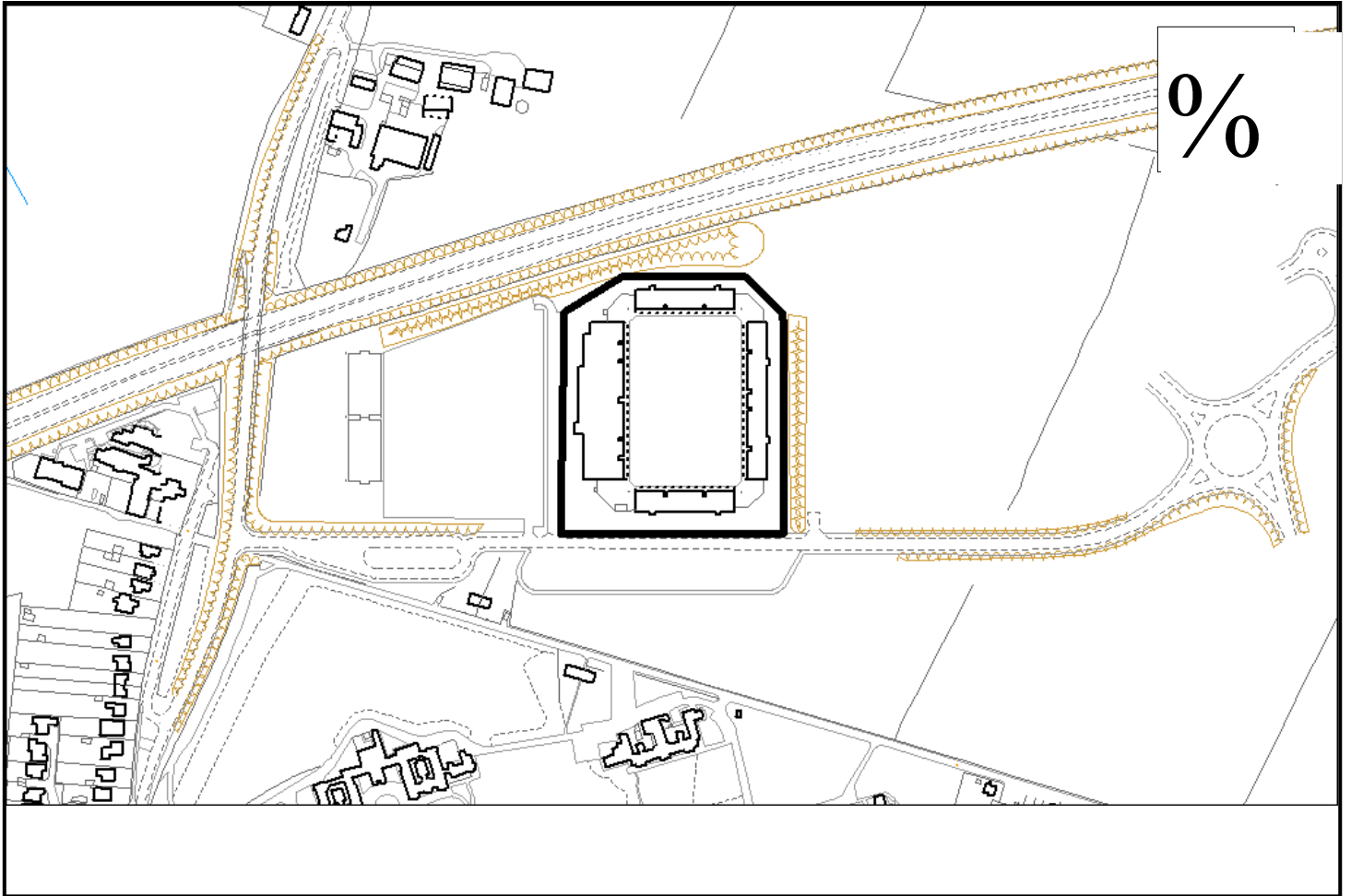
The 4 car parking spaces west of the building accommodating the use hereby permitted and east of the access to the school site shall be made available for the sole use of staff employed for the use hereby permitted prior to the first commencement of the use hereby permitted and shall retained thereafter for their sole purpose.

Reason: To ensure that the parking provisions previously agreed and already constructed are actually useable for the staff for which these spaces were originally required, in order to ensure that the new use meets the required car parking standards.

6 - Non-Standard Condition

Prior to the first commencement of the use hereby permitted 2 bicycle parking spaces shall be provided in a position that will have been previously agreed, in writing, and implemented to the satisfaction of the local planning authority. The bicycle parking spaces shall be retained as approved thereafter, unless otherwise agreed, in writing, at a later date by the Local Planning Authority.

Reason: To ensure proper provision for cyclists, including parking in accordance with the adopted cycle standards.



Application No: 081644

Location: Weston Homes Community Stadium, United Way, Colchester, Essex, CO4 5UP

Scale (approx): 1:1250

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7.9 Case Officer: Vincent Pearce

OTHER

Site: United Way, Colchester, Essex, CO4 5UP

Application No: 081644

Date Received: 9th December 2008

Applicant: Ms Sue Page

Development: Variation of condition 37 attached to O/COL/01/1622 to allow use of the stadiums internal concourses for the holding of a monthly farmers market on the 3rd Thursday and an annual christmas fayre and the variation of condition

Ward: Mile End

Summary of Recommendation: Conditional Approval

1.0 Site Description

1.1 The Weston Homes Community Stadium sits at the western end of Axiel Way/United Way and adjacent to the southern boundary of the A12 and the east side of Boxted Road

2.0 Description of Proposal

2.1 The proposal comprises two elements:-

- (a) The use of the concourse areas under the North, East and West Stands for the holding of a farmers' market on the first Thursday of every month with trading between 09-00 and 14.00. (set-up from 07.30 and breakdown by 15.00). It is also proposed to hold an unspecified annual '*Christmas Fayre*'.
- (b) Betting booths for match-day betting within each stand.

3.0 Land Use Allocation

3.1 Community Sports Stadium

4.0 Relevant Planning History

4.1 O/COL/01/1622) - 21 March 2006

Outline planning permission granted for community stadium, health & fitness centre, hotel, pub/restaurant, A3 units, two storey business unit, employment use, associated parking, transport interchange facilities and landscaping.

4.2 (F/COL/06/1727) – 5 July 2007

Permission granted to vary conditions relating to build programme/phasing

4.3 (071539) - 23 November 2007
Reserved matters approval granted for stadium

5.0 Principal Policies

Local Plan DC1: Development Control considerations

Core Strategy SD1: Sustainable development locations
SD3: Community facilities
CE1/2 Employment, Hierarchy and Town Centre:
UR1: Community Stadium, North Colchester Regeneration Area
TA1: Accessibility and changing travel behaviour

6.0 Consultations

6.1 The Planning Policy Manager comments that:-

“There is no objection to the proposal to allow betting.

The main issues relevant to the farmers’ market are the retail impact on the town centre and local centres and the sustainability of the location. In this instance the size of the market, the type of goods sold and (in view of the fact that the) Market will be held once a month it is not considered that it will have a significant negative impact on any existing centre.

Conditions will however be required to restrict the size of market, type of goods sold and number of days it is held. Any increase in the proposal would necessitate a retail impact assessment.

The location of the stadium is not at present the most sustainable. However, it must be remembered that significant residential and commercial growth is expected in the surrounding area and a farmers’ market would serve the enlarged local Community”

6.2 Street Services state:-

“In terms of waste collection we are currently in talks with Community Stadium/Colchester United re: recycling and waste collection schemes within the club so this would come under that. As long as it is compliant with the Community stadium’s waste collection scheme there are no issues.

