

Planning Committee

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

This committee deals with

If you wish to come to the meeting please arrive in good time. Attendance between 5:30pm and 5:45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

Information for Members of the Public

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Material Planning Considerations

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

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

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

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

Human Rights Implications

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

Community Safety Implications

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

COLCHESTER BOROUGH COUNCIL PLANNING COMMITTEE 5 March 2009 at 6:00pm

Members

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

Substitute Members : All members of the Council who are not members of this Committee or the Local Development Framework Committee. The following members have undertaken planning training which meets the criteria:-
Councillors Arnold, Barlow, Barton, Bentley, Bouckley, Cook, Dopson, Ellis, Fairley-Crowe, P. Higgins, T. Higgins, Hunt, Lilley, Lissimore, Maclean, Manning, Martin, Pyman, Quarrie, Sykes, Tod, Turrell and Young.

Agenda - Part A

(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 6 are normally brief. An amendment sheet is circulated at the meeting and members of the public should ask a member of staff for a copy to check that there are no amendments which affect the applications in which they are interested. Could members of the public please note that any further information which they wish the Committee to consider must be received by 5pm on the day before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

Pages

1. Welcome and Announcements

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

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

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

2. Have Your Say!

The Chairman to invite members of the public to indicate if they wish to

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

3. Substitutions

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

4. Urgent Items

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

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

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

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

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

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

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

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

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

6. Minutes

To confirm as a correct record the minutes of the meeting held on 19 February 2009.

7. Planning Applications

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

- 1. 081879 25 Green Acres Road, Layer de la Haye** **8 - 13**
(Birch and Winstree)

Erection of one and a half storey two bedroom new build.
- 2. 082152 10 Manor Road, Wivenhoe** **14 - 19**
(Wivenhoe Quay)

Construction of 2 new bedroom detached bungalow and demolition of existing single garage.
- 3. 090032 Lorkin Daniel Playing Field, Lexden Road, West Bergholt** **20 - 25**
(West Bergholt and Eight Ash Green)

Variation of Condition 09 of Planning Permission F/COL/00/1277 to vary hours of use.
- 4. 090079 Pond Cottage, Waldegraves Lane, West Mersea** **26 - 28**
(West Mersea)

Erection of single storey extension to the south of Pond Cottage. Two storey extension connected to the North of the Pond Cottage via a glass link. An outbuilding to the northern end of the property.
- 8. Withdrawal of Reasons for Refusal // Application 081300, Former Cherry Tree Garage, Blackheath, Colchester** **29 - 38**
(Berechurch)

See report by the Head of Environmental and Protective Services
- 9. Legal Action // Land at Turnpike Close, Old Ipswich Road, Colchester** **39 - 47**
(Dedham and Langham)

See report by the Head of Environmental and Protective Services.
- 10. Enforcement Action // 56 Firs Road, West Mersea** **48 - 51**
(West Mersea)

See report by the Head of Environmental and Protective Services.

11. Telecommunications Mast // Corner of Norman Way and Lexden Road, Colchester **Oral Report**
(Lexden)

An oral report by the Head of Environmental and Protective Services

12. Exclusion of the Public

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

PLANNING COMMITTEE

19 FEBRUARY 2009

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

Substitute Member:- Councillor Martin for Councillor Elliott.

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

210. Minutes

The minutes of the meeting held on 5 February 2009 were confirmed as a correct record.

Councillor Chillingworth (in respect of his Chairmanship of the County Branch of the Campaign for the Protection of Rural England, one of the consultees) declared his personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

211. 081951 Former Rowhedge Port, Rowhedge

The Committee considered an outline application for the redevelopment of the former port site to provide 300 dwellings, comprising one, two, three and four bedroom units, buildings for retail use (use class A1); café and restaurant uses (use class A3); business class (use class B1); community uses (use class D2); a public waterfront area incorporating dinghy park and car park; landscaping and associated works. The site was a regeneration area and a development brief was in place for the whole of the site. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations. The main issues were that the proposal was a two phase development due to land ownership; there would only be minor improvements to the access road (haul road) linked to phase 1 whereas the main improvements to the road would be completed as part of phase 2; the four storey elements fronting the rivers were out of keeping with the rest of Rowhedge; concerns in respect of high densities, particularly within the area called Roman fronting onto the Roman River; and the submitted information being insufficient to demonstrate the site could satisfactorily accommodate the development proposed. Reference was made to the Amendment Sheet which contained amendments to two of the reasons for refusal as set out in the report.

Christine Sharp, Chairman of East Donyland Parish Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Parish Council were concerned that the proposal does not follow the development brief; the building layout is not in keeping with the surrounding area and waterfront but instead follows the standard residential estate layout; the three and four storey elements create a walled effect; the improvements to the haul road are connected with phase 2, and the applicant does not own the land comprising phase 2; the parish council is very concerned about the phasing because the landowners of the phase 2 site had written stating that they had no intention of signing a legal agreement; the High Street was very congested

and should not be considered as an access as it is not capable of coping with that level of increased traffic.

Charlie Barda, representing the owners of phase 1 part of the site, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that this is a brownfield site for which the Council had produced a development brief. A comprehensive independent consultation had been carried out over two days and a great deal of technical work had been undertaken to address the issues of the main access route and the site layout. An impact assessment had also been undertaken. It was accepted that not all matters had been resolved but not accepted that there were fundamental issues with the scheme. Essex County Council had raised issues with the access, but their advice indicated that these could be overcome. The Amendment Sheet indicates that they are already progressing towards a revised design and this scheme would assist the Council in meeting its housing targets. He urged the Committee to defer the application for a revised design to be submitted.

Councillor Lilley attended and, with the consent of the Chairman, addressed the Committee. He did not believe that this was the right development for that area. It was out of character with the rest of the village. Much of Rowhedge runs down towards the river in straight lines and does not obscure views of the river, unlike this scheme which has a wall of development obscuring the river. In spite of the 300 cycle spaces there was no dedicated cycle path. The only access to the development was from Rectory Road. There were no pathways linking in with the existing network to connect to schools, etc. Without these connections the development would be isolated from the rest of the village. A new community hall was proposed but there was already a community hall existence. During construction there would be disruption in the High Street and Fingringhoe Road with many lorries and noise. He preferred that the development be completed as one whole scheme.

Councillor Bentley attended and, with the consent of the Chairman, addressed the Committee. He considered Rowhedge to be one of the jewels in the crown of the borough and an act of architectural vandalism to approve plans in outline that do not demonstrate that they draw on the design principles of the village. The development brief was specific about buildings of no more than two storeys. The three and four storey elements in this scheme created a high wall along the river frontage which was out of character and raised the density. PPS1 states any new development which fails to take the opportunity to improve character and quality of an area should not be accepted; this is a material reason for refusal. He doubted the ability of the applicant to deliver any enhancements which would be needed if the scheme was to succeed. Predicted traffic of 2,000 lorries a day will affect neighbouring wards. He hoped the Committee would take the interests of Rowhedge and surrounding villages into account.

Councillor Davidson attended and, with the consent of the Chairman, addressed the Committee to represent the views of Fingringhoe residents and to alert the Committee to the Roman River Conservation Area which was supported by Natural England and the Essex Wildlife Trust. The design of this scheme could be improved and he urged the Committee to encourage the applicant to come back with a better scheme. He was concerned that little attempt had been made to address the issues of a commuter link. This was a missed opportunity for an ongoing ferry service from Rowhedge to Wivenhoe to connect to the Wivenhoe cycle trail. The developers should adhere to the development brief so the community could benefit. The reasons for refusal should be robust in the event of appeal.

Members of the Committee were also concerned that the applicant had not followed the development brief as closely as they should, resulting in the many objections to the scheme. Many statutory consultees had also objected the scheme. The Committee recognised that they could not approve a scheme without a Section 106 Agreement which was uncertain

because of the problems from the ownership issues. Other concerns expressed were the high number of lorries predicted to be using small local roads during construction; there was a hope that something should be built on this site but that it should be in character with the area; and the risk of the site flooding.

It was explained that the reasons for refusal were robust enough to defend an appeal. Withdrawing the application to allow negotiations on the scheme to continue was an action open to the applicant. The question of land ownership was a fundamental issue which needed to be resolved before any application would be acceptable at this site. Planning officers had not seen the legal advice in respect of the acceptability of phasing this development which was in contradiction to the Council's own Legal Services advice that phasing was not acceptable without the certainty of obligations being forthcoming. The Highway Authority was concerned about the road improvements to the extent that they had recommended refusal. The High Street was very narrow and the Authority did not want to encourage any additional traffic. The Highway Authority would like to see footpaths and cycleways linking new development to the school and to the village. There was uncertainty about public access to the pits. The site did not need to be developed at any cost because there was no imperative for it to be developed. It was noted that the applicant was present and will have heard the comments of the Committee.

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

Councillor Gamble (in respect of his acquaintance with a relative of one of the objectors) declared his personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

212. 090003 12 Headgate, Colchester, CO3 3BT

The Committee considered an application for a change of use from an estate agents office to a sandwich bar, mixed use class A1/A5, with a heavy reliance on hot food takeaway. The Committee had before it a report in which all information was set out.

John Davies, Principal Planning Officer, attended to assist the Committee in its deliberations. It was explained that a sandwich bar would not need a change of use application. Objections to this application had been received from an existing sandwich bar in Crouch Street on the basis that it would create additional competition. Whilst the implications for existing sandwich bars was acknowledged competition was not a matter which could be taken into account as a valid consideration. There was no policy objection to partial A1 use. There were concerns raised about night time economy but the applicant was not looking for night time use; use ceases at 5pm and there will be a restriction on hot food being served on the premises, i.e. fried food which would need mechanical extraction equipment. An Informative had been included in respect of deliveries in response to comments received from the Colchester Civic Society.

Julie Southgate addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She was representing her daughter who was a proprietor of Bon Appetite Sandwich Bar which was ½ mile from 200 food premises of which 23 were in Crouch Street and Headgate. She was aware that competition was not a reason for refusal, but since their business opened 4 years ago their sales had reduced to 40%. Another sandwich bar would close her down resulting in the loss of jobs and her daughter's livelihood. Also of concern was access, traffic, loading and unloading lorries, and the safety of the public.

Members of the Committee had some sympathy with the public speaker's point of view, but competition was not a planning issue. Some members had previous experience of food outlets progressing on to serving hot food. There was some support for an extractor fan system being included as a condition. There were also concerns about the maintaining the attractive frontage of the building which was considered to be part of the history of Headgate and a similar issue was raised in respect of signage. The building was not listed but was within a Conservation Area. It was also noted that there was no disabled access to the building. Questions were raised in respect of any policy for areas where there was a large number of food outlets. Other issues raised were the hours of use, access for disabled and how collections and deliveries could be managed in such a location.

It was explained that any wish to change the exterior of the building would require planning permission. There were no proposals for alterations to the exterior of the building and the proposed use would use the existing access with no alteration to the ground floor window; the building was not listed. No plans had been received for external advertising but the need for advertisement signage can be included as an informative. There was no disabled access, and it may not be possible to provide one because of the difference in levels. There is no requirement to provide disabled access as part of this application.

In respect of policy regarding types of use, this site fell within the mixed use area A and the main restriction was that there should not be less than 50% of retail frontage. In respect of the intended use, there was no material difference and the premises could operate as a sandwich bar without any further permission; it was the hot food element which required permission. There was a wish to avoid the need for extraction fans which were only likely to be required for cooking and frying which, in this case, was not considered appropriate as this was primarily a sandwich bar. If the serving of hot food became a problem it would be picked up from complaints. In respect of the use of vehicles for deliveries, it would be possible to include an informative indicating that motor cycles or small moped vehicles would be most appropriate vehicles for deliveries of orders. A sandwich bar will need to be serviced and any occupier would need to adhere to the constraints that the site poses.

