

Planning Committee

Council Chamber, Town Hall
27 February 2014 at 6.00pm

This Committee deals with

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

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

Material Planning Considerations

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

The following approach should be taken:

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

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

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

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

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

- land ownership issues including private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses
- matters specifically controlled through other legislation
- unless they are “exceptional”, personal circumstances, including hardship

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

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

Human Rights, Community Safety and Equality and Diversity Implications

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

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council Equality Impact Assessment (EIA) Framework

In order that we provide a flexible service that recognises people's diverse needs and provides for them in a reasonable and proportional way without discrimination.

Using Planning Conditions and Considering Reasons for Refusing Applications

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

In terms of the Planning Committee, Circular 03/2009 makes it clear that “*Planning authorities are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority*”.

The power to impose conditions is an important material consideration in any determination. Circular 03/2009 states that “*Whenever appropriate, planning authorities will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed*”. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. *The Circular adds that “A planning authority refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.”* Advice on the need to consider whether conditions may make a proposal acceptable which would be otherwise unacceptable is also to be found in Circular 11/95.

Any planning condition imposed on a development must be necessary, relevant to planning, relevant to the development to be permitted, reasonable, precise and enforceable. Unless conditions fulfil these criteria, which are set out in Circular 11/95, they are challengeable at appeal as *ultra vires* (i.e. their imposition is beyond the powers of local authorities). If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted.

In considering the reasons for that refusal, Circular 03/2009 makes it clear that planning authorities must “*properly exercise their development control responsibilities, rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason*”. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that public authorities act fairly and reasonably in executing their decision making functions, and that it is evident to all that they so do.

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
27 February 2014 at 6:00pm**

Members

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

Substitute Members

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

Agenda - Part A

(open to the public including the media)

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

An Amendment Sheet is available on the council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Could members of the public please note that any further information which they wish the Committee to consider must be received by 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

Pages

1. Welcome and Announcements

1

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

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

2. Have Your Say!

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

3. Substitutions

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

4. Urgent Items

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

5. Declarations of Interest

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

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

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

6. Minutes

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

7. Planning Applications

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

- | | | |
|----|---|----------------|
| 1. | 140001 66a London Road, Lexden, Colchester
(Lexden) | 2 - 15 |
| | Change of use from A1 (Shops) to private members social club. Alterations to the building include: Change of front door from uPVC to wooden / traditional looking. Change rear double doors (wooden / glazed) to single metal security / fire exit style. Change rear (first floor) double doors (uPVC) to single metal security / fire exit style. These changes are internal only: Replace existing toilet area to include two separate toilets and one shower - connect to existing plumbing. Replace / Move internal doors to create additional soundproofing. Rewire building to bring up to date. | |
| 2. | 132816 Warriors Rest, Maypole Road, Tiptree
(Tiptree) | 16 - 28 |
| | Construction of a steel framed, fabric covered sports building to enclose the Multi Use Games Area at Warriors Rest. | |
| 3. | 140043 5 Lexden Park House, Lexden Road, Colchester
(Lexden) | 29 - 33 |
| | Application for removal or variation of a condition following grant of planning permission (F/COL/00/1007) to use part of the roof area | |

as a roof terrace.

4. 136177 Outdoor Adventure, The White Hart, 342 London Road, Stanway (Copford and West Stanway) **34 - 43**

Change of use from Class A1 (Shops) to Class A3 (Restaurant).

8. Amendment Sheet **44 - 46**

See Amendment Sheet (attached).

9. Exclusion of the Public

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

Information for Members of the Public

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Have Your Say!

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Access

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Colchester, CO1 1JB
telephone (01206) 282222 or textphone 18001 followed by the full number you wish
to call
e-mail: democratic.services@colchester.gov.uk
www.colchester.gov.uk



Application No: 140001

Location: 66a London Road, Lexden, Colchester CO3 4DF

Scale (approx): 1:1250

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **27 February 2014**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: Peter Hill

Date: 27.2.14

OTHER

Site: 66a London Road, Lexden, Colchester CO3 4DF

Application No: 140001

Date Received: 2 January 2014

Applicant: Mr Jason Woolf

Development: Change of use from A1 (Shops) to private members social club
Alterations to the building include:-Change Front Door from uPVC to
Wooden/Traditional looking Change Rear double doors (wooden/glazed)
to single metal security / fire exit style Change Rear (first floor) double
doors (uPVC) to single metal security / fire exit style Other changes are
internal only:- Replace existing toilet area to include two separate toilets
and one shower - connect to existing plumbing. Replace / Move internal
studwork walls to suit new use Add new internal doors to create
additional soundproofing. Rewire building to bring up to date

Ward: Lexden

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee by Councillor Sonia Lewis for the following reason;

“Concerns regarding traffic, comings and goings between site and car park and noise from within the building, all potentially causing noise and disturbance to surrounding residential properties.”

2.0 Synopsis

2.1 The key issues explored below are;

1. Morality
2. Policy principle
3. Impact on local character
4. Highway safety
5. Parking
6. Neighbours' amenities
7. Economic benefits

2.2 It is set out that morality is not a planning consideration, that the development is not harmful to the objectives of the development plan and that the proposal is not out of character with the surrounding area. This report outlines that there are no highway safety concerns and that the lack of available parking within the development site itself does not constitute grounds for refusal. It is accepted that there may be some increased noise and disturbance to the occupiers adjoining the nearby car park, but that this car park is existing and that its more efficient use would not justify a refusal. In other respects, noise and disturbance can be mitigated against by condition, but its potential for harm is in any case limited by the site's location on a busy road with other commercial properties. It is furthermore set out that the proposal will generate economic benefits which, although unquantifiable, must be given some weight. Finally, it is concluded that this proposal is acceptable but that planning permission should be granted on a temporary basis in the first instance to allow any impacts of the development to be monitored and assessed.

3.0 Site Description and Context

3.1 The application site is positioned on London Road, close to the junction with Halstead road. It comprises a two-storey building with hard standing area at the front. It has no other curtilage.

3.2 Next door to the west is a garage (Airway Tyres wheel alignment centre). That premises is on the corner of Back Lane and extends to the rear of the application site, enclosing its southerly aspect. Next door, to the east, is a model shop (Colchester A1 Models). This has no residential accommodation above it. Opposite the site is an ambulance service depot that takes its access off Halstead Road.

3.3 Beyond the immediate neighbours to the east, on the same side of the road is (in respective order), a hair and beauty salon, an Indian takeaway and a fish and chips / kebab takeaway. Beyond these commercial properties can be found five residential dwellinghouses and beyond these a public car park. This car park is bounded by residential properties. At the rear of it, there is a pedestrian connection to Henley Court.

3.4 Beyond the immediate neighbour and the Back Lane junction to the west can be found a Chinese takeaway, a betting shop and an IT shop on the same side of the road. Further afield still, are residential properties and a large Aldi store with the Kingsland Church above.

3.5 The private road of Back Lane contains the closest residential properties from the site. No.2 Back Lane is 12 metres from the back of the application building (25 metres from the front).

4.0 Description of the Proposal

4.1 The applicant proposes the change of use of the building to a private members' club. The private members club will comprise what is popularly known as a 'swingers' club.

4.2 Although associated physical operations are also described in the application form, no specific details are provided in relation to these and it is not clear whether or not they require express planning permission. Conditions will need to address this lack of clarity.

5.0 Land Use Allocation

5.1 The site is within an area designated in the Local Development Framework as a 'Neighbourhood Centre'.

6.0 Relevant Planning History

6.1 Historically, this building was used for a long period of time as a printing works and office. The most relevant planning permission pertaining to this use was 90/1178 that granted continued use for this purpose. The use appears to have changed around 2012, when the premises became a Polish grocery shop. Planning permission 121273 granted a café use ancillary to that shop but it is not clear whether that permission was ever implemented. It is understood that the retail use ended in December 2013.

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

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

- SD1 - Sustainable Development Locations
- CE1 - Centres and Employment Classification and Hierarchy
- CE2c - Local Centres
- UR2 - Built Design and Character
- ENV1 - Environment

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

DP1 Design and Amenity
DP7 Local Centres and Individual Shops
DP17 Accessibility and Access
DP19 Parking Standards

7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

-Vehicle Parking Standards

8.0 Consultations

8.1 Highway Authority

No objection. No recommended conditions

8.2 Archaeology

No comment

8.3 Environmental Services

Environmental Protection recommend conditions requiring;

1. 0dB noise from plant, equipment and machinery at noise-sensitive boundaries
2. Opening hours restricted to 12:00-02:00 on weekdays and Saturdays and 12:00-23:00 on Sundays.
3. A scheme of sound insulation
4. Conditions restricting the times that glass bottles can be emptied
5. A scheme of signage at all exists requesting customers leave quietly
6. A 12 month temporary permission.

8.4 Spatial Policy

"The site is located on London Road in a designated Neighbourhood Centre.

Neighbourhood Centres have been designated to provide small scale shops, services and community facilities for local residents and this function is protected by policy CE2c of the Core Strategy

The main objective of Development Policy DP7 is also to protect the primary retail function provided by neighbourhood centres.

There are a total of 16 units within the Neighbourhood Centre on London Road providing a mix of retail (A1), (A2), (A5) and Sui-Generis uses. 50% of the units are currently in A1 uses and the above policy seeks to maintain this balance.

The site was used most recently for an A1 use but historically it has been used by a printing business, a non A1 use. The unit is currently empty. The proposal would result in the loss of an A1 use from the neighbourhood centre bringing the number of A1 frontages to just below the 50% required by this policy. As such the proposal would not accord with this objective of policy DP7.

In addition to their main retail function, policy DP7 also recognises that community uses which do not significantly impact on residential amenity can also be suitable alternative uses within neighbourhood centres. It is supportive of alternative uses that meet a local or district wide community need.

As there are a small number of residential properties located close to the development site, the proposal should not adversely impact on the amenity of local residents or significantly increase traffic related issues in the immediate area. As case officer, you should be satisfied that these policy objectives are met. It is noted that while there is no parking immediately outside the building there is however a public car park close by which patrons could use. The site is also on a bus route and therefore is easily accessible by public transport.

