

Planning Committee

Moot Hall, Town Hall
12 September 2013 at 6.00pm

This Committee deals with

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

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

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Attending Meetings and "Have Your Say" at www.colchester.gov.uk

Audio Recording, Mobile phones and other devices

The Council audio records all its public meetings and makes the recordings available on the Council's website. Audio recording of meetings by members of the public is also permitted. The discreet use of phones, tablets, laptops and other such devices is permitted at all meetings of the Council, with the exception of all meetings of the Planning Committee, Licensing Committee, Licensing Sub-Committee and Governance Committee. It is not permitted to use voice or camera flash functionality and devices must be kept on silent mode. Councillors are permitted to use devices to receive messages and to access papers and information via the internet and viewing or participation in social media is at the discretion of the Chairman / Mayor presiding at the meeting who may choose to require all devices to be switched off at any time.

Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are located on each floor of the Town Hall. A vending machine selling hot and cold drinks is located on the ground floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Colchester Borough Council, Angel Court, High Street, Colchester
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www.colchester.gov.uk

Material Planning Considerations

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

The following approach should be taken:

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

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

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

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

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

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

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

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

Human Rights, Community Safety and Equality and Diversity Implications

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

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

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

Using Planning Conditions and Considering Reasons for Refusing Applications

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

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

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

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

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

COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
12 September 2013 at 6:00pm

Members

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

Substitute Members

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

Agenda - Part A

(open to the public including the media)

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

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

Pages

1. Welcome and Announcements

- (a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.
- (b) At the Chairman's discretion, to announce information on:

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

2. Have Your Say!

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

3. Substitutions

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

4. Urgent Items

1 - 9

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.

That the Chairman be asked to agree pursuant to the provisions of Section 100B(4)(b) of the Local Government Act 1972 to consider the following item at the meeting as a matter of urgency because of the need for the redistribution of existing officer delegations to reflect recent service restructuring, which is due to become operational on 1 October 2013.

The report sets out proposed changes to the Scheme of Delegation to effect a redistribution of existing delegated powers to match service function changes that have arisen from the Universal Customer Contact Fundamental Service Review (UCC FSR).

Please see the report of the Head of Commercial Services and Head of Professional Services (attached).

5. Declarations of Interest

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

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

6. Minutes

10 - 14

To confirm as a correct record the Minutes of the meeting held on 22 August 2013.

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. 131452 St John Ambulance Site, Chapel Road, Wivenhoe (Wivenhoe Quay)

15 - 37

Demolition of the superstructure of the existing St John Ambulance building and erection of a two storey building of mixed use C3 Residential and D1 Gallery / Studio.

2. 131453 St John Ambulance Site, Chapel Road, Wivenhoe
(Wivenhoe Quay)

Conservation Area consent for the demolition of the superstructure of the existing St John Ambulance building.

Please see above report at 7.1.
3. 131231 Trafalgar Farm, 183 London Road, Stanway
(Copford and West Stanway) **38 - 48**

Change of use of land from agriculture to car park (105 car parking spaces); installation of 4 no. lighting columns; erection of 1.8 metre palisade fencing to eastern boundary. Resubmission of 112355.
4. 130937 Colchester Golf Club, 21 Braiswick, Colchester
(Mile End) **49 - 63**

Creation of irrigation reservoir.
5. 130472 Town Hall, High Street, Colchester
(Castle) **64 - 71**

Application for listed building consent for installation of an internal partition to a corridor.
6. 131417 14 Eldred Avenue, Colchester
(Shrub End) **72 - 76**

Single storey side and rear extensions.
8. **Application No. O/COL/03/1019 Mixed Development at New Braiswick Park, Bergholt Road, Colchester** **77 - 79**
(Mile End)

Please see the report of the Head of Professional Services.
9. **Congruence, Consolidation and Confirmation Reports** **80 - 92**

Please see the report of the Head of Professional Services.
10. **Amendment Sheet** **93 - 96**

Please see the Amendment Sheet (attached).
11. **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

Item
4

Date: 12 September 2013

Report of	Head of Commercial Services and Head of Professional Services	Author	Vincent Pearce 01206 282452
Title	Request to amend Scheme of Delegation in respect of the Development Management functions delegated by the Planning Committee to Heads of Service to reflect post UCC FSR (Universal Customer Contact Fundamental Service Review) 'Service restructure' due to come into force on 1 October 2013		
Wards affected	All		

This report sets out proposed changes to the Scheme of Delegation to effect a redistribution of existing delegated powers to match service function changes have arisen from the UCC FSR

This report needs to be read in conjunction with Appendix 1

1.0 Decision Required

1.1

(a)

Members are asked to agree the recommended redistribution of existing powers as set out in Appendix 1 & 2 of this report.

and,

(b)

Members agree that these changes if agreed under (a) above become operational on 1 October 2013

and,

(c)

The Legal Services Manager & Monitoring Officer (or equivalent post-holder) make appropriate arrangements to incorporate & publish the agreed amended Schemes of Delegation within the Constitution and that this shall occur in time to facilitate their coming into force on 1 October 2013.

2.0 Reasons for Decision(s)

2.1

The Planning Committee is being asked to agree the recommendations in the interest of good governance and in order to ensure the efficient and effective operation of the development management function of the Council - as local planning authority. The changes can be seen as 'housekeeping' as **they do not involve an extension of delegated powers, merely a redistribution of existing powers between Heads of Service to reflect organisational change.**

3.0 Alternative Options

- 3.1 Retaining the current Scheme of Delegation with its current distribution between services would no longer reflect how the development management function is to be delivered from 1 October 2013 and would result in a logistical quagmire that would fail to deliver customer excellence.

4.0 Supporting Information

- 4.1 On 1 April 2013 the first phase of new service restructure implementation came into force with the creation of two new services involved in the management of the planning functions of the Council.

Professional Services with Beverley Jones as the Head of Service; and,
Commercial Services with Gareth Mitchell as the Head of Service

Basic functional responsibilities can be summarised as:-

Professional Services:

The determination of all planning applications (except Major Applications delegated to the Head of Commercial Services) irrespective of scale and size (including changes of use and all applications for Listed Building Consent, Conservation Area Consent, Certificates of Lawfulness, applications for the determination as to whether prior approval of details is required, consent to display advertisements and other notifications) except any application:

Commercial Services:

The determination of all "Major Applications" meaning those applications which are of significant size, complexity or strategic importance to the Borough due to the number of residential units, the impact of commercial development or employment opportunities within the Borough. (These types of applications will necessitate close working with Planning Policy where there is likely to be Local Plan implications) (including changes of use and all applications for Listed Building Consent, Conservation Area Consent, Certificates of Lawfulness, applications for the determination as to whether prior approval is required, consent to display advertisements and other notifications)

- 4.2 Phase 2 of service restructure implementation has now been resolved and from 1 October new Group Management Team (GMT) arrangements come into force as the new services start to take real shape.
- 4.3 In the interim temporary delegated arrangements have been in operation pending completion of phase 2 of the restructure. Now that these has been settled and come into force on 1 October it is considered appropriate to ask the Planning Committee to agree the permanent arrangements for the delegation of powers from it to Heads of Service.

5.0 Report & Conclusion

- 5.1 This report is considered to be uncontroversial as it does not involve any increase in the range, nature, or scope of existing delegated powers. It is practical housekeeping and good governance to ensure that the Planning Committee has formally agreed delegated authority to the appropriate Heads of Service who have

now been tasked with delivering different aspects of the development management function.

6.0 Consultation

6.1 None

7.0 Publicity Considerations

7.1 The publicising of UCC FSR outcomes is a matter that is already high on both the Corporate and Service Group agendas. Each service will be ensuring that changes are communicated to customers via a range of media.

8.0 Financial Implications

8.1 None

9.0 Equality, Diversity and Human Rights Implications

9.1 None.

10.0 Community Safety Implications

10.1 None

11.0 Health and Safety Implications

11.1 None.

12.0 Risk Management Implications

12.1 None

13.0 Background Papers

Scheme of Delegation Planning Committee to Heads of Service : The Council's Constitution

This report needs to be read in conjunction with Appendix 1 which follows.....

Colchester Borough Council

SCHEME OF DELEGATION TO OFFICERS BY THE PLANNING COMMITTEE

Delegated to the Head of Commercial Services

- 1 The determination of all “Major Applications” meaning those applications which are of significant size, complexity or strategic importance to the Borough due to the number of residential units, the impact of commercial development or employment opportunities within the Borough. (These types of applications will necessitate close working with Planning Policy where there is likely to be Local Plan implications) (including changes of use and all applications for Listed Building Consent, Conservation Area Consent, Certificates of Lawfulness, applications for the determination as to whether prior approval is required, consent to display advertisements and other notifications) except any application:
 - (a) contrary to adopted policies or provisions of the development plan, and which is recommended for approval;
 - (b) which any Councillor requests in writing to the Head of Commercial Services within 25 days of the date of the weekly list circulating details of the application, should be subject of consideration by the Committee;
 - (c) which constitutes a major application on which a material planning objection(s) (including those from Parish/Town Councils and statutory consultees) has been received in the stipulated time span and the officer recommendation is to approve;
 - (d) which constitutes a major application and where a section 106 Agreement is required (excluding unilateral undertakings);
 - (e) submitted by or on behalf of a Colchester Borough Council Councillor (or their spouse/partner) or by any Council officer (or their spouse/partner); or
 - (f) submitted by or on behalf of Colchester Borough Council (for clarity, this does not include applications made by other parties on land owned by the Council where the development is not by or on behalf of the Council).
2. The determination of any application for a determination as to whether the prior approval of the authority will be required under The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.
3. The determination of applications for the approval of reserved matters, details required by a condition on a planning permission and non-material or minor material amendments, unless the Planning Committee at the granting of the outline / original permission indicates that it requires to determine the aforementioned matter itself.
4. Authority to refuse planning applications where a proposed section 106 Agreement remains uncompleted for six months from the decision regarding its provision.