There are no issues with the Charter Market aspect. As long as the farmers’ market is contained within the stadium we don’t have objections to it.”

6.3 Essex County Fire & Rescue Service comments that:-

“The proposal achieves an acceptable standard subject to the implementation of the items contained in your correspondence with confirmation of the following principle matters.

- A Fire Risk Assessment must be completed
- The stands should not be in use during this time. It would be advisable to lock or marshal the ‘pitch-side’ doors

- Due to the reduced fire resistance of exposed steel works within the concourse no naked flames or heat sources should be permitted
- It should be noted that in the event of fire/heat affecting the steel works, a full structural inspection would need to be carried out before the stand/concourse can be used."

6.4 **The Building Control Service Manager** endorses the advice of Essex County Fire & Rescue Service and adds that six additional fire extinguishers should be provided and evenly spaced out in the concourses during farmers' market events and no naked flames or open flammable liquids should be exposed in the stands during farmers' market events.

6.5 **Essex County Council Highways** raises no objection subject to conditions that restrict

- Trading to between 10.00 and 16.00 with the use ceasing and traders clear by the 16.00 deadline.

6.6 **Environmental Protection** has no comment to make.

7.0 Parish Council's Views

7.1 Myland Parish Council requests that:-

"..conditions are set to ensure that traders remove all their litter after every market/fayre. Also to ensure that signage to the farmers markets/fayres is in place and directions to the Weston Homes Community Stadium, via Severalls Lane NOT Boxted Road, are publicised"

8.0 Representations

8.1 Mr Bob Russell M.P. has written to the Planning Service questioning the sustainability of the location of proposal, the adequacy of public transport links to the site and the impact that the proposal may have on retailing activity in the town centre.

9.0 Report

9.1 **This report will now consider the merits of the proposal by exploring in turn:-**

- **The proposed farmers' market**
- **The currently operational 'match-day' betting use**

Abbreviations used:

WHCS: Weston Homes Community Stadium

DCLG: Department for Communities and Local Government

LDF: Local Development Framework

THE FARMERS' MARKET

9.2 Any discussion of the merits of this proposal must first focus on a detailed exploration of:-

- (i) What is meant by a farmers' market? and
- (ii) Will the proposal fundamentally challenge basic land use policy principles and more specifically the Council's retail policies. Namely:- Will the proposal, if permitted, undermine the Council's retail strategy to protect the vitality and viability of the town centre as a sub-regional shopping centre, such as to cause material harm**?

***the presumption being within the "plan-led" (Local Plans & LDF) planning system that permission should be granted unless the proposal will 'result in demonstrable harm to an interest of acknowledged importance' – which is another way of the Government saying – a proposal cannot be refused simply because it is contrary to policy if the Local Planning Authority cannot identify the adverse impact that will actually flow from a decision to approve the proposal.)*

9.3 Then the debate needs to extend to taking a look at the original planning permission for the stadium and the wider site known as Cuckoo Farm West to see if the current proposal is compatible with the uses allowed by that permission.

9.4 **It is a fact that that the site is owned by the Council, although it is not the applicant in this case. The Weston Homes Community Stadium is operated by a commercial stadium operating company. This report must be thorough, transparent, consistent in its recommendation and robust in its analysis of material planning considerations as the same 'rules' that apply to all applicants apply to the Council. The fact that the Council owns the site and has an obvious financial interest in it is not a material consideration for which the Planning Service and/or the Planning Committee can have regard.**

9.5 Other critical considerations that need addressing are:-

- Conformity with the intentions for use in the relevant stadium planning permission (O/COL/01/1622)
- Is the proposed location sustainable?
- Will the use, if permitted, undermine the Chartered Market in the Town Centre?
- Is the highway infrastructure able to cope with traffic generated by the use?
- Will it cause parking problems within the wider vicinity?
- How will the monthly event be signed and publicised?
- Is the use safe for operation within the stadium complex?
- What arrangements will be made for the storage and collection of refuse?
- Will the use, if permitted, cause any adverse impacts upon amenity?
- Are access arrangements satisfactory?
- Does the proposal have design implications for the building?

What is meant by a farmers' market?

- 9.6 In reality a farmers' market can be whatever it's operators want it to be or whatever is permitted by a local planning authority. That said there is a clear unwritten public understanding that a genuine farmers' market is about the selling of local produce, to local people, by local growers and producers. It is a venue at which local people can support local growers and producers rather than shop at a large national supermarket that stocks produce from all over the country as well as all over the world. It implies that buyers know the source of the produce and can build a rapport with the supplier.
- 9.7 The applicants in their supporting statement state that the farmers' market would provide a venue for farmers and small-holders to sell produce such as soft fruits in season, vegetables, breads, cakes, lamb, beef, pork, sausages, apple juices, plants, free range eggs and similar products.
- 9.8 From researching the farmers' market movement further it seems that the common thread is as suggested above in paragraph 9.6. The clear intention is to allow local growers and producers to sell their own produce. Farmers' markets generally also sell all the produce identified by the applicants but may also include cheeses, dairy produce, fish (fish farmed or locally caught), jams, preserves & honey, game, poultry, nuts, fungi and salads.
- 9.9 The underlying principle is that everything on sale has been grown, raised, baked, caught, shot or made by hand by people selling it. The implication is that a seller only sells their produce and no one else's.
- 9.10 Clearly the philosophy rules out the sale of imported, bought in and/or factory made produce/products. Therefore a seller cannot supplement her or his own stock with lets say pineapples from Hawaii, oranges from Seville, potatoes from Lincolnshire, apples from Kent, loaves made by Warburton's or sausages made by Wall's. It also implies that a cheese maker from lets say Great Tey couldn't buy greengages from a grower in East Mersea and sell them on.

Retail policy

- 9.11 The Council's Planning Policy Manager has considered the proposal and concluded that:-
- "In this instance the size of the market, the type of goods sold and (the fact that the) market will be held once a month it is not considered that it will have a significant negative impact on any existing centre."
- 9.12 The full text of her advice is produced in the consultations section of this report.
- 9.13 The Council's Street Services Department confirm that as managers of the town centre market they have no objection to the proposal effectively on the grounds that the proposed market will not affect the vitality or viability of the town centre market and the important retailing activity it contributes to the overall Colchester shopping experience.

- 9.14 The town centre market operates every Friday and Saturday (whereas the proposed farmers' market will occur only on the first Thursday of every month) and It offers a greater range and variety of items for sale. (of which only a small element is locally produced foodstuff).
- 9.15 The farmers' market held in the Colchester Arts Centre occurs on the first Friday of every month and so the proposal represents a second opportunity, on a different day, for growers and producers to sell their wares to local people.
- 9.16 As members will be aware "competition" is not a material planning consideration and the planning system has no remit to protect one trader/business from competition from another. The guiding government philosophy has consistently been through various Governments of the day that the market will decide.
- 9.17 The proposal is considered acceptable from both a general planning and specific retail policy perspective subject to restrictions by condition on frequency of operation and type of produce sold.