While the proposal would lower the number of A1 uses in this neighbourhood centre to just below the policy requirements of DP7, it introduces a valid community use into the Neighbourhood Centre and as such is considered to accord with the broad objectives of the National Planning Policy Framework to promote the vitality of urban areas and policies CE2c or DP7.”

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

9.0 Parish Council Response

9.1 N/A

10.0 Representations

10.1 Objections have been received from 30 people. The comments raised are summarised as follows;

1. Inadequate parking.
2. Would result in bad parking on Back Lane and damage to the surface of that private road.
3. Public car park used by local residents who have no parking of their own.
4. Public car park serves local businesses, its use by a private members club would harm them.
5. On-street parking would obstruct residents’ accesses and emergency vehicles.
6. Nowhere for deliveries
7. No drop-off point, resulting in cars parked on highway
8. Noise and disturbance until 2am
9. Out of character with residential area
- 10.No other local businesses open this late
- 11.Immoral
- 12.Threat of early sexualisation of young children
- 13.Disorder that results from licensed premises

14. Noise emitting from the building
15. Impact on property prices
16. Speculation about the personalities and personal abilities of the applicant to run the enterprise.
17. Increase in local crime from additional use of car park and 'sex club' use
18. Inadequate public consultation.
19. Questionable marketing – building could have alternative use.

Points 11, 12, 15, 16, and 18 are not planning considerations relevant to the determination of this application. Other points raised will be addressed within the subsequent sections of this report.

10.2 Comments of support have been received from 13 people. These are summarised as follows

1. Existing industrial use of the building would be noisy in any case
2. Nature of clientele likely to be older professionals, making bad behaviour less likely
3. High percentage of members likely to arrive by Taxi or public transport.
4. Parking in front of the building allows taxis to drop-off visitors
5. Members would leave at staggered times, reducing noise impact
6. The existing area is not quiet in any case
7. The location has good bus and train connections.

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

11.0 Parking Provision

11.1 The frontage contains potential parking for two vehicles.

12.0 Open Space Provisions

12.1 This proposal would not place additional burden on the Borough's public open space and there is no policy requirement for contributions from developments of this nature.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 Morality

15.1.1 Representations have been made about the morality of the proposed use. This is not a planning matter and members should give it no weight in the determination of this application.

15.2 Policy Principle

15.2.1 The site is within an area defined by the Local Development Framework as a 'Neighbourhood Centre'. Development Policy DP7 sets out the following in relation to neighbourhood centres;

"Neighbourhood Centres as defined on the Proposals Map will provide shops and some other local services for the needs of residents in the local neighbourhood. Rural District Centres as defined on the Proposals Map will provide a wider range of shops and services for the needs of residents within both the immediate neighbourhood and the vicinity of the district settlement.

Within the Neighbourhood Centres and the Rural District Centres the primary retail role of the centre will be safeguarded. Other uses will be supported where they complement the existing role of these centres, provided that the proposal:

- (a) meets the needs of residents within the local neighbourhood and/or the district settlement; and
- (b) would not reduce the number of A1 retail units in any centre to below 50% of the units used for commercial purposes.

15.2.2 Whilst clearly the proposed use serves only a niche need, the fact that there is demand enough for the applicants to wish to develop the proposal, suggests that there is a need within the district settlement. However, the proposal would result in a reduction of A1 retail units to below 50% and this means that there is a policy conflict with the proposal. That said, merely failing to comply with all of the requirements of a policy is not itself grounds for refusal. Resulting harm must also be demonstrated.

15.2.3 Retail in this neighbourhood centre is dominated by the Aldi Supermarket. This is many times the size of the application site or any other unit within the neighbourhood centre, but only counts as a single unit in assessing whether the number of units in retail use is 50% for the purposes of policy DP7. Its retail dominance perhaps explains why the other units in A1 retail use appear to rely on a much wider catchment than one may typically imagine of a neighbourhood centre. Specialist furniture shops, IT equipment and kitchen showrooms are not the kind of shops that customers would visit weekly or even monthly and in this sense do not result in the kind of linked shopping trips that maximise the vitality of a neighbourhood centre. Instead, they take advantage of this road being a busy arterial link. In this centre, it is the non-A1 units that could be argued to more regularly meet neighbourhood need – the betting shop, takeaways and bank. With this in mind, it is far from guaranteed that if this application were refused, the unit would serve an A1 retail purpose that related to the neighbourhood.

Consequently, it is concluded that the proposal would not harm the retail function of the neighbourhood centre and is broadly in line with the overall thrust of this policy as well as the NPPF. This conclusion is supported by the Spatial Policy section of the Council.

15.3 Impact on local character

15.3.1 The local character is a mixed use neighbourhood centre. A wide variety of uses exist and this use would not harm that character. It is the case that there are currently no private members' clubs in the area, but there is also only one betting shop, one bank and so on, and these mixed and sometimes unique uses are part of the local character. Unlike other commercial properties, there will be little indication from the outside that this building has a commercial use. It will appear discrete and more like offices or a residential dwelling of which there are several in the area. There is an existing night time economy in the area with several takeaways present. Typically, these open till around 23:00. Aldi supermarket closes at 21:00 (earlier on Sundays). For these reasons, the proposal is not considered to harm local character.

15.4 Impact on Highway Safety

15.4.1 No new works or accesses are proposed. With realistic potential for just two cars parked on the existing hard standing, it is not considered that there would be any intensification in the use of the existing access. Objectors have argued that there would be increased traffic generation. The applicant anticipates approximately 24 cars when the use is at capacity. When compared to the number of vehicle movements that would be associated with a retail unit, that number is small. Furthermore, activity will be concentrated in the evenings when roads are quieter as opposed to a retail use that has its busy times coinciding with the busiest times on the roads.

15.4.2 Objectors comment that there is no dropping off point and no place for delivery vehicles to park. This situation is comparable with other businesses in the area and would be the same were this site to operate as a shop or other business.

15.4.3 For these reasons, it is not considered that the proposal would present harm to highway safety. The Highway Authority has no objection to the proposal and as the recognised authority in highway safety, their views must be given significant weight.

15.5 Parking

15.5.1 The Council's adopted parking standards include no minimum requirements for non-residential development – only maximum requirements. This is in recognition of the fact that commercial developments should encourage access by transport means other than private cars. This proposal does not exceed those maximum requirements.

15.5.2 The precise parking demand generated by this proposal is difficult to estimate.

15.5.3 The application site has hardstanding that could provide two parking spaces. The applicant has stated that the staffing will comprise two couples. It is considered that this will be adequate to meet staffing needs.

15.5.4 The applicant estimates that when at capacity (60 people), the membership will have a maximum parking need for approximately 24 cars. This is based on the assumptions that car-using membership will arrive on average in two people per car and that 20% of membership will arrive by taxi, public transport, foot or bicycle. These assumptions do not seem to be unreasonable.

15.5.5 It is intended for the majority of cars to park in the Council controlled car park east of the site. This has 23 parking spaces in it. The applicant has produced the results of a sample parking survey that suggest between 15 and 20 spaces are empty at different times of the evening on different day of the week. Officers have no way to verify that data, but based on site visits it does not appear to be an unrealistic assessment. From this (admittedly limited) assessment it would appear that when the club is busiest and the car park is at its fullest, there will be nine cars belonging to members that cannot be parked at the car park without displacing other users. If the applicant has underestimated attendee numbers, that figure may be slightly higher. The proposed use may therefore cause some difficulties for local residents who currently use the car park to meet their domestic parking needs. Whilst officers sympathise with the concerns of local residents, no single user has a right over these parking spaces and these concerns are not considered to present a reason for refusal. With the club not opening until 7:30pm on Wednesdays and Thursdays and 8pm Fridays and Saturdays, it is in any case possible that residents will have parked before the car park 'fills up' with cars belonging to club members.

15.5.6 Laws exist to prevent dangerous and illegal parking and it cannot be assumed that this proposal will cause people to break such laws. As a private road, the management of Back Lane is the responsibility of those in control / ownership of it. Whilst customers of a takeaway or shop may be tempted to park inappropriately for a short time, members of the club will be staying a much longer time at their venue and, it could reasonably be argued, would therefore be more likely to park responsibly. That they are 'members' rather than 'customers' furthermore enables the club operators to exert more control and management than in the case of a shop or takeaway. The applicant has identified on-street parking areas within a walkable distance of the club that would meet the needs of its members should the car park be full.

15.5.7 It is furthermore the case that the existing use of the building could be said to generate parking demand during the daytime – when the car park is in greatest demand. Removing that day time parking burden in favour of night time parking demand (when many of the shops and services in the neighbourhood are closed) offers an overall benefit to the parking situation.

15.5.9 Whilst officers consider it unlikely, on the basis of the above, that the proposal would cause materially harmful parking problems, the actual impacts will not be known until the club is up and running. For this reason, it is recommended that a condition making the permission temporary is imposed. This would give the applicant the opportunity to collect ongoing data in support of a possible future application for continued use.

15.6 Neighbours' Amenities

15.6.1 The Environmental Services department of the Council is satisfied that, subject to conditions, the proposed use can operate without unacceptable noise and disturbance to nearby residents. Noise from within the club itself can be prevented from emanating beyond the building to noise sensitive properties.

15.6.2 Objectors have expressed concerns that club members will be leaving late at night, walking east down London Road to the car park where they will disturb local residents. London Road is a busy road, even late at night and club members are likely to wish to be discrete. It is therefore considered unlikely that there will be rowdy behaviour. It is accepted that the car park is in very close proximity to residential properties, with the windowed side elevations of two properties bounding it. It is understandable that those residents would have concerns about the noise of car engines being started and car doors closing late at night. However, this is an existing car park available for use 24 hours a day. That it will be more efficiently used late into the evenings is not considered to present reasonable grounds for refusal.

15.6.3 Objectors comment on a perceived increased vulnerability to crime. It is generally accepted that increased presence of members of the public leads to improved safety, not the reverse. Objector concerns that the clientele themselves will generate crime, are without evidence and can be given no weight. Concerns that the establishment will harm children also appear without foundation and it is not clear how such harm is perceived to be likely to occur.