5. Authority to make observations on applications to be determined by another planning authority.
6. Authority to appoint consultants where the Council's case may be enhanced or when specialist information needs to be provided.
7. That, subject to written confirmation from the Chief Finance Officer and the Monitoring Officer, the Head of Commercial Services be authorised to agree the release of funds secured by means of a legal agreement under the Planning Acts for expenditure, for purposes solely in accordance within the specified legal agreement. Such delegated powers would only operate where such expenditure is entirely in accordance with the legal agreement attached to the development.
8. Where an appeal has been lodged against a refusal of planning permission, the Head of Commercial Services has authority to conclude a legal agreement which complies with the Council's current policies where we would expect to see the provision of such requirements a may include affordable housing, open space contribution, education contribution in circumstances where time does not permit a referral to the Planning Committee.
9. Where an application has already been considered by the Planning Committee who have given authorisation to enter into a legal agreement delegated authority is given to Head of Commercial Services to agree alterations whereby :-
 - (a) The mechanism for delivering the required outcomes for the agreement have changed, but the outcome remains the same (including changes to triggers, phasing and timing);
 - (b) There is a need to issue a delegated refusal where a legal agreement is not completed within the statutory time limit and it is considered by the Head of Commercial Services reasonable to do so.
 - (c) There is a need to remove a legal agreement from a local land charge where all clauses have been compiled with.
 - (d) To enter into a new planning obligation relating to gain previously secured that needs to link back to a previous planning permission via a Deed of Variation.
10. Authority to institute proceedings in respect of any offence against the advertisement regulations, including prosecution where it is considered appropriate. In the cases where repeated prosecution fails, this includes the authority to seek an injunction under Section 222 of the Local Government Act 1972.
11. Authority to institute proceedings in respect of any enforcement actions where a valid notice exists, no appeal decision thereon is pending, the prescribed time for compliance with the notice has expired, and where the breach of planning control continues to exist.
12. Authority to sign and serve "Planning Contravention Notices" under the Town and Country Planning Act 1990, Sections 171(C) and 171(D), and to arrange for the institution of proceedings where the requirements of such Notices are not complied with within statutory time limits.
13. Authority to sign and serve "Breach of Condition Notices" under the Town and Country Planning Act 1990, Section 187(A), and to arrange for the institution of proceedings

where the requirements of such Notices are not complied with within statutory time limits, subject to a report being made to the Planning Committee as soon as practical thereafter.

14. Authority to sign and serve enforcement notices, stop notices, temporary stop notices, section 215 notices, section 224 discontinuance notices or breach of condition notices under the Town and Country Planning Act 1990 (Parts VII & VIII).
15. Power to serve a notice under Section 330 of the Town and Country Planning Act 1990 (to require information as to interests in land).
16. Authority to give a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) as to whether an Environmental Impact Assessment is required and to determine the scope of the environmental issues to be covered in any such assessment.
17. Authority to defend the Council's decision in respect of any appeal proceedings, provided that where any additional or revised information is submitted which may overturn the Council's initial decision, the case shall be referred back to Planning Committee to determine the Council's case. In the event that timescales do not allow the matter to be referred back to Planning Committee, then the Head of Commercial Services shall consult the Planning Committee Chairman, and Group Spokespersons, before determining the Council's case. In the unlikely event that none of the foregoing is possible, then as an emergency procedure, a Director or the Chief Operating Officer can determine the action required, which will be reported to the Planning Committee as soon as is practical thereafter.
18. Authority to institute legal proceedings (including the serving of injunctions and enforcement notices) under the Town and Country Planning Act 1990 (Part VII and Part VIII) and the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 (Part IV) where it is considered the most appropriate remedy in relation to the circumstances of the case, and expedient to do so, without referral to Planning Committee, subject to a report being made to Committee as soon as practical thereafter.
19. Authority to prosecute for the failure to comply with the statutory time limit imposed by any notices served in respect of Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and Sections 171C, 171D and 330 of the Town and Country Planning Act 1990, or for providing false/misleading information.
20. Power to make orders for the creation, diversion or extinguishment of public rights of way.
21. Authority to administer the Hedgerow Regulations 1997 and to issue notice in accordance with the Council's policy.
22. Service of Building Preservation Notices.

Appendix 1 continues..... Scheme of Delegation ~ Professional Services

Colchester Borough Council

SCHEME OF DELEGATION TO OFFICERS BY THE PLANNING COMMITTEE

Delegated to the Head of Professional Services

1. The determination of all planning applications (except Major Applications delegated to the Head of Commercial Services) irrespective of scale and size (including changes of use and all applications for Listed Building Consent, Conservation Area Consent, Certificates of Lawfulness, applications for the determination as to whether prior approval of details is required, consent to display advertisements and other notifications) except any application:
 - (a) contrary to adopted policies or provisions of the development plan, and which is recommended for approval;
 - (b) which any Councillor requests in writing to the Head of Professional Services within 25 days of the date of the weekly list circulating details of the application, should be subject of consideration by the Committee;
 - (c) which constitutes a major application on which a material planning objection(s) (including those from Parish/Town Councils and statutory consultees) has been received in the stipulated time span and the officer recommendation is to approve;
 - (d) which constitutes a major application and where a section 106 Agreement is required (excluding unilateral undertakings);
 - (e) submitted by or on behalf of a Colchester Borough Council Councillor (or their spouse/partner) or by any Council officer (or their spouse/partner); or
 - (f) submitted by or on behalf of Colchester Borough Council (for clarity, this does not include applications made by other parties on land owned by the Council where the development is not by or on behalf of the Council).
2. The determination of any application for a determination as to whether the prior approval of the authority will be required under The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.
3. The determination of applications for the approval of reserved matters, details required by a condition on a planning permission and non-material or minor amendments, unless the Planning Committee at the granting of the outline permission indicates that it requires to determine the aforementioned matter itself.
4. Authority to refuse planning applications where a proposed section 106 Agreement remains uncompleted for six months from the decision regarding its provision.
5. Authority to make observations on applications to be determined by another planning authority.

6. Authority to appoint consultants where the Council's case may be enhanced or when specialist information needs to be provided.
7. That, subject to written confirmation from the Section 151 Officer and the Monitoring Officer, the Head of Professional Services be authorised to agree the release of funds secured by means of a legal agreement under the Planning Acts for expenditure, for purposes solely in accordance within the specified legal agreement. Such delegated powers would only operate where such expenditure is entirely in accordance with the legal agreement attached to the development.
8. Where an appeal has been lodged against a refusal of planning permission, the Head of Professional Services has authority to conclude a legal agreement which complies with the Council's current policies where we would expect to see the provision of such requirements a may include affordable housing, open space contribution, education contribution in circumstances where time does not permit a referral to the Planning Committee.
9. Where an application has already been considered by the Planning Committee who have given authorisation to enter into a legal agreement delegated authority is given to Head of Professional Services to agree alterations whereby :-
 - (e) The mechanism for delivering the required outcomes for the agreement have changed, but the outcome remains the same (including changes to triggers, phasing and timing);
 - (f) There is a need to issue a delegated refusal where a legal agreement is not completed within the statutory time limit and it is considered by the Head of Commercial Services reasonable to do so.
 - (g) There is a need to remove a legal agreement from a local land charge where all clauses have been compiled with.
10. Authority to institute proceedings in respect of any offence against the advertisement regulations, including prosecution where it is considered appropriate. In the cases where repeated prosecution fails, this includes the authority to seek an injunction under Section 222 of the Local Government Act 1972.
11. Authority to institute proceedings in respect of any enforcement actions where a valid notice exists, no appeal decision thereon is pending, the prescribed time for compliance with the notice has expired, and where the breach of planning control continues to exist.
12. Authority to sign and serve "Planning Contravention Notices" under the Town and Country Planning Act 1990, Sections 171(C) and 171(D), and to arrange for the institution of proceedings where the requirements of such Notices are not complied with within statutory time limits.
13. Authority to sign and serve "Breach of Condition Notices" under the Town and Country Planning Act 1990, Section 187(A), and to arrange for the institution of proceedings where the requirements of such Notices are not complied with within statutory time limits, subject to a report being made to the Planning Committee as soon as practical thereafter.

14. Authority to sign and serve enforcement notices, stop notices, temporary stop notices, section 215 notices, section 224 discontinuance notices or breach of condition notices under the Town and Country Planning Act 1990 (Parts VII & VIII).
15. Power to serve a notice under Section 330 of the Town and Country Planning Act 1990 (to require information as to interests in land).
16. Authority to give a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) as to whether an Environmental Impact Assessment is required and to determine the scope of the environmental issues to be covered in any such assessment.
17. Authority to defend the Council's decision in respect of any appeal proceedings, provided that where any additional or revised information is submitted which may overturn the Council's initial decision, the case shall be referred back to Planning Committee to determine the Council's case. In the event that timescales do not allow the matter to be referred back to Planning Committee, then the Head of Professional Services shall consult the Planning Committee Chairman, and Group Spokespersons, before determining the Council's case. In the unlikely event that none of the foregoing is possible, then as an emergency procedure, a Director or the Chief Operating Officer can determine the action required, which will be reported to the Planning Committee as soon as is practical thereafter.
18. Authority to institute legal proceedings (including the serving of injunctions and enforcement notices) under the Town and Country Planning Act 1990 (Part VII and Part VIII) and the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 (Part IV) where it is considered the most appropriate remedy in relation to the circumstances of the case, and expedient to do so, without referral to Planning Committee, subject to a report being made to Committee as soon as practical thereafter.
19. Authority to prosecute for the failure to comply with the statutory time limit imposed by any notices served in respect of Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and Sections 171C, 171D and 330 of the Town and Country Planning Act 1990, or for providing false/misleading information.
20. Power to make orders for the creation, diversion or extinguishment of public rights of way.
21. Determination of enforcement cases where:
 - (a) investigations conclude that no breach of planning has occurred and therefore no further action is required;
 - (b) a breach of control has occurred but it is not expedient in the public interest to take action;
 - (c) investigations conclude that a breach has occurred in excess of four years or ten years (as appropriate) and is therefore, immune from further action.

**PLANNING COMMITTEE
22 AUGUST 2013**

Present :- Councillor Theresa Higgins* (Chairman)
Councillors Peter Chillingworth*, Helen Chuah*,
Stephen Ford, Cyril Liddy*, Jackie Maclean,
Philip Oxford and Laura Sykes*

Substitute Members :- Councillor Mark Cable for Councillor Sonia Lewis
Councillor Colin Mudie for Councillor Jon Manning

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

48. Minutes

The Minutes of the meeting held on 1 August 2013 was confirmed as a correct record.

49. 131325 - Berryfields Firstsite Development, Queen Street, Colchester

The Committee considered an application for the change of use of the temporary bus station to a playing field with part removal of shelters while retaining the wall and other elements of street furniture. The application also included extension of the existing playing field, including new earthworks, boundary enclosure and soft landscape works. The Committee had before it a report in which all the information was set out.

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

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

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

50. 130939 - 41 Priory Street, Colchester

The Committee considered an application for the demolition of the existing works buildings, the change of use from light industrial to residential and the erection of 2 semi-detached houses and 7 apartments. The Committee had before it a report in which all the information was set out.

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

Mr David Whybrow, Principal Planning Officer, presented the report and assisted the Committee in its deliberations.

Mr. Richard Kirby-Taylor addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application.

Mr. Kirby-Taylor said as a resident in the area he did not object to the planning application in principle, but did think there was some issues that needed addressing before the application was approved.

He said there are inconsistencies in the planning process. In 2003 the Council allowed for no more than 5 dwellings on the site, whereas the current application was to approve a development of 9 dwellings.

Mr. Kirby-Taylor raised further issues.

He said the scheme was out of character and scale with the surrounding area.

The laurel bushes to the side of Laurel House, to be retained in perpetuity, a condition of the building of Laurel House, were to be removed as part of the refurbishment of the road.

The new development would severely affect the light amenity to Laurel House.

He added that the parking arrangements in the area, which had worked for many years, will be upset by the new development. He asked that no change was made to the fabric of the current road and that any changes that are made to improve the parking and traffic flow are carried out on the development site.

Mr. Chris Clegg addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application.