Conformity with the original stadium planning permission

- 9.18 The outline planning consent of 21 March 2006 (ref: O/COL/01/1622) permitted a broad range of uses designed to maximise the stadium's ability to serve, attract and cater for a rich and diverse blend of community uses. As a community stadium it was always expected, indeed is required, to be a busy and well-used venue. That said the Council as a responsible local planning authority did reasonably apply restrictions to the uses permitted and the operators do not have a free-hand to do as they wish.
- 9.19 Condition (no. 6) attached to the original outline planning permission restricts use of the stadium thus:-

6. The Community Stadium hereby approved shall primarily be used for purposes within Class D2 (e) (a swimming bath, skating rink, gymnasium or area for other indoor and outdoor sports or recreation not involving motorised vehicles or firearms) of Part A of the Schedule to the Town and Country Planning (Use Classes) Amendment Order 2005 (or any Order revoking or re-enacting that Order with or without modification) Secondary uses for purposes within:
- Class A1 (shop), A3 (restaurant and cafe) and A5 (hot food takeaway) purposes (where these are directly ancillary to the primary use);
 - B1 (a) (office other than a use within A2 (financial and professional services));
 - D1 (b) (creche, day nursery or day centre); (c) (for the provision of education); (d) (display of works of art otherwise than for sale or hire); (g) (public hall or exhibition hall) (including conference facilities) and (h) (for or in connection with public worship or religious instruction)
 - Function Rooms (function room use is considered to be 'sui generis'. This condition does not permit any other 'sui generis' use from occurring without further prior written approval of the Local Planning Authority).
- (where all or any of these are incidental to the primary use)

are permitted subject to the prior written notification to the Local Planning Authority and subsequent confirmation by the Local Planning Authority that an intended use is either ancillary or incidental. The prior notification will require the provision of details as to the nature of the intended use and the extent and location of floorspace to be available for that purpose.

Reason: To ensure that the A12 trunk road will continue to fulfil its purpose as part of a national system of routes for through traffic, in accordance with Section 10 (2) of the Highways Act 1980, and for the safety of traffic on that road. The proposed improvements to the A12 trunk road have been assessed on the basis of a total floor areas and building sizes shown above. An increase in the total might invalidate the assessment. In addition the Local Planning Authority wishes to ensure that the use of the stadium does not give rise to adverse impacts upon the amenity of nearby residential properties and wishes to ensure that the premises are used for the intended purposes.

9.20 Furthermore condition no.37 refers specifically, amongst other things, to a restriction on market use. Namely:-

37. Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 1995 Schedule 2, Part 4, Class B (or any order revoking or re-enacting that Order) no temporary buildings or uses shall be permitted (including the holding of a market/car boot sale) without the prior written approval of the Local Planning Authority upon submission of an application for planning permission.

Reason: In the interest of local amenity and highway safety.

9.21 The intention in applying condition 37 was:-

- to ensure that the Council as local planning authority retained control over the future use of external spaces around the stadium as impromptu and sporadic unauthorised and 'permitted development' (ie: allowed without the need for planning permission subject to certain caveats) boot fares had arisen and had generated concern elsewhere in the borough in the past
- to ensure that if a market use (indoor or outdoor) was proposed the Council as local planning authority would be able to control it through the planning system, if appropriate, in order to safeguard highway safety and in order to ensure that it's retail planning policies and the well being of existing retail centres were not prejudiced by such activity.

Sustainability

9.22 Both National Planning Guidance in the form of PPG (Planning Policy Guidance)13: Transport and PPS (Planning Policy Statement) 1: Delivering Sustainable Communities and the Council's planning policies look to encourage sustainable development.

9.23 This is particularly important when considering whether a proposed development will make provision for encouraging access by modes of transport other than the motor car. This can be achieved by encouraging mixed use development where 'balanced communities' can be created where facilities and opportunities are located together within easy walking or cycling distance. In addition proposals can either take advantage of existing good public transport connections or make provision for improved facilities and/or infrastructure.

- 9.24 Currently a farmers' market at the WHCS cannot be said to be particularly sustainable. The WHCS sits in isolation remote from and indirectly connected to most existing residential areas save for a smattering of houses along Boxted Road. Tower Lane which on plan connects the stadium with residential communities to the south is owned by English Partnerships and whilst in due course it will provide a key green link it is currently not always passable. It is unlikely and unrealistic to expect that existing residents in Mill Road and the Highwoods area will walk from their homes to a market at the WHCS using what for them is the circuitous Axial Way link.
- 9.25 Whilst the Severalls Hospital site has outline planning permission for predominantly residential redevelopment no reserved matters application has been submitted and so new development is still some way off, irrespective of the impact that the credit crunch is having on the housing market. Therefore there is little immediate prospect that the planned pedestrian and cycle links from a new residential community to the west will appear.
- 9.26 Members will recall however that construction of the stadium was brought forward in terms of the originally agreed phasing of development. This meant that in fact it has preceded construction of the Northern Approach Road Phase 3 and the new A12 junction (and some early residential development, up to 475 units on Severalls Hospital).
- 9.27 As a functioning community stadium it already attracts users to the site who are taking advantage of those facilities and activities being provided - beyond attendance as supporters at Colchester United home games. Outside of match days when special public transport services are laid on it has to be said that car usership must of necessity be higher now than can be expected once the 'planned' development has occurred around it. This will include new pedestrian and cycle links and a segregated bus corridor with an express bus service linking north Colchester to the main station and the town centre beyond. The site is therefore situated to take advantage of an emerging and rich network linkages that are not car dependent.
- 9.28 In terms of place-making and community development should wider community use of the building now be discouraged until improved pedestrian/cycle links have been delivered through the development process?
- 9.29 By accelerating the construction of the stadium within the project Cuckoo Farm/Severalls Hospital regeneration programme ahead of much of the other transport infrastructure and before any other development the Council has accepted that for a limited period the sustainability credentials of the site will not be as good as they will inevitably become. Members are reminded that the decision to bring forward the stadium was made with the agreement of the DCLG (Department of Communities and Local Government) via the "referral" process which requires Government scrutiny of the proposal.

- 9.30 It is fair to say that a farmers' market suggests a rural origin for the produce. It makes little sense from a sustainability point of view to hold a farmers' market in the countryside, remote from the majority of the likely custom, as this would generate longer car trips. (unless it is specifically targeting a relatively small rural customer base). Therefore an urban location makes more sense as it cuts journey distances for the majority of customers. The WHCS is located within what is now urban Colchester. (although this statement may inflame passions in Myland). A broad 'fan' of residential development will soon open out around the site bridging the current gap between it and the existing communities of Myland and Highwoods.
- 9.31 Members will be aware that a privately managed farmers' market is held on the first Friday of every month at the Colchester Arts Centre. This is currently a highly sustainable location as it can allow shopping to occur as part of a linked trip.
- 9.32 As community activity burgeons within and around the stadium and as residential and commercial development expands in the vicinity and as the site increasingly becomes a journey destination in its own right the same scope for linked trips (which need not be car dominated) will flourish.
- 9.33 This proposal is seen as another component in helping to sustain the WHCS such as to help enable it to contribute longer-term to delivering a sustainable community at Severalls Hospital/Cuckoo Farm which can better integrate with the existing communities of Myland & Highwoods.

Colchester's market 'Charter'

- 9.34 The Planning Committee is not required to have regard to any restrictions on market activity laid down in the "Royal Charter" as this ancient document does not constitute a material planning consideration.
- 9.35 The question as to what impact the proposal is likely to have on retail activity in town centre is however a material consideration and has already been addressed in this report.

Traffic, parking and access

- 9.36 Essex County Council as Highway Authority has raised no objection subject to there being no trading before 10.00 hours and all related activity having ceased and with all traders clear of the site before 16.00. This would ensure that any potential conflict with peak time traffic is avoided, particularly in advance of the provision of the A12 junction and NAR3.
- 9.37 With such a restriction on trading it is unlikely that an event such as this which will only occur on the third Thursday of every month will cause any adverse highway impact in terms of congestion or highway safety.
- 9.38 Members will wish to ensure that vehicular use of the Boxted Road access continues to be restricted in order to avoid nearby residents being exposed to nuisance.