RESOLVED (MAJORITY voted FOR) that the application be approved with conditions and informatives as set out in the report together with additional informatives on signage, alterations to the front of the building and appropriate vehicles to be used for deliveries of orders.

213. 090021 48 St Christopher Road, Colchester, CO4 0NB

The Committee considered an application for the siting of a single Tomra recycling unit, to crush cans and bottles, together with associated works outside a Tesco store. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations. The Highway Authority have confirmed that they have no objections. Environmental Control had raised concerns about noise issues for residential flats above and a condition was suggested to restrict the hours of operation of the equipment to 7am to 10pm. In respect of the emptying of the unit, it was suggested that condition 5 could require details to be agreed with the local planning authority prior to implementation of the permission.

John Egan, Colchester Civic Society, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. This was one of three identical applications for stores in Colchester and it was suggested that the Council should respond to all three. The description of the proposal is for crushing cans and bottles, whereas in practice the unit can only crush cans and plastic bottles, and the question arises as to what

happens to glass items which are rejected. This unit was to be located in an area where there was a high doorstep recycling scheme; it was thought this might be a trial. In other areas where there were recycling facilities any items left on pavements get kicked around; the Colchester Civic Society did not want litter to be encouraged. He asked what would happen if someone arrived when the unit was closed. The operating hours proposed are the hours when the store is open, so could the unit be sited within the store. The Highway Authority has recommended one of the other proposed units should be refused because it would be an obstruction in the highway. He wondered why this objection would not apply to all three proposals. He requested that this application be deferred to enable planning officers to discuss the objectives of the scheme and submit all three applications to the Committee together.

Members of the Committee had concerns regarding such a proposal when similar facilities were available nearby. It was noted that Street Services wanted a condition to secure information on recycling tonnages. A number of questions were raised in respect of various matters: what happens to rejected items or those abandoned when the unit is full or not available; information on any policy on recycling units was requested; might the units be regarded as clutter; and are they fixed or can they be moved; would a temporary permission be appropriate. The Committee also requested an indication of how the unit operates.

RESOLVED (UNANIMOUSLY) that consideration of the application be deferred for more information and an indication of how the unit would operate.

214. 081938 3 Priory Street, Colchester, CO1 2PY

The Committee considered an application for the continued use of the building and rear amenity area for worship. The site comprised one of a pair of semi-detached houses, No. 3, and the rear gardens of Nos. 2, 3 and 3a, all of which had been laid to hardstanding. The other side of the pair, No. 2, is currently already under authorised use as a mosque. The site is in Colchester Conservation Area 1 and adjacent to the grounds of St. Botolph's Priory. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

In accordance with its determination at the last meeting, the Committee made a site visit in order to assess the impact of the proposal upon the locality and the suitability of the proposal for the site.

John Davies, Principal Planning Officer, attended to assist the Committee in its deliberations. He referred to photographs, the nature of the use and further information on the Amendment Sheet. The permission was required for use of rear gardens as an overspill area for Friday prayers from 12.30pm to 1.30pm; the services were silent with no amplified music or singing. In addition funerals were held at the current rate of one per year and a further use twice a year for 45 minutes for Eid services.

Julie Whiting addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. Their objections had been made on the proposal and not on any religious grounds. She thanked the Committee for the site visit which she hoped would enable the Committee to appreciate the effect on the neighbouring property. They objected to the use of the outside area at the rear of Nos. 2, 3 and 3a for open air funerals and worship in respect of the impact on their boundary and the loss of privacy. There was an increased risk of crime because walls had been taken down to form a car park. The numbers of people using the mosque had increased to 250. She believed there was a detrimental impact on the area and the general outlook. She considered the numbers of people using the mosque was likely to increase and the point had been reached when it was

overbearing. The facility could attract far more than 250 people and this has not been taken into account in formulating the recommendation for approval. She asked if there were any restrictions in the use of the area and how could it be regulated without causing offence. She questioned whether the use was appropriate and whether there was a responsibility to protect vulnerable individuals. The area of concrete was constructed for use as a car park and she believed it had led to an increase in crime in the area. She asked the Committee to reject the application if they considered the proposal to be unreasonable.

Councillor Barlow attended and, with the consent of the Chairman, addressed the Committee. The main issues were the land being in a Conservation Area and the use of residential garden now being used for meetings. The detail of what the area would look like was not available. There was no objection to the continuation of use of buildings inside, but he questioned the use of a residential garden becoming a meeting space and the precedent that would set.

Members of the Committee had concerns about what the surface was going to be and the height it would be in relation to No. 4 which was already 2 feet below the surface of the concreted area. The attendance of so many people implies a need for the usage in Colchester which may increase further. There were concerns regarding the safety of those who attend the services, there being only one access in and out of the site. Questions were raised on whether there should be a maximum number in attendance. Some advice on safety for the numbers of people attending was requested and whether Priory Street itself can cope with so many worshippers.

The boundary treatment with No. 4 needed to be clearly specified and it was important that those living further along the road do not have to look out on coffins on show and it was preferred that they remain inside. The existing low boundary wall appeared to be crumbling and with large numbers of people it needed some protection otherwise it could collapse. A green landscaped screen on the eastern edge set a few metres inside the boundary between the low wall of No. 4 and a new fence was suggested. It was only the use of the outside area in this application because the use of the inside is established use. More detail on the proposal was needed. It was hoped that there could be some negotiation with applicants and the objector next door with the aim of agreeing on a satisfactory solution.

The concerns that the Committee had raised were understood by planning officers and would assist their discussions with both parties. The sensitivity of the matter was appreciated and it was the planning issues which needed a resolution.

RESOLVED (UNANIMOUSLY) that consideration of the application be deferred for discussions with the applicant and the objector on the boundary treatments, the number of people attending outside services and the use of the former garden space as a parking area.

Councillor Lewis left the meeting at this point.

215. Legal Action // Land at Turnpike Road, Old Ipswich Road, Colchester

The Head of Environmental and Protective Services submitted a report seeking authorisation to take civil action in the County Court pursuant to Section 187B of the Town and Country Planning Act and/or other legal action be undertaken to secure the removal of unauthorised vehicles and structures from the land together with a palisade fence which has been erected to sub-divide the site, all in direct contravention of the terms of the Unilateral Undertaking which regulated the use of this land in the interests of safeguarding the character and appearance of the countryside. The Committee had before it a report in which all information was set out together with further information on the Amendment Sheet.

John Davies, Principal Planning Officer, attended to assist the Committee in its deliberations. Officers were satisfied that the storage of commercial vehicles were unrelated to the authorised use of the site. However, reference was made to additional information received from the solicitors of the owners of the site stating that there had been insufficient time and information provided by the Council to enable the owners to be in a position to make full representations to the Committee thus prejudicing their client's position.

Members of the Committee were willing to defer the matter to the next meeting in order to give the owners of the site and their legal representatives sufficient time to make representations.

RESOLVED (UNANIMOUSLY) that consideration of the matter be deferred to the next meeting to enable the owners of the site and their legal representatives more time to make representations to the planning authority.



Application No: 081879

Location: 25 Green Acres Road, Layer-De-La-Haye, Colchester, CO2 0JP

Scale (approx): 1:1250

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **5 March 2009**
Report of: **Head of Environmental and Protective Services**
Title: **Planning Applications**

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

7.1 Case Officer: Bradly Heffer **EXPIRY DATE: 11/03/2009** **MINOR**

Site: **25 Green Acres Road, Layer-De-La-Haye, Colchester, CO2 0JP**

Application No: **081879**

Date Received: 14th January 2009

Agent: A D James

Applicant: Mr Bob Warren

Development: Erection of one and a half storey two bedroom new build.

Ward: Birch & Winstree

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

1.0 Site Description

1.1 The site for this proposal currently forms part of the curtilage of no. 25 Green Acres Road Layer-de-la-Haye. It is a level, irregularly shaped area of land that is currently grassed. Immediately to the west of the application site is No. 25, a detached property that forms part of an enclave of three dwellings arranged around a private drive accessed off Green Acres Road. Immediately to the east of the application site is the curtilage of No.27 Green Acres Road, a detached dwelling that takes its access directly off the estate road, as opposed to the private drive.

1.2 The character of the area surrounding the application site is of an established residential development with examples of mature planting.

2.0 Description of Proposal

2.1 The proposed development is the provision of a detached, two-bedroom chalet-style dwelling, with an associated car parking area to accommodate two cars. The proposed dwelling would incorporate dormer window projections on the front roof plane – facing towards Nos 21 and 23.

2.2 The planning application submission is accompanied by a Design and Access Statement, in which the following points are included:

- The proposed dwelling would have an overall gross floor area of 91 square metres.
- The building has been designed having regard to its setting and existing constraints.
- External materials would be of good quality and sympathetic to the character of the area.
- The proposal would not create unacceptable overlooking or loss of privacy.
- The dwelling would have good accessibility to local services.

2.3 The full text of the Design and Access statement may be viewed on the Council's web site.

3.0 Land Use Allocation

3.1 Residential – as allocated in the adopted Review Colchester Borough Local Plan.

4.0 Relevant Planning History

4.1 COL/95/0528 – Erection of garage – Application approved 22 June 1995.

5.0 Principal Policies

5.1 Adopted Borough Local Plan
DC 1 – General Development Control criteria
UEA 11 – Design
UEA 12 – Infilling and backland development
UEA 13 – Development, including extensions, adjoining existing or proposed residential property

6.0 Consultations

6.1 The Highway Authority has no objection to the proposal subject to the imposition of conditions.

6.2 At the time that the application was originally submitted the Council's arboricultural officer requested the submission of a tree survey. Following receipt of this information the officer's response will be included on the Amendment Sheet.

7.0 Parish Council's Views

7.1 The comment of Layer de la Haye Parish Council is as follows:

'The Parish Council objects to this application for a number of reasons.

The proposed development is at the end of a narrow cul-de-sac where parking and the movement of vehicles for existing properties is already very restricted. The additional vehicles associated with the proposed development would exacerbate this situation and the development itself would dramatically reduce the space that is currently used for parking. Indeed it is difficult to see from the plans how vehicles could access or exit the new property without encroaching on neighbouring plots. There is also a strong concern that an increase in vehicles and reduction in parking spaces would make access for Emergency vehicles potentially impossible. We have this situation unavoidably elsewhere in the village, but do not wish to see it also created in this instance.

The Parish Council also believes that the size of the proposed development is disproportionate to the size of the available plot and would have an adverse impact in terms of light and be overbearing on neighbouring properties.

The Parish Council would also like to point out that Planning Permission given for a garage on this land in 1995 required protection of a number of mature trees on the plot. We are advised by residents that these trees have now been removed, at least one very recently, and any further reduction in greenery as a result of this development should be avoided.'

8.0 Representations

8.1 As a result of neighbour consultation, five letters of objection have been received. The points of objection can be summarised as follows:

- The applicant currently has a substantial number of vehicles parked on his property. If space is lost to accommodate the proposed new dwelling some of the vehicles will have to be parked within the cul-de-sac itself. This will add to parking and manoeuvring difficulties currently experienced in the vicinity.
- The proposal will contravene deeds that require the shared driveway to be kept clear and a covenant that restricts new building in the area.
- Access to the proposed parking spaces to serve the new dwelling cannot be achieved safely.
- The site plan submitted does not accord with details shown on a previously-submitted application for a garage on the site (ref. COL/95/0528).
- Trees that stood on the site have been removed. These were to be retained as part of the permission for the garage.
- The proposal would have an overbearing impact on existing dwellings in the area and cause a loss of light/overlooking problems. It would also constitute an overdevelopment in this setting.
- If permitted the dwelling would cause privacy problems for an as yet unconstructed bedroom extension on a neighbouring dwelling.