Mr. Clegg said he understood that access to the site and parking were the key areas of concern.

Whilst the number of units on the proposed development were considered by some to be high, he said following dialogue between the developers and officers the original proposal for 14 units was reduced to 9 units, and with all traffic leaving the site via Watts Lane.

Mr. Clegg said there was no doubt that the site will be better for this scheme than if it was to revert back to its original use, a light industrial site. The development will provide a more open aspect and a widening at the bottom end of Watts Lane that will improve traffic movement. He added that the Highway Authority considered the one (space) to one (Property) parking ratio to be appropriate.

In conclusion, Mr. Clegg said the site could not remain derelict and believed residential properties was the best use for the site. He clarified the developer's offer regarding Non Standard Condition 14. He said the developer will provide £150.00 per property towards a secure cycle park, plus free bus travel vouchers for 12 months in addition to the condition as agreed with the Highway Authority.

Councillor Nick Barlow attended the meeting and, with the consent of the Chairman, addressed the Committee.

He explained that there was a vagueness about the method of measuring the impact of the development on neighbouring properties, for example, paragraph 15.9 said 'It would appear that these tests (light) are marginally failed to that dwelling', whereas paragraph 15.12 said 'Whilst this is not perfect, it is felt to be reasonably compliant with standards'. He said these statements were worrying.

He said there was still an opportunity to tweak the application to allow more daylight to Laurel House.

Councillor Barlow felt some of the issues regarding highways and parking had not been satisfactorily resolved and needed clarification, especially ownership of Watts Lane and parking rights, that by addressing these issues and toughening up the conditions, it will prevent problems in the future.

Councillor Barlow asked for the decision to be deferred so the issues raised can be addressed and small changes can be made, before the application is resubmitted for approval.

Mr. Whybrow said regarding the impact on neighbouring properties, paragraph 15.8 did state the distance between the flats and Laurel House almost 10 metres, the requirement to comply with the Essex Design Guide.

In respect of vehicle access, the ownership of Watts Lane and parking rights, Mr. Whybrow said these issues will be dealt with as part of the work towards implementing the non-standard conditions noted within the recommendation.

Councillor Chillingworth said the removal of a light industrial site was an improvement for local residents. The site had remained derelict for some time, and given it could be reused for industrial use was a disadvantage to the local residents. He said the design was modern, not to everyone's taste, but was better to many similar developments in Colchester. Councillor Chillingworth said doubt remained over some issues, for example, the ownership of highway land, didn't the owners of this land have some say over the proposals, and could the owner of Laurel House as owner of the boundary laurel hedge be made to remove the hedge.

Councillor Chillingworth said the issues needed to be resolved before the application could be approved and proposed a deferral of the decision.

Councillor Oxford agreed to the proposal for a deferment, and asked if a condition could be added whereby the surface of Watts Lane is brought up to a reasonable standard that ensured safe access for emergency vehicles. Mr. Whybrow said it is the intention that the road will be improved with the provision of a passing bay.

Councillor Sykes agreed to a referral, saying it would provide an opportunity for a realignment of the plans to allow the appropriate distance between Laurel House and

the development.

Councillor Cable agreed that a deferment will provide an opportunity for the plans and conditions to be tweaked, for the issues raised by Councillor Barlow to be addressed. He added that slight revisions will enable a decision to be made that can be endorsed by the whole Committee.

Councillor Mudie agreed to the proposed deferment that will allow the parking and access issues to be addressed. Councillor Mudie agreed with the comments of Councillor Barlow, that too much of the language within the report only suggested 'near enough right'.

Given all the issues raised by the Committee and speakers, Councillor Higgins said on the grounds of a lack of daylight, garden sizes, the number of parking spaces and vehicle access, she would go further than a deferral and propose a refusal. She later added that at similar developments with minimum parking standards parking had become such an issue it had created a complete parking mess in and around the development.

Councillor Liddy agreed with Councillor Higgins, adding that the site was been overdeveloped and the design was poor, inadequate and lacked character.

Mr. Pearce, Development Services Manager said giving all the issues raised he understood that the Committee were moving towards a deferral, and suggested if that was the outcome, it will allow officers the opportunity to address the issues raised and provide greater clarity.

Mr. Pearce advised against a refusal on the basis that all the issues could be clarified and addressed and passed back to the Committee for approval.

Councillor Chillingworth said the Council must make the best use of brown field sites such as this application. He agreed that officers should clarify and address the issues raised and resubmit to the Committee for approval as soon as possible.

RESOLVED (FIVE voted FOR, THREE voted AGAINST and TWO Abstentions) that the application was deferred, pending further clarification and addressing of the issues raised, to be re-submitted to the Committee as soon as possible.

51. 130996 - Chrysmond Croft, Moor Road, Great Tey

The Committee considered an application for the erection of the single storey 3-bed dwelling, including a new single garage, widening of the existing vehicular access and provision of a new vehicular access to the existing dwelling. The Committee had before it a report in which all the information was set out.

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

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

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

52. Completion of S106 Agreement // Application No. 120412 - Local Centre at Butt Road, Colchester

The Committee considered the report of the Head of Commercial Services which sought the provision of delegated powers to the Head of Commercial Services to complete the section 106 agreement in respect of the proposed scheme of a local centre at Butt Road comprising of a supermarket, 6 retail units, affordable housing and car parking.

Mr Vincent Pearce, Development Services Manager, attended to assist the Committee in its deliberations.

It was explained that setting up the s106 agreement had now been satisfactorily concluded, and the Committee was asked to approve giving delegated powers to The Head of Commercial Services to complete the s106 work in respect of the proposed scheme for a local centre at Butt Road.

RESOLVED (UNANIMOUSLY) that the Committee approved giving The Head of Commercial Services delegated powers to complete the s106 agreement in respect of the proposed scheme for a local centre at Butt Road comprising a supermarket, 6 no. retail units, affordable housing and car parking.

53. Agreements on Land at Rowhedge Wharf

The Committee considered the report of the Head of Commercial Services which sought an agreement to a deed of release being prepared and signed by the Council in respect of the provisions of two section 52 agreements and a section 106 agreement.

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

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

54. Cooling Off Periods

Report withdrawn, to be presented to the next Committee meeting.



Application No: 131452/131453

Location: St John Ambulance Site, Chapel Road, Wivenhoe, Colchester, CO7 9DX

Scale (approx): 1:1250

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Colchester

Committee Report

Agenda item

7

To the meeting of **Planning Committee**

on: **12 September 2013**

Report of: **Head of Professional/Commercial Services**

Title: **Planning Applications**

7.1 Case Officer: James Ryan

Due Date: 17/09/2013

MINOR

Site: Chapel Road, Wivenhoe, Colchester, CO7 9DX

Application No: 131452

Date Received: 23 July 2013

Agent: Mr Robert Pomery

Applicant: Mrs Pru Green

Development: Demolition of the superstructure of existing St John Ambulance building and erection of two storey building of mixed use C3 Residential and D1 Gallery/Studio.

Ward: Wivenhoe Quay

Summary of Recommendation: Conditional Approval

7.2 Case Officer: James Ryan

Due Date: 17/09/2013

OTHER

Site: Chapel Road, Wivenhoe, Colchester, CO7 9DX

Application No: 131453

Date Received: 23 July 2013

Agent: Mr Robert Pomery

Applicant: Mrs Pru Green

Development: Conservation Area consent for demolition of the superstructure of existing St Johns Ambulance building.

Ward: Wivenhoe Quay

Summary of Recommendation: Conservation Area Consent

1.0 Reason for Referral to the Planning Committee

- 1.1 Both the planning application and Conservation Area consent have been called-in by Cllr. Stephen Ford on the grounds of community use capacity and the loss of a building in the Conservation Area.
- 1.2 Both Conservation Area consent and the planning application will be covered in this committee report.

2.0 Synopsis

- 2.1 The previous applications 120012 and 120013 were both refused by Members as the planning application did not comply with policy DP4 (community facilities). Without a planning approval the Conservation Area consent application could not be granted either. The applicants appealed the refusal but the Council's decision was upheld.
- 2.2 These two applications are a resubmission of the previous two applications but have come with further supporting evidence in an attempt to justify the loss of the community facility.
- 2.3 In line with Members' decision, the Inspector concluded that the lack of evidence to demonstrate compliance with Development Plan Policy DP4 was the only issue that warranted a refusal of this scheme. Therefore the design in the Conservation Area, impact on neighbouring amenity, parking provision, amenity provision and the impact on the Sycamore are all considered to be acceptable.

3.0 Site Description and Context

- 3.1 The application site is an irregular shaped parcel of land, fronting onto an unadopted road, in close juxtaposition with a number of residential properties and within the Wivenhoe Conservation Area. The property is close to the heart of the town and although within a predominantly residential area, is also near to commercial outlets along the High Street, which form part of the Rural District Centre designation.
- 3.2 The application site is largely occupied by a rectangular-shaped hall of utilitarian form and appearance. A small corrugated-metal garage is located within the north-west part of the site. Part of the site is overhung by a mature tree, the trunk of which is positioned immediately to the north of the application site.

4.0 Description of the Proposal

- 4.1 The application looks to remove the existing buildings on the site and to create a new two-storey building of modern design and appearance, comprising a ground floor with a potter's studio, gallery, office and kiln room, with two-bedroom residential accommodation on the first floor.
- 4.2 The documentation submitted with the application includes a DAS with 3D views of the proposal accompanying the text and a Heritage Statement.

5.0 Land Use Allocation

5.1 Conservation Area

5.2 Predominantly Residential Area

6.0 Relevant Planning History

WIV/10/48 – change of use of church hall to furniture store and showroom, approved 1948;

WIV/3/57 – change of use from furniture showroom to builders yard, approved 1957;

WIV/14/60 – change of use from builders workshop to St John Ambulance HQ and store, approved 1960;

WIV/26/60 – additions to provide storage, kitchen and toilet accommodation, approved 1960;

110608 – proposed demolition of the superstructure of the existing St John Ambulance Hall. Proposed erection of a two-storey, flat-roofed building comprising an artist's studio on the ground floor and two-bedroom dwelling on the first floor. This application was refused on 11th October 2011 as was the accompanying Conservation Area consent, 110609.

120012 – proposed demolition of the superstructure of the existing St John Ambulance Hall. Proposed erection of a two-storey, flat-roofed building comprising an artist's studio on the ground floor and two-bedroom dwelling on the first floor. This application was refused on the 19th January 2012 along with the accompanying Conservation Area consent.

The previous refusals 120012 and 120013 were then refused at appeal on the 20th of November 2012. The Inspector's decision is the key material consideration for the determination of these applications.

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:

SD1 - Sustainable Development Locations
SD3 - Community Facilities
H1 - Housing Delivery
H2 - Housing Density
H3 - Housing Diversity
UR2 - Built Design and Character

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

DP1 Design and Amenity
DP4 Community Facilities
DP12 Dwelling Standards
DP14 Historic Environment Assets
DP16 Private Amenity Space and Open Space Provision for New Residential Development
DP17 Accessibility and Access
DP19 Parking Standards

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

Backland and Infill
Community Facilities
Vehicle Parking Standards
Sustainable Construction Open Space, Sport and Recreation
Extending your House
The Essex Design Guide
External Materials in New Developments
Cycling Delivery Strategy
Wivenhoe Town Plan 2008

8.0 Consultations

8.1 ECC Highways stated:

The Highway Authority would not wish to make comment further to the formal recommendation dated 28 July 2011 in relation to application 110608.