- 9.39 The site already benefits from having its own 667 space car park. It is unlikely that Colchester United will ever play a home game during the day on a Thursday (save perhaps a bank holiday game over the Christmas period) and so a lack of parking provision is not expected to be an issue. There is also a hard surfaced apron around the WHCS which can accommodate farmers' vans and the large hard surfaced coach parking area can also be made available for customer parking. A fee is only charged for parking on match days so there is unlikely to be any incentive for market goers who come by car to park in adjacent residential areas along Boxted Road.
- 9.40 The proposal is considered acceptable from a traffic and parking perspective subject to the addition of suitable conditions as described above.

Signage

- 9.41 Myland Parish Council wisely points out that adequate directional signage needs to be in place and that all publicity needs to direct access to and from Severalls Lane and not Boxted Road.
- 9.42 Indeed the Parish Council taps an important and sensitive vein because members are familiar with the visual blight that fly posting for various impromptu and sporadic events causes around the borough.
- 9.43 In consequence it is recommended that a condition be attached to any planning permission, if such is forthcoming, requiring a signage and publicity strategy be agreed with the local planning authority prior to the permitted use commencing.

Health & Safety

- 9.44 Safety considerations are a material planning consideration. However additional safeguards apply to football stadia as a result of the Taylor Report following the Hillsborough Disaster. The Ground has its own Safety Advisory Group which includes representatives from the Council's Building Control Service and Essex fire & Rescue Service.
- 9.45 Essex County Fire & Rescue Service has been consulted and they confirm that the proposal achieves an acceptable standard (*of fire safety*) subject to a number of restrictions and pre-requisites which can be attached as planning conditions.
- 9.46 The Council's Building Control Service endorses the advice of the Fire & Rescue Service and add a recommendation that the naked flames and/or open flammable liquids be prohibited on any stand in addition to the undercroft. They also advise that six extra water type fire extinguishers be evenly placed within the undercroft during farmers' market events.
- 9.47 The proposal is considered acceptable from a traffic and parking perspective subject to the addition of suitable conditions described above .

Refuse storage and collection

- 9.48 Understandably Myland Parish Council has expressed a view that market traders should be required to remove their litter after every market/fayre. One can easily picture a scene where bits of packing boxes, left-over/discarded fruit and veg in various stages of decomposition and an assortment of wrappings etc. could be strewn hither and thither causing nuisance, untidiness and a health hazard.
- 9.49 Even though as responsible parties it would clearly not be in the interest of the Club, the stadium operators or the owners to allow the use to be managed in a way that results in filth accumulating the addition of a suitable condition along the lines suggested by Myland Parish Council is considered eminently sensible.
- 9.50 The fact that the proposed use will be accommodated entirely within the WHCS should minimise any risk of litter and detritus escaping beyond the confines of the undercroft. However it is further recommended that no material be stored or otherwise left in the open outside of the WHCS.
- 9.51 The Council's Street Services Department is currently in discussion with the operators over appropriate refuse collection arrangements.
- 9.52 The proposal is considered acceptable from a refuse perspective subject to the addition of suitable conditions as described above.

Other amenity considerations

- 9.53 The fact that the proposed use is to be contained entirely within the stadium complex will mean that beyond those elements already covered in this report no adverse impacts on amenity are expected.
- Any noise, such as will be created, will be adequately contained by the enclosed undercroft structure;
 - no unpleasant odours are expected as cooking will not be permitted in the open concourses and any hot food being prepared will use existing purpose-built kitchen areas within the WHCS.
 - No new lighting issues arise from this proposal.

Access

- 9.54 Access to the concourses is via turnstiles or more conveniently through existing double gates in the corners of the stadium at each end of the stands. The stadium has been designed to make wheel chair access easy and convenient. A full range of toilet facilities already exists and convenient parking is available.

Design

- 9.55 Beyond access considerations the proposed use does not raise any design issues as the buildings appearance is unaltered by the proposal.

MATCH-DAY BETTING

- 9.56 This use already occurs within the WHCS. A booth in each of the North, East and South Stands along with two booths in the Main West Stand and a betting table in the Layer Suite and Box Holders Bar cater for betting on match-days.
- 9.57 The booths are open from 13.00 – 17.00 when afternoon matches are being played and 18.00 – 22.00 for evening games.
- 9.58 This type of facility is common at most league grounds and allows supporters to gamble on the results of the match, first scorer. Times of goals etc.
- 9.59 Subject to a restriction on the times of operation as currently operated the use is not considered to pose any adverse amenity or planning policy impacts.

CHRISTMAS FAYRE

- 9.60 In the absence of any real detail as to what is intended by the Club when it refers to a 'Christmas Fayre' it is for the Council to control this by condition to ensure that it doesn't become something that undermines the viability and vitality of the town centre and other centres.
- 9.61 Working on the assumption that it will be themed around the farmers' market then it is suggested that the Christmas Fayre be permitted to take place on the first and second Thursday in December one in place of the normal farmers' market and one in addition to it. (a total of 13 events). The Christmas Fayre will follow the same principles as the normal farmers market in terms of the restrictions (by condition) on the type of produce sold by condition but is will be permitted to have a Christmas theme. Any change to this arrangement would need to be agreed in writing by the Local Planning Authority before any change/ was/were made.

10.0 Conclusion

- 10.1 Having carefully considered all the relevant issues raised by this proposal it is considered that the low key proposed farmers' market use and occasional Christmas Fayre are not contrary to the Council's planning policies to safeguard the vitality and viability of the town centre. With conditions restricting the range of produce sold and with restrictions on the time and frequency of the use occurring an unbridled retail use will not evolve to threaten any existing retail area. This low key use is considered to represent a valuable adjunct to the community uses that are already developing within the WHCS.
- 10.2 This report does not wish to disguise the fact that the WHCS has not yet achieved it's full potential in terms of serving the community and the fact that it is operating ahead of schedule means that much of the community that will ultimately support it (and it them) has yet to arrive as development now lags behind. What is clear is that this part of the borough will continue to grow and will continue to offer new opportunities. The WHCS is well placed to become a vital focus for community activity. The proposed use is considered complementary to that end as it will help to sustain the increasing breadth of compatible uses being made by and for the community of and within the WHCS.

10.3 The match-day betting activity is limited in its extent and scope and raises no policy or amenity issues. Licensing of such activity is not a matter for the Planning Committee.

11.0 Background Papers

11.1 ARC; PP; Street Services; ECC (Fire & Rescue); BC; HA; PP; PTC; NRL

Recommendation - Conditional approval to vary condition 6 and 37 attached to O/COL/01/1622

Conditions

The Farmers Market

1 - Non-Standard Condition

Condition 6 and 37 as attached to the planning permission reference O/COL/01/1622 granted 21st March 2006 are hereby amended:-

- to permit the holding of a farmers' market on the first Thursday of every month only and on no other occasion without having secured the prior written approval of the Local Planning Authority.

Reason: In granting this permission the Council, as Local Planning Authority, has had particular regard to the specialist and infrequent nature of the retailing involved and the particular characteristics of a farmers' market that lend themselves to facilitating community development and which will contribute to the creation sustainable development on this site and the wider regeneration area hinterland around it. The Local Planning Authority however wishes to control the nature and extent of the use hereby permitted in the interest of safeguarding the viability and vitality of the town centre as a sub-regionally important shopping centre and that of local shopping centres.

2 - A1.5 Full Perms (time limit for commencement of Development)

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

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

The following additional conditions shall thereafter apply to the farmer's market use hereby permitted:-

3 - Non-Standard Condition

The permitted farmers' market shall only be open to the public between 10.00 and 15.00 on the permitted day.

Reason: In order to ensure that until the proposed new A12 junction and Northern Approaches Road Phase 3 connection is implemented the proposed farmers' market does not attract additional traffic on to the local highway network at peak traffic times in the interest of highway safety and in order to minimise the potential for congestion.