15.7 Economic benefits

15.7.1 The economic benefits of the proposal are difficult to quantify, however the proposal will provide employment and it is reasonable to assume that members visiting the club will take advantage of public transport, taxis, hotels and other shops and services in the neighbourhood centre. These economic benefits present a material consideration that must be given weight.

16.0 **Conclusion**

16.1 This proposal would not harm the retail function of the neighbourhood centre, nor would it harm the local mixed use character. Conditions can ensure that it does not materially harm neighbours' amenities and the busy main road location and commercial nature of immediately adjacent buildings also mitigate against potential harm resulting from noise and disturbance. Being a neighbourhood centre, the site has good public transport access and so is not dependant on private car access (accepting that buses do not run late into the night). The shortage of local parking options encourages the use of more sustainable transport methods and this is in line with national and local policy objectives. A more efficient use of an existing local car park is not considered to present grounds for refusal, even though it is accepted that later night activity may intensify noise and disturbance to occupiers of properties adjoining the car park. The increased 'competition' for parking spaces that local residents and businesses may face is of some concern, but does not amount to grounds for refusal – especially as day time use of the car park (when the car park is in most demand) will reduce as a result of this proposal.

16.2 For the above reasons this application is recommended for approval. Because the precise impacts of the proposed use are to some degree unknown, and will rely to some extent on how well the club is managed, it is recommended that temporary permission be granted in the first instance. This will enable the impacts of the development to be assessed and the operators to gather information in support of a possible future application for permanent planning permission.

17.0 Recommendation

17.1 APPROVE subject to the conditions set out in section 19.

18.0 Positivity Statement

18.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

19.0 Conditions

1 - Time Limit for Full Permissions

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

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

2 - Non-Standard Condition/Reason – Temporary permission

The period of this permission shall expire on 28/2/15 at which date the use hereby permitted shall cease and the lawful use shall return to being retail, within Class A1 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005.

Reason: To enable the precise impacts of the proposal on the amenities of local residents and parking to be assessed and reviewed.

3 - Non-Standard Condition/Reason - Specifics of use

The site shall be used only as a private members club and in accordance with the specific descriptions of the use contained within in the letter from Mr Jason Woolf of 23/1/14.

Reason: This is the basis on which the application has been considered. Other private members club uses may have different impacts on local amenity which would need individual consideration.

4 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dB(A) above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

5 - *Restriction of Hours of Operation

The use hereby permitted shall not be open to customers / members outside of the following times:

- Wednesdays- 7:30pm - 12 Midnight
- Thursdays- 7:30pm - 1am (Friday morning)
- Fridays- 8pm - 2am (Saturday morning)
- Saturdays- 8pm - 2am (Sunday morning)

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

6 - Non-Standard Condition/Reason - Scheme of sound insulation

Prior to the first use or occupation of the development as hereby permitted, the building shall have been constructed or modified to provide sound insulation against internally generated noise so that it does not cause a nuisance at any nearby premises in accordance with a scheme devised by a competent person and agreed, in writing, by the Local Planning Authority. If the current level of insulation is adequate to achieve, details of these existing sound insulation measures, together with evidence compiled by a competent person to support this (including sound testing) shall instead be submitted to and approved in writing by the Local Planning Authority in lieu of this scheme. The sound insulation measures shall be retained and maintained as agreed thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

7 -Non-Standard Condition/Reason - Management arrangements for minimising noise and disturbance to the occupiers of nearby residential properties.

Prior to the commencement of development, a scheme of management arrangements detailing measures to be implemented so as to minimise noise and disturbance to surrounding residential properties shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall address the emptying of glass bottles, the closure of doors and windows whenever amplified music is playing, and measures to encourage members to leave quietly – including between the site and the public car park and within the public car park. It shall address what (if any) provision shall be made for smokers and shall include measures to encourage members to park responsibly. All approved measures shall be implemented in precise accordance with the approved details and the approved use shall only operate in such a way that precisely confirms with these approved management arrangements.

Reason: To minimise the potential for noise and disturbance to the occupiers of nearby residential properties.

8 - Non-Standard Condition/Reason - Doors and windows at the rear to be closed

No door or window at the rear of the building shall be opened at any time that the club is open, except in an emergency.

Reason: To prevent noise to residential properties that may be generated from within the building or by smokers congregating outside the building at the rear.

9 - Non-Standard Condition/Reason - No physical operations

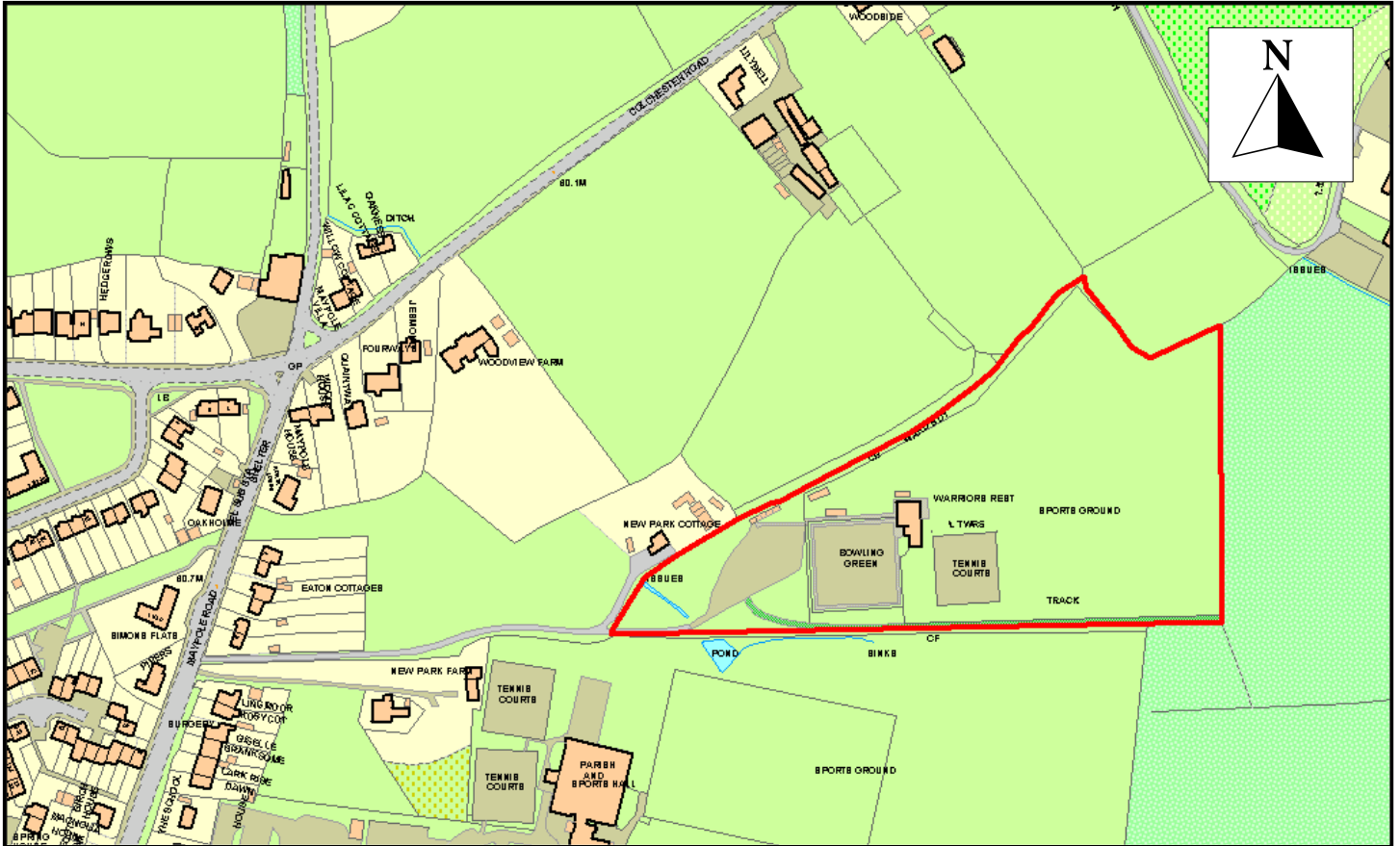
No physical operations that constitute development that is not permitted development shall take place until such times as the precise details, including elevation and plan drawings, and details of materials to be used in the construction have been submitted to and approved in writing by the Local Planning Authority. The physical operations shall thereafter only be implemented in such a way that precisely accords with the approved details.

Reason: Although physical operations are described in the application form, inadequate details are provided of these to enable an assessment to be made as to whether such works require express planning permission, and if they do, whether the details of them are acceptable.

20.0 Informatives

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

(2) PLEASE NOTE that, with regard to and noise measurement and sound insulation, a competent person is defined as 'someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience'.



Application No: 132816

Location: Jobserve Social Club, Warriors Rest, Maypole Road, Tiptree, Colchester, CO5 0ER

Scale (approx): 1:2500

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Site: Warriors Rest, Maypole Road, Tiptree, Colchester, CO5 0ER

Application No: 132816

Date Received: 16 December 2013

Applicant: Mr Mark Hedgecock

Development: Construction of a steel framed, fabric covered sports building to enclose the Multi Use Games Area at Warriors Rest.

Ward: Tiptree

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it is a major application and objections have been received from the parish council and residents.

2.0 Synopsis

2.1 The key issues explored below are the relevant policies, the impact on residents' amenity, the impact in the landscape and the impact on wildlife.

3.0 Site Description and Context

3.1 Warriors Rest is a site used for sports historically forming the Anchor Press Social Club. The Warriors Rest site has an area of approx 3 hectares and comprises a large surfaced car park, a bowling green, football and other pitches and a recently constructed multi use games area (MUGA). There are a range of small buildings used for changing rooms and providing club facilities.

The site is accessed along a narrow unmade track off Maypole Road. The track runs along the side boundary of a dwelling on the north boundary and is separated from a dwelling on the south boundary by a narrow open strip of land. The access track continues for over 200m serving a residential property, New Park Cottage, before reaching the car park. The site is therefore located behind the road frontage and trees on the site boundary can be seen across open land from Colchester Road to the north whilst to the south are sports pitches of Thurstable School.

Maypole Road forms the boundary of the built up edge of Tiptree. Colchester Road contains a scatter of dwellings on the south side but is outside the settlement boundary.

The specific part of the site is the area of the MUGA and an area of approx 65m x 45m.