9.0 Report

- 9.1 As the site for this application falls within the defined residential area for Layer de la Haye, the principle at least of a dwelling being built on the land accords with the established land use allocation. That said, there are issues relating to the scheme that need to be examined.

1. Design and layout

- 9.2 The predominant form of development in the area is detached houses, of relatively uniform design, set within generally similarly-sized plots. Individual vehicular accesses are taken directly off the estate road. The exception to this situation is where the private drive leads off the end of Green Acres Road. Nos 21, 23 and 25 are currently served off this private drive.
- 9.3 The applicant's dwelling does benefit from a particularly large curtilage in relation to other dwellings in Green Acres Road. The submitted plan demonstrates, in your officer's view, that the proposed dwelling can be physically accommodated on the site and, importantly, accord with the Council's spatial standards. In particular the dwelling would have a useable rear garden area in excess of the 100 square metres minimum. Furthermore the plan shows that two cars can be accommodated on the site.
- 9.4 As regards the design of the dwelling itself it is considered that its appearance would not be so unusual in this context as to make the proposal unacceptable in planning terms. The arrangement of openings within the dwelling, and the position of the dwelling on the site would, it is felt, not result in unacceptable overlooking, overshadowing or loss of privacy to adjoining or nearby dwellings.

2. Highway implications

- 9.5 A core concern for local residents is the potential detriment to highway safety and vehicle manoeuvrability resulting from the development taking place. It is noted that the highway authority does not object in this regard. The submitted plans demonstrate that vehicles visiting the site may turn within land owned or controlled by the applicant. Whilst comments regarding deeds and easements are acknowledged these are matters to be resolved between the parties involved and are not within the remit of development control matters.

10.0 Conclusion

- 10.1 In summary it is considered that the proposed dwelling can be accommodated on the application site without causing unacceptable detriment to residential amenity in this area and Members are recommended to grant a conditional planning permission for the development.

11.0 Background Papers

- 11.1 ARC; HA; TL; PTC; NLR

Recommendation

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

Conditions

TO FOLLOW ON AMENDMENT SHEET



Application No: 082152

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

Scale (approx): NOT TO SCALE

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7.2 Case Officer: Mark Russell

EXPIRY DATE: 19/03/2009

MINOR

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

Application No: 082152

Date Received: 22nd January 2009

Agent: Mr Ross Bain

Applicant: Rusden Ltd

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

Ward: Wivenhoe Quay

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

1.0 Site Description

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

2.0 Description of Proposal

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

3.0 Land Use Allocation

3.1 Residential

4.0 Relevant Planning History

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

4.2 88/1968 - Outline application for erection of bungalow/chalet bungalow. Refused 6th December 1988.

5.0 Principal Policies

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

Local Transport Plan.
Policy 3.5 in Appendix G

6.0 Consultations

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

7.0 Town Council's Views

- 7.1 Comments from Wivenhoe Town Council are awaited.

8.0 Representations

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

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

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

9.0 Report

- 9.1 The principle of infill development is not unacceptable, but the specifics of the proposal do need close examination.
- 9.2 The site, as seen from the road, and from above, can fall in to the category of “marginal” in terms of being acceptable as an infill development site. Our Urban Designer has commented as follows: “This proposed dwelling is over intensive use of the site, evident in the lack of appropriate parking accommodation. The unmitigated domination of the frontage of both the existing and proposed dwelling is not satisfactory. The plot ratio and especially the mass in relation to the width of the plot is too much development. This creates a constrained rhythm in the streetscape that does not look appropriate in the suburban context. I notice that the plot adjacent has the same size and proportions and accommodated an extension and garage in a far more satisfactory design; this would be a more acceptable approach on this site.”

- 9.3 Members may be aware of other infill developments in the vicinity which have been allowed in recent years in surrounding roads, such as at 21 Belle Vue in 2007. Indeed, over the years many have been allowed which do not strictly comply with the existing rhythm of development.
- 9.4 Regarding the comments from objectors, it is unclear why the objector from 11 Stanley Road has made such remarks. Members are reminded that it is not good practice to place hours of work conditions on developments such as this as the Demolition and Construction advice notes and Environmental Control legislation are far more effective. It is not realistic for a local authority to police hours of work, and by-and-large, being informed by residents is the speediest and most efficient way of being informed of any breaches. Matters relating to electricity are not relevant to planning.
- 9.5 Regarding the comments about parking, whilst these are noted it must be recalled that two parking spaces for each house are being proposed. Whilst cars will be more in evidence than previously, this is the trade off for avoiding on-road parking. A sensitive boundary treatment can assist, in some ways, in softening the effect.
- 9.6 Whilst the design of the bungalow is bland and lacking in invention, the scheme is held, on balance, to be acceptable.

Conclusion

10.0 Background Papers

10.1 ARC; HA; HH; NLR

Recommendation

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

Conditions

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

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

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

2 - A2.2 Development to Accord With Revised Plans

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

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

3 - C3.1 Materials (general)

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

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

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

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

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

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

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

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

6 - C3.21 (Hard Surfacing)

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

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

7 - C11.14 (Tree/Shrub Planting)

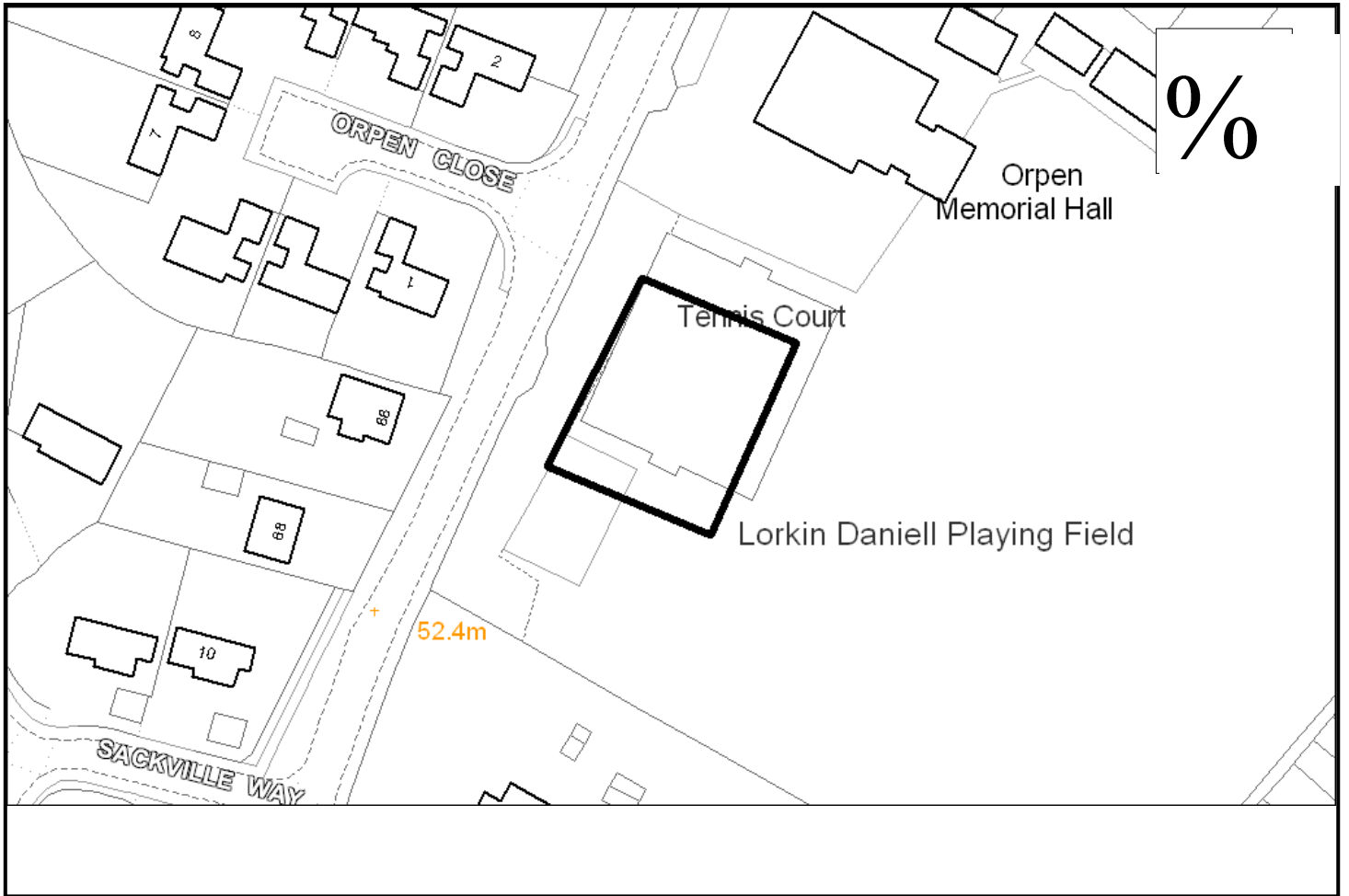
Before any works commence on site, details of tree and/or shrub planting and an implementation timetable shall be submitted to and approved in writing by the Local Planning Authority. This planting shall be maintained for at least five years following contractual practical completion of the approved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

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

Informatives

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

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



Application No: 090032

Location: Lorkin Daniel Playing Field, Lexden Road, West Bergholt, Colchester

Scale (approx): 1:1250

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7.3 Case Officer: Jane Seeley

EXPIRY DATE: 06/03/2009

OTHER

Site: Lorkin Daniel Playing Field, Lexden Road, West Bergholt, Colchester

Application No: 090032

Date Received: 9th January 2009

Applicant: Mrs Val Walsom

Development: Variation of condition 09 of planning permission F/COL/00/1277 to vary hours of use.

Ward: W. Bergholt & Eight Ash Green

Summary of Recommendation: Temporary Approval

1.0 Site Description

1.1 The MUGA (Multi Use Games Area) is located on Lorkin Daniel Playing Field adjacent to the Orpen Memorial Hall and children's play area/equipment. It is a black surfaced court/pitch surrounded by black fencing and has floodlights.

1.2 Planning permission was granted for the MUGA in 2001; in 2003 the Planning Committee agreed a minor amendment to its position. Use commenced in 2004. Condition 9 attached to the planning permission restricts the type of use and the hours of operation:

Football, netball and hockey are permitted:

Monday – Friday – 9.00am – 6 pm, apart from one evening until 9.00pm

Saturday – 10.00am – 4pm

Sunday - 10.00am – 1.00pm

Tennis is permitted:

8.00am – 10pm during the months of May, June, July and August

9.00am – 8pm during the months of September – April inclusive

1.3 The applicants, West Bergholt Parish Council, are applying to vary Condition 9 to allow grate use of the MUGA. In support of the application they have submitted a variety of documents including notes of a public meeting and letters of support. These are available via the website. At your officers request they have also provided a letter explaining the background to the application and details of how they intend to manager the MUGA. This letter is summarised as follows:-

- the MUGA is owned by the Trustees of the Lorkin Daniel Playing Field and the management is vested in the Parish Council as the Trustees and sole managing authority
- currently the main user of the MUGA is the Tennis Club

- since its construction the Trustees have been approached to allow use of the MUGA by other organisations. Use has been permitted providing it complies with the planning conditions
- use is only permitted if it is in the best interest of the community and that local residents are not unduly disturbed or inconvenienced
- there have been few, if any, complaints regarding the use
- currently the Tennis Club and the Football Club operate under a licence with the Trustees, if variation of the condition is permitted the use of the facility will operate in a broadly similar manner. For example, if the Bergholt Youth Group wish to become a main user, the Trustees will look to implement a licence with the management committee to enforce agreed hours, management discipline, supervision and type of activities.
- The Trustees have a demonstrable record of successfully managing and controlling village facilities/properly.
- The current restrictions for the MUGA are no longer conducive to effective management of the facility. Clubs and organisations are constantly altering their operations to reflect modern village recreation needs
- The Parish Plan indicates that more facilities and younger members of the community seek recreational activities. There is a wish to extend the use of facilities to accommodate properly supervised youth activities. The Parish Council wishes to control the use in order to prevent the need for continuing applications to alter conditions to accommodate changing village needs.
- The Parish Council will decide the type of sport or recreational function that can be carried out and ensure hours of use are reasonable. It will permit casual and one-off uses as well as regular supervised club use.