4 - Non-Standard Condition

Sellers are permitted to set-up their stalls from 08.30 and must have cleared and be away from the venue by no later than 16.00, leaving it in a tidy and clean condition.

Reason: In order to safeguard the amenity of existing and future neighbouring properties from noise and litter and in order to ensure that realistic setting-up and breaking-down times can be achieved around the restricted public opening hours set out in condition 3 above.

5 - Non-Standard Condition

The permission hereby granted only permits the selling of local produce by local growers and producers. Nothing that isn't grown, raised, baked, caught, shot or made by hand by the people selling it shall be sold and the seller is only permitted to sell their own produce only and no one else's.

Reason: In granting this permission the Council, as Local Planning Authority, has had particular regard to the specialist and infrequent nature of the retailing involved and the particular characteristics of a farmers' market that lend themselves to facilitating community development and which will contribute to the creation sustainable development on this site and the wider regeneration area hinterland around it. The Local Planning Authority however wishes to control the nature and extent of the use hereby permitted in the interest of safeguarding the viability and vitality of the town centre as a sub-regionally important shopping centre and that of local shopping centres.

6 - Non-Standard Condition

The permitted farmers' market shall only take place in the concourse areas beneath all or some of the North Stand, East Stand and/or South Stand only.

Reason: In the interest of public safety.

7 -Non-Standard Condition

No other part of the WHCS beyond those described in condition 03 above, including any part of the West Stand, shall be used for the setting-up of stalls and the public shall be prohibited from entering any other part of any stand above where the farmers' market is being held. Furthermore no naked flames or flammable liquids shall be allowed in any stand over a concourse within which the farmers' market is being set-up, open to the public or being broken down. The stands should not be in use during this time. It would be advisable to lock or marshal the 'pitch-side' doors. Due to the reduced fire resistance of exposed steel works within the concourse no naked flames or heat sources should be permitted. It should be noted that in the event of fire/heat affecting the steel works, a full structural inspection would need to be carried out before the stand/concourse can be used. Six additional fire extinguishers shall be provided and evenly placed around the concourse/s being used for the farmers' market on market day.

Reason: In the interest of public safety.

8 - Non-Standard Condition

Prior to the use hereby permitted commencing A Fire Risk Assessment must be undertaken and agreed in writing with Essex County Council Fire & Rescue Service and Colchester Building Control Service.

Reason: In the interest of public safety.

9 - Non-Standard Condition

Prior to the extended use hereby permitted commencing a refuse storage and collection management plan shall be submitted to and be approved by the Local Planning Authority. Such arrangements as shall have been agreed shall be fully implemented at all times thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of public health & hygiene, in order to prevent pollution/litter and to protect the amenity of existing and planned adjacent properties.

10 - Non-Standard Condition

There shall be no outside storage of any produce or any other equipment, material or any other item/s associated with the farmers' market use outside (externally) of the WHCS building except for the vehicles used by sellers. Customers cars are excluded from this restriction.

Reason: In the interest of protecting public health & hygiene, in order to prevent pollution/litter and to protect the amenity of existing and planned adjacent properties.

11 - Non-Standard Condition

Prior to the extended use hereby permitted commencing a signage and publicity strategy shall be submitted to and be approved by the Local Planning Authority. Such arrangements as shall have been agreed shall be fully implemented at all times thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that permitted events do not result in fly posting or signs being left out on days that the farmers' market is not permitted. In addition the Local Planning Authority wishes to ensure that visitors unfamiliar with the location of the Community Stadium are directed to it easily in order to improve accessibility and minimise haphazard and dangerous parking and unsafe road behaviour.

Informatives

(A) This planning permission is granted without prejudice to the need should it exist under the Stadium operating agreement/lease to first secure the approval of Colchester Borough Council as owner of the Community Stadium. It should not be taken as providing any such approval from Colchester Borough Council as owner of the Community Stadium.

(B) Produce such as soft fruits/vegetables/salads/nuts all in season, mushrooms, cheese, dairy produce, lamb, beef, pork, poultry, game, other meats, sausages, fish (fish farmed or locally caught), shellfish, apple juices, plants, free range eggs, breads, cakes, jams, preserves, honey, mead, beer and wine may all constitute produce that can be sold at the farmers' market provided it is local produce being sold by local growers and producers.

The Christmas Fayre

1. Non Standard Condition

Condition 6 and 37 as attached to the planning permission reference O/COL/01/1622 granted 21st March 2006 are hereby amended:-

- to permit the holding of a Christmas Fayre market on the first and second Thursday of December (the former in lieu of a normal farmers' market and the latter as an additional event) only and on no other occasion without having secured the prior written approval of the Local Planning Authority.

Reason: In granting this permission the Council, as Local Planning Authority, has had particular regard to the specialist and infrequent nature of the retailing involved and the particular characteristics of a farmers' market that lend themselves to facilitating community development and which will contribute to the creation sustainable development on this site and the wider regeneration area hinterland around it. The Local Planning Authority however wishes to control the nature and extent of the use hereby permitted in the interest of safeguarding the viability and vitality of the town centre as a sub-regionally important shopping centre and that of local shopping centres.

2- A1.5 Full Perms (time limit for commencement of Development)

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

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

The following additional conditions shall thereafter apply to the Christmas Fayre use hereby permitted:-

3 - Non-Standard Condition

The permitted Christmas Fayre shall only be open to the public between 10.00 and 15.00 on the permitted day.

Reason: In order to ensure that until the proposed new A12 junction and Northern Approaches Road Phase 3 connection is implemented the proposed farmers' market based Christmas Fayre does not attract additional traffic on to the local highway network at peak traffic times in the interest of highway safety and in order to minimise the potential for congestion.

4 - Non-Standard Condition

Sellers are permitted to set-up their stalls from 08.30 and must have cleared and be away from the venue by no later than 16.00, leaving it in a tidy and clean condition.

Reason: In order to safeguard the amenity of existing and future neighbouring properties from noise and litter and in order to ensure that realistic setting-up and breaking-down times can be achieved around the restricted public opening hours set out in condition 3 above.

5 - Non-Standard Condition

The permission hereby granted only permits the selling of local produce by local growers and producers which can be presented with a Christmas theme. Nothing that isn't grown, raised, baked, caught, shot or made by hand by the people selling it shall be sold and the seller is only permitted to sell their own produce only and no one else's unless otherwise and unless first agreed in writing by the Local Planning Authority.

Reason: In granting this permission the Council, as Local Planning Authority, has had particular regard to the specialist and infrequent nature of the retailing involved and the particular characteristics of a farmers' market based Christmas Fayre that lend themselves to facilitating community development and which will contribute to the creation sustainable development on this site and the wider regeneration area hinterland around it. The Local Planning Authority however wishes to control the nature and extent of the use hereby permitted in the interest of safeguarding the viability and vitality of the town centre as a sub-regionally important shopping centre and that of local shopping centres.

6 - Non-Standard Condition

The permitted Christmas Fayre shall only take place in the concourse areas beneath all or some of the North Stand, East Stand and/or South Stand only.

Reason: In the interest of public safety.

7 - Non-Standard Condition

No other part of the WHCS beyond those described in condition 03 above, including any part of the West Stand, shall be used for the setting-up of stalls and the public shall be prohibited from entering any other part of any stand above where the Christmas Fayre is being held. Furthermore no naked flames or flammable liquids shall be allowed in any stand over a concourse within which the farmers' market is being set-up, open to the public or being broken down. The stands should not be in use during this time. It would be advisable to lock or marshal the 'pitch-side' doors. Due to the reduced fire resistance of exposed steel works within the concourse no naked flames or heat sources should be permitted. It should be noted that in the event of fire/heat affecting the steel works, a full structural inspection would need to be carried out before the stand/concourse can be used. Six additional fire extinguishers shall be provided and evenly placed around the concourse/s being used for the Christmas Fayre on fayre day.