4.0 Description of the Proposal

- 4.1 The proposal is for the construction of a steel framed, fabric covered sports building to enclose the Multi Use Games Area an area approx 65m x 45m and 12.5m high. The stated times of use are 8.30 – 22.30.

The application includes the following background information

“The site, Warriors Rest, was secured under a 125 year lease from Colchester Borough Council by the registered charity Jobserve Sports & Social Club (JSSC/the Club) in 2008 and has been in constant use for sporting activities since. The club currently has around 300 members who participate in a number of sports including football, table tennis, athletics and lawn bowling. The club has aspirations to grow these numbers and to offer them a wider choice of activities. In 2012 the club had approval for the construction of a Multi Use Games Area built with financial assistance from Aspire Media Group who also own Colchester United FC (CUFC). CUFC required the use of this local 60 x 40yd artificial surface to meet the Elite Player Performance Plan (EPPP) required standards.

To further satisfy CUFC’s requirement to meet EPPP conditions and to make the MUGA a more practical facility for community use in the winter, JSSC is proposing to construct a typical sports building to enclose the MUGA.

This application relates to the construction of a fabric covered steel building which will make the facility available 365 days a year, negating the issues caused by waterlogging, frost or snow. As well as offering improved facilities to its members, JSSC see this development as a potential increase in club income through external hire including community use, which will help keep club membership costs to a minimum”.

The following clarification has been submitted regarding the lighting of the building

I have been back to our potential suppliers for some definitive information pertaining to light spillage from the building and their response is below. In essence it shows that, if the lights were directed at the roof of the structure, only 12% of the light would permeate the material. As the lights are directed downwards, this level is significantly further reduced. They also state that the walls of the structure are opaque and let out no light whatsoever.

(clarification from suppliers) We have a variety of options in which can help control the amount of light spill through the structure. As discussed when using our translucent roof sail this allows the structure to be able to use natural daylight which in turn helps reduce running costs. I know one concern was how much light would be come through the fabric when artificial light is used. The PVC in which we use on this particular structure would actually reduce the amount of natural light spill compared to a non covered pitch. As described the external walls will be made from an opaque material which would lead to a no light being able to get through. The PVC currently specified as the roof will only let in 12% of the natural light available through the day, which in turn means that during the evening under artificial light this will also stop majority of the light going out the building.

In addition dependant on the lighting system used having a frame in which the lights can be directly fastened to can also help. As each individual lamp faces down this means there is no unnecessary light wastage as all light is directed to the surface where the light is needed. Also another item which could help even further is using an LED system. The way in which an LED bulb is more efficient in terms of significantly less power used and also the light directed to one focal point gives further reduced light spill

5.0 Land Use Allocation

5.1 The site is identified as an area of open space

6.0 Relevant Planning History

6.1 120919 Replacement of a disused and derelict tarmac tennis court with a multi use games area 45M x 65M. Approved

131032 Erection of 5 off 15M high floodlight pylons supporting up to 3 luminaires per pylon in order to enable extension of the usage time of the Multi Use Games Area at Warriors Rest. Refused for reason relating to lack of ecological survey and landscape assessment

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

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

SD1 - Sustainable Development Locations

SD2 - Delivering Facilities and Infrastructure

SD3 - Community Facilities

UR2 - Built Design and Character

ENV1 - Environment

ENV2 - Rural Communities

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

DP1 Design and Amenity

DP3 Planning Obligations and the Community Infrastructure Levy

DP4 Community Facilities

DP10 Tourism, Leisure and Culture

DP15 Retention of Open Space and Indoor Sports Facilities

DP16 Private Amenity Space and Open Space Provision for New Residential Development

DP21 Nature Conservation and Protected Lanes

8.0 Consultations

- 8.1 **Sport England** Thank you for consulting Sport England on the above application. It is understood that the site forms part of, or constitutes a playing field as defined in The Town and Country Planning (Development Management Procedure) (England) Order 2010 (Statutory Instrument 2010 No. 2184), in that it is on land that has been used as a playing field within the last five years, and the field encompasses at least one playing pitch of 0.2 ha or more, or that it is on land that is allocated for the use as a playing field in a development plan or in proposals for such a plan or its alteration or replacement.

The consultation is therefore statutory and Sport England has considered the application in the light of its playing fields policy a copy of which can be downloaded from our website at www.sportengland.org/facilities-planning/planning-forsport/development-management/planning-applications/playing-field-land/. The aim of this policy is to ensure that there is an adequate supply of quality pitches to satisfy the current and estimated future demand for pitch sports within the area. The policy seeks to protect all parts of the playing field from development and not just those which, for the time being, are laid out as pitches. The policy states that:

“Sport England will oppose the granting of planning permission for any development which would lead to the loss of, or would prejudice the use of, all or any part of a playing field, or land last used as a playing field or allocated for use as a playing field in an adopted or draft deposit local plan, unless, in the judgement of Sport England, one of the specific circumstances applies.”

Reason: Development which would lead to the loss of all or part of a playing field, or which would prejudice its use, should not normally be permitted because it would permanently reduce the opportunities for participation in sporting activities. Government planning policy and the policies of Sport England have recognised the importance of such activities to the social and economic well-being of the country.

The proposal involves a fabric covered steel framed building being erected to cover the recently built multi-use games area (MUGA) at Warriors Rest Sports Ground. I consider that Exception E5 of Sport England’s playing fields policy would be the most applicable to the proposal:

“The proposed development is for an indoor or outdoor sports facility, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss of the playing field or playing fields.”

While I have not visited the site, I have considered the information provided in support of the planning application and would make the following assessment of how the proposed development would relate to exception E5:

The rationale for covering the MUGA is to ensure that the facility is available for use all year and to extend the availability of the facility. While the MUGA’s artificial surface is of an ‘all weather’ nature because it is not covered its use during periods of snow, frost and rain would be restricted. Furthermore, the absence of permanent sports lighting can restrict the use of the facility during the evenings and other periods of limited daylight. The proposed building would allow the facility to be used continuously throughout the year without being restricted by the weather and because of internal lighting, use into the evenings would be facilitated.

The building would firstly benefit Colchester United Football Club's (CUFC) Academy who use the MUGA mainly during the weekdays for helping to meet the training requirements of the Academy. In 2012, the Premier League introduced the Elite Players Performance Plan (EPPP) for enhancing the development of youth players at the Academies of professional football clubs such as CUFC. The EPPP has intensified match and training requirements for Academies and therefore if weather conditions restrict use of the MUGA this can prevent the club's Academy from fully meeting its training needs. Furthermore, the proposal would allow the Academy's use to not be restricted by daylight hours although the majority of their use would be expected to continue to be during the day. It is advised that most professional football clubs now have access to similar facilities.

The proposal would also benefit the wider community as the MUGA is currently used by Tiptree Jobserve Sports and Social Club when not required by CUFC during the weekends. Membership of the multi-sports club is open to the local community and the club incorporates Tiptree Jobserve Football Club which is Tiptree's principal community football club for all age groups. The building would allow community users to use the facility in all weathers plus would offer the potential for significantly more evening use throughout the year e.g. it could help Tiptree Jobserve FC to meet its training needs for instance.

In terms of the impact on the playing field, the building would have a positive impact on the use of the MUGA as set out above and would not affect the wider adjoining playing field as the building would only enclose the existing MUGA.

Conclusion

On the basis of the above assessment, I consider that the potential sports development benefits that the proposed building would offer would clearly outweigh any impact on the playing field. I therefore consider that the proposal would meet exception E5 of our playing fields policy. This being the case, Sport England does not wish to raise an objection to this application as a statutory consultee.

In its separate capacity as a non-statutory consultee, Sport England has assessed the proposal in the light of its Planning for Sport Aims and Objectives Guide (2013) www.sportengland.org/facilities-planning/planning-for-sport/aims-and-objectives/ which is consistent with the NPPF. Objective 2 of this guide relates to ensuring that that the best use is made of existing facilities in order to maintain and provide greater opportunities for participation and to ensure that facilities are sustainable. As set out above, the appellant's proposals would help ensure that the MUGA can be consistently used throughout the year by CUFC and the community and would offer the potential for extended use of the facility that would help sustain it. Sport England would therefore be supportive of the principle of the planning application as a non-statutory consultee because it would accord with this objective.

The absence of an objection to this application in the context of the Town and Country Planning Acts, does not in any way commit Sport England's or any National Governing Body of Sport's support for any related application for grant funding.

Environmental Protection Should permission be granted for development, Environmental Protection recommends inclusion of the following advisory note: -

NOTE: Demolition and Construction

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

Environmental Control was asked to comment on potential light pollution and responded as follows

“I get the impression from the application form that the lighting is internal and should therefore be contained to a large extent. The site is also a considerable distance from the nearest residential property (approx. 120 metres). We have not received any nuisance complaints (only one query) arising from the floodlights currently on site and the situation should improve. We suggested the following condition with regard to a previous application for temporary floodlights:-

ZGR - *Light Pollution for Minor Development*

Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2. Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

This can be added as a precaution if you feel it is necessary, but is not specifically for floodlights and it is acknowledged that the figures for glare can be difficult to achieve for sports lighting. However, the fabric should ‘soften’ the appearance and reduce glare.

HA has commented “I have viewed the details of this application and the Highway Authority does not wish to submit a formal recommendation”.

Landscape Officer comments that the impact of the development on the landscape should be assessed through submission of a landscape appraisal as the proposed development would appear to be potentially visible from the public viewpoints of Colchester Road, New Road, PRoW 1 (linking New Road and Colchester Road) and PRoW 12 (north-east of Grove Road). These are principally long-views and there would appear to be little if any opportunity to mitigate against the effect any potentially adverse visual impact, particularly with relation to any defoliated winter views. It needs to be identified if the MUGA cover is proposed to be illuminated at night, as this would have a potentially detrimental impact on the landscape with relation to any defoliated winter views, a factor that would need to be fully assessed in any landscape assessment. The tree planting along the strip of land to the adjacent track way beside the MUGA needs to be accommodated within the proposal; this was recommended under the landscape consultation for application no. 120919.