2.0 Land Use Allocation

2.1 Open Space
Village Envelope

3.0 Relevant Planning History

3.1 F/COL/00/1277 Formation of all weather court and associated lighting on part of playing field (resubmission of COL/99/1216) approved July 2001.

4.0 Principal Policies

4.1 Local Plan
DC1 - Development Control considerations
P1 - Pollution
P2 - Light Pollution
L16 - Sports causing noise or disturbance

Core Strategy
SD3 – Community Facilities

5.0 Consultations

5.1 The Highway Authority have no objections.

5.2 Environmental Control:

- There have not been any complaints about the current use of the MUGA.
- Aware that some neighbours are concerned about potential for nuisance if use of the facility is expanded and it is not well managed.
- Consider that currently the MUGA is overly restricted.
- Understand that the Parish Council will retain overall control - on balance suggested a temporary permission for 12 – 18 months so that the situation can be monitored.
- If permanent planning permission is granted and noise/disturbance becomes problematic action can be taken under Environment Health legislation.

5.3 Life Opportunities (Sports Development Manager):

- There appears to be broad support from community for increase access to the MUGA and the Parish Council's plan to control use access and supervision
- Support increase use:
 - It would encourage young people and adults to enjoy sport and physical activity
 - Increase opportunities to improve physical activity leading to improved health and well being
 - Helps to build links between sports clubs, youth group and community
- Application links into areas of focus in the CBC Sport and Leisure Business Plan and Development Plan for Sport that encourages young people to lead healthy and active life styles, seek to maximise use sports facilities, develop opportunities to increase participation in sport.

6.0 Parish Council's Views

6.1 No comments received

7.0 Representations

7.1 One email raising no concerns but commenting that there should be 1 day per week that cannot be booked on a permanent basis in order to allow for more use by the community

7.2 Four letters/emails of objection (the full text and accompanying photographs are available via the website:

- Residents were invited by the Parish Council to a meeting to discuss the increased hours of use, at the meeting it was unclear what the full range of activities on the MUGA would include.
- The MUGA exists and visually I live next to an area which appears like an industrial estate rather than a village amenity.
- Light from the floodlights illuminates the house and garden.

- The MUGA has never been landscaped and the boundary hedge is now thinner which means views are far removed from the former rural field.
- The noise is a real issue. Footballs can be heard when windows are closed and the problem increases in warmer weather when windows and doors are open. On many occasions foul language has been audible.
- The current restrictions help minimise nuisance.
- Currently only tennis and football are played on the MUGA. Other ball games, such as basketball would exacerbate the noise problems.
- Only a few houses are directly affected by the noise so the number of objections will be few but this should not rule out consideration of the concerns.
- The Parish Council have no interest in ensuring the current rules are obeyed.
- If planning permission is granted conditions should be attached to prevent weekend evening use, the use should only be for village residents and as the summer months are much noisier some limit should be put on that time of year.
- Any increase in use should be phased in with appropriate adult supervision to enable adequate monitoring/feedback.
- Any extension of use should be restricted to one more evening.

8.0 Report

- 8.1 The MUGA has been in use for 5 years without any complaints being made to this Council. However it is noted that the objectors advise that noise and light from the use of the facility is, in their view, problematic, particularly during warmer weather. The determination of this application is pivotal on whether the variation of Condition 9 to, in effect, give the Parish Council full control over the users and hours of operation of the MUGA, will have an unreasonable impact on residential amenity.
- 8.2 Whilst Condition 9 is very specific with regard to when certain sports can be played it nonetheless permits use of the MUGA 7 days a week from early morning to 10pm in summer months and 8pm at other times of year. Certain sports are restricted so that they cannot be played during evenings, as they are considered to be noisier. At the time of the original permission Environmental Control opposed the grant of planning permission due to the impact on local residents. The Planning Committee were minded to grant planning permission and Condition 9 was imposed in order to minimise amenity impacts.
- 8.3 Environmental Control has been consulted on this proposal. Their view is that the MUGA is currently over restricted and that they would support a variation of the Condition provided the Parish Council retain overall control and the permission is temporary in order to assess the impact. It is also noted that if there is any nuisance from the MUGA there is action under Environmental legislation that can be considered.
- 8.4 The Council's policies generally support community recreational facilities. Your Officers are sympathetic to the Parish Council's desire to increase use of the MUGA particularly by the youth club. Disturbance from facilities such as MUGA can occur due to misuse or unsupervised activity. The Parish Council have indicated that they have mechanisms that can be put in place to control users of the facilities and that they would exercise control to ensure that neighbours are not unduly inconvenienced. The Parish Council is elected and accountable and it is considered they are an appropriate

body to control a recreational facility. However, in light of the concerns expressed by local residents, it is suggested that a temporary planning permission is granted for 12 months. This will allow the Parish Council to demonstrate that they do have the necessary controls over the management of the MUGA and Officers to assess the impact of the variation of the condition on local residents amenity.

9.0 Background Papers

9.1 ARC; HA; HH; LS; NLR

Recommendation - Temporary Approval

Conditions

1 – Non-Standard Condition

The management/use of the MUGA shall be controlled by West Bergholt Parish Council as set out in their letter of 29 January 2009.

Reason: For the avoidance of doubt and in the interests of residential amenity.

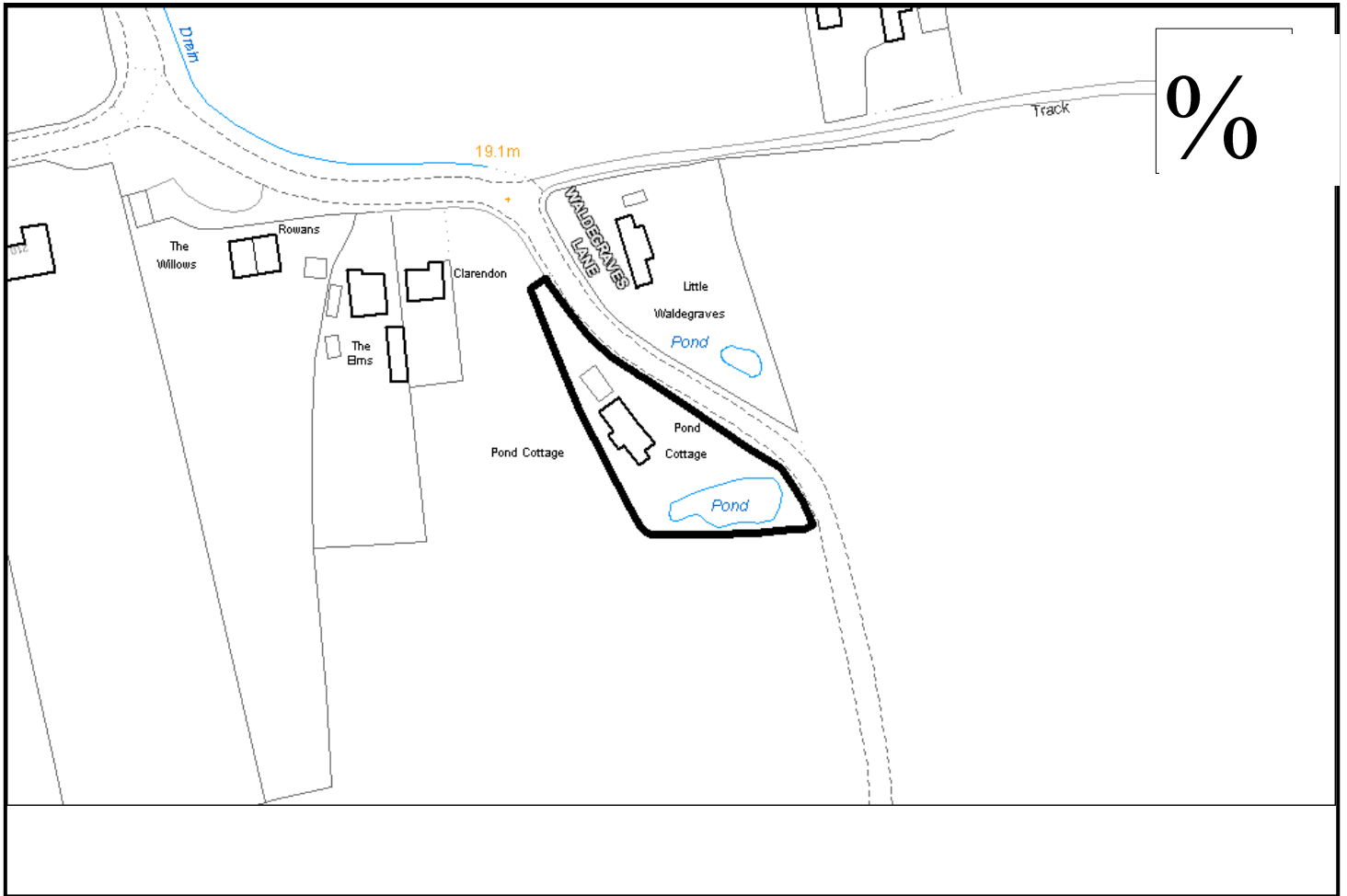
2 – Non-Standard Condition

The Variation of Condition 9 of F/COL/00/1277 is only permitted until 31 March 2010.

Reason: To enable the local planning authority to judge the effect of the variation of the Condition on residential amenity.

Informatives

You are reminded that Conditions attached to F/COL/001277, other than Condition 9, remain in force for the duration of this temporary permission.



Application No: 090079

Location: Pond Cottage, Waldegraves Lane, West Mersea, Colchester, CO5 8SE

Scale (approx): 1:1250

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7.4 Case Officer: Sue Jackson

EXPIRY DATE: 19/03/2009

OTHER

Site: Pond Cottage, Waldegraves Lane, West Mersea, Colchester, CO5 8SE

Application No: 090079

Date Received: 22nd January 2009

Agent: Stanley Bragg Partnership Ltd

Applicant: Mr P Harrison

Development: Erection of single storey extension to the south of Pond Cottage. Two storey extension connected to the North of the Pond Cottage via a glass link. An outbuilding to the northern end of the property.

Ward: West Mersea

Summary of Recommendation: Conditional Approval

1.0 Planning Report Introduction

1.1 This application is reported to Committee as the proposed 2 storey extension is visible for a public area and is therefore contrary to policy H8.

2.0 Site Description

2.1 This application relates to a detached cottage in Waldegraves Lane West Mersea, a rural area. The property is located on a bend in the road and as a consequence the front, rear and side elevations are visible from the lane and the adjacent main road.

3.0 Description of Proposal

3.1 The application proposes the erection of a single storey extension to the south (side) elevation, a 2-storey linked extension of the north (side) elevation and re-roofing of existing rear additions. An existing car port will be converted into a garage

4.0 Land Use Allocation

4.1 Countryside Conservation Area

5.0 Relevant Planning History

5.1 Application 081572 was refused permission last October.

6.0 Principal Policies

6.1 Adopted Review Borough Local Plan
H8 - Extensions to dwellings in the countryside

7.0 Consultations

7.1 None

8.0 Town Council's Views

8.1 No objection

9.0 Representations

9.1 None received

10.0 Report

10.1 The previous application was refused permission due in particular to the bulk and height of the 2 storey building. This had been reduced in width and height. It now sits just below the ridge of the main dwelling and its proportions reflect the proportion of the original cottage which has unsympathetic additions in the past.