The comment referred to above was as follows:

“Whilst it is noted the parking provision on site is substandard this Authority does not feel that the proposed use of the site will alter the trips associated with the building. It is assumed that the current building could be reopened and used by the public for the function of the St John Ambulance without further recourse to the planning process. In this regard the Highway Authority would not wish to raise an objection to the proposal”.

8.2 Network Rail has not commented on this application, but with regards to the previous application stated:

No objection in principle to the development however due to its close proximity to the embankment and Network Rail infrastructure Network Rail strongly advises that the developer contact Asset Protection 6 weeks prior to the commencement of development. Network Rail's asset protection team can be contacted on AssetProtectionEastAnglia&Wessex@networkrail.co.uk."

8.3 Environmental Control advised that on the basis of the information previously submitted regarding the extraction/ventilation system for the kilns it had no objection and recommended the standard demolition and construction informative and a condition requiring details of soundproofing.

8.4 Planning Policy comments:

The Spatial Policy Team consider that the sole outstanding issue raised by the Planning Inspector in the recent appeal concerning the application site (ref Appeal Ref A: APP/A1530/A/12/2177145) is the level of existing provision of community floor space/facilities in Wivenhoe. I refer you to the Spatial Policy response to a pre-application enquiry received in February 2013 (ref. 130214).

The Spatial Policy team and Community Initiatives Officer, Fay Mathers, provided the applicant with a list of facilities that fall within Use Classes D1 and D2 in Wivenhoe to use in an assessment of existing community facilities. The Spatial Policy team agreed that the most appropriate methodology to use to assess community facility need is the calculation contained in the recently reviewed Communities Facilities SPD. This SPD stipulates that 0.75m² of community space should be provided for each new dwelling in the Borough. The standard of 0.75m² is taken from a survey undertaken by Fordham Research Associates into existing provision in Colchester (2000). It is considered appropriate to use this figure in this case as it is a useful way to calculate the level of provision of an acceptable amount of community facilities. However, it is also important to explore wider issues such as cost of using existing facilities, condition of existing facilities, likely future demand and management issues.

The applicant has carried out a detailed assessment of community facilities in Wivenhoe which lists facilities and provides the floorspace, cost, availability in next 2 weeks, usage, access, whether it is fit for purpose, distance from the application site and restrictions on use. This assessment states that there are 3457 households in Wivenhoe (2011 Census), which results in a need for 2592.7m² of community facilities. The assessment shows that there is 4181.9 m² of community floorspace available, which is a surplus of 61.2%. However, if all community facilities that are not available or where the assessment states not applicable under availability are removed there is 3041m² of floorspace available. Whilst this is still in excess of the minimum figure it is important to note that some of the facilities in Wivenhoe have limited availability and some have restrictions on use. For example, some facilities cannot be hired in the evenings, others incur an evening or daily cost and so could be prohibitive for a group looking to hire a venue for an hour or two.

It is considered that the applicant has carried out a thorough assessment into the provision of community facilities in Wivenhoe and the Spatial Policy team agrees with the methodology used. The assessment does show that in terms of floorspace there is an excess of available floorspace within Wivenhoe based on 0.75m² per household. However, there are other factors to consider such as cost, condition and availability and the Spatial Policy team do not agree that there is a surplus of 61.2% of community space. On balance, the Spatial Policy team consider that a satisfactory assessment has been undertaken that proves that there is an excess of such provision and therefore criterion (iv) of policy DP4 (Community Facilities) is met.

8.5 The Design and Heritage Unit (now renamed “Commercial Services”) previously recommended approval of the application.

8.6 The Tree Officer has no objection to this scheme.

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

9.0 Parish Council Response

9.1.1 Wivenhoe Town council would strongly argue this application should be refused. In line with the planning inspector’s recommendations and observations about community buildings and the buildings historic value. Also in respect of the following material planning grounds.

- * DP4, that seeks to protect community buildings from inappropriate use, the demolition of this building will result in a loss of community building.
- * Concerns with regard to noise and toxic omission, due to the nature of the proposal.
- * A Tree Preservation Order that will be affected for perpetuity.
- * The proposed building fails the overbearing test in respect of neighbouring properties.
- * The proposed building is well below adopted minimum private amenity space.
- * The site does not comply with standard recommended parking provision.
- * The existing building is listed on the community assets register.
- * DP14, in respect that the existing building has been proposed for the local list for its historic value, being a heritage building in a Conservation Area.

The majority of the planning statement concentrates on putting forward a case that Wivenhoe has an excess of community space. WTC contest this evidence as unsound, and misleading in several ways.

Additionally WTC contest the statement that proposes that the existing building is not financial viable in terms of refurbishment and running commercially as a community building.

WTC believe that it would be considerable cheaper to prepare the existing building as 'fit for purpose' as a community building. This view is based on evidence produced from a survey and builders quotes commissioned and paid for by WTC for St Johns, when WTC were interested in buying it. Also the planning statements conclusions on costs vary greatly from business plans and builders quotes produced by Wivenhoe Community Trust. WTC as landlord of a community building know it is entirely possible to run one at a modest profit once the initial investment is taken care of which appears to be the case with the Wivenhoe Community Trust .

WTC do not understand the relevance of the data with regard to the calculations of, and subsequent summary that there is an excess of community space in Wivenhoe. The figures of 0.75% per household is a formula used in seeking planning obligation contributions for new dwellings. Therefore totally irrelevant when being applied to existing facilities. Also the supplementary planning document, where these figures have been taken from, only refers to a minimum amount of community space that is required, and does not make any reference to the possibility of having an excess.

Also all definitions WTC can find of what CBC consider as a community building would lead us to believe many of the places on this list are not viable in this context.

WTC strongly believe the opposite to the findings of this document. That in view of the demand, Wivenhoe is actually deficient in community spaces. If evidence of this lack is necessary then ECC failed attempts to find alternative venues for any of the three Community Groups that have had to leave the Philip Road Centre should suffice. Furthermore, many of the community spaces listed by the report are lacking in any disabled access, as well as being outside the 800m rule relating to DP4 are not accessed by a bus route.

As evidence of the unsound nature of this document WTC offer that the only totally 'public hall' on it is the William Loveless Hall, at 249 square metres. Spaces that cannot be considered in any capacity whatsoever from the applicants list are, Phillip Road Centre - now closed; the Colne Social Club which operates a very restricted membership, that never hires to the public; the pavilion - that has a full time tenant and is not for private hire; the library that is not for private hire; the Little Avenue playgroup - who are a tenant of the school and the space is not for private hire and the police houses - which are tenanted private residences.

Others on the list are member clubs and have limited hiring because of their commitment to members for example the football club, tennis club, bowls club, cricket club, sailing club, Masonic hall, scout and guide hut. The British Legion (also with commitments to members) is currently being renovated and has no hiring availability whatsoever. Cutting Corners is a shop with occasional gallery space. Millfields and the two Broome Grove Schools have very restricted hiring. The ground floor at the Nottage is a full time workshop and full of boats! The Flag and The Greyhound are commercial businesses. The three Churches do have halls that can be hired.

Once the unrealistic options are removed and the restrictions of all the other organisations are in place the suggested figure of a surplus is more than questionable.

We also refute that the proposed application will constitute an equal community space to a community hall. It is smaller and will have limited openings, and restricted uses.

Also how can there be any guarantee of this being accessible to the public in future occupancies? Further to that can the Borough Council confirm what categorisation the proposed build will be? Will it, for instance, be paying business rates?

In summary there are various material planning grounds to refuse this application on. Additional WTC believe that much of the applicant's evidence is questionable and would ask CBC to do their own research to clarify this if they think it has any bearing on the case.

10.0 Representations

10.1 195 representations were received. 126 objecting to the proposal were received and 69 representations in support of the proposal.

10.2 The following issues were raised by the objectors (including the Wivenhoe Society and the Wivenhoe Community Assets Forum):

1. Loss of a community asset. There is a desperate shortage of community buildings in Wivenhoe. The building is structurally sound. There are funds available to bring it back into appropriate and viable community use.
2. The Hall is a simple nineteenth-century building which makes a contribution to the character and appearance of the Conservation Area. The building has religious and social significance to Wivenhoe's history.
3. Insufficient garden space and parking in accordance with the Council's standards for the occupants of the proposed building.
4. The scheme will have a negative impact on neighbouring amenity in terms of overshadowing and overbearing.
5. The architecture proposed is poor and will harm the Conservation Area.
6. The evidence that demonstrates an excess of community facilities is clearly flawed for the following reasons:

The list of community facilities previously agreed with the Policy Team was based on D1 and D2 uses however community uses may be C2 or sui generis. The list is therefore misleading and inaccurate.

The Philip Road centre has now closed.

I have tried recently to book a community hall for an art class but was not able to find one.

The number of households used in the study is misleading as this could include bedsits and blocks of flats. This provides a misleading lower level of required provision.

The SPD requires community facilities to be accessible, both to those with mobility impairments and by a range of transport. This removes many of the community facilities in the list.

Some of the square metre sizes on the applicant's spreadsheet are incorrect.

A number of the clubs/halls are only for use by members and guests. They should not be on the list.

A number of the spaces on the list are commercially provided and therefore are controlled by the policy of the owners.

Seventeen groups have expressed an interest in using the restored St John Ambulance hall.

The supporting statement claims it would be too expensive to restore and run the SJA hall but this is not the case.

Churches are rarely for hire and are not community facilities but are places of worship. They should not be on the list.

There is a significant shortfall in the level of community provision and therefore DP4 (iv) is not met.

The studio space would not be a community space as it is too small, there is no guarantee that it will be used as a community facility and there is no guarantee that a future owner would treat it as such either.

The benefits/interest to Wivenhoe of a working pottery would be outweighed by the loss of community space which is unacceptable.

The population of Wivenhoe is rapidly on the increase and the calculations did not take this into account.

The applicant's definition of a community facility does not accord with the definition set out in the SPD.

The 0.75 square metre formula is inappropriate which means the applicant's study is fundamentally flawed.

No community consultation took place prior to this resubmission.

Relying on a mechanistic formula when the overwhelming evidence is that Wivenhoe has a deficit of community facilities is not good planning and is contrary to the Localism Act.

- 10.3 In addition, the Wivenhoe Community Trust (WCT) has submitted a very detailed objection, with appendices that include a business plan demonstrating how they could restore the hall and run it successfully.