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

9.0 Parish Council Response

9.1 The Parish Council have stated that Tiptree Parish Council would like to object to this application on the grounds of light pollution, environmental impact, loss of amenity to existing residents and intended use by commercial enterprise

10.0 Representations

10.1 Colchester Cycling Campaign - Please ensure there is safe cycle access separate to that for motor vehicles. If the cycle entrance is shared with pedestrians, this should be by way of a segregated path. There should be sufficient secure cycle parking to ECC standards.

Six representations have been received objecting to the application there are no representations in support

- increase in traffic using the access which is only one vehicle wide and causes problems onto Maypole Road
- Construction vehicles have previously caused damage to neighbouring properties the access should be improved before further permission is granted
- previous application for flood lights was been turned down this building at 12.5 high will be just as visible and the impact of the light within the structure will be same as the floodlights
- the environmental issue on the wildlife must be considered
- impact on the open space for the village
- noise impact there is already noise from the site which continues until 10.00pm we were led to believe noise and other infringements were breaking rules but nothing has been done
- this is not being done for the benefit of Tiptree but for Mr Cowling
- at 12.5m this will be one of the tallest structures in Tiptree this is an area that only a few years ago was deemed to be an area of natural beauty
- the size of the structure is totally out of keeping with the area and far smaller structures have been refused for example a proposed community centre, country residence and a first floor onto my bungalow
- the structure is to be translucent to let light on therefore it will let light out the previous application for floodlights refused due to need to carry out ecological survey to assess impact on rare wildlife
- the DAS refers to 365 day usage therefore there will be increased traffic increased noise once established it will no doubt be extended.
- Jobserve youth and mens football teams have already stopped using Tiptree sports centre and they will look to entice other users away
- Jobserve may be in breach of the lease which states the facility must be made freely available to the local community
- Jobserve continues to use portable floodlights in contravention of the refusal of fixed floodlights
- will the facilities at Warriors Rest be adequate to run all the electricity needed for lighting, air conditioning and heating

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

11.0 Parking Provision

11.1 There is a substantial car park which is unaffected by this proposal

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 Policy issues

The site is within an area of open space and adopted national and local planning policy is broadly supportive of improvements in community facilities. The application indicates that the proposed facility is to serve the community of Tiptree as well as Colchester United Football Club and will complement and enhance the outdoor sports facilities at the site. This is a material consideration that supports the grant of planning permission. Sport England has no objection. The proposal is acceptable in principal.

Impact on the surrounding area

The proposed building is in a relatively sensitive area in landscape terms. The site is close to public open space, open countryside and Pods Wood a local wildlife site. The building will be visible from Colchester Road and in long views from PROW to the north and south. Whilst new landscaping along the site boundaries will, in the long term, mitigate the impact of the building to some degree it will not be possible to completely screen it due to its height and size. The building itself is not an especially attractive feature and will be most visible during the hours of darkness when it is illuminated.

Light Pollution

Environmental Control was asked to consider light pollution and have confirmed they have no objection they consider residents will not be affected by light.

Further details of the lighting have also been submitted and it has been clarified that the walls of the structure will be opaque. The walls can also be coloured.

The supporting information indicates the lights will be directed downwards and the level of lights will therefore be further reduced by using LED lights. The direction of the lights, type of lights and the installation of hoods/cowls can be controlled by condition. However there will be light pollution to some degree which cannot be mitigated.

The site is a short distance from a designated local wildlife site and close to other natural areas that may provide potential habitat for wildlife including protected species. Light spill could impact on wildlife including birds and bats. The standing advice from Natural England indicates artificial lighting can affect bat roosts, feeding and flight activity behavior. Whilst the supporting information indicates light spillage will be limited it is considered a condition requiring a detailed assessment of the lighting proposals and their potential impact on wildlife together with mitigation proposals should be submitted to and approved prior to commencement of development.

Impact on neighbours' amenities

The lawful use of the site is as a sports ground, therefore sports can be undertaken without the need for planning permission. The roof will allow sports to take place during the hours of darkness when open pitches could not be used without the benefit of floodlights. An application for floodlights was refused planning permission but subsequently the applicant has been advised that portable floodlights would not require planning permission.

The nearest residential property to the proposed building is New Park Cottage, over 100 metres away and separated by the bowling green and other structures. The nearest residential properties in Colchester Road are separated by a distance of over 200 metres. Whilst the building, in particular when the lights are on, will be visible from these properties at these distances, the potential for material harm resulting from light pollution is small. As noted above Environmental Control has considered these issues and raised no objection.

Whilst noise from existing sports activities may be audible the building will reduce any potential noise from the MUGA part of the site. Access is via an unmade track the applicant does not own this track and improvements to it are outside the applicants' control. There are residential properties either side and opposite the access. Whilst there will be some additional use of the access in the evening the sports use and existing MUGA has no restrictions on its hours of use. It is considered any additional traffic will be limited and it is noted the Highway Authority has made no comment on the proposal. However as the access is narrow and close to a school it is considered appropriate to impose a condition regarding the delivery times.

Other issues

Residents have raised concerns about the availability of the facilities to the community. The site operates under a lease with Colchester Borough Council and this is a matter to be dealt with under the terms of the lease and is not a planning matter. Other issues relating to the moveable floodlights are outside the remit of this application. Concerns that the facility will compete with the public sports centre are not a planning matter.

16.0 Conclusion

The building is proposed on an established sports area on a site allocated for open space purposes and is therefore acceptable in policy terms. The proposal will benefit the community. However the benefits of the proposal have to be balanced against its impact in the landscape. The building will be visible, in particular when the lights are on, and its impact cannot be completely mitigated. It is considered that, on balance, the proposal can be supported and permission is recommended.

17.0 Recommendation

APPROVE subject to the following conditions

18.0 Positivity Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

19.0 Conditions

1 - Non-Standard Condition/Reason

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

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

2 - Non-Standard Condition/Reason

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers MH0022 v1 sheet 1 of 1 and unnumbered section drawing and unnumbered East Standard Inc drawing plus the applicants email dated 14 February and email from De Boer Structures.

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

3 - Non-Standard Condition/Reason

No works shall take place until precise details of the manufacturer and colour of the external walls of the building have been submitted to and approved, in writing, by the Local Planning Authority. Such details as may be approved shall be those used in the development and thereafter retained.

Reason: In order to ensure that suitable materials are used on the walls of the building as there are insufficient details within the submitted planning application and to reduce the impact of the building in the landscape.

4 - Non-Standard Condition/Reason

No works shall take place until a landscape mitigation scheme and implementation timetable for the Warriors Rest site has been submitted to and approved, in writing, by the Local Planning Authority. The landscape scheme shall be informed by a landscape appraisal the scope of which shall be agreed in writing with the local planning authority. The approved planting scheme 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 standard of visual amenity in the local area and to mitigate the impact of the building in the landscape.

5 - Non-Standard Condition/Reason

Prior to the commencement of the development hereby permitted, a lighting report assessing the impact of all the lighting proposed for the building on both the landscape and on wildlife shall be submitted to and approved by the local planning authority. The report shall be undertaken by competent persons and shall demonstrate that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) does not adversely impact on wildlife interests and as a minimum fully complies with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 rural areas. The report shall include details of the time the lights will be switched off following the last use of the building. The lighting shall thereafter be retained in accordance with the approved details.

Reason: In order to allow a more detailed technical consideration of the lighting at the site, as there is insufficient information submitted within the application to prevent the undesirable, disruptive and disturbing effects of light pollution in the landscape and on wildlife interests.

6 - Non-Standard Condition/Reason

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for: the parking of vehicles of site operatives and visitors; hours of deliveries and hours of work; loading and unloading of plant and materials;

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

7 -Non-Standard Condition/Reason

The building shall only be available for use during the hours of 8.30 until 22.30.

Reason: To avoid doubt as to the scope of the consent hereby granted

20.0 Informatives

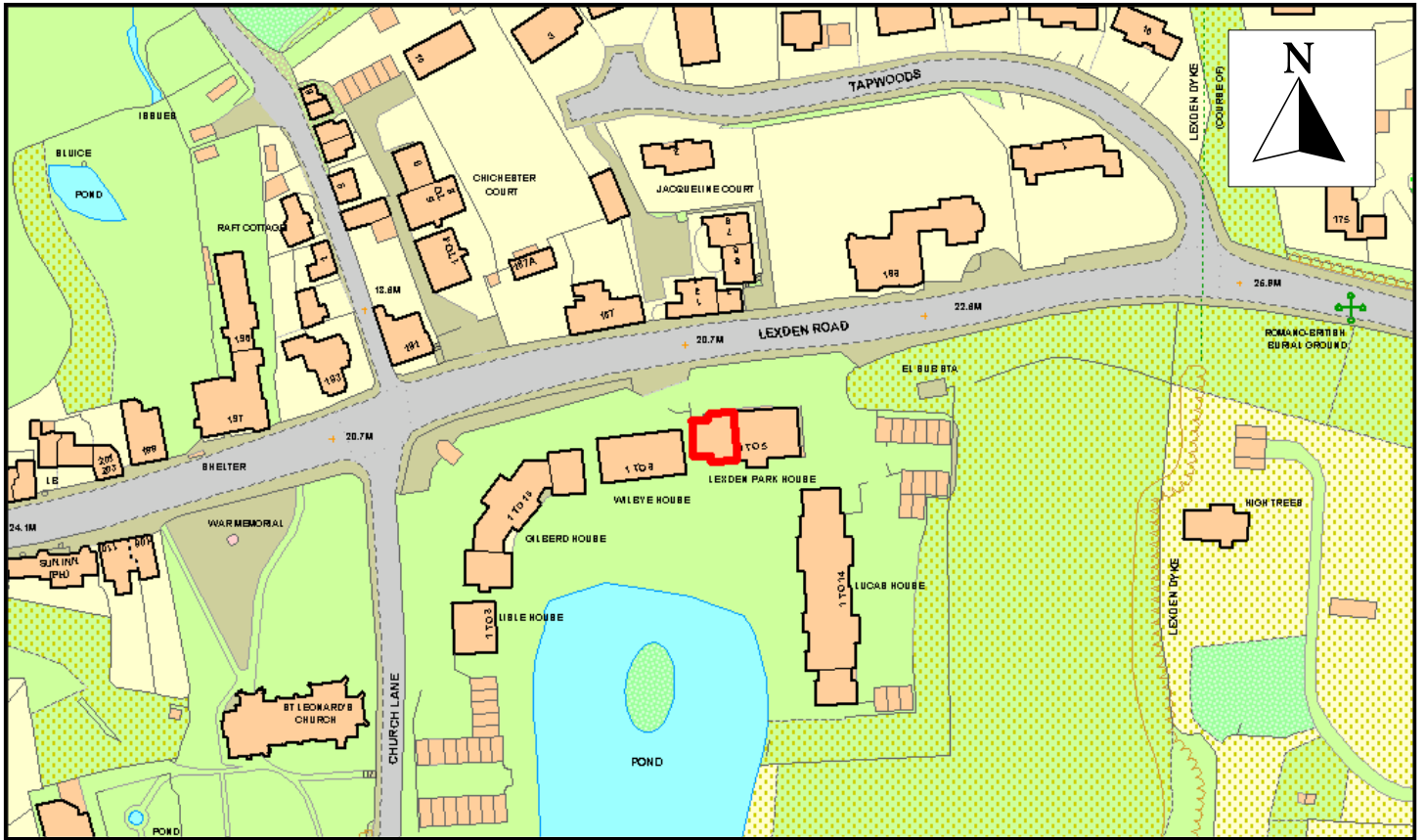
(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require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

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

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

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

PLEASE NOTE the consent of Colchester Borough Council as landowner is required.