10.2 The design and access statement indicates the key requirements were to realign the living rooms away from the road and to ensure the existing cottage remains dominant. A 2 storey extension is indicated visually separate from the cottage but with a single story link. Contemporary materials are indicated i.e slates, cedar boarding and large glazed elements.

10.3 The single storey element is an extension of an existing structure and will be constructed of traditional materials. False pitched roofs are indicated to existing flat roof single storey additions to the rear of the building.

10.4 Due to position of the plot in relation to the road the 2 storey extension is visible and therefore conflicts with criterion (b) of policy H8 which precludes extensions if they have an adverse impact on the rural character of the open countryside when viewed from a public place. However the building will be partially screened by trees. The property has a very small rear garden with most of the useable areas to the sides therefore any extension is likely to fail this part of the policy.

10.5 In this instance it is considered the extension would not seriously compromise the policy and planning permission is recommended.

11.0 Background Papers

11.1 ARC; PTC

Recommendation - Conditional Approval

Conditions

1. time limit
2. retain trees
3. materials
4. landscape conditions



Application No: 081300

Location: Land At Former Cherry Tree Garage, 17 Blackheath, Colchester, CO2 0AE

Scale (approx): 1:1250

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Planning Committee

Item

8

5 March 2009

Report of	Head of Environmental & Protective Services	Author	Nick McKeever ☎ 01206 282441
Title	Application No. 081300, Former Cherry Tree Garage, Blackheath, Colchester – Redevelopment of site to provide A1 convenience retail foodstore (407 sq.m.) and 13 nos. residential units with associated cycle and car parking		
Wards affected	Berechurch		

This report concerns the proposed withdrawal of reasons 3, 4 & 5 of the refusal of planning permission for the above mentioned development prior to a scheduled appeal against the refusal to be heard at a public inquiry.

1. Decision(s) Required

- 1.1 Members of the Planning Committee are requested to approve the withdrawal of reasons 3, 4 and 5 set out in the Notice of Planning Decision dated 7th October 2008. The application was refused under delegated powers. The Applicant, Tesco Stores Ltd, has lodged an appeal against this decision, which is to be heard at a public inquiry. The date for this public inquiry was originally set for March 2009 but has to be postponed due to a lack of suitable accommodation for the scheduled four day inquiry. An alternative date is awaited.
- 1.2 Under the prescribed procedures for a public inquiry, the Appellant and the Council are required to agree 'Common Ground'. This is in effect areas upon which the parties are in agreement and would not then be contested at the inquiry. In this case agreement is sought regarding the submission of amended drawings relating to the design and the use of appropriate conditions relating to noise levels, sound insulation and a restriction on Sunday opening hours, as 'Common Ground'. In effect this would amount to a withdrawal of these grounds of refusal.
- 1.3 A copy of the Notice of Planning Decision setting out all of the reasons for the refusal of the development is reproduced as Appendix ?. Reason 3 relates to matters of design; Reason 4 relates to the impact of the proposed night-time opening hours upon residential amenity in terms of noise, disturbance and other related forms of environmental pollution; Reason 5 concerns the failure to secure a planning obligation as required under the adopted supplementary planning document Provision of Open Space, Sport and Recreational Facilities. The required contribution is £38,360.

2. Reasons for Decision(s)

- 2.1 **Reason 3** – Design. The Agent, GL Hearn Property Consultants, acting on behalf of Tesco Stores Ltd, has submitted amended drawings which seek to address matters of design. Whilst the basic concept of the layout of the buildings was deemed to be acceptable, there were a number of design elements which were considered by your Officers, and in particular the Urban Design Officer, to be below the standard required for this site. These are all matters of detail. Examples include a lack of balance in the facades (size & position of windows & doors), one shop window is disproportionately large, the central gateway feature appears weak/lacks structural integrity, some monotonous and blank gable ends. Individually these are not of great significance but taken collectively they result in a poor visual appearance.
- 2.2 Prior to the submission of the application there was an on-going dialogue between your Officers and GL Hearn, which included a number of meetings. As a result of these negotiations the layout and design of the scheme and the buildings evolved and underwent a number of changes. It was unfortunate that the Applicant, Tesco Stores Ltd, decided to submit the application prior to these matters of design having been completely resolved. Nonetheless these negotiations carried on throughout the consideration of the application. They ultimately led to the Urban Design Officer providing GL Hearn with a written and detailed explanation of the design matters that needed to be addressed, together with the proposed solutions, in order to bring the scheme up to an acceptable standard.
- 2.3 Members will be aware that the application had to be determined within the allotted time frame (i.e. in the case of a ‘major’ application such as this one, this is a 13 week period). It was unfortunate that the recommended amendments were not undertaken or submitted within this timeframe. The application had therefore to be determined prior to these matters having been resolved.
- 2.4 The amendments submitted by GL Hearn in the period subsequent to the issue of the refusal of planning permission are in accordance with the recommendations put to them prior to the determination. In the event that these amendments are produced at the Public Inquiry, your Officers would be put in the position of having to agree that they address Reason 3 of the refusal and that a continued objection could not be sustained.
- 2.5 **Reason 4 – Noise & disturbance.** The application as submitted, proposed that the foodstore would be open from 07:00 until 23:00 hours, Mondays through to Sundays and Bank Holidays (inclusive). The consultation response from Environmental Control recommended that the use should not operate/be open to customers outside of the times Mondays to Saturday 07:00 – 21:00, Sundays and bank holidays 08:00 – 21:00. No deliveries to be made to (and no goods despatched from) the site outside the hours 07:00 – 19:00. Specific recommendations were also made relating to site boundary and noise levels, sound insulation of the buildings and sound insulation of external Plant, Equipment and Machinery.

- 2.6 In response to these matters an environmental noise assessment prepared by Sharps Redmore Associates was submitted. Having regard to this submission, together with additional information submitted and discussed subsequent to the refusal of permission, Environmental Control has agreed that all their recommended noise conditions will be met and that the nearby residents will not be disturbed by the external plant (a condenser pack and 3 small air conditioning units) located at the rear of the store. The Applicant has also agreed to the closing of the store at 22:00 hours on Sundays. Environmental Control are now satisfied and do not oppose the amended opening hours and that the aforementioned conditions can be agreed as 'common ground'. Hence the proposal put forward for the withdrawal of this particular reason for refusal.
- 2.7 G.L. Hearn are currently in contact with Legal Services in respect of a planning obligation to secure the required contribution towards the provision of Open Space, Sport and Recreational facilities. There is also a requirement to an Educational Contribution of £14,326 together with a Community Facilities contribution of £10,000. Members are asked to agree to the withdrawal of Reason 5 upon the satisfactory completion of this obligation.

3. Alternative Options

- 3.1 In the event that Members resolve not to agree that these matters can be treated as common ground, they will be contested at the public inquiry. Having regard to the matters discussed between the Applicant and your Officers it is considered that these reasons for refusal could not be sustained.

4. Supporting Information

- 4.1 The site consists of three main buildings, together with a large area of hardstanding fronting, on to the Mersea Road at Blackheath. The site had a long established commercial use as a car sales showroom, associated workshops, together with an office. The site was vacated early in 2007 when the business was transferred to another site outside of the Borough.
- 4.2 Tesco Stores Ltd acquired this 0.026ha site and submitted an application for the demolition of the existing building and the erection of a Tesco Express food store and a mix of flats and dwellings, giving a total of 13 units. The flats are located on the frontage, some being over part of the foodstore. The two storey dwelling houses are located to the rear of these other buildings, with a landscaped parking area in between.
- 4.3 A recommendation was submitted by Planning Policy to refuse the application for the retail use as being contrary to the Adopted Local Plan and the emerging Local Development Framework Shopping policies. This subsequently formed the principal reason for the refusal of the application.
- 4.4 The Highway Authority had also been involved in discussions with GL Hearn prior to, and during, the consideration of the application. A recommendation for refusal was ultimately submitted by the Highway Authority and this formed the second grounds for refusal.

- 4.5 The consultation period generated a large number of objections. Amongst other issues the following matters were raised:
- (a) This is a residential area
 - (b) Noise arising from the plant, opening hours and delivery vehicles during unsocial hours
 - (c) Units are two and three storey
 - (d) Design of housing is rather un-inspiring

4.6 Having regard to these objections the proposed recommendation to agree as common ground, and hence for the withdrawal of the reasons 3,4 & 5, is submitted to Members prior to the public inquiry.

5. Proposals

- 5.1 To agree as 'Common Ground' the recently submitted amendments to the design of the units, where these amendments accord with the recommended improvements made by the Urban Design Officer.
- 5.2 To agree as 'Common Ground' the recommended conditions relating to noise levels and the sound insulation of plant and buildings, together with the condition restricting Sunday opening until 22:00 hours, in order to protect residential amenity.
- 5.3 To agree to the withdrawal of Reason 5 upon the satisfactory completion of the required Planning Obligation.

6. Strategic Plan References

- 6.1 (a) Adopted Review Colchester Borough Local Plan – March 2004 policies DC1 (General Development Control) UEA11 & UEA13 (Design and Impact Upon Neighbouring Dwellings), P1 (Pollution- General).
- (b) Local Development Framework Core Strategy – Dec 2008. The policies listed under (a) above remain saved.

7. Consultation

- 7.1 Consultations with Environmental Control have taken place prior to the preparation of this report.

8. Publicity Considerations

- 8.1 In this section you should show that consideration has been given to who will be affected by the decision, what effect it will have on them and the best way of communicating the decision to them.
- 8.2 If the project is likely to be very controversial then consideration should be given to consulting the people concerned in advance of the decision.

9. Financial Implications

- 9.1 None

10. Equality, Diversity and Human Rights Implications

10.1 None

11. Community Safety Implications

11.1 None

12. Health and Safety Implications

12.1 None

13. Risk Management Implications

13.1 None

If your report does not impact on any or a number of the standard references, please consider using the following paragraph, amended as required, as an alternative to the separate paragraphs above.

6. Standard References

6.1 (a) Adopted Review Colchester Borough Local Plan – March 2004 policies DC1 (General Development Control) UEA11 & UEA13 (Design and Impact Upon Neighbouring Dwellings), P1 (Pollution- General).

(b) Local Development Framework Core Strategy – Dec 2008. The policies listed under (a) above remain saved.

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

Background Papers

Planning Application 081300



Notice of Planning Decision

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

In pursuance of the powers exercised by it as District Planning Authority this Council, DOES HEREBY GIVE NOTICE of its decision to REFUSE PERMISSION for the development detailed below.

APPLICATION NO: 081300

APPLICATION DATE: 7th July 2008

PROPOSAL: Redevelopment of site to provide A1 convenience retail foodstore (407 sq m) and 13no. residential units with associated cycle and car parking.

LOCATION: Cherry Tree Garage, Blackheath, Colchester, CO2 0AE

APPLICANT: Tesco Stores Ltd, c/o agent

1. National retail policy is currently guided by Planning Policy Statement 6: Planning for Town Centres (PPS6). Proposed changes to PPS6, out for consultation until 3 October, seek to improve the effectiveness of the 'needs test', which is considered to have distorted competition and restricted consumer choice. The revisions replace the existing impact assessment with a new impact assessment framework which provides a broader focus on the overall costs and benefits of a proposal. The changes include an assessment of a proposal effect on consumer choice and retail diversity. The assessment of the impacts of a development continues to be a key consideration in determining the acceptability of a proposal.

The relevant saved Local Plan policies governing consideration of this proposal include TCS1, TCS3 & TCS12. Policy TCS1 includes tests set out in national policy. Retail proposals must show need, conformity with the principles set out in the sequential approach, accessibility and avoidance of harm to the vitality and viability of local centres.