10.4 Replicating the entire WCT representation is beyond the scope of this report and the full text can be read on the Council's website, however in summary the representation objected to the scheme on the following grounds:

- 1) The applicant wrongly considered that the only issue to be addressed was the level of existing community provision and that the level calculated showing an excess was incorrect.
- 2) The formula used to calculate the level of community need is inappropriate.
- 3) The proposed studio area cannot possibly be compared to the quality of community provision that would be provided if the hall were retained and renovated.
- 4) The proposal does not meet the sentiments of policy DP4 which requires the Council to retain community uses when they can contribute to the quality of local community life.
- 5) The business plan supplied by the applicant is incorrect and bears no relationship to the way the WCT would run the hall as a non profit generating community facility.

10.3 The following points were made by supporters of the proposal:

- A. The existing building has no merit and is gradually falling into greater dereliction.
- B. The proposed building is of good modern design and will be a refreshing change to the street scene.
- C. The proposed use will cause less noise and disturbance than an alternative community facility.
- D. The building is not viable as a community facility. The building has been on the market since 2007 and only the Wivenhoe Cinema Project has taken a serious interest until this application. The cinema project would have required a virtual rebuild at an unacceptably high cost.
- E. The applicant is an artist of international stature and the proposal will enhance Wivenhoe's reputation.
- F. The Philip Road centre presents a wonderful opportunity to provide a genuine community facility.

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

11.0 Parking Provision

- 11.1 The proposal makes provision for 1 car parking space. This is below the standard recommended by the adopted Parking Standards SPD (two spaces for a two-bedroom dwelling and one space per 30 square metres for a Class B1 commercial proposal). However, the existing site makes no provision for off-street parking.

12.0 Open Space Provisions

- 12.1 The proposal does not generate a requirement to provide on-site public open space. However, a Unilateral Undertaking has been submitted to provide a contribution towards public open space, sports and recreation facilities (and community facilities) in accordance with the Council's adopted standards. There is also a requirement for private amenity space – this is discussed within the main body of the report.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

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

15.0 Report

15.1 Principle of Redevelopment for Non-Community Use

The new National Planning Policy Framework was published on 27th March 2012. This reaffirms the statutory status of the development plan as the starting point for making decisions (paragraph 12). It encourages making it easier for jobs to be created in towns and villages (paragraph 9). However, it also states that planning policies should guard against the unnecessary loss of valued facilities and services particularly where this would reduce the community's ability to meet its day to day needs (paragraph 70).

- 15.2 Policy DP4 supports the retention and enhancement of existing community facilities, where these positively contribute to the quality of local community life. Any proposal that would result in the loss of such a facility will only be supported if the Council is satisfied that (i) an alternative community facility to meet local needs is to be provided; or (ii) it has been proven that it would not be economically viable to retain the site/building for community use, and (iii) the community facility could not be provided by an alternative occupier and it has been marketed to the satisfaction of the LPA to confirm there is no interest or the building is genuinely redundant; and (iv) a satisfactory assessment has taken place that proves there is an excess of such provision and the building is not needed for any other community facility or use.

- 15.3 From the representations received, it would appear that the building was originally constructed in 1871 as a Wesleyan Chapel and sold around 1901 to St Mary's Church as a church hall. During WWII, it was used as an overflow school for evacuees. In 1948 its use changed to a furniture/antique showroom, until 1958 when it was sold to a Wivenhoe builder. From around 1960 the building was used by St John Ambulance (SJA) as a Training Centre. It has also been suggested that during this period it was used for safety training for Sailing Club cadets and various local activities, including occasional weddings and family occasions, and the Gilbert and Sullivan Society for designing and painting their scenery and rehearsals in connection with their annual production.
- 15.4 The building is in private rather than public ownership. Nonetheless, DP4 makes clear that community buildings extend well beyond public owned community buildings and a D1 use would normally be considered as a community building for the purposes of this policy. The SJA hall appears to have functioned as a D1 use before it was put on the market and it is the planning officer's view that the previous use by the SJA has not been abandoned. There is an extant planning permission for the use, the building remains, and there is compelling evidence that the building has been used at least on an informal basis for community purposes after it was put on the market. This has been confirmed by the appeal Inspector.
- 15.5 With regards to DP4 (i), the Inspector concluded that the studio space that is proposed although smaller than the hall in a renovated condition, would offer the possibility of community space. The WCT contends that the renovated hall would be a far better community facility as it would be run by the WCT specifically for the community. They also point out that there is no way to prevent the building being sold on and the community use extinguishing.
- 15.6 With regards to DP4 (ii), the Inspector concluded that ".....the very significant cost, beyond that of just the initial purchase, must raise questions of delivering a long term, sustainable community led initiative....."
- 15.7 To further support the case, the applicant has provided an estimate of the cost of acquiring the building and refurbishing the building which puts it at £210,000. A typical business plan has also been provided that demonstrates that even with the hall being rented out eight hours a day, seven days a week, the hall makes a substantial loss.
- 15.8 In response, the WCT contests this cost completely and has provided a business plan demonstrating how they would run the hall. Appendix A of its representation is an Executive Summary detailing how the hall would be run in the interests of the community. As set out in Appendix E of its representation, it confirms it has £80,000 to purchase the hall already. It has then calculated that it would cost just under £50,000 to get the building operational as it would use a volunteer workforce and by using materials at heavily discounted trade prices as it has done in the past.
- 15.9 Furthermore, as set out in Appendix C and D of its representation, the WCT states that it would charge less than the applicant has used in the business plan. It has calculated that it would make a yearly profit of £1053.75 at 100% capacity, £461.23 at 75% capacity and £-368.25 at 40% capacity (i.e. a small loss). It also has a list of 22 'committed user groups' who have expressed an interest in the use of the hall as set out in Appendix B.

- 15.10 With regards to DP4 (iii) the building has been marketed to the satisfaction of the LPA and is now in the ownership of the applicant. It does appear that there was ample opportunity for the community to come forward and purchase the building but this did not happen. Whether the building is genuinely redundant is dealt with in more detail under criterion DP4(iv).
- 15.11 The case turns on DP4 criterion (iv). The Inspector felt that he could not support the previous scheme due to a lack of evidence in support of this policy. The actual wording is as follows:
- “The balance of this case therefore rests on whether the community facility is still required and whether the alternative proposed as a part of the scheme would be sufficient to address the needs of the community. I have noted that this contribution would be less than the potential use of the hall, however, I do not have sufficient evidence to conclude that the hall is not needed in this context. Matters such as the current overall provision, the loss of the British Legion facility and the implications of the former police houses should all have been properly addressed in light of evidence pertaining to the use of the existing facilities, and the demand in Wivenhoe”.
- 15.12 Therefore the key issue Members must consider is whether, in line with DP4 point (iv), the level of community facility need in Wivenhoe requires the retention of this building. In short – is there a surplus or deficit of community facilities in Wivenhoe?
- 15.13 The applicant has produced a study to assess the level of community need that uses a formula of 0.75m² of community space per household (which is the formula used for the provision of community facilities in planning obligations). Representations have contested that this formula is not relevant but the Planning Policy Team agreed it prior to the application submission and still considers it to be the best way to assess the level of need.
- 15.14 The latest census states that Wivenhoe has 3457 households which results in a requirement of 2597.7m² of community space. The applicant’s assessment calculates that Wivenhoe has 4181.9 m² of community space. The applicants argue that this results in a surplus of 1589.2 m² or 61.2%. 3449m² of this space is within 800m of the application site.
- 15.15 As noted above, many representations question the validity of this calculation. In particular WTC, the WCT and the Wivenhoe Society have listed a number of the venues that were included in the applicant’s calculation and note why they should not have been included. They also consider the need to be significantly greater and therefore conclude that Wivenhoe has a significant deficit of community provision.
- 15.16 In response to these concerns, the Planning Policy Team has concluded that whilst it does not agree that there is a surplus of 61.2% of community space, on balance it does consider that there is an excess of such provision and, therefore, is satisfied that criterion (iv) of Policy DP4 is met.
- 15.17 The applicant argues that the study provided has demonstrated clear compliance with policy DP4. Representations, and in particular the WCT, contest this, are sure there is a defined need and have shown a willingness to take the building on and run it as a viable proposition.

15.18 Members must decide whether the benefits of the scheme, for example the high quality architecture, and the benefit to the cultural and artistic community in Wivenhoe, outweigh the possibility of the community coming forward to purchase the hall and run it as a viable community facility. Officers consider that as the Policy Team is satisfied that the applicant has met the requirement of DP4 and as the building is privately owned and unlikely to be sold to the community, an approval is warranted.

15.19 The Register of Assets of Community Value

Since the previous application, the hall has been included on the Council's Register of Assets of Community Value. It is therefore important to consider the implications of this.

15.20 As a registered asset, if the owner wanted to sell the hall, they would have to write to the Council to inform them of their intentions. Within six weeks of this notification, a community group has the opportunity to come forward to put in a bid for the site. If a bid (which in effect registers an interest in the site) is made, the owners would not be able to sell the asset to anyone (apart from a community group) in the six month moratorium period following the initial notification.

15.21 Following the expiration of the six month moratorium period, if not bid has been made by a community group, the owners would be free to sell to whoever they choose. If the hall was not sold within an 18 month period the procedure would need to be repeated.

15.22 It is very important to note that the inclusion on the Register does not oblige the owner to sell to a community group; it is simply a process to allow community groups a six month 'head start' in order to give them a purchasing advantage over other possible purchasers.

15.23 Furthermore, the inclusion on the Register does not oblige the owner to sell the asset at all. The owner is well within their rights to mothball the hall and leave it empty on a permanent basis, or use it for its lawful use.

15.24 Other Material Considerations:

This scheme is exactly the same as the scheme that was dismissed at appeal. In the interest of completeness the other material considerations have been addressed below. It is very important to note that the Inspector was content with these other material considerations and therefore a refusal of this resubmission for reasons other than the need for the community use would be unreasonable.

15.25 Impact on Character of Area

Policy UR2 in the Core Strategy and DP14 in the Development Policies promote high quality design, particularly where it would impact on heritage assets such as Conservation Areas. There is a clear difference of opinion from the representations received as to whether or not the proposal is harmful or beneficial to the character of the surrounding area, which is in fact part of the Wivenhoe Conservation Area. The proposal will result in the loss of an existing building dating to the Victorian period (and a small dilapidated corrugated metal garage/shed).

The proposed replacement structure is of modern design and differs in terms of the form of the building and the palette of materials proposed; in particular, the proposed flat roof form contrasts with the pitched roof forms of buildings within the surrounding area.

- 15.26 The Council's DHU previously recommended approval of the application in design terms. This response considered the original appearance of the existing building to be much changed, to the detriment of the building and its contribution to the overall appearance of the sensitive Conservation Area. Original detailing on the gable end and main entrance, the symmetry of openings has been lost, and unsympathetic extensions visible from Chapel Road further detract from townscape quality. The contemporary architectural approach, although in contrast to the traditional forms in the Conservation Area, is refreshingly different and contemporary, while the massing, scale and proportion achieves a domestic feel sympathetic to the surrounding area.

The building demonstrates good proportions and balanced openings, and provides visual interest from all sides. The use of two contrasting materials is successful, reflecting the contemporary form of the building, while attention to detail will provide aesthetic quality. The palette adds to the variety of forms and finishes already present in the Conservation Area.