Application No: 140043

Location: 5 Lexden Park House, Lexden Road, Colchester, CO3 3UF

Scale (approx): 1:1250

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7.3 Case Officer: Mr David Whybrow

Due Date: 10/03/2014

MINOR

Site: 5 Lexden Park House, Lexden Road, Colchester, CO3 3UF

Application No: 140043

Date Received: 13 January 2014

Agent: Traer Clark Architect Limited

Applicant: Mr Alan Speers

Development: Application for removal or variation of a condition following grant of planning permission. (F/COL/00/1007) to use part of roof area as a roof terrace

Ward: Lexden

Summary of Recommendation: Approved without conditions

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee as a result of being called in by Cllr Mrs Lewis. The reasons given are "safety concerns and impact on rights of way as the proposal would block a fire escape".

2.0 Synopsis

2.1 The key issues explored below are those raised by the call in and also the proposal's effect on the appearance of the building and Conservation Area setting and its impact on the amenity and privacy of other residents. It will be concluded that the proposal is acceptable in these terms and a recommendation of approval is made.

3.0 Site Description and Context

3.1 No. 5 Lexden Road is a second floor apartment in a three storey block, part of the former Endsleigh Annexe, redeveloped for residential purposes and completed in the mid 1990s. The building is in gault bricks and has a flat roof screened by a brick balustrade. A taller, tower feature alongside the proposed terrace is occupied as a bedroom and en suite bathroom in association with the main apartment.

4.0 Description of the Proposal

4.1 This retrospective application is for variation of condition 3 attached to planning permission F/COL/00/1007 for roof extension to form access for fire escape. Condition 3 stated :

“The works approved herewith shall be used solely for the formation of access for a fire escape and unless otherwise agreed in writing by the LPA shall not be used to provide access to a roof garden or other recreational use of the roof.”

4.2 This application seeks to vary that condition to allow for part of the roof area to be used as a roof terrace for private amenity purposes, whilst maintaining the designated fire escape route. The applicants contend this escape is for the occupants of 5 Lexden Park House only.

4.3 The existing area of useable space is 5.6 x 5.15 m, including the area shown for fire escape use. The applicants add that they have “improved the area and installed a new glass balustrade, new glazed roof lights, new decking (with planters) and would like to use the remaining area as a roof terrace whilst preserving the fire escape route as shown. This will mean the terrace area will primarily overlook the communal garden but proximity to the roof edge is set back 1m in the centre and over 2 metres elsewhere. All the work carried out has been approved by the Council's Building Control department.”

4.4 The new balustrade is approximately 1.2m high and fixed to a stainless steel framework. It is therefore visible above the existing 0.8m high brick balustrade from the front and rear elevations.

5.0 Land Use Allocation

5.1 Residential area within Conservation Area 3. Lexden Park House is a Building of Local Interest.

6.0 Relevant Planning History

6.1 COL/87/2125 Demolition of Buildings, Conversion of Original House to Flats and Erection of 58 Flats and 15 Houses – Approved May 1989

6.2 COL/94/0524 Residential Development of 29 Dwellings, Garages and Access – Approved August 1994.

6.3 F/COL/00/1007 Roof extension to form access for fire escape – Approved Aug 2000.

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
UR2 - Built Design and Character
ENV1 - Environment

7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
DP1 Design and Amenity
DP13 Dwelling Alterations, Extensions and Replacement Dwellings
DP14 Historic Environment Assets

7.4 There is no adopted Supplementary Planning Guidance of direct relevance to this case.

8.0 Consultations

8.1 The Archaeological Officer has no observation to make on this proposal.

9.0 Representations

9.1 None received at the time of writing the report.

10.0 Parking Provision

10.1 Not applicable

11.0 Open Space Provisions

11.1 Not applicable

12.0 Development Team and Planning Obligations

12.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

13.0 Report

Design and Impact on the Surrounding Area

13.1 Although not a matter raised in representations, the effect of these proposals on the Conservation Area setting and building of local interest must be a material consideration in this case. The new enclosure is higher than the existing brick balustrade but given its lightweight, primarily glazed, nature it is not considered that this impacts significantly on views of the building from Lexden Road or the park to the rear.

Impacts on Neighbouring Properties

13.2 The reason for Condition 3 was to protect the amenity and privacy of neighbouring residents, however, while the use of the roof terrace for recreation purposes will open up views to the front (towards Lexden Road) and rear (over Lexden Park) of the building it will have no material impact on the privacy or amenity of other residents in terms of overlooking private amenity areas.

Other Matters

- 13.3 The fire escape, subject of this application, was created as a result of Building Regulation approval BR/00/0991. It provided an escape route from the bedroom/ensuite bathroom (separate from the main part of Flat 5) housed within the tower feature alongside the proposed terrace. It crossed the terrace before gaining access to the main flat and then to the fire stairs for the building as a whole. Under the present proposals this route is not interrupted by the creation of a roof terrace in that the roof area remains a basically open space. The escape route is shown notionally as a dog-legged pathway on the submitted drawing.
- 13.4 Therefore, notwithstanding the councillor's concern over obstruction of the fire escape, the status quo is maintained and the fact that the roof area remains "open" means that escape routes are not compromised.

14.0 Conclusion

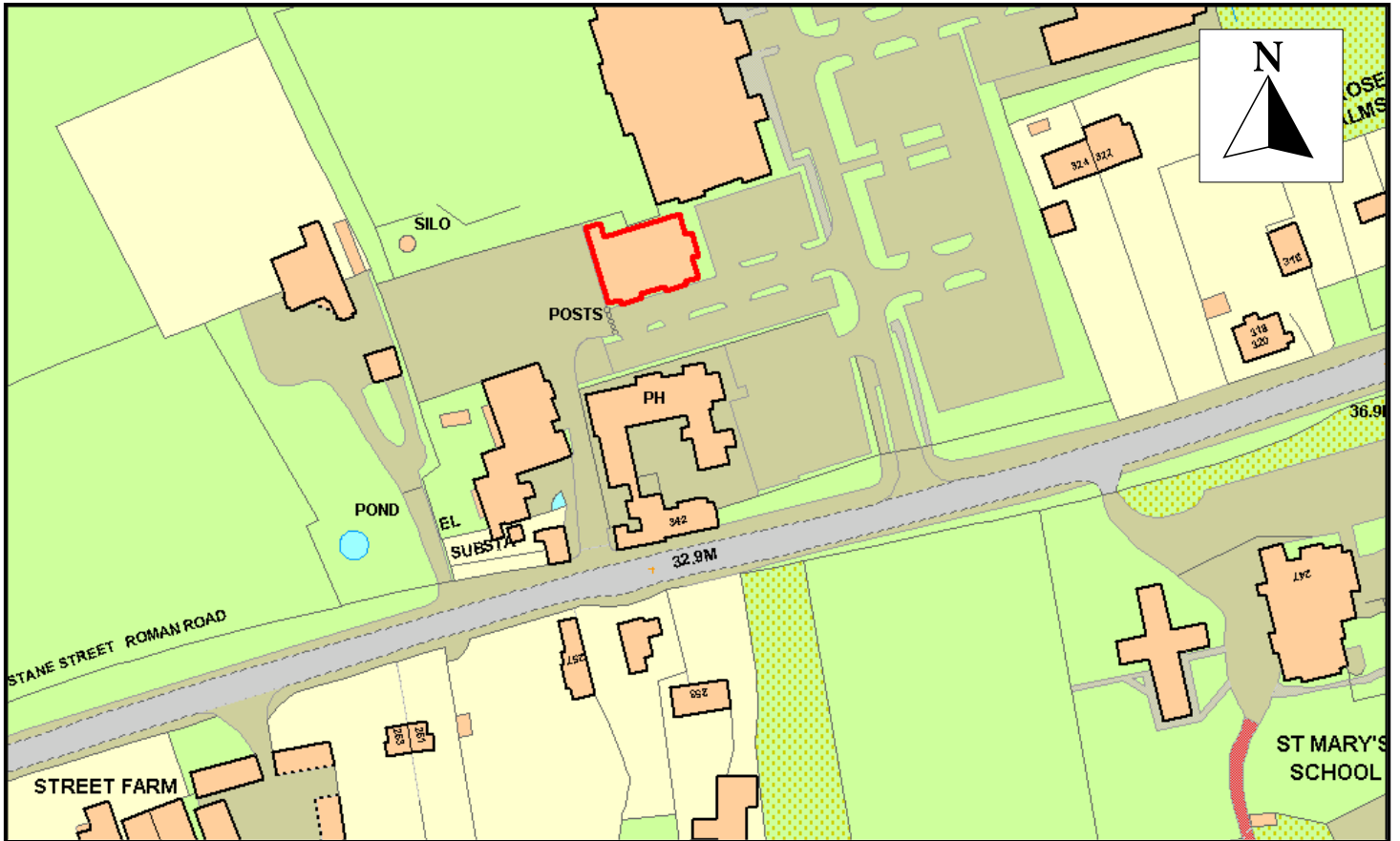
- 14.1 For the reasons described above these proposals are considered to be consistent with relevant planning policy and although Cllr Mrs Lewis' concerns regarding obstruction of a fire escape are noted, the conclusion must be that the means of escape from Flat 5 will be unaffected. It is therefore recommended that permission be approved.