Reason: In the interest of public safety.

8 - Non-Standard Condition

Prior to the use hereby permitted commencing A Fire Risk Assessment must be undertaken and agreed in writing with Essex County Council Fire & Rescue Service and Colchester Building Control Service.

Reason: In the interest of public safety.

9 - Non-Standard Condition

Prior to the extended use hereby permitted commencing a refuse storage and collection management plan shall be submitted to and be approved by the Local Planning Authority. Such arrangements as shall have been agreed shall be fully implemented at all times thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of public health & hygiene, in order to prevent pollution/litter and to protect the amenity of existing and planned adjacent properties.

10 - Non-Standard Condition

There shall be no outside storage of any produce or any other equipment, material or any other item/s associated with the Christmas Fayre use outside (externally) of the WHCS building except for the vehicles used by sellers. Customers cars are excluded from this restriction.

Reason: In the interest of protecting public health & hygiene, in order to prevent pollution/litter and to protect the amenity of existing and planned adjacent properties.

11 - Non-Standard Condition

Prior to the extended use hereby permitted commencing a signage and publicity strategy shall be submitted to and be approved by the Local Planning Authority. Such arrangements as shall have been agreed shall be fully implemented at all times thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that permitted events do not result in fly posting or signs being left out on days that the farmers' market is not permitted. In addition the Local Planning Authority wishes to ensure that visitors unfamiliar with the location of the Community Stadium are directed to it easily in order to improve accessibility and minimise haphazard and dangerous parking and unsafe road behaviour.

Informatives

(A) This planning permission is granted without prejudice to the need should it exist under the Stadium operating agreement/lease to first secure the approval of Colchester Borough Council as owner of the Community Stadium. It should not be taken as providing any such approval from Colchester Borough Council as owner of the Community Stadium.

(B) Produce such as soft fruits/vegetables/salads/nuts all in season, mushrooms, cheese, dairy produce, lamb, beef, pork, poultry, game, other meats, sausages, fish (fish farmed or locally caught), shellfish, apple juices, plants, free range eggs, breads, cakes, jams, preserves, honey, mead, beer and wine may all constitute produce that can be sold at the farmers' market provided it is local produce being sold by local growers and producers.

Match Day Betting

1 – Non Standard Condition

Condition 6 and 37 as attached to the planning permission reference O/COL/01/1622 granted 21st March 2006 are hereby amended:-

- to permit 'match-day' betting within the Community Stadium on occasions when Colchester United are playing a Football League home game or a recognised 'home' 'cup' game only and on no other occasion without having secured the prior written approval of the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of this permission and in order to fully reflect the applicant's intentions.

2 - A1.5 Full Perms (time limit for commencement of De

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

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

The following additional conditions shall thereafter apply to the 'match-day' betting use hereby permitted:-

3 - Non-Standard Condition

'Match-day' betting shall, in addition to the restriction contained in condition 1 above ('match-day' betting), only occur between the hours of 13.00 and 17.00 only on Saturday home match days and 18.00 and 22.00 only on weekday evening matches.

Reason: For the avoidance of doubt as to the scope of this permission and in order to fully reflect the applicant's intentions.

4 - Non-Standard Condition

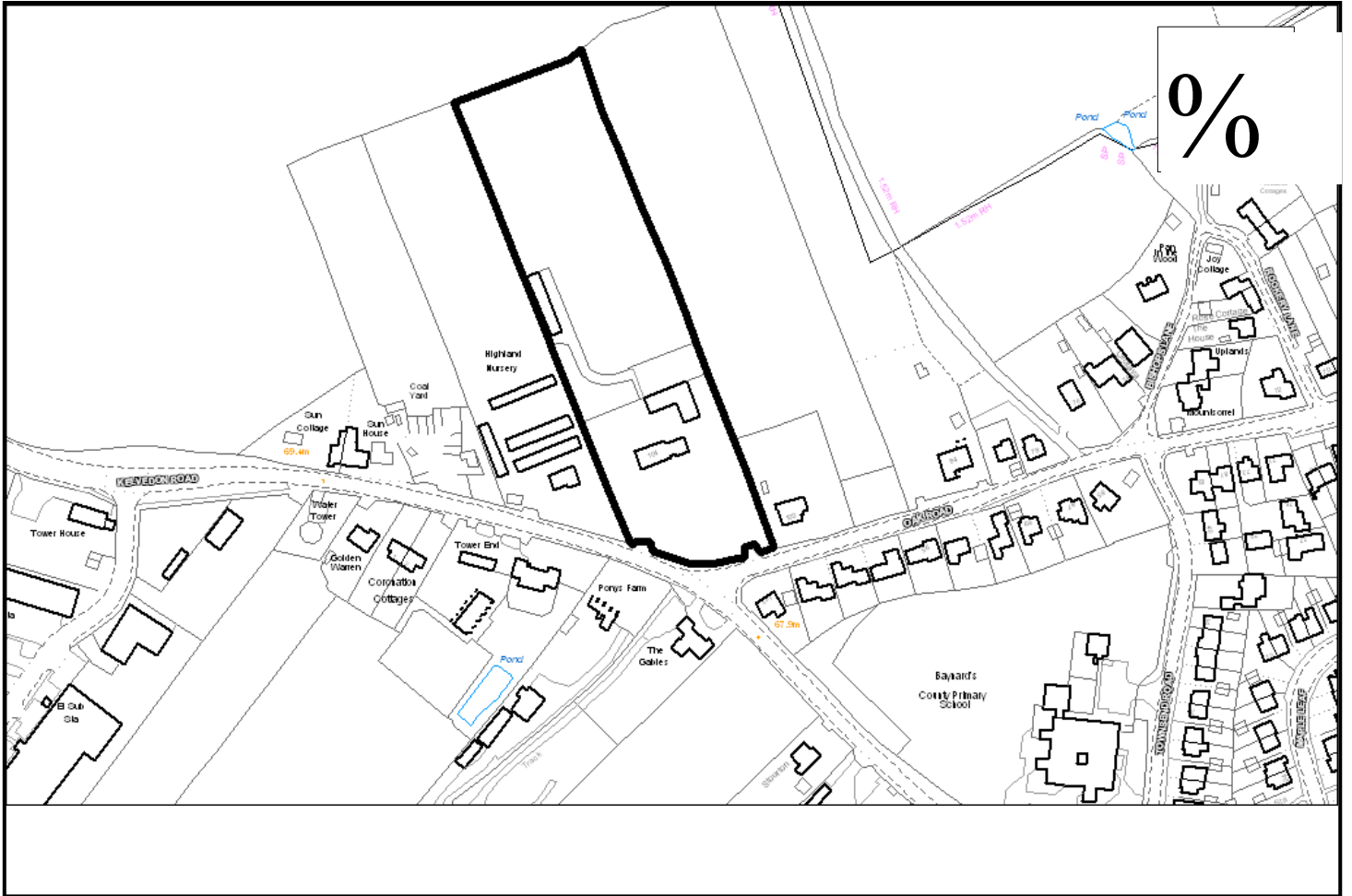
The permission hereby granted extends to the siting of one booth in each of the North Stand, East Stand and South Stand concourses, two betting booths in the West Stand concourse and betting tables set up in the Layer Suite and Box Holders Bar.

Reason: For the avoidance of doubt as to the scope of this permission and in order to fully reflect the applicant's intentions.