- 15.27 The Council still has a duty to consider the implications of the loss of the building because it is within the Conservation Area. It is clear that significant investment is required to improve the internal facilities offered. The Wivenhoe Conservation Area Appraisal was published in July 2008, although it has not been adopted by the Council. It includes a townscape analysis and shows Listed Buildings as well as buildings assessed to have townscape value. The SJA building is not shown on this appraisal as a building of townscape value. Paragraph 7.24.1 has a brief description of Chapel Road and in respect of this building states: "The St John Ambulance Brigade building is less positive in its current rather neglected state".

- 15.28 The Inspector was clear that he considered the proposed scheme to be acceptable in the Conservation Area. In paragraph 6 of the appeal decision he noted "*I am satisfied that the development would not harm the character or appearance, and thereby the objective of preserving or enhancing the CA would be met*". It then follows that the proposed building is acceptable in design terms and further Conservation Area consent can be granted for the demolition of the hall.

15.29 Impacts on Neighbouring Properties

Local concerns have been voiced regarding the impact the scheme has on neighbouring properties. Neighbours felt that the scheme would be overbearing, would cause overlooking and would be oppressive to neighbouring amenity. This was not used as a reason for refusal by Members previously and the Inspector concluded that with the use of privacy screens the proposal would not be materially harmful to neighbouring amenity. It was considered by neighbours that this was an error and the harm the scheme will cause warrants a refusal this time. Notwithstanding the sentiments of the neighbours, the introduction of impact on amenity as a new reason for refusal would be unreasonable. It is recommended that a condition requiring the prior approval of privacy screens is imposed on any consent.

15.30 Amenity Provisions

Policy DP16 requires a minimum of 50 square metres (sqm) of private amenity space for one and two-bedroom houses, or 25 sqm for flats, as a secure and useable space. The proposal includes a balcony/ first-floor sitting out area of approx 10 sqm, but little other useable amenity space. This is clearly well below the Council's adopted minimum standards. However, in mitigation, the site is very close to a large area of parkland and the proposal is within an area of Wivenhoe where many of the dwellings have very small gardens. This was not used as a reason for refusal by Members previously and was not raised as an issue by the appeal Inspector.

15.31 Highway Issues

The proposal makes provision for one car parking space. This is below the standard recommended by the adopted Parking Standards SPD (spaces for a two-bedroom dwelling and one space per 30 sqm for a Class B1 commercial proposal = requirement for four extra spaces). However, the existing site makes no provision for off-street parking and an alternative use of the site for community purposes would also generate a requirement for off-street parking. The Highway Authority has not objected to the proposal on these grounds. The proposed use is in effect a live-work unit, and the provision of one space is not considered unacceptable in the circumstances. This was not used as a reason for refusal by Members previously and was not raised as an issue by the appeal Inspector.

15.32 Trees

The proposal is in very close proximity to a semi-mature tree, with its trunk just north of the application site and a crown spread overhangs the existing building. Previously the Council's Tree Officer agreed it was possible to build the proposed structure if the sycamore tree is sufficiently protected. However, the tree is semi mature and is going to get much bigger and whilst it may be possible to carry out pruning operations every year, once this tree actually gets to a full grown size it will dwarf the building, which will then mean that the owners of the building will want the owners of the tree to remove it.

15.33 However, the comments by the applicant are entirely accurate in that subject to a Conservation Area Notice being submitted they would be able to reduce this tree back to the property boundary as this tree is not one that would merit protection by a tree preservation order. In conclusion the Tree Officer concludes that while granting permission may result in dispute between neighbours in the long run this should not be used as a reason to refuse the planning permission given the status under the CA/TPO legislation and common law principles. The Inspector concluded that *"the requirement for intermittent pruning would not substantially harm the character and appearance of the area, and the long term implications would be insufficient to warrant a dismissal"*. Therefore it would not be reasonable to use this as a reason for refusal for this resubmission.

16.0 **Conclusion**

16.1 Members' previous decision was upheld by a Planning Inspector. The Inspector's decision is the most important material consideration when assessing this scheme. The Inspector was clear that his decision turned on a lack of justification for the loss of the community facility and was therefore content with all other matters.

- 16.2 The Inspector's concerns were primarily based around a lack of information.
- 16.3 In order to overcome this reason for refusal the applicant has provided a study that demonstrates that Wivenhoe has an excess of community provision. The Planning Policy Team does not completely agree with the findings, however it is satisfied that the study has adequately demonstrated that the loss of the community facility would not result in a deficit in community facility provision in the town.
- 16.4 This stance is strongly contested by the Town Council, the Wivenhoe Community Trust, the Wivenhoe Society and many of the residents. Flaws have been pointed out in the study and representations have provided alternative calculations that show the town already has a deficit of provision.
- 16.5 On balance, it is considered that in line with the advice provided by the Planning Policy Team, the scheme has demonstrated that Wivenhoe has sufficient community space provision to meet the need it generates and therefore complies with Policy DP4. Therefore an approval both the planning application and the Conservation Area consent is warranted.

17.0 Recommendation

APPROVE both the planning application and the Conversation Area Consent subject to the following conditions:

18.0 Recommended Reasons for the Decision

Planning Application (131452)

YOP - *Reason for Approval (Objection(s) Received - Committee)

The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because the applicant has provided the evidence that the appeal scheme was lacking in and has therefore addressed all of the Inspector's outstanding concerns. Thus, having had regard to all material planning considerations the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the particular circumstances and reasons set out below, namely the representations received in relation to the perceived need for community facilities and the issues raised with the applicants supporting information and justification. These have all been carefully considered but did not warrant a refusal of this scheme. All other material considerations have been previously addressed by the appeal Inspector and were considered to be satisfactory.

Conservation Area Consent (131453)

YOP - *Reason for Approval (Objection(s) Received - Committee)

The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because the applicant has provided the evidence that the appeal scheme was lacking in and has therefore address all of the Inspectors outstanding concerns and as the planning application is acceptable it follows that the demolition of the hall is acceptable to facilitate the development. Thus, having had regard to all material planning considerations the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the particular circumstances and reasons set out below, namely the representations received in relation to the historic and architectural importance of the hall. These have all been carefully considered but did not warrant a refusal of this scheme. All other material considerations have been previously addressed by the appeal Inspector and were considered to be satisfactory.

19.0 Conditions for 131452 (Planning Application)

1 - Non-Standard Condition/Reason

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

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

2 - Non-Standard Condition/Reason

The development hereby permitted shall be constructed strictly in accordance with the approved drawings, unless otherwise agreed in writing by the Local Planning Authority. The approved drawings include 163-01A, 163-02A, 163-03D, 163-04A, 163-05B, 163-07B, 163-08C and 163-30B.

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

3 - Non-Standard Condition/Reason

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

Reason: To ensure that the development preserves and enhances the character and appearance of the Conservation Area.

4 - Non-Standard Condition/Reason

The use hereby permitted is for a first floor residential flat and a ground floor potter's studio and gallery only and no alternative use of either floor shall be made without the prior approval in writing of the Local Planning Authority.

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

5 - Non-Standard Condition/Reason

Prior to the first occupation of the development hereby permitted, the proposed opening and closing times of the ground floor gallery (shown on drawing 163002A) shall have been submitted to and agreed in writing by the Local Planning Authority, and the gallery shall thereafter be kept open to members of the public in accordance with the approved opening hours, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of amenity and because this forms part of the justification for the proposal put forward by the application submission.

6 - Non-Standard Condition/Reason

Prior to the commencement of development, evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 3 or higher for all dwellings shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the development is designed to be sustainable and will make efficient use of energy, water and materials.

7 -Non-Standard Condition/Reason

Prior to the first occupation of any dwelling hereby approved, a post-construction Final Code Certificate issued by an accreditation body confirming that dwelling has achieved a Code for Sustainable Homes rating of Code Level 3 or higher shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the completed development is sustainable and makes efficient use of energy, water and materials.

8 - Non-Standard Condition/Reason

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 windows other than those expressly authorised by this permission shall be constructed in the building hereby approved.

Reason: To protect the amenities and privacy of adjoining residents and to ensure the building has an appearance appropriate to the character of the Conservation Area.

9 - Non-Standard Condition/Reason

Prior to the commencement of the development hereby permitted full details of the proposed glazing screen (shown in principle on drawing 160-30B), including the depth of the upper privacy section shall be submitted to and agreed in writing by the Local Planning Authority. The upper privacy section should give an obscuration level equivalent to scale 4 or 5 of the Pilkington texture Glass scale of obscuration, unless otherwise agreed in writing by the Local Planning Authority. The details as approved shall be installed prior to the first occupation of the flat and thereafter retained at all times.

Reason: In the interests of residential amenity and to secure the privacy of adjoining occupiers.

10 - Non-Standard Condition/Reason

The kiln shall be operated in accordance with the Ventilation /Extraction Statement by Libra Services dated 22 September 2011, with the ventilation being discharged at first floor roof level as shown on drawing no. 163-04A, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of local amenity.

11 - Non-Standard Condition/Reason

Prior to the commencement of the development hereby permitted full details of the proposed site boundary treatment to the application site shall be submitted to and agreed in writing by the Local Planning Authority. The details as approved shall be implemented prior to the first use of the development, and shall thereafter be retained and maintained strictly in accordance with these approved details, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development preserves and enhances the character and appearance of the Conservation Area.

12 - Non-Standard Condition/Reason

Prior to the first use or occupation of the development as hereby permitted, the building shall have been constructed or modified to provide sound insulation against internally generated noise in accordance with a scheme devised by a competent person and agreed, in writing, by the Local Planning Authority. The insulation shall be maintained as agreed thereafter.

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

13 - Non-Standard Condition/Reason

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme devised by a competent person for the control of fumes, smells and odours, and dust that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. The control measures shall thereafter be retained and maintained to the agreed specification and working order.

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

14 - Non-Standard Condition/Reason

Prior to the commencement of development, all trees, shrubs and other natural features not scheduled for removal on the approved plans shall have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

15 - Non-Standard Condition/Reason

No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

Conditions for Conservation Area Consent (131453)

1) ZAB - Time Limit for LBCs

The works hereby permitted shall begin before the expiration of 3 years from the date of this consent.

Reason: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2) ZPI - *Contract for Redevelopment before Demolition*

No part of the building shall be altered by way of demolition until:

- (i) a binding contract for the full implementation of the scheme of redevelopment granted planning permission under reference number 131452 has been entered into; and
- (ii) all necessary permissions and consents have been obtained; and
- (iii) evidence thereof shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: In order to ensure that the demolition is necessary as the works would not be acceptable on their own, without a replacement scheme.

20.0 Informatives for Planning Application (131452)

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works. (2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(2) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

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

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

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

21.0 Positivity Statement (for both applications)

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



Application No: 131231

Location: Trafalgar Farm, 183 London Road, Stanway, Colchester, CO3 8PB

Scale (approx): 1:2500

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7.3 Case Officer: Mark Russell

Due Date: 20/09/2013

MAJOR

Site: Trafalgar Farm, 183 London Road, Stanway, Colchester CO3 8PB

Application No: 131231

Date Received: 21 June 2013

Agent: Mr Peter Twemlow

Applicant: Tollgate Partnership Limited

Development: Change of use of land from agricultural to car park (105 car parking spaces); installation of 4 No. lighting columns; erection of 1.8 metre palisade fencing to eastern boundary. Resubmission of 112355.