15.0 Positivity Statement

- 15.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

16.0 Conditions

- 16.1 No conditions need be applied to this retrospective proposal.



Application No: 136177

Location: Outdoor Adventure, The White Hart, 342 London Road, Stanway, Colchester, CO3 8LT

Scale (approx): 1:1250

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7.4 Case Officer: Peter Hill

OTHER

Site: Outdoor Adventure, The White Hart, 342 London Road, Stanway, Colchester CO3 8LT

Application No: 136177

Date Received: 18 December 2013

Agent: Mr Peter Johnson

Applicant: SDGK Partnership

Development: Change of use from Class A1(shops) to Class A3 (Restaurant).

Ward: Copford & West Stanway

Summary of Application: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee by Councillor Jackie MacLean for the following reason;

“Times of opening and access to and from the premises, Regarding parking there is only 1 disabled space allocated this is not enough for this size of application. Odours from the kitchens and waste water contaminated with food, oil and fat I would like more details how these problems will be addressed.”

2.0 Synopsis

2.1 The key issues explored below are;

1. The principle of development
2. Highway safety and parking
3. Amenity

It is concluded that the development does not harm the objectives of the development plan because the site already has lawful retail use. Parking and highway safety will be unaffected by the development, taking into account that existing lawful use. There is the potential for harm to neighbours' amenities if the western access is used at night time, but conditions can prevent this from happening. In other respects the proposal will not materially harm neighbours' amenities and so the application is recommended for approval.

3.0 Site Description and Context

3.1 The application site is outside of the defined settlement limits, in between Colchester and Copford. It is within a commercial area to the rear of the White Hart which contains a number of well established businesses including a retail garden centre, day nursery and existing restaurants (one being the White Hart). These businesses share two accesses that connects with London Road to the east of the White Hart pub / restaurant. The application site includes a substantial building completed in timber to give it a barn-like appearance. Although not within the application site, the building and other businesses are set within large landscaped parking areas.

4.0 Description of the Proposal

4.1 The application site is currently vacant. It was most recently used as a retail unit for the sale of outdoor sports and activity equipment and clothing, falling within Class A1 to the Use Classes Order. This application proposes to change the use to a restaurant under Class A3 of the Use Classes Order. No physical alterations are proposed within this application. The applicant states that the restaurant would cater for 100 covers.

5.0 Land Use Allocation

5.1 The site has no specific allocation or designation.

6.0 Relevant Planning History

6.1 Historically, much of the development rear of the White Hart appears to have been part of the garden centre. Planning permission F/COL/03/1211 granted permission for the application building in 2004. Its intended use when approved was as an indoor adventure play area, including play frame, kitchen, toilets, parents' lounge and party rooms. Its opening hours were conditioned as being 09:00 to 20:00 on Mondays to Saturdays and 10:00 to 17:00 on Sundays and bank holidays. It is understood that the intended use was not implemented.

6.2 Whilst the building was under construction, an alternative use was permitted in 2010 through planning permission 091297. This use was described as "retail unit for the sale of outdoor sports and activity equipment and clothing". Opening hours were conditioned as being 08:30-20:00 Mondays to Saturdays and 10:30-16:30 on Sundays and Bank Holidays. A legal agreement restricted what could be sold from the unit.

6.3 The planning history of nearby buildings is also relevant to this application. The building to the west of the White Hart Pub (run as a Chinese restaurant called 'Banquet') is particularly relevant. This was granted planning permission in 2005 for use as a restaurant (reference C/COL/05/1240). Planning permission F/COL/06/1612 subsequently varied the opening hours condition to allow the restaurant to be open from 11:00 to 23:30, 7 days a week.

6.4 South of the site, the White Hart clearly has a long history as a pub. The pub is open from 11:30 to 23:00 Mondays to Saturdays and 11:00 to 22:30 on Sundays (the restaurant closes at 22:00 all week).

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

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

SD1 - Sustainable Development Locations
CE1 - Centres and Employment Classification and Hierarchy
UR2 - Built Design and Character
TA1 - Accessibility and Changing Travel Behaviour
ENV1 - Environment
ENV2 - Rural Communities

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

DP1 Design and Amenity
DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
DP9 Employment Uses in the Countryside
DP17 Accessibility and Access
DP19 Parking Standards

7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

-Vehicle Parking Standards

8.0 Consultations

8.1 Spatial Policy

"The application site is located outside of any defined settlement boundary or allocation as seen on the LDF Proposals Map. The site is therefore considered to be in a countryside location between Colchester and Copford, although the proposal lies within a commercial centre containing a number of well established businesses including a retail garden centre, day nursery and two existing restaurants.

The centre is not designated as an Urban District Centre in the Core Strategy, reflecting its relatively small size and location on the outskirts of the built-up area of Colchester. The site therefore does not fall into the categories set out in Policy CE1 Centres Classification and Hierarchy.

The proposal involves the Change of Use from Class A1 (shops) to Class A3 (Restaurant). The building subject to this application currently lies empty, previously being used for the sale of outdoor equipment. The applicant has provided details of marketing undertaken of the vacant retail unit with no interest being received over the period since it became vacant in 2011.

Core Strategy Policy CE1 states that employment developments that conflict with the Centres and Employment Classification Hierarchy will not normally be supported. The site is accordingly not in a sequentially preferable location for restaurant development.

Development Policy DP9 states that employment proposals within the countryside outside of designated local employment zones must contribute to the local rural economy and help sustain rural communities. Small scale developments that provide for the daily needs of a local residential catchment may be appropriate (CE1) but this use is considered a town centre use that would cater to an area-wide catchment rather than the local population.

However, the commercial centre is in a unique location on the edge of the built up area and the established businesses contribute to the Borough's economy. Given that the vacant unit currently has an A1 designation, which is also considered to be a town centre use it is considered that this proposal does not have a significantly greater or different impact on the functioning of the site than its current use.

Transport

No mention is made of the access to the site, although it is assumed that this would be through the main entrance to the commercial centre and not through the additional one-way exit alongside Banquet 1408.

The site is located on a main road, with good public transport links available. There is only a small catchment which could access the site by walking. However, the scheme is for an A3 use and is therefore unlikely to be a major high turnover car attractor.

On the basis of the above considerations, there is no planning policy objection to the principle of this proposal, providing colleagues are satisfied that the impacts of this proposal, particularly the transport arrangements, are acceptable.”

Environmental Services

No objection. Recommend conditions relating to hours of operation (as stated on the application), 0dB noise at site boundaries, a scheme of control measures for fumes and odours, and the provision of grease traps.

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

9.0 Parish Council Response

9.1 Stanway Parish Council raises no objections in principle but “awaits final details of parking, opening hours and number of expected covers.”

10.0 Representations

10.1 Three objections have been received. Planning concerns expressed are summarised as follows;

1. Increased noise and disturbance at night and early mornings from delivery vehicles and customers.
2. Already numerous restaurant facilities in the area
3. More traffic
4. Concerns about the existing situation of perceived abuse of the one-way system and barriers. Control needs to exist to prevent access to the car parks when the site is closed and to ensure the right exit is used at the right time.

10.2 Other observations are made in these letters, but it is not in all cases clear what planning point is being made. Comments are made about there already being numerous restaurants in the area. This is not a planning matter, but is a matter for the market to dictate.

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

11.0 Parking Provision

11.1 The red-lined application site does not include any car parking, however the applicant's agent has stated that each of the units in the blue lined area has allocated parking as follows;

- The existing building has 24 dedicated parking spaces (including 2 disabled spaces)
- Banquet 1408 has 26 dedicated parking spaces
- The White Hart has 53 dedicated spaces
- Just Learning Day Nursery has 35 dedicated spaces
- First Strokes Swim School has 23 dedicated spaces
- In addition to the above dedicated parking spaces there are an additional 242 communal spaces available

12.0 Open Space Provisions

12.1 Not applicable

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 Principle of development

15.1.1 The comments of colleagues from the Planning Policy section of the Council provide a full assessment of this issue. In summary, the site is outside of the settlement limits and not in a town centre or local centre, and so not in a location where a new restaurant would normally be encouraged. However, the fact that this is an established commercial centre and that the building has existing lawful use for retail purposes means that the proposal is not considered to be harmful to town or local centres or to the interests of sustainability and is acceptable in principle.

15.1.2 A marketing report has been submitted to confirm that the applicants have been unsuccessful in marketing the property for A1 (retail) purposes. This marketing report is of limited relevance to the application, as the site is not allocated for a particular purpose and is no more or no less suitable in policy terms for A3 purposes than it is for A1 purposes.

15.2 Highway Safety and Parking

15.2.1 The site would use existing accesses and would not result in a greater intensity of use compared with the existing retail use. Consequently, there would be no impact on highway safety. In terms of traffic, a restaurant use is likely to see greater activity in the evenings and at weekends when roads are quieter compared with a retail use that is likely to see activity concentrated in the day time. In any case, the volumes of traffic associated with this site compared with overall traffic on London Road would be very small.

15.2.2 The Council has no adopted minimum parking standards for restaurant uses. The red-lined application site includes none of the parking areas that surround this commercial centre. However, the applicant has stated that the 24 spaces closest to the building will be allocated to the site. Should this prove inadequate, there is no barrier that would prevent the 242 communal car parking spaces of the commercial park which are within the ownership / control of the applicant being used by customers. At times when a restaurant use is likely to be busiest, these car parking areas are likely to be at their quietest and there is no reason to suppose that a restaurant use would generate greater parking requirements than the building’s lawful use as retail. Comments have been received in relation to disabled parking spaces. It is not considered that the building’s proposed use as a restaurant would generate a greater requirement for disabled parking than its use for retail purposes. As such, conditions requiring additional provision would not be justified.

