

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

SUPPLEMENTARY AGENDA

Part A

(open to the public including the press)

Pages

13. Amendment Sheet

See Final Amendment Sheet.

**No Page
Numbers**

AMENDMENT SHEET

**Planning Committee
5 February 2008**

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

**LATE AMENDMENTS HAVE BEEN INCORPORATED INTO THIS
AMENDMENT SHEET AND ARE SHOWN AS EMBOLDENED**

7.2 082064 – Stanway Green, Stanway

As advised in the Committee report, many more representations have been received, both in opposition to and support for the application.

- **Stanway Parish Council is now opposing the application as follows: “Stanway Parish Council STRONGLY OBJECTS to this application for the following reasons:**

With regard to the adequacy of the proposed screening which it feels will cause loss of privacy and amenity to properties to the rear. The Parish Council would also request a site visit by the Planning Committee and they view the site from the adjacent gardens.”

- **Twenty-five letters of objection, and fifteen letters of support have now been received. The latter are solely from people connected with the Lodge itself, and the former are all from neighbouring and nearby properties.**

Many of the comments are as before, and these have been dealt with in the main Committee report. New points raised, however, relate to the inadequacy of the proposed screening. The relative merits of this have been discussed in the report, but following discussion with the Landscape Officer the applicant’s agent has been advised that a semi-mature Yew hedge would be preferable to Laurel for maintenance reasons. This is available in heights of up to 2.5 metres and will grow at a manageable 100mm to 300mm per year and would cost upwards of £4,000 to acquire. The relative loss or gain of privacy is clear to see when looking at the annotated photographs on the committee presentation.

One party has raised concerns that the quoted height of the proposed hedge might include the roots, and therefore be effectively lower than at first thought. Our Landscape Officer has advised, however, that nurseries always quote heights from ground level.

For clarification, the hedge would replace three, not eight, trees as has been claimed by some objectors. These would be the Norway maple and the twin poplars. Meanwhile, the previous proposal to fell two mature trees on the northern boundary has now been dropped, contrary to what is being claimed by some objectors, and two trees (Lawson cypress and sycamore, of which the latter is showing some signs of decay) on the southwest elevation would be replaced by two silver birches. Whilst the applicant's tree specialist has recommended a minimum 2.75m - 3m height for the new silver birches, it is recommended that a condition be attached whereby Colchester Borough Council secure taller specimens. Meanwhile a new field maple is tabled for the northwestern corner. The new planting must therefore be weighed against the loss of some trees in reference to policy UEA22 (Areas of Special Character – Stanway Green) which this site lies just outside of.

Comments have also been made about the fact that the previous application (081655) was withdrawn on the day it was to be refused. For clarification, it is not uncommon, especially in complex cases such as these, to advise applicants that applications are to be refused and to give them the option of withdrawal before submitting a new proposal that meets the concerns raised. This is the case for 081655.

Several objectors have claimed that the care home operator is 'doubling up' i.e. having more than one person in each room, and that the increase in size will only exacerbate this. The applicants have been contacted for a response to this claim and have responded: "All bedrooms are to be single bedroom (requirements of Social Services). There are 30 bedrooms with 30 residents maximum."

New conditions

- 14) **Notwithstanding the details of the planting programme hereby approved, the applicant shall, prior to planting, submit details of two replacement trees for specimens T08 and T09. These shall be a minimum of five metres in height, and shall be planted as such and maintained in accordance with implementation and monitoring programme as agreed in condition 11 above.**

Reason: The original proposal for 2.75m to 3m high specimens is considered insufficient in comparison to the existing trees.

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

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

- 16) **Prior to the commencement of work on the “General Waste and Recyclable Store” being commenced, details of this shall be submitted in writing to, and agreed in writing by, the Local Planning Authority. These details shall then be implemented as such.**

Reason: For avoidance of doubt, as the submitted application does not provide sufficient information.

- 17) **Prior to the commencement of work on the “Cycle Rack” being commenced, details of this shall be submitted in writing to, and agreed in writing by, the Local Planning Authority. These details shall then be implemented as such.**

Reason: For avoidance of doubt, as the submitted application does not provide sufficient information.