Ward: Copford & West Stanway

Summary of Recommendation: Approval subject to the signing of a S106 Agreement

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it is a major application and an objection has been received.

2.0 Synopsis

2.1 The key issues explored below are the proposal for a 105 space car park adjacent to Tollgate Business Centre. An objection from Transportation Policy is described, but in the interests of job creation it is concluded that the proposal is, on balance, acceptable.

3.0 Site Description and Context

3.1 Agricultural land just outside Employment Zone, surrounded on two sides by agricultural land, near to the Western relief and separated from London Rd by a long drive and a series of buildings.

4.0 Description of the Proposal

4.1 The proposal is for a 105 space car park to serve existing and proposed business units at the Tollgate Business Park.

5.0 Land Use Allocation

5.1 Agricultural

6.0 Relevant Planning History

- 6.1 112355 - Change of use of land from agricultural to car park (105 car parking spaces); installation of 4 No. lighting columns; erection of 1.8 metre palisade fencing to eastern boundary. (Amended Description). Withdrawn 12th February 2013.

7.0 Principal Policies

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

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

SD1 - Sustainable Development Locations
CE1 - Centres and Employment Classification and Hierarchy
CE3 - Employment Zones
UR2 - Built Design and Character
TA5 - Parking

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

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

- 7.4 Further to the above, the adopted Site Allocations (2010) policies set out below should also be taken into account in the decision making process:

SA STA1 Appropriate Uses within the Stanway Growth Area
SA STA2 Phasing of Greenfield sites in Stanway Growth Area
SA STA3 Employment and Retail Uses in Stanway Growth Area
SA STA4 Transportation in Stanway Growth Area

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

Vehicle Parking Standards
Stanway Master Plan

7.6 Also of note is the “Vision Statement for the Tollgate area” which has been presented to the Local Development Framework Committee.

8.0 Consultations

8.1 Environmental Control – No comments.

8.2 Highway Authority – No objections, but asked for a wheel-wash facility.

8.3 Transportation Policy -

This planning application is submitted following the withdrawal of a previous application on the site (ref 112355) which was withdrawn as a result of the need for additional evidence of the need for additional car parking. The site is located outside of the settlement development boundary, just outside the Strategic Employment Zone. The Tollgate Business Park is located within the Strategic Employment Zone.

In accordance with policy ENV1 (Environment) of the Core Strategy, unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced. Development in such areas will be strictly controlled to conserve the environmental assets and open character of the Borough.

Policy TA5 (Parking) of the Core Strategy states that development should manage parking to accord with the accessibility of the location and to ensure people-friendly street environments, and that business parking for staff, visitors and operational uses will be managed as part of company Travel Plans.

Policy TA1 (Accessibility and Changing Travel Behaviour) states that travel behaviour change towards sustainable modes will be encouraged through travel plans and by managing travel demand. Employers should develop travel plans to promote sustainable travel behaviour. It also states that car parking will be carefully managed to encourage sustainable travel behaviour within Colchester. Condition 15 of the planning approval for the Tollgate Business Park requires the provision of a Travel Plan prior to occupation of the development.

Policy DP19 (Parking Standards) of the Development Policies DPD states that the Council will refer to the adopted Vehicle Parking Standards SPD. This sets out maximum levels of car parking for all uses. The Tollgate Business Park development comprises B1, B2 and B8 uses. The Vehicle Parking Standards state that B1 units should provide a maximum of 1 space per 30sqm, B2 units a maximum of 1 space per 50sqm and B8 units should provide a maximum of 1 space per 150sqm.

The applicant states that the limited car parking allocated to each of the 12 business units is a key reason for it remaining vacant. At present there are 114 car parking spaces provided serving the 12 units. This works out at approximately 1 space per 30sqm which is in line with current car parking standards for B1 uses. B2 or B8 uses would require less car parking in accordance with the current standards. To increase the level of car parking would therefore be contrary to the standards set out in the adopted SPD.

The applicant has submitted evidence with this application indicating interest in the Business Park has previously been retracted on the basis of the number of car parking

spaces provided, with businesses choosing to locate elsewhere. It is also suggested that a company currently interested in one of the units requires 17 additional car parking spaces in addition to the 13 currently allocated to the unit. However, this proposal is for an additional 105 car parking spaces. In addition, there is no evidence provided that sustainable travel change behaviour is being encouraged.

Recommendation: The Council recognises the need to be flexible and support new businesses. However, it is considered that at present this application is contrary to policies TA1, DP19 and ENV1. The evidence provided does not provide justification for the need for 105 additional parking spaces, and makes no reference to any proposals to improve accessibility and change travel behaviour as part of a wider Travel Plan.

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

9.0 Parish Council Response

9.1 Stanway PC – “No objections to this proposal in principle, however, they do not see formal evidence of a requirement for the additional parking spaces.”

10.0 Representations

10.1 No external consultation replies have been received

11.0 Parking Provision

11.1 105 parking spaces are being applied for.

12.0 Open Space Provisions

12.1 n/a

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

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

15.0 Report

15.1 The application is for additional parking next to the existing Tollgate Business Centre. Transportation Policy has objected.

15.2 The objection is noted, and it could be stated that the proposal is against policy. However, other material considerations need to be weighed up.

- 15.3 The applicants have stated that the insufficient parking is deterring users from taking up units, and has deterred interest in units not yet built, to such an extent that a diversification away from traditional uses has recently been sought, and granted (application 130789 – for a Chiquitos restaurant and a Costa coffee shop, for example).
- 15.4 The evidence produced is not conclusive (coming from one potential user) and the applicants have been asked to provide more evidence.
- 15.5 The matter was discussed in a meeting with the applicants and your senior Officers, and the following response has been supplied by the Development Service Manager:

I would like to advise you that I have had recent discussions with the Tollgate Partnership around the issue of extending parking provision and to outline my reaction to the application that you are now dealing with.

(We) came to the conclusion that in the context of promoting jobs and allowing the Tollgate Partnership to attract business tenants to their speculatively built office village we should support the application. The office village was completed some time ago and was built when other developers dared not to put a spade in the ground. The Partnership has had interest from prospective occupiers but they (the prospective tenants) have been unwilling to commit on the basis of parking spaces (overall) in the approved development being limited). (The last application) required additional information to be submitted and that has now occurred.

- 15.6 The applicants have also provided a letter from chartered surveyors Nicholas Percival. This letter states that the nearby units (still unoccupied) have been marketed for in excess of 3 ½ years.
- 15.7 The letter states that a problem in letting is an under-provision of car parking (“due to the nature of the users, and the wider catchment area where employees and the businesses’ clients will be drawn from”) and it quotes discussions with another potential user (“Push Energy”) stating that its requirement would be for 30 spaces.

16.0 Conclusion

- 16.1 In the interests of promoting jobs, Members are asked to support this application.

17.0 Recommendation

APPROVE subject to the following conditions

18.0 Recommended Reasons for the Decision

- 18.1 YPD - *Reason for Approval (Policy Conflict - Committee)
Whilst the proposal accords with most of the relevant policies in the Statutory Development Plan (as set out above), it does not fully comply with policy DP19, TA1 and TA5 in so far as it could be seen as an overprovision of car-parking. That said the Planning Committee has, after having regard to all material considerations, concluded that the proposal is acceptable because of the potential for job creation.

Thus, having balanced the weight to be given to the various issues, and having had regard to all of the material planning considerations, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged importance that would warrant the refusal of this application.

19.0 Conditions

1 - Time Limit for Full Permissions

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

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

2 - Non-Standard Condition/Reason

The development hereby approved shall comply in all respects with the submitted drawings TPL/139/12, TPL/139/13 and P145-1131D.

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

3 - Non-Standard Condition/Reason

The parking area hereby permitted shall be used solely in connection with businesses in the surrounding area and not for other uses such as commuter parking.

Reason: In the interests of sustainability as permission has been granted solely on the basis of the applicants' claims that additional parking provision is required for users of existing and future commercial units.

4 - Non-Standard Condition/Reason

Notwithstanding the details of the submitted boundary treatment, the applicants shall, prior to the car park being brought into use, submit details of softening planting/landscaping to its southern and western boundaries to the satisfaction of the Local Planning Authority. Such treatment shall be put in place in the first planting season after details are agreed and shall be maintained at all times thereafter.

Reason: In the interests of visual amenity as these boundaries are exposed and the proposed fencing has a harsh appearance.

5 - Non-Standard Condition/Reason

No access to the car park shall be taken off of London Road unless part of a subsequent Planning application, and the applicants shall ensure that such access is physically impossible at all times.

Reason: In the interests of highway safety as such issues as visibility splays onto that road would have to be carefully considered.

6 - Non-Standard Condition/Reason

Prior to commencement of the development details of a wheel cleaning facility within the site and adjacent to the egress onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The wheel cleaning facility shall be provided prior to commencement and during construction of the development.

Reason: To protect highway efficiency of movement and safety in accordance with policy DM1 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

20.0 Informatives

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

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

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

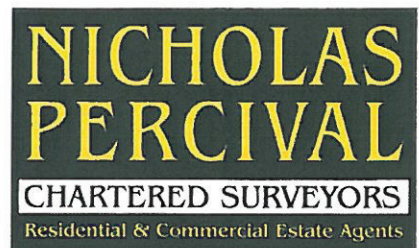
21.0 Positivity Statement

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

23 August 2013

Our Ref: NJP/AB/C.3429

Mark Russell
Planning Services
Colchester Borough Council
Rowan House
33 Sheepen Road
Colchester
Essex, CO3 3WG.



Beacon End Farmhouse, London Road
Stanway, Colchester, Essex CO3 0NQ
Tel:(01206) 563222 Fax:(01206) 564025
www.nicholaspercival.co.uk

BY POST AND EMAIL

Dear Mark

Re: Planning Consultation – reference number 131231

I refer to your recent request for additional information in respect of the issues of additional car parking for Tollgate Business Park. This is subject to a current planning application submitted in June 2013 Ref: 131231.

Nicholas Percival Chartered Surveyors has been marketing these offices at the Tollgate Business Park since the development of them commenced on site which was in excess of 3½ years.

In March 2011 we carried out a formal opening of the premises when we invited office occupiers to visit and inspect the premises.

Offices, in locations such as this are generally very popular for a range of office users including regular professional services, small business headquarters, distribution, call centres, and high-tech business. However, one problem that can arise is that of car parking, namely the under provision of car parking spaces due to the nature of the users and the wider catchment where employees and the businesses' clients will be drawn from.

I would estimate, based on professional judgement, marketing and letting evidence in the immediate and wider area, that for one of the office buildings at Tollgate Business Park, one may require circa 16 car parking spaces. This is considerably higher than the car parking spaces that are currently available per unit.