15.3 Amenity

- 15.3.1 The building itself is some 50 metres from the nearest residential property – 344 London Road. Conditions should be adequate to ensure that there is no harmful noise and disturbance from plant or machinery in/on the building, and visitors cars will be likely to be concentrated further away still. The existing Chinese restaurant ‘Banquet’ and its closest parking area is in any case closer to this dwelling than the application building.
- 15.3.2 The commercial park has two accesses. To the west, an access (annotated on plans as ‘exit only’) runs between ‘Banquet’ Chinese restaurant and the White Hart, opposite the residential properties of 255 and 257 London Road. This access point has a somewhat complex history. Planning permission COL/97/1650 that permitted the garden centre, included a condition (No.8) that required no public or service access via this route and a scheme of signage and a plastic barrier to enforce this. When the building that now accommodates the Chinese Restaurant was built (then for an aquatics shop) under planning permission COL/98/1200, that permission also referred to the access, stating under condition 6 that it should be closed, prior to the occupation of the new building. This does not seem to have happened. The reason it has not happened is not clear. After so many years, it may now be immune from enforcement action. The exit continued to be shown on subsequent planning applications at the commercial centre, with no reference to it in the decision notices. Objectors comment that the gate is required to be closed at night time. This does not seem to be a planning requirement but one that is less formally agreed by the operators.
- 15.3.3 The use of this westerly access late into the evening is not ideal as it comes out directly opposite homes. Whilst noise is less of a concern, bearing in mind that this is a busy road, light from headlights directly facing into peoples’ properties is a concern. It would therefore be appropriate to impose conditions that discouraged the use of this access, in favour of the main, easterly access to the site. This access is wider, is not immediately opposite residential properties and is 50 metres from the nearest residential property. Its use would have very little impact on the amenities of local residents. It is not considered likely that early morning delivery vehicles will result in a material loss of amenity in view of their infrequency, the distance from residential properties, the presence of boundary treatment and the context of the busy London Road.
- 15.3.4 Objectors have commented on the wider car park areas not being secure when the businesses within are closed. This application does not affect that situation. It is an operational matter for the site owners to secure their site and this remains the case whether or not businesses are operating from within.

16.0 Conclusion

16.1 Whilst sites outside of the settlement limits would normally be considered to be inappropriate locations for restaurants, this is an existing building with lawful retail use that would also normally be expected to be in a town or local centre. In addition, the proposal is within an established commercial park with two other lawful restaurants in close proximity. Consequently there would be no harm to the interests of sustainability and the proposal would not harm the objectives of the development plan. The proposed restaurant use is comparable to the existing retail use in its impacts on the highway, parking requirements and impact on amenities, except that it will tend to operate later into the night where there is the potential for increased noise and light pollution to surrounding residential properties. Such harm can adequately be mitigated against by a condition requiring the closure of the existing barrier on the westerly access at night times.

17.0 Recommendation

17.1 APPROVE subject to the conditions set out in 19.0

18.0 Positivity Statement

18.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

19.0 Conditions

1 - Time Limit for Full Permissions

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

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

2 - Non-Standard Condition/Reason

The existing barrier at the westerly of the two vehicle accesses between London Road and the blue lined site shall be permanently retained and shall be closed between 20:00 every day and 07:00 the following day, and there shall be no access/egress for staff, customer or for delivery purposes permitted through those barriers at those times.

Reason: To prevent this access being used at night when headlights and noise and disturbance would cause unacceptable harm to the amenities of residents living close to that access.

3 - *Restriction of Hours of Operation

The use hereby permitted shall not be open to customers outside of the following times:

Monday to Saturday: 09:00 to 23:00

Sundays and Bank Holidays: 09:00 to 22:30

Reason: This is the basis on which the application has been considered. Increased opening hours have the potential to impact upon the amenities of neighbours and would need to be consulted upon and given appropriate consideration.

4 - Site Boundary Noise Levels

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

5 - Food Premises (Control of Fumes and Odours)

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

6 - Grease Traps Required

Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

20.0 Informatives

ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

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

AMENDMENT SHEET

Planning Committee
27 February 2014

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.1 140001 – 66a London Road, Lexden, Colchester

An additional comment has been received. The planning issues raised within are summarised as follows;

1. Parts of the report relating to impact on residents contradict other parts of the same report.
2. Empty spaces within car park demonstrated by survey info, demonstrate how quiet the car park currently is.
3. Buses do not operate until 2am, so the site is not easily accessible by public transport
4. Nothing currently open till 2am. Increased activity in the car park at that time will harm residents' amenities (including children).
5. Concerns that the car park will be the designated smoking point.
6. The car park is only open 24 hours a day because so far this hasn't caused problems.

Officers' response is as follows;

The committee report concludes that the development may intensify noise and disturbance to occupiers of properties surrounding the car park. However, it is not assumed that such increased noise and disturbance will amount to more than the closing of car doors and starting of engines and it has been noted that Environmental Services do not object on the basis or the impact on residential properties bounding the car park. In this context, and the context of this being an existing car park open 24 hours, such increased noise and disturbance does not justify a refusal. The car park would seem to be an unlikely smoking point, being some distance away from the site. Management of smoking arrangements is required under the recommended condition 7. It is accepted that buses do not run until 2am, however, not all members will wish to stay so late, and there is the opportunity for them to leave earlier to use public transport.

7.2 132816 – Jobserve Social Club, Warriors Rest, Maypole Road, Tiptree

Condition 3 amend wording to

No worksuntil precise manufacturers product details including materials, finish and colour of external walls of the building.....

Condition 5 amend wording to

Prior to the building being used for the purpose hereby permitted a lighting report the last use of the building. The lighting shall be installed in accordance with the approved report and details and shall thereafter be retained as such.

7.3 140043 – 5 Lexden Park House, Lexden Road, Colchester

For Members' information the following conditions are attached to approval ref F/COL/00/1007 : as per 1 – 3 on attachment

An adjoining resident raises the following concerns

1. The original planning application no. F/COL/00/1007 with a condition (No.3) only permitting the use of the roof area for the purposes of a fire escape. The planning officers clearly never intended that the roof area should be used for any other purpose than as an escape route via the emergency staircase to the common parts in the event of fire.
2. The proposed roof terrace, as seen by the photographs, is already completed, including chrome rails, decking, planters, terrace furniture, lighting and CCTV cameras. The scaffolding-like rails can clearly be seen by Lucas House residents from the rear, and, from the front, by residents of Lexden Road (North side) and Tapwoods. Although Lexden Park House is not a listed building, it is in a Conservation Area, and its Georgian facade enhances the ambience of Lexden Village. Should this planning variation be approved there is nothing to stop existing or future residents of No 5 installing sun umbrellas, washing lines, barbecues and other unsightly equipment, all of which may be seen by other residents.
3. The applicants have changed the door locks and barred all other Lexden Park House residents and Management from accessing any part of the roof. The Management are going to have to go cap in hand to have unrestricted access for necessary maintenance.

The applicants have provided the following response in relation to access for maintenance purposes:

“We own the stairs to the roof as they were built by the previous owner and a requirement under fire safety regs.

A fire risk assessment has been done this year and found we were the only residents based on the design of our flat who needed access via these stairs.

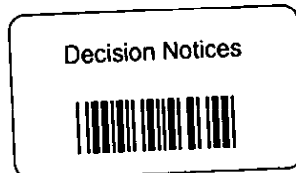
The management company originally changed the lock removing the panic bar and inserting a Yale lock which we have subsequently changed. This has no effect on other residents as they have no legal or safety requirement to access the roof.

We have lived in this apartment for 7 years and have always given the management company access to the roof to carry out maintenance work. Granting planning permission should it be approved will not change anything as the current structure has been in place for 3.5 years and we understand the importance of access when required.”



Colchester Borough Council

Environmental Services



Lexden Grange,
127 Lexden Road,
Colchester,
Essex C03 3RJ

Notice of Planning Decision

TOWN AND COUNTRY PLANNING ACT 1990
THE TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER
1995

In pursuance of the powers exercised by it as District Planning Authority this Council, having considered your application to carry out the development detailed below in accordance with the plan(s) accompanying the said application, DOES HEREBY GIVE NOTICE of its decision to GRANT PERMISSION for the said development subject to the notes attached and to any additional condition(s) set out below.

APPLICATION NO: F/COL/00/1007 **APPLICATION DATE:** 19th June 2000

PROPOSAL: Roof extended to form access for fire escape

LOCATION: Flat 5, Lexden Park House, Lexden Road, Colchester

APPLICANT: Mr D M Bliss, Flat 5, Lexden Park House, Lexden Road, Colchester.

subject to compliance with the following condition(s) :-

1. The development hereby permitted shall be begun before the expiration of five 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.
2. The external materials and finishes to be used shall be as stated on the application form and as indicated on the approved plans and schedule returned herewith, 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.
3. The works approved herewith shall be used solely for the formation of access for a fire escape and unless otherwise agreed in writing by the Local Planning Authority shall not be used to provide access to a roof garden or other recreational use of the roof.
Reason: In order to safeguard the privacy and amenity of neighbouring residents.

Date: 3rd August 2000

Signed:  Head of Planning Services



IMPORTANT - ATTENTION IS DRAWN TO THE NOTES ATTACHED

DC1001MW
PD 437



Colchester Borough Council Development Control

Advisory Note on Parking Standards

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

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

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

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

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



Colchester Borough Council Environmental Control

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

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

Best Practice for Construction Sites

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

Noise Control

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

Emission Control

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

Best Practice for Demolition Sites

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

Noise Control

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

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

Emission Control

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

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

Class A1. Shops

Use for all or any of the following purposes—

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

Class A2. Financial and professional services

Use for the provision of —

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

Class A3. Restaurants and cafes

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

Class A4. Drinking establishments

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

Class A5. Hot food takeaways

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

Class B1. Business

Use for all or any of the following purposes—

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

Class B2. General industrial

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

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

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

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

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

Class C3. Dwellinghouses

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

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

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

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

Class C4. Houses in multiple occupation

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

Class D1. Non-residential institutions

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

Class D2. Assembly and leisure

Use as —

(a) a cinema,

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

(d) a dance hall,

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

Sui Generis Uses

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

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

Interpretation of Class C3

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

Interpretation of Class C4

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