Informatives

(A) This planning permission is granted without prejudice to the need should it exist under the Stadium operating agreement/lease to first secure the approval of Colchester Borough Council as owner of the Community Stadium. It should not be taken as providing any such approval from Colchester Borough Council as owner of the Community Stadium.

(B) This planning permission for 'match-day' betting is granted without prejudice to the need to first secure any additional approvals or licenses that may also be required under other legislation.



Application No: 082144

Location: 104 Oak Road, Tiptree, Colchester, CO5 0NA

Scale (approx): 1:1250

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7.10 Case Officer: Sue Fenghour

EXPIRY DATE: 24/02/2009

OTHER

Site: 104 Oak Road, Tiptree, Colchester, CO5 0NA

Application No: 082144

Date Received: 30th December 2008

Agent: David Snaith Associates Ltd

Applicant: Dr & Mrs Otto

Development: Infill and conversion of existing garage/car port area to provide consultation offices.

Ward: Tiptree

Summary of Recommendation: Conditional Approval

1.0 Planning Report Introduction

1.1 This application is put forward for Committee consideration as an objection has been received from a neighbour and in view of the recent planning history of the site.

2.0 Site Description

2.1 104 Oak Road, Tiptree is a large detached modern house set back from the road within large grounds. Immediately to the rear is an L shaped entertainment block with attached car port. Beyond a stable block is located in a rear paddock area.

2.2 The proposed development comprises the change of use and conversion of the existing car port to create 2 consultation offices and associated waiting room and W.C. facilities. This is intended to supplement the London based practice of the applicant, a doctor operating a private cosmetic clinical practice.

2.3 Information in the accompanying planning statement emphasises that the new practice would serve an existing local client basis, provide employment opportunities for the local community and not be used as a full-time basis with a maximum of 8 clients daily on an appointment basis.

3.0 Land Use Allocation

3.1 Residential

4.0 Relevant Planning History

4.1 COL/05/1851 - Change of use and conversion of outbuildings (former stables) to use as a part-time surgery and clinic. Planning permission refused 20 December 2005 and subsequent appeal dismissed by letter dated 20 July 2005.

5.0 Principal Policies

- 5.1 Adopted Review Borough Local Plan
C01 - Countryside
C03 - Countryside Conservation Areas

6.0 Consultations

- 6.1 The Highway Authority have no objections subject to the vehicular access onto Kelvedon Road being closed and vehicular access only from Oak Road. (An e-mail has been received from the agent indicating their clients agreement to this).

7.0 Parish Council's Views

- 7.1 Tiptree Parish Council has no objections to the application.

8.0 Representations

- 8.1 1 letter of objection has been received drawing parallels with the previous application which was dismissed on appeal.

9.0 Report

- 9.1 The current proposal differs from the previous application in that it is on a greatly reduced scale and would be contained within the main residential complex. The original proposals involved conversion of the stable block set well back to the rear of the property located within open countryside.
- 9.2 In dismissing the appeal the Inspector expressed concern that the proposed development would generate an inappropriate level and type of activity in a building located in the open countryside and that it would therefore cause unacceptable harm to the rural character of the area.
- 9.3 Whilst the main house lies outside the defined residential area for Tiptree it does lie within the residential frontages of Oak Road. As a relatively modest scheme enclosed within the main building complex it is considered that it will not have a detrimental impact upon the surrounding countryside.
- 9.4 No objections are therefore raised to these proposals subject to conditions to control the scale of activity.

10.0 Background Papers

- 10.1 ARC 2004; HA; PTC; NLR; CAA

Recommendation - Conditional Approval

Conditions

1 - A1.5 Full Perms (time limit for commencement of Development)

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

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

2 - A3.5 Specified Ancillary Use Related to Main Use

The permitted building shall not be occupied at any time other than for purposes ancillary to the residential use of the main dwellinghouse at 104 Oak Road, Tiptree.

Reason: For the avoidance of doubt as to the scope of the permission and to protect the amenities of the surrounding area.

3 - Non-Standard Condition

The approval hereby permitted shall relate only to that area edged in green on the returned plan No. 002.

Reason: For the avoidance of doubt as to the scope of the permission and to protect the amenities of the surrounding area.

4 - A5.2 Restaurants, Clubs etc

The use hereby permitted shall not be open to clients outside the following times 9.00 a.m.- 5.00 p.m. Monday to Friday; 9.00 a.m. - 1.00 p.m. Saturday and at no time on Sundays, Bank or Public Holidays.

Reason: The use of this site outside these hours would be likely to cause loss of amenity to adjacent residents.

5 - C3.5 Materials to Match Existing

The external materials and finishes to be used for the approved development, shall be of the same type and colour as those of the existing building unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not detract from the appearance of the existing building and the character of the area.

6 - Non-Standard Condition

The existing access onto Kelvedon Road, shown blue on Plan No. 010, shall be suitably and permanently closed, including reinstatement to full height of the highway verge, to the satisfaction of the Highway Authority, in accordance with details submitted to and approved by the Local Planning Authority prior to the commencement of the proposed development.

Reason: To minimise the points of traffic conflict within the highway, in accordance with Essex Local Transport Plan 2006/2011 Appendix G: Development Control Policy 1.1.

Informatives

All works affecting the highway are to be carried out by prior arrangement and to the satisfaction and requirements of the Highway Authority. Application for the necessary works should be made initially by telephoning 01206 838600.

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



Application No: 061164

Location: Blackheath Demolition & Tradin, 26 Hythe Quay, Colchester, CO2 8JB

Scale (approx): 1:1250

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Planning Committee

Item

8

19 March 2009

Report of	Head of Environmental & Protective Services	Author	Bradly Heffer ☎ 01206 506940
Title	26 Hythe Quay, Colchester		
Wards affected	New Town		

Members are requested to agree an extension of time to enable the completion of a legal agreement that would be attached to a planning permission for development at 26 Hythe Quay Colchester.

1. Decision(s) Required

- 1.1 That the Planning Committee allows another six month period to enable completion of negotiations on a section 106 agreement attached to planning application F/COL/06/1132.

2. Reasons for Decision(s)

- 2.1 Members are advised that under application F/COL/06/1132 planning permission was sought for the following development:

‘Refurbishment and redevelopment of the existing Victorian warehouses and the construction of a new residential block to form 24no. apartments including landscaping and riverside improvements.’

- 2.2 Committee resolved to accept the officer recommendation of approval, subject to the completion of a section 106 agreement. At the time the report was presented, and the recommendation agreed, the report to Members included a caveat that negotiations should be concluded within a six month period following approval of the resolution. The six month period has long since expired; the application recommendation having been agreed by Committee at the meeting held on 23rd August 2007. However, recently progress has been made on the terms of the agreement and it is anticipated that matters could be concluded in the near future. It is on this basis that the further six month extension is requested.

3. Alternative Options

- 3.1 An alternative option would be to refuse the application on the basis that the legal agreement has not been completed within the original six month period. However, this is not considered to be appropriate in this case.

4. Supporting Information

- 4.1 Officers fully acknowledge that an extensive period of time has elapsed since the matter was originally reported to Committee. However, in seeking to secure the regeneration of the Hythe it is felt that the completion of the legal agreement attached to the grant of planning permission - albeit delayed – will be a positive step. It is acknowledged that, generally, applications that have been dormant for a long time with no prospect of completion should be withdrawn or refused as appropriate. However, in this case there is a realistic prospect that the proposal can be satisfactorily concluded.

5 Strategic Plan References

- 5.1 East Colchester Regeneration Area which is identified in the Strategic Plan as part of the Renaissance of Colchester.

6. Consultation

- 6.1 None.