IMPORTANT – ATTENTION IS DRAWN TO THE NOTES ATTACHED

Policy TCS3 provides that smaller stores that primarily serve local walk-in catchment areas will be permitted where they are widely accessible to the local catchment population and would not prejudice the vitality and viability of a defined shopping centre. Policy TCS12 provides that additional shopping provision outside existing centres will only be allowed where it would not prejudice that existing. The protection given to existing centres is continued by the submitted Core Strategy Policy CE2c which states that 'Neighbourhood Centres will be protected and enhanced to provide small scale shops, services and community facilities for local residents.'

The Council considers that the proposed development is contrary to the aforementioned policies in that:-

- The site lies outside a designated retail centre in an unsustainable out-of-centre location and is accordingly contrary to saved Local Plan policies TCS1, TCS3 and TCS12 as well as submitted Core Strategy policy CE2c.

- The proposal, because of its location and size, will have a more significant impact in the area than a purely local facility. It would have a negative effect on the viability and vitality of the three local centres within the catchment area, and because of its size, on the nearby mid-size supermarket. It is considered to have a negative effect on consumer choice and retail diversity

2. The proposal fails to:

- Provide 4.5 x 90 metre vehicle visibility splays
- Provide a safe, workable and efficient parking/turning/loading and offloading facility for delivery vehicles.
- The parking provision for the development does not comply with EPOA standards and would give rise to vehicles being parked in the adjacent carriageway creating safety and congestion hazards.
- The proposed cycle parking facilities are neither secure nor convenient to the entrances of the buildings.
- Provide adequate width on the access track allowing a service vehicle to pass another vehicle.

This proposal is detrimental to the safety, efficiency and integrity of the highway. The proposal therefore fails to comply with policy DC1(d) of the Adopted Review Colchester Borough Local Plan - March 2004.

3. The saved Adopted Review Local Plan policy UEA11, in common with Planning Policy Statement 3: Housing, requires that there shall be a high standard of design in the layout of an area and of a building itself. New development should in general accord with the Borough Council's design, layout, parking, highway and space standards and to further the interests of crime prevention, energy conservation and nature conservation.

In addition, the following design principles will apply:

(a) When any non-residential use is to be developed, expanded or redeveloped within a predominantly residential area, any part of the

development affecting the street scene should be compatible with the surrounding dwellings in scale, form, detailed design and materials;

- (b) The buildings or building groups shall be well designed in themselves and have adequate regard to their setting;
- (c) When a non-residential use is to be developed, expanded or redeveloped in any other built-up area, but outside a Conservation Area, it should be well designed in itself. Any part of a development affecting the street scene should reflect the predominant form and character of the surrounding area where that form and character makes a positive contribution to the appearance of the area;
- (d) Good standards of townscape should be achieved in terms of harmonious groups of buildings and the spaces between them;
- (e) The external materials used should be of a good quality and sympathetic to the particular character of the area which it is desirable to retain and enhance;
- (f) The design and layout of the buildings should ensure that the amenity of adjacent property is not unreasonably affected;
- (g) Where they are to be created as part of the development, public open spaces should be well landscaped and properly maintained;
- (h) In all cases, redevelopment should be designed and implemented so as not to prejudice the redevelopment of adjoining land.

The scheme submitted fails to achieve a satisfactory standard of detailed design, including weak and unbalanced elevations, a lack of balance in the facades of the houses, unconvincing and lack of architectural detail, poor articulation of the built forms and lack of richness of materials.

Having regard to these matters the development would result in an unsatisfactory appearance detrimental to the visual amenity of the area.

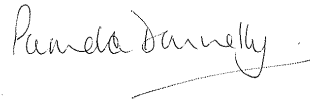
4. Saved policies within the Adopted Review Colchester Borough Local Plan March 2004, (DC1(a) and P1), seek to protect existing residents from development that would cause unacceptable harm through pollution to land, air and water or to people or natural resources.
The site lies within a predominantly residential area with dwellings immediately adjacent to, and surrounding, the site. Whilst the Council acknowledge that the site has a long established commercial use, it is considered that the proposed retail use until 2300 hours Mondays to Saturday, Sunday and Bank Holidays is likely to give rise to additional noise, disturbance and other forms of environmental pollution over and above that generated by the previous commercial use within and around the site to the detriment of the amenity of the existing and proposed residential properties. The development is therefore contrary to the aforementioned Local Plan policies.
5. The proposal has not secured an appropriate planning obligation that makes provision for the costs of the development in terms of a contribution towards open space, sports and recreation facilities, community facilities and education facilities in accordance with Policies CF1 and L5 of the Adopted Review Colchester Borough Local Plan March 2004 and adopted SPD.

Informatives

In the event that a revised application is submitted the Applicant is advised that developer contributions, in line with adopted Supplementary Planning Guidance or Documents will be required.

Date: 7th October 2008

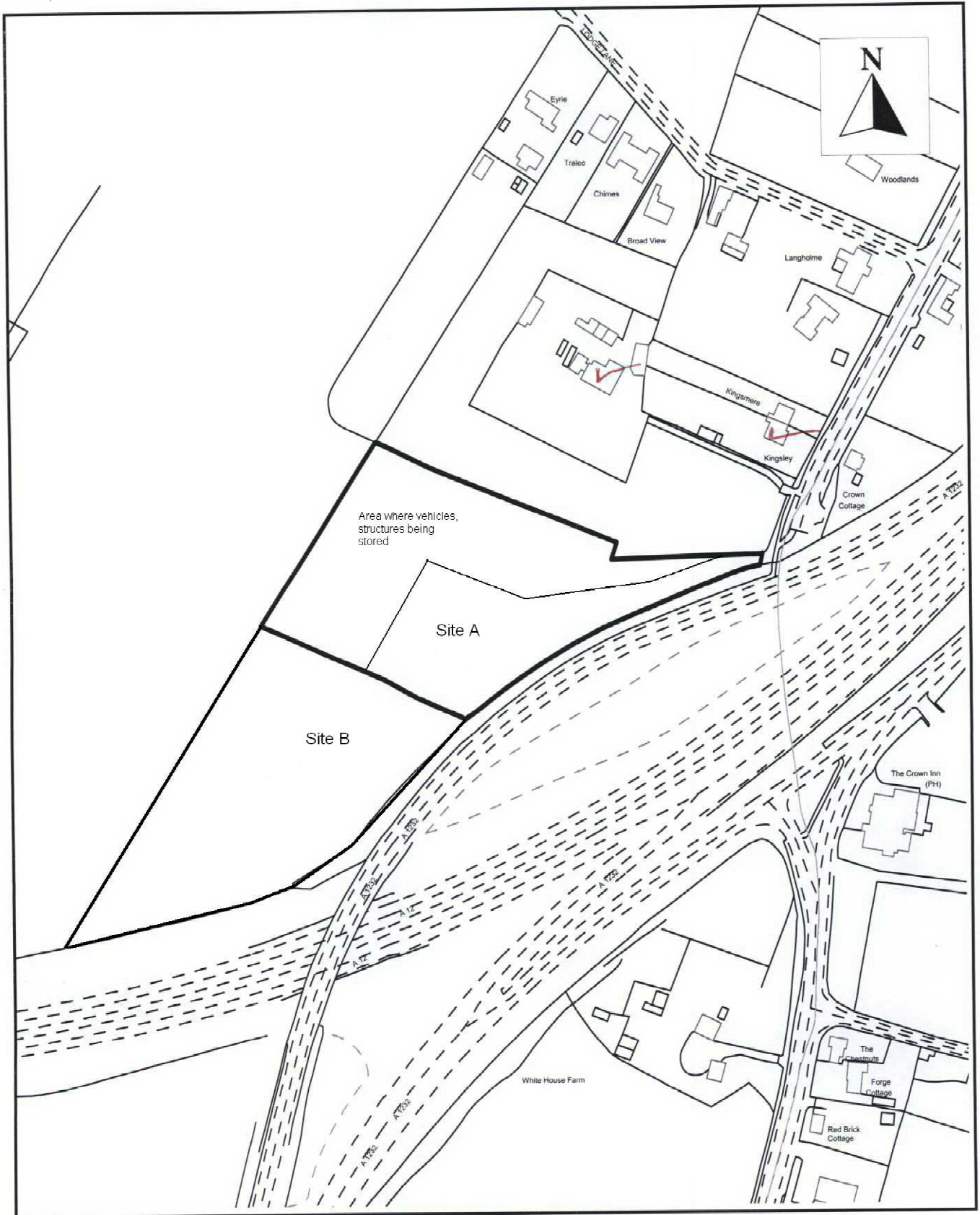
Signed:



Pam Donnelly
Executive Director

In determining this application the Council has taken into account the following policies:

DC1 Development Control Considerations
P1 Pollution (General)
P4 Contaminated Land
UEA11 Design
UEA13 Development Adj. Existing or Proposed Residential Property
TCS1 Protecting the Vitality and Viability of Colc
TCS3 Major Foodstores
TCS12 Rural, District and Local Shopping Centres
T9 Car Parking (Outside Central Colchester)



Application No: F/COL/06/1054
Location: Land adjacent A12/A120 interchange, Turnpike Close, Colchester
Scale: 1:2500

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Planning Committee

Item
9

5 March 2009

Report of	Head of Environmental and Protective Services	Author	John Davies ☎ 507838
Title	Land at Turnpike Close, Old Ipswich Road, Colchester		
Wards affected	Langham		

This report concerns a parcel of land at a site in Turnpike Close off the Old Ipswich Road, which is being used for the storage of commercial vehicles, portacabins and other structures without compliance with the terms of a Unilateral Agreement dated 8 November 2006 connected with Application F/COL/06/1054.

1. Introduction

- 1.1 This application was deferred from the previous meeting in order to allow owners opportunity to make any further representations to the Committee. Any representations received will be reported on the Amendment Sheet.

2. Decision(s) Required

- 2.1 To agree that civil action in the County Court pursuant to S.187B of the Town and Country Planning Act and /or other legal action be undertaken to secure the removal of the unauthorised vehicles and structures from the land together with a palisade fence which has been erected to sub-divide the site.

3. Reasons for Decision(s)

- 3.1 The storage of these vehicles and structures is in direct contravention of the terms of the Unilateral Undertaking which regulated the use of this land in the interests of safeguarding the character and appearance of the countryside.

4. Alternative Options

- 4.1 If no action was taken the unauthorised use would become lawful at the end of ten years after which no enforcement action could be taken.

5. Supporting Information

- 5.1 This site has a long planning history. The background to the case is set out in the attached Committee report which recommended the grant of planning permission for use of the site for storage, bagging, grading and distribution of aggregates and associated ancillary development. At the time the site was divided into two parcels. Site A to the north was allowed to be used for these uses and Site B to the south was required to be cleared of various unauthorised structures, vehicles and hard surfacing and restored to its former undeveloped rural appearance. In addition a site layout plan and a landscaping plan were agreed for both sites and restrictions on activities on the site, structures and were set down in the Unilateral Undertaking. These restrictions included that there should be no vehicles stored on the site except in connection with the approved uses nor any excluded articles including portacabins, containers and equipment.
- 5.2 These matters first came to light during a visit to the site on 8 October 2008 to check compliance with the terms of the Unilateral Undertaking. There have been subsequent visits which have confirmed that the breach is continuing. Apart from the part of the site that has been separated off by fencing for the storage of the vehicles and structures, the rest of the site is being used by a company (Agrimix Ltd) who are operating the aggregate depot business in accordance with the planning permission.

6. Proposals

- 6.1 The action proposed is to take legal action against the owners of the land to secure the removal of the vehicles, structures and fence which are not in compliance with the Agreement. The Council's Legal Services have already been instructed to take action and any progress will be reported at the meeting.

7. Standard References

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

Background Papers

Provide a list of documents here that you have relied upon to formulate the report but you do not need to list any document already in the public domain. Please be aware that any document listed must be shown to anyone who asks to see it. You should take this into consideration before listing any confidential documents.