7.3 081947 – 143 Coast Road, West Mersea

The comments of West Mersea Town Council have been incorrectly reported in the agenda and should read as follows:-

“Following discussion it was agreed to recommend CONSENT be granted in respect of this application. However, having regard to the site’s status as a Conservation Area and the potential restriction of riparian rights, we ask that wooden posts, close enough together to prevent vehicle access, with no chains, are erected.

Any conflict with the forthcoming Marine Bill should also be considered.”

Additionally, Officers recommend that the following additional condition be imposed:-

“The boundary treatment hereby approved shall incorporate a white painted finish and shall be retained as such in perpetuity.

Reason: To ensure a satisfactory appearance in the interests of visual amenity within this defined Conservation Area.”

7.4 081997 – Dawes Lane & Est Mersea Road, West Mersea

Members are advised that the final comments of the Highway Authority were not available in time for this evening’s meeting. Therefore the recommendation to Members is altered to read as follows:-

The application is deferred in order that the written view of the Highway Authority may be obtained. If that Authority does not object to the proposal the Head of Environmental and Protective Services be authorised to grant planning permission for the development subject to the imposition of conditions set out in the report. If the Highway Authority objects to the application the Head of Planning and Protective Services be authorised to issue a delegated refusal of the application for the reasons identified by the Highway Authority.

7.5 082102 – Turkey Cock Lane, Eight Ash Green

Email received from objector’s agent stating:

‘We have carefully considered the officer report, together with background information. Particularly relevant is the Council’s own legal advice that the proposed use needs express planning permission. A change of use needs planning only if that change of use is material, so that it constitutes development as defined by s55(1) TCPA 1990.

By implication therefore the council considers that the proposal constitutes a material change of use (It is unfortunate, and in the interest of the applicant that the agent was not required to properly complete the application form in respect of this issue).

A material change of use from a low key hobby use to the proposed full retail use in the countryside must be a departure from policy, and yet is not being treated as such. We have raised this before but have not received a response. I note that our other main comments have been correctly summarised in the officer report, whereas this fundamental point has been omitted from the report.’

Advice has been taken from the Council's Solicitor. She advises:

- 1) With regard to paragraphs 1 and 2 there is nothing to comment as these points are obvious and have been dealt with previously at the time of the withdrawn applications.
- 2) The writer appears to be seeking comments on whether the proposal is in breach of the Council's Policies. I note that in your report, you state that if the number of sales significantly increased, then this would constitute a derivation from the policy but at this stage, it is not known how extensive that will be, so I can't say what more can be said on the subject.
- 3) I am of the mindset that you have dealt with the application as comprehensively as possible, having taken into account all representations made and can satisfy committee that as much thought, transparency and fairness has been applied to this application, so in response to the objector's agent's email, I believe that the point in her final paragraph has been addressed adequately in your report.

Following this advice Paragraph 8.7 of the Committee Report has been replaced with:

' An assessment has to be made as to whether the bringing of furniture to the site, its display and retail is materially different whether the items are antiques, second hand or new. Your Officers have concluded that the use of the site for the retailing of new furniture is not significantly or materially different from the use of the site for retailing antique or second hand furniture. Accordingly, it is not considered that a refusal of planning permission can be justified. The site has been used for the sale of mainly new furniture for some time. It is therefore unlikely that the grant of this permission will lead to any material increase in retailing. Whilst it appears that when planning permission was originally granted for retailing from the barn in early 1990's the use was very low key. However, the subsequent planning permission did not control the days of use etc. It cannot be simply assumed that an antique/second hand business would be less intense than a business selling new furniture.'

The objector's agent has commented on the revised paragraph 8.7 of the committee report. The paragraph is reproduced below with the comments shown in italics.

An assessment has to be made as to whether the bringing of furniture to the site, its display and retail is materially different whether the items are antiques, second hand or new. Your Officers have concluded that the use of the site for the retailing of new furniture is not significantly or materially different from the use of the site for retailing antique or second hand furniture. Accordingly, it is not considered that a refusal of planning permission can be justified. The site has been used for the sale of mainly new furniture for some time.

Correct, but such use has been in breach of planning control, and (unless it has become lawful – and there is no evidence or even suggestion that that is the case) an unlawful use is not the correct basis against which to assess whether the use has intensified or otherwise materially changed.

It is therefore unlikely that the grant of this permission will lead to any material increase in retailing.