7. Publicity Considerations

- 7.1 The original application was subject to appropriate notification and consultation. The issue being considered by Committee is to extend the period of time to enable conclusion of the required section 106 agreement. The terms of the application are unaltered and further publicity is not required.

8. Financial Implications

- 8.1 None known.

9. Equality, Diversity and Human Rights Implications

- 9.1 None.

10. Community Safety Implications

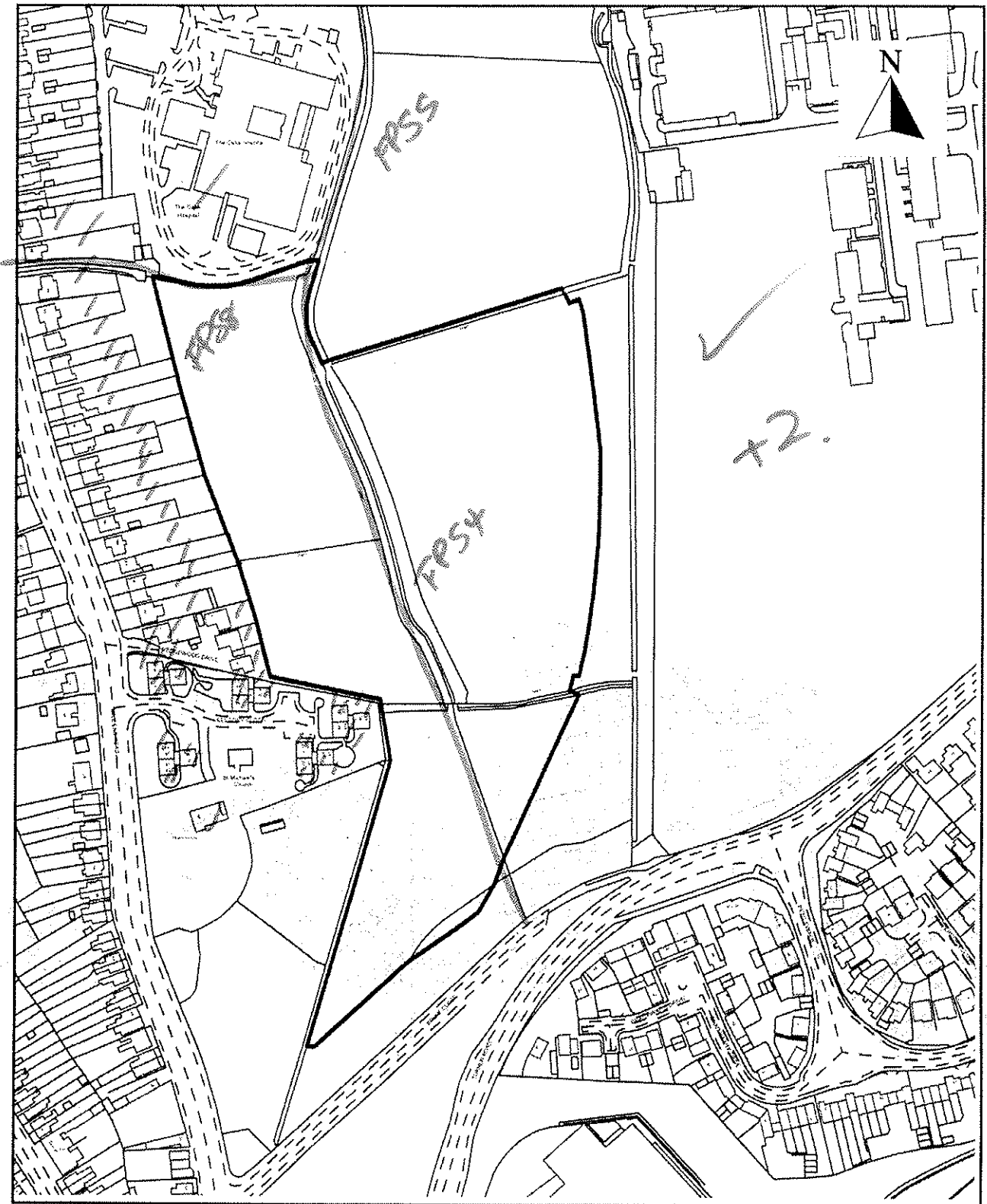
- 10.1 The introduction of new residential development would, it is felt, make a positive contribution to visual amenity and community safety in the area.

11. Health and Safety Implications

- 11.1 None.

Background Papers

None.



Application No: RM/COL/04/1235

Location: Southern Slopes, Colchester (formerly known as Land west of Turner Village Hospital), Turner Road, Colchester

Scale: 1:2500

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19 March 2009

Report of	Head of Environmental and Protective Services	Author	John Davies
Title	St James Park Estate, Mile End, Colchester		☎ 507838
Wards affected	Mile End		

This report concerns the provision of affordable housing within the above development and a proposal to change the status of 12 affordable flats from shared ownership to social rented accommodation to be let and managed by Flagship Housing Group.

1. Decision(s) Required

- 1.1 To agree a Deed of Variation to an existing Agreement under S.106 in respect of the proportions of social rented and shared ownership units.
- 1.2 To agree that the amendment may take place following the approval of Planning Committee and prior to the completion of a Deed of Variation in order to allow the units to be brought into use at the earliest opportunity.

2. Reasons for Decision(s)

- 2.1 The Deed of Variation requires Committee approval as this type of amendment is not delegated to Officers to agree.

3. Alternative Options

- 3.1 If the amendment is not agreed the change in tenure may not be carried out and the RSL indicates that the flats are likely to remain empty as it has not been possible to sell them.

4. Supporting Information

- 4.1 Outline consent was approved for residential development on this site known then as Southern Slopes in 2003. There was a legal agreement attached to the consent which regulated among other matters the provision of affordable housing and specified a tenure mix for rented and shared ownership units. This was as follows:

TYPE	RENTED	SHARED OWNERSHIP
2 bedroom house	15%	None
3 bedroom house	11%	None
1 bedroom flat	26%	15%
2 bedroom flat	None	34%

- 4.2 Reserved matters approvals for the development in two phases were agreed in 2004 and 2005 for the provision of a total of 209 houses and flats of which 52 were to be provided as affordable units.
- 4.3 The RSL has stated that there were originally 13 shared ownership flats on the 4th phase of the development, but it has only been possible to sell one of the units since their completion in October 2007 despite intense marketing. The units have remained vacant for 16 months.
- 4.4 The RSL requests that if the Committee are agreeable to the change and authorise the variation, that they be allowed to let the units in advance of the completion of any Deed. Officers raise no objection to this as the Deed may take some time to be completed and it would mean the earlier occupation of these units.

5. Proposals

- 5.1 The proposal is to allow the change of tenure of 12 no. one and two bed flats from shared ownership to social rented. The resulting mix of units is as shown in the following table. Actual figures are in brackets:

TYPE	RENTED		SHARED OWNERSHIP	
	Approved	Proposed	Approved	Proposed
2 bedroom house	15% (8)	no change	0	no change
3 bedroom house	11% (6)	no change	0	no change
1 bedroom flat	26% (13)	27%(14)	15%(8)	13% (7)
2 bedroom flat	0	21% (11)	34% (17)	11% (6)

- 5.2 The main changes are that the proportion of rented two bedroom flats over the whole site is increased from zero to 21% and there is a corresponding reduction in 2 bedroom shared ownership units from 34% to 11%.

6. Standard References

- 6.1 There are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications.

Background Papers

Case references:
 O/COL/00/1281
 RM/COL/03/1848
 RM/COL/04/1235

Our vision is for Colchester to develop as a prestigious regional centre

Our goal is to be a high performing Council

Our corporate objectives for 2006-2009 are:



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