Case File

Adopted review Colchester Borough Local Plan 2004

Case Officer:	Mr J Davies
Site:	Land adjacent A12/A120 interchange, Turnpike Close, Colchester
Application No:	F/COL/06/1054
Date Received:	22nd June 2006
Agent:	Andrew Martin Associates
Applicant:	Agri-Mix Ltd
Development:	Change of use to storage, bagging, grading and distribution of aggregates and associated ancillary development.
Ward:	Dedham & Langham

Site Description

The application site comprises a parcel of land to the west of the northbound slip road onto the A12 leading from the Crown Interchange. It extends over 1.3 ha in size. It is predominantly hard surfaced. There is an access from the north-east corner leading from Old Ipswich Road.

The land is currently used for a variety of commercial purposes as set out in the following Notices.

The land to the south is included in the application as 'blue' land in the applicant's control. It is 1.2 ha in size and there is a public footpath running through the middle of it (FP47). Both the application site (red line) and blue lined land are the subject of current enforcement notices relating to unauthorised uses being carried on on the land and have been referred to as Sites A and B respectively in the Notices. These are as follows:

Notice A (Site A) concerns the change of use of the land from agriculture to a mixed use comprising commercial, industrial and storage uses which include: storage, grading, bagging and distribution of sand, aggregates, hardcore, recycled concrete, road planings, spent mushroom compost and topsoil; storage of building materials, rubble, vehicles, plant, machinery, containers and use as a builders and general reclamation yard and incorporating unlawful siting on the Land of shipping containers, portacabins, hoppers and other plant and open storage structures.

Notice B (Site B) is against the change of use of the land from agriculture to a mixed use comprising commercial, industrial and storage uses which include the storage of recycled aggregates including road planings, crushed concrete and brick rubble, the storage of builders materials and equipment, containers and vehicles together with the carrying out of operational development by spreading rubble and hard core to create hardstanding in connection with the unauthorised change of use.

Notice C covers both sites and is against the same uses as set out in Notice A.

It is the Local Planning Authority's position that both sites have agricultural use rights and that the various commercial activities on the land have been in existence for less than ten years and have therefore not attained lawful status. Appeals have been lodged against the Notices on various grounds including Ground (a) that in respect of the breach of planning control as set out in the Notice planning permission ought to be granted. A public inquiry has been scheduled to consider these appeals on the 12 and 13 December this year. This application has been submitted in an attempt to secure a negotiated conditional permission for some commercial development on the site. This report considers the application and, if approved, it is likely that the appeals against the Notices would be withdrawn. Further clarification on this point is being sought from the applicants.

The planning application is supported by a Planning Statement including a Landscape and Visual Assessment. The application proposes a rationalisation and regularisation of existing uses on Site A only and includes proposals for further screening and visual mitigation measures.

The main features of the proposals for Site A are:

- Entrance gates to site moved 50 metres within site to aid visual containment of site
- Improvements to internal roadway surface
- Fencing along north boundary to be enhanced by additional boundary treatment
- Additional planting along north and west boundaries
- All structures on site associated with use relocated away from nearest residential uses and closer to A12 slip road
- North and south-western parts of site restricted to vehicle turning and storage.

The Proposals also include the restoration of land to the south of the application site (Site B) to agricultural land. The applicants offer to restrict the future use of this land through a unilateral undertaking and including the following works:

- Removal of all structures from the land
- Removal of all road planings and rubble
- Planting and seeding as appropriate with suitable native species
- Future use of land restricted to no purpose other than agriculture

Land Use Allocation

No allocation

Relevant Planning History

ENF3/90 - Enforcement Notice served regarding road way on site dated 25 June 1990

ENF3/90 - appeal lodged 15 September 1990 and withdrawn on 15 October 1990

Re-serving of ENF3/90 as ENF15/91 Enforcement Notice due to service on wrong person 14 June 1991 complied with on 17 November 1993

ENF16/91 - regarding gypsy caravan 14 June 1991 - complied with on 27 July 1991

91/1292 - Retrospective application for construction of concrete access drive- refused 25 November 1991.

ENF25/93 - Enforcement Notice served re dumping of hardcore on 9 December 1993

99/0485 - Application for Certificate of lawfulness for use of land for storage of building materials- refused 17 June 1999

ENF14/99 - Enforcement Notice served re use of land for aggregates and storage of commercial vehicles 22 September 1999 - appeal lodged on 22 October 1999
 Appeal decision dated 25 May 2000 - Notice quashed as it would give permission to unchallenged use for building material storage

Principal Policies

Adopted Review Colchester Borough Local Plan (ARCBLP) Adopted March 2004
 DC1 - General Development Control Practice
 CO1 - Rural Resources
 CO4 - Landscape features
 P1 - Pollution (General)
 L14 - Public Rights of Way
 EMP 4 Employment Uses in the Countryside

Essex and Southend-on-Sea Replacement Structure Plan (ESSRSP) April 2001

CS2 - Protecting the natural and built environment
 C5 - Rural Areas not in Green belt
 NR1 - Landscape Conservation
 BIW3 - Business development-The Sequential Approach

Human Rights Implications

In the consideration of this developments impact on Human Rights particularly, but not exclusively, to:

Article 8 - The right to respect for private and family life,
 Article 1 of The First Protocol (Protection of Property) - The right to peaceful enjoyment of possessions,
 it is considered that:

The proposal would have an impact on an individual's human rights, but having considered the level of impact and in the general interest of the public and in accordance with planning law, the proposal is considered to be reasonable.

Community Safety Implications

Help to reduce the fear of crime
 Help to reduce the occurrence of crime

Positive	Negative	Nil Effect
		3
		3

The development would be expected to achieve 'secured by design' in terms of its layout

Yes	No	Not Applicable
		3

Consultations

Highways Agency - no objection as the application will not affect the A12 trunk road at this location.

Environment Agency - no objection to the proposed development but makes comments in respect of lack of foul drainage details and on arrangements for storage of oils, fuels and chemicals.

Environmental Control recommend inclusion of conditions covering noise levels associated with use and contaminated land.

Environmental Policy comment as follows:-

“The site is a countryside location, does not fall within any specific area designation (white land) and is situated adjacent to the A12/A120 interchange near the border with Tendering BC. The site has a complex history. An Enforcement Notice was issued by CBC, but dismissed by the Planning Inspectorate. It appears that the original gravel storage and distribution activity may be permissible, however the proposal involves a much larger area of activity than the original operations and a much larger area than would be needed by the new proposal.

Policy DC1 - The proposal may have significant noise, air pollution, traffic and visual impacts on nearby residents/businesses depending on the operational activities, the proximity of neighbours, and the mitigation measures proposed.

The application proposes to landscape the site and consolidate the area of operations to reduce the visual impact of the unlawful development. The landscape measure proposed appeared to be quite minimal and there may still be a significant visual impact.

There is little information about noise, traffic or air pollution impacts and no mitigation measures are proposed. If the operations are limited to the business hours proposed, the impacts may not be significant due to the presence of the A12/A120. Regular truck movements along residential streets may result in unacceptable noise levels.

In the absence of technical reports, complaints and submissions from neighbours would give an indication of the impacts. If residents have made reasonable complaints about noise, pollution or traffic, the application has given no evidence of how these would be mitigated.

Policy CO1 states quite strongly that "development that does not need a countryside location and which could reasonably be located elsewhere in the Borough will be refused." Colchester Borough has an ample supply of employment zone, some of which would be appropriate for the proposed land-use. The application conflicts with this policy.

Policy CO4 - The rehabilitation of the southern site makes a positive step towards compliance with this policy. The landscaping of the northern operational site appears minimal. National and regional policies provide no further insights that are not discussed above.”

Parish Council's Views

Langham PC comment as follows:

'This site has caused great problems for many years and although we would like to see the problems resolved, the Parish Council feels strongly that this is not the best way forward. As the applicant admits the site is in the countryside and has never had planning permission to change it from agricultural use. The Parish Council fully supports the Borough in the actions that it has taken and the Enforcement Orders that it has served. This is not a suitable site for such a business and the number of lorry movements involved and so the Parish Council strongly objects to this application.'

Representations

1 letter of support from resident in Lodge Lane.

Report

This report considers the planning merits of the proposals against the provisions of the development plan. Key considerations are:

- The principle of development on an un-allocated site
- Impacts on the visual amenity of the area
- Impacts on neighbours
- Highway issues
- Other material considerations

The site is located in the countryside although not far from the northern limits of the built up area of Colchester and close to the A12. Policies in the Structure and Local Plan seek to resist

development on such sites except for purposes associated with agriculture or forestry or other uses than can demonstrate a need to be in the countryside. The site is un-allocated in the Local Plan and therefore there is a presumption in policy terms against development. The Local Plan does not have any specific policies for the proposed use of the site as an aggregates depot. Regard otherwise must be had to policy EMP4 which sets out an employment hierarchy for development in the countryside. This seeks to focus new employment development within Village Envelopes and Rural Business Sites with development on other sites limited to re-use of existing buildings and appropriate changes of use. In all cases there is a requirement to retain or create local employment opportunities and ensure that the proposed use or development is compatible with the character and scale of the settlement concerned and the surrounding rural areas. The applicants indicate that the aggregates use only provides 3 on site employees, but provides services to other businesses by the supply of sand and aggregates and is appropriately located for such.

In this case the factors to be taken into account are that the aggregate related uses have been on the site for at least 5 years. The applicants claim that the uses have been on the site for over ten years and have therefore attained lawful status. The exact duration and the question of lawfulness is disputed by the LPA and is one of the issues at appeal. The site is close to the A12/A120 interchange and, therefore, has excellent highway access for such uses. It is also the case that such uses do not easily fit into an urban setting by reason of the difficulty of finding suitable sites and they are generally incompatible within urban residential areas. The comments of the Policy Team are noted, however, they have to some extent been superseded by the provision of a noise survey (details to follow) and clarification on operational hours. Moreover, no complaints of noise nuisance have been received from neighbours. With regard to alternative employment sites it is true that no such assessment has been provided and that the applicants rely on the locational advantages of the site in terms of A12 access and on the northern edge of Colchester.

With regard to impacts on the landscape and visual character of the countryside, the main views of the application site and Site B are from the A12 slip road leading from the Crown Interchange, from the fields and public footpath on the west side of the site and from residential properties to the north of the site. The land is not protected in the sense of being AONB, Countryside Conservation Area or other landscape or ecological designation. Views into the site are generally well screened by existing trees and hedgerows on the site boundaries. At present, however, there are views into the site from along the A12 of structures on Site B. This would be resolved by the proposed removal of structures and restoration of this land back to its former state. Whilst in the past both sites have to varying degrees been covered by large numbers of containers, storage structures, commercial vehicles and other paraphernalia this application proposes that there would be a minimum of structures on the land which could be controlled by legal agreement/condition in the interests of safeguarding visual amenity. Officers have requested that a site layout plan indicating all the proposed uses and structures on the site and vehicle manoeuvring areas be provided prior to the Committee meeting.

With respect to neighbour amenity issues it should be noted that there are residential occupiers to the north and north-west of the site forming part of a low density neighbourhood based around the line of the Old Ipswich Road. The closest house is approximately 75 metres from the northern boundary. Concerns over impacts on residential amenity relate to operations carried on at the site and associated commercial vehicle movements to and from the site. The applicants have agreed to provide a noise survey associated with the aggregates use and are aware of concerns about dust nuisances. The Environmental Control Team have concerns over noise and contaminated land and recommend conditions. An important factor is the proposed hours of use and the applicants have agreed that a condition limiting the hours to 8am-5pm Mondays to Fridays and 8am-1pm on Saturdays only would be acceptable. No letters of objection to the application have been received from neighbours.