You mean from the current unlawful use. However, surely the question to be addressed is whether it will lead to an increase from that of the lawful use? This is a very fundamental point that I ask you to consider please.

Whilst it appears that when planning permission was originally granted for retailing from the barn in early 1990's the use was very low key. However, the subsequent planning permission did not control the days of use etc. It cannot be simply assumed that an antique/second hand business would be less intense than a business selling new furniture.'

I would point out that if the Council was to grant permission for full retail use, there is little restriction on the site being taken over by one of the retail multiples such as Tesco or Sainsburys. I note that a condition is proposed to restrict this to furniture use, but I doubt the validity of such condition, The Council is already struggling with the materiality of the proposed change.

Your Officers' response to these points is as follows:

The breaches of planning control are acknowledged in the report and have, indeed, prompted the submission of this application in order to regularise the position. However, it cannot be ignored that this site has a previous retail history with undisputed entitlement to sell, antique, secondhand and pine furniture. It remains the Officers view that there is no material difference between sales of these items and new furniture. As a retrospective application Officers have been able to consider the

actual impacts of the development which has informed our assessment. The recommendation includes planning conditions to regulate and control the use and in particular restriction on sale of other goods and impact on neighbour amenity.

It is recommended that the Reason for Condition 1 be amended to read:

Reason: The application site is in a rural location where National Planning Guidelines and Council Policies resist retail uses. The site has a lawful use for the sale of antique/second hand furniture and antiques. Planning permission has been granted because it is considered that there is no material difference between the retailing of second hand/antique furniture and new furniture. However it is considered that the retailing of other goods has the potential to have an adverse impact on the locality.

7.6 082110 – 342 London Road, Stanway

Amended description - Delete “A’ Board”

7.8 081848 – Halstead Road, Eight Ash Green

This application has been withdrawn from the Planning Committee to enable the applicant to provide further information regarding their rights of access to Blind Lane and an amendment to the application site boundary.

7.9 081938 – 3 Priory Street, Colchester

- **Comments have now been received from Environmental Control, requesting that the outside area be limited to silent Friday prayer, silent funeral prayers and Eid prayers, and also proposing a 1.8 metre high wall along the boundary with number 4 Priory Street, and that the existing 1.8 metre high fence along the boundary with number 3a be maintained as such.**

- Amended condition 1. The sentence relating to commencement of use is removed as the application is retrospective, and the condition is reworded thus:

“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. These details shall be agreed in writing by the Local Planning Authority and shall be implemented within 56 days of permission, and shall be retained thereafter.”

Amended Condition 3. “A permanent barrier shall remain in place between the former gardens of 2 and 3 Priory Street at all times, of such a height and position to prevent the passage of motor vehicles.”

- Amended condition 6. No *amplified* music or sound shall be played, nor dancing take place on the premises, including the outside area.

Reason: To protect the amenity of the occupants of residential properties in this area;

- Extra conditions:

8) Non-standard: Use of the external area to the rear of number 3 Priory Street shall be restricted to silent Friday prayer, silent funeral prayers and Eid prayers at the times and durations specified in the application only.

Reason: In the interests of residential amenity.

9) Non-standard: The existing 1.8 metre high fence along the boundary with number 3a shall be maintained as such at all times.

Reason: In the interests of residential amenity.

10) Non-standard: Prior to the installation of any boundary treatments, the applicants shall submit details of ground levels from which all measurements shall be taken. These shall be agreed, in writing, by the Local Planning Authority prior to any boundary measures being agreed. Reason: For avoidance of doubt, in the interests of residential amenity.

7.10 082051 – Chapel Road, Tiptree

The nearest residential property is approximately 20m from the existing mast not 80m as stated in paragraph 8.1 of this report.

Agenda Item 11 – 13 Stanley Road, Wivenhoe

The applicant has commented as follows:-

“Although we are attending the above meeting we are not intending to speak therefore we would appreciate it if this statement could please be made available to members of the planning committee:

If we have inconvenienced anyone during the course of our development we sincerely apologize. It was never our intention to create any anxiety. Whilst disturbance is inevitable we believe we have taken all appropriate steps to minimize disruption and that we have been careful to ensure construction work has been carried out during the hours detailed in our permission. We will continue to consider our neighbours as our home nears its completion.”