With regard to highways matters the applicants submissions states that there would be 6 daily car movements in/out of site each day and 4-8 commercial vehicles movements per day. All vehicular traffic would be using the Old Ipswich Road which runs parallel with the A12. The access into the site is at the end of the Old Ipswich Road so there is no passing traffic. Clearly the impact of vehicle movements of this volume and nature needs to be considered in the context of the close proximity of the A12. No objection has been raised by the Highways Agency.

In summary, this report has considered the various issues associated with use of the site as an aggregates depot as proposed in the application and taking into consideration the various controls and limitations than can be imposed either by legal undertaking or condition to regulate the use. The proposal represents a much reduced and controlled use of Site A only by the applicants compared to the position when the notices were served against the uses and large number of associated structures on both sites. Subject to satisfactory resolution of various outstanding matters in respect of the proposed unilateral undertaking and conditions it is recommended on the basis of the foregoing assessment that planning permission be granted.

Background Papers

ADRBLP; SDD; HA; NR; HH; PP; PTC; NLR

Recommendation

APPROVE subject to the prior completion of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990. The Head of Planning, Protection and Licensing to be authorised to complete the Unilateral Undertaking to include the following matters within the Undertaking or by conditions as appropriate:

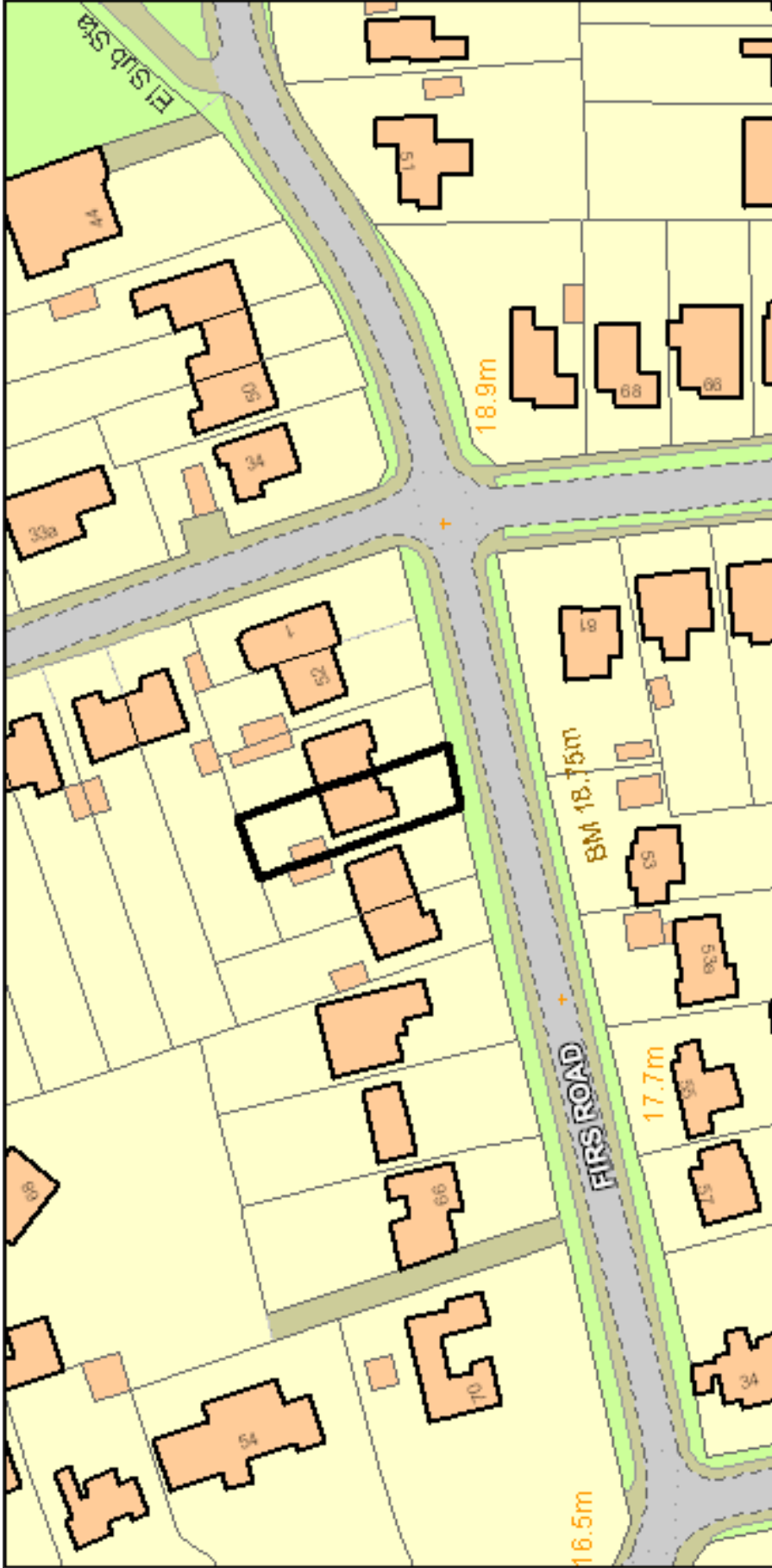
- Site A
 - Definition of approved uses on the land
 - Limits on numbers of containers and other fixed structures
 - Limits on heights of structures/ open storage
 - Proposed boundary landscaping and other on-site works
 - Hours of operation of approved uses

Site B

- Removal of all road planings and rubble from land
- Removal of all structures on the land
- Clean up and re-planting proposals
- Use of land only to be for agricultural purposes

and subject to the following matters to be covered by conditions if not contained in the Unilateral Undertaking:

1. Timetable for implementation of proposals
2. Hours of operation
3. Height limit on structures and open storage
4. Proposed use(s) on site
5. Hard and soft landscaping proposals
6. Noise level controls
7. Foul drainage details
8. Dust suppression measures
9. Structures on site - maximum 7 containers, hopper etc only
10. Contamination



Site Location Plan

MAP NOT TO SCALE

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Complaint Reference: 191175

Site Location Address: 56 Firs Road, West Mersea, Colchester, CO5 8JP

Date Produced: 25 February 2009



Planning Committee

Item
10

5 March 2009

Report of	Head of Environmental & Protective Services	Author	Sarah Hayes ☎ 01206 282445
Title	56 Firs Road, West Mersea		
Wards affected	West Mersea		

**This report concerns the storage of items for sale at 56 Firs Road,
West Mersea**

1.0 Decision Required

- 1.1 Members are requested to authorise the service of an enforcement notice requiring that the storage and sale of items from 56 Firs Road ceases.

2.0 Reasons for Decision

- 2.1 The storage of items exceeds what could be considered to be incidental to the occupiers' enjoyment of the dwelling house and therefore requires planning permission. The use has led to several complaints from local residents due to its unsightliness and increase in visitors to the property.

3.0 Alternative Options

- 3.1 If no action is taken, after a period of ten years the use would become lawful and no action could be taken.
- 3.2 Action could be taken under legislation to control untidy sites. However, this would not necessarily stop the use operating and again after a period of ten years the use would become lawful. Although the unsightliness would be controlled there may be other undesirable manifestations of the use, such as vehicle movements which it would then be impossible to control.

4.0 Supporting Information

- 4.1 The sale of items from residential premises is not uncommon. Householders may hold an occasional 'garage sale' to get rid of unwanted items. During the summer holidays children may set up a stall in the front garden to sell toys they no longer play with and of course gardeners offer seedlings or produce during a glut. These activities probably fall within the definition of 'incidental to the enjoyment of the dwelling house' or else be considered to be de-minimus and would not require planning permission. Even if they do fall outside this definition, they are an accepted part of village life to which no reasonable person would take exception provided they are not carried to excess.

- 4.2 Complaints were first received in August 2008 that numerous items were being sold from the front garden of the property. A visit showed a considerable number of items with 'for sale' signs being displayed. The occupier was advised that the level of sales was sufficient to require planning permission, which was unlikely to be granted. He was given until the end of September to reduce the level of items being offered for sale to an insignificant level. The period for compliance was given to allow the existing items to be sold. The occupier was advised that a single item being displayed two days a week would be disregarded.
- 4.3 In mid October another visit was made to check whether items were still being offered for sale. Four bikes, three chairs and a lawnmower were in the front garden, although there were no signs. It was decided at this stage that no action would be taken as the number of items in the front garden was not very large and there was no indication they were being offered for sale. However, the occupier was advised that the Council had powers to serve an untidy site notice if the situation deteriorated.
- 4.4 By November a further complaint was received that the situation had deteriorated. A visit to the site showed that 38 bikes were stored beside the house, although these were not easily visible from the road. The occupier said that he bought these at auction and they were delivered to his property. He mended them and then sold them through the internet. He said that purchasers did not call at the property, he either delivered the items or despatched them by courier.
- 4.5 Calls continued to be received stating that the number of items being kept in the garden was increasing and that purchasers were seen visiting, particularly at the weekend. A further visit was made on 10 February, when it was clear that the situation had deteriorated further. The owner agreed with a rough estimate that fifty bicycles were being kept, although this was probably an underestimate.
- 4.6 In order for planning permission to be required, and enforcement action to be possible, a material change of use of the property has to have occurred. Consideration has to be given to whether the appearance of the site has changed, whether a significant part of the property is used for the use and the effect on neighbours and the local area. Most of the front garden and the side of the house are used for storage and the display of items and it is considered that this has led to a change in the appearance of the property. A significant degree of latitude is allowed to householders to enjoy their dwellings as they see fit, subject to any uses being reasonable. It is considered that keeping in excess of 50 bicycles and wide variety of other items is more than could be considered normal or reasonable. Photographs are available showing the appearance of the front garden.
- 4.7 The occupier of the property has stated that he sells on Ebay and it has been possible to track down his sales. At the time this report was drafted nine bicycles were being offered for sale on Ebay. All were offered to be sent to the purchaser by freight, rather than to be collected from Firs Road. Between 5 February and 18 February 13 items had been sold with a total value of £659.
- 4.8 Having established that a material change of use of the property has occurred, there has to be a reason for enforcement action to be taken. Several letters, emails and telephone calls have been received from local residents stating that they are unhappy about the appearance of the site. Complaints have also been received about visitors to the property to view or collect items, but it has not been possible to verify this.

- 4.9 Since mid October, when an improvement in the appearance of the property had occurred, the situation has got steadily worse. The occupier was advised that the Council had powers to act, but this has not halted the increase in storage at the premises.
- 4.10 Members should be aware that another local resident, living opposite, but with an address in St Peters Road, is also selling items from his garden. In the interests of fairness an investigation was also carried out into the use of this property. The householder has managed to demonstrate that sales have been continuing for a period of ten years. Documentary evidence has been produced showing sizable donations to both the Air Ambulance and Lifeboats charities for a number of years. Letters of support have been received from both the charities and various individuals. These confirm that the sales have been continuing for over ten years and that they are in the public interest and should not be interfered with. Generally this householder's activities are well tolerated locally but the residents accept the need to be even handed in dealing with both. The St Peters Road resident has now been advised that his activities appear to be lawful, but must be kept within reasonable limits. The property is bounded by a wall and fence which naturally limits the extent of the activities to the driveway. The owner has been advised that his activities must be contained within his driveway and not spread out onto the highway land. Furthermore he has been advised that should they become excessive he will be vulnerable to the service of an untidy site notice. It is felt that this gives a sufficient control over these activities. A decision over whether a material change of use has occurred is always a matter of fact and degree and at their current level it is possible to argue that this has not occurred.

5.0 Proposals

- 5.1 The issue of an enforcement notice requiring that the keeping of bicycles and any other items for sale should cease.
- 5.2 A period of two months is considered an appropriate period of time for compliance with the notice.

6.0 Standard References

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

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

Our goal is to be a high performing Council

Our corporate objectives for 2006-2009 are:



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