I enclose a copy of a letter received recently from Push Energy who have inspected the premises and detailed their car parking requirements at the office unit.

As at Colchester Business Park, it is our client's intention to maximize the viability of the Tollgate Business Park to attract new business to Tollgate and Colchester and to avoid issues relating to problems where office occupiers use the roads for the purpose of car parking as a result of there being insufficient designated car parking available.



Registered in England No: 8166501

N.J.PERCIVAL BSc FRICS C.J. CHAMBERS MRICS
T.B.J. NOBLE BSc (Hons) MRICS
NATALIE POTTTS
46



We look forward to this planning application being positively determined and consider that it will enhance the attraction of units at the Tollgate Business Park, encouraging further investment and confidence in Colchester and Tollgate in particular.

If you require any further information in relation to the above, or in terms of the current planning application, then please do not hesitate to contact me.

Kind regards.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N J Percival', with a long horizontal flourish extending to the right.

N J Percival

njpercival@nicholaspercival.co.uk

c.c. Daniel Watts (Tollgate Partnership Ltd)
Peter Twemlow (Barton Willmore)

Helen Bagley

From: Victoria Day <victoria@pushenergy.co.uk>
Sent: 16 August 2013 10:52
To: Nicholas Percival
Subject: Tollgate Business Centre Parking

Dear Nick,

Following, on from our viewing at the Tollgate Business Park, we are interested in the unit's but whilst the units are situated in an ideal location for Push Energy, the limited parking of 16 spaces that can be allocated is not suitable for our needs, ideally we require 30 spaces for staff and visitors.

Please advise if this would be viable.

Kind Regards,

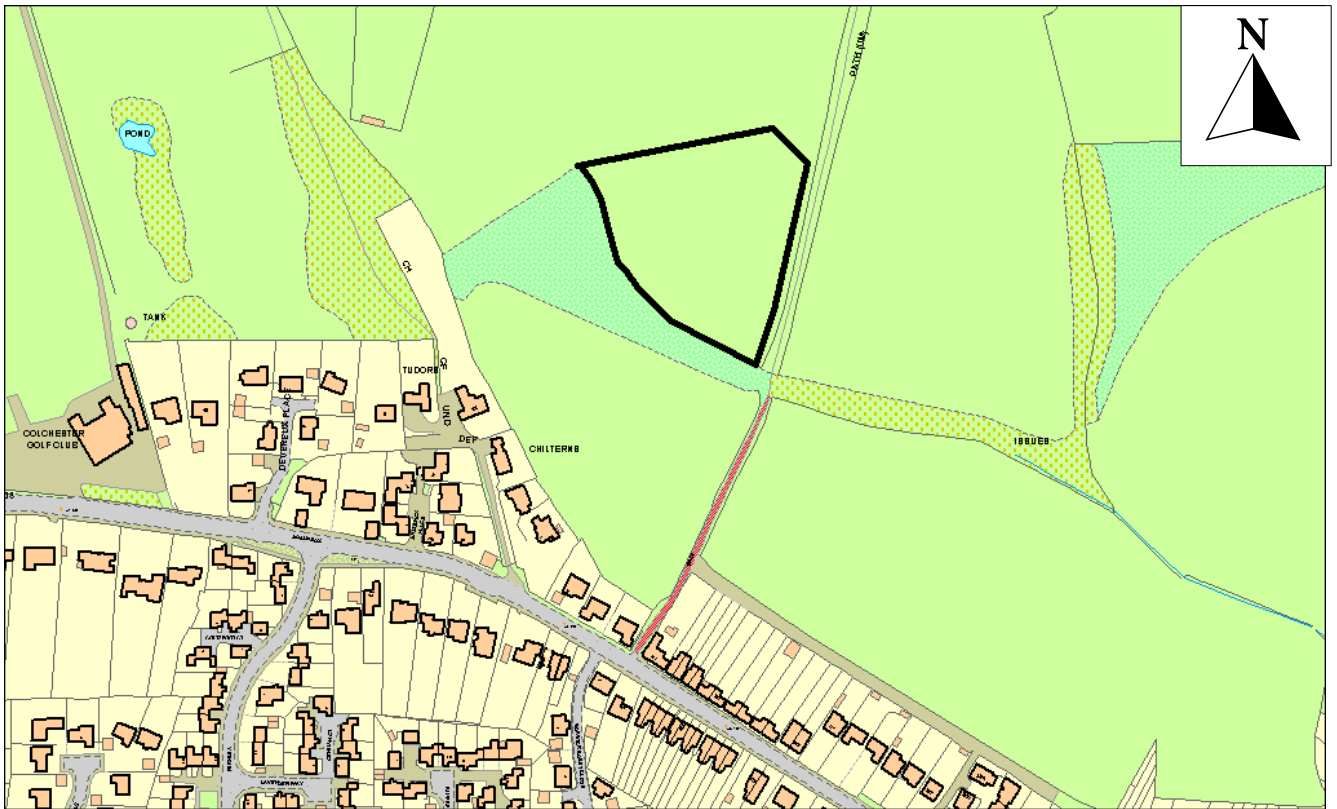
Victoria Day
Development Director



Westwood Park
London Road
Little Horkesley
Colchester
Essex
CO6 4BS

Mob – 07787 404055
victoria@pushenergy.co.uk

Please note that I work Monday, Wednesday and Fridays.



Application No: 130937

Location: Colchester Golf Club, 21 Braiswick, Colchester, CO4 5AU

Scale (approx): 1:2500

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7.4 Case Officer: Lucy Mondon

MAJOR

Site: Colchester Golf Club, 21 Braiswick, Colchester, CO4 5AU

Application No: 130937

Date Received: 16 May 2013

Applicant: Mr Brian Morgan

Development: Creation of irrigation reservoir

Ward: Mile End

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it is a major planning application where the recommendation is for approval, but an objection has been received.

2.0 Synopsis

2.1 The application seeks planning permission for the creation of reservoir, with associated bunding at Colchester Golf Club, 21 Braiswick, Colchester.

2.2 The key issues explored below are planning policy; impact on residential development; impact on landscaping and trees; nature conservation; flood risk; and highway safety. Having considered the planning merits of the proposal, along with consultation responses, the comments of the Local Ward Member, and local representations, it is concluded that the proposal is in accordance with planning policy and is acceptable, subject to conditions. A conditional approval is recommended.

3.0 Site Description and Context

3.1 The golf club site is, for the most part, located within the countryside, although the reservoir would be located within the Colchester settlement boundary as defined in the Colchester Borough Council Local Development Framework (LDF). To the east of the reservoir site, running north-south, is a public right of way (Footpath 41), which is segregated from the golf club site by a hedge. There is a small area of woodland to the south of the site. The nearest residential properties are approximately 100 metres to the south-west of the site. There are residential properties to the south of the site, approximately 140 metres away, and to the east of the site, 400 metres away. The land slopes down towards the south and south-east.

3.2 There is a ditch that runs along the southern boundary of the site. Further to the south-east of the site the ditch runs into a piped watercourse that flows downstream under existing residential development.

3.3 The application site forms part of the existing Colchester Golf Club, although it is not used as part of the golf course; it is an area of grassland.

4.0 Description of the Proposal

4.1 The proposal seeks planning permission for the creation of an irrigation reservoir on land within Colchester Golf Club, 21 Braiswick, Colchester. The irrigation reservoir would be fed from an existing pond to the north of the golf club site and would aid the watering of the golf club site during the summer months rather than rely on mains water supply. The reservoir would be 22090 cubic metres (covering 0.82ha). Spoil heaps would be positioned on adjacent land within the golf club site, with the height limited to 1.2 metres and sown with a mixture of meadow grass and wild flower mix. The reservoir would have a natural clay lining.

4.2 The reservoir would be accessed via Braiswick Lane and then via a track south of the field hedge (over land with a right of access). There would be a 1.3 metre high post and rail fence to the northern boundary of the reservoir. Following consultation with the Highway Authority, the agent has also confirmed that a fence can be erected alongside the footpath hedge to ensure that users of the footpath would not stray towards the reservoir.

4.3 The reservoir would be constructed by excavating into existing ground and creating raised embankments around the reservoir edge, meaning that the water within the reservoir would be partially stored below ground level and partially impounded above ground level. The embankments would vary in height due to levels on site (one metre high at the northern side to five metres high at the southern side), but would have a consistent level of 44.5 mAOD (metres above Ordnance datum). The top water level would be 44 mAOD, but water levels would be kept at 300mm below this level to allow for rain water attenuation. There would be a piped overflow installed at the top water level in order to prevent overflow of the embankments. In order to control the inflow of water to the reservoir, daily visual inspections would be undertaken during the winter and wet seasons. The Flood Risk Assessment submitted provides further details of the management procedures that would be put in place to control the water levels of the reservoir, as well as management procedures in the event of failure of the embankments. The Flood Risk Assessment is available to view in full on the Council's website, but the contents of the assessment will be discussed in more detail in the main body of the report under 'Flood Risk'.

4.4 The levels in and around the site are as follows:

- Level at closest property to west (No. 11 Braiswick): 42.74 mAOD
- Level at closest property to south (No. 5 Braiswick): 41.29 mAOD
- Level at southern boundary of reservoir site: 39.64 mAOD
- Level 200 metres to east (following ditch): 31.23 mAOD

4.5 The levels of the reservoir would be as follows:

- Base of reservoir: 38 mAOD
- Height of embankment: 44.50 mAOD
- Top water level: 44 mAOD (water level kept at 300mm below this level to allow for rainwater attenuation)

5.0 Land Use Allocation

5.1 The site is designated as Private Open Space and is located within the Northern Growth Area Urban Extension in the LDF. The site is not included within the current planning application for the northern growth area.

6.0 Relevant Planning History

6.1 The application site was previously agricultural land. Planning Permission was granted for the change of use of agricultural land to golf practice ground in 1994 (ref: COL/93/1187).

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

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

UR2 - Built Design and Character
ENV1 - Environment
ER1 - Energy, Resources, Waste, Water and Recycling

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

DP1 Design and Amenity
DP20 Flood Risk and Management of Surface Water Drainage
DP21 Nature Conservation and Protected Lanes

7.4 As the site is located within the allocated Northern Growth Area Urban Extension, the following Site Allocation (2010) policies are of consideration:

SA NGA1 Appropriate Uses within the North Growth Area
SA NGA2 Greenfield Sites in the North Growth Area
SA NGA3 Employment Uses in the North Growth Area
SA NGA4 Transport measures in North Growth Area
SA NGA5 Transport Infrastructure related to the NGAUE

8.0 Consultations

8.1 Policy:

'The proposal site is shown on the Proposals Map as private open space lying within the Northern Growth Area Urban Extension. Thus, while the wider area is expected to be developed for residential use, the land designated as private open space would be expected to be safeguarded for that purpose. Additionally, the site appears to be included within the existing golf club area so its change of use to a reservoir does not appear to entail extension of the golf club area. Accordingly, no planning policy objections are raised to the proposal.'

8.2 Landscaping:

Following receipt of a justification for the wild flower planting for the bunds, the Landscape Officer is satisfied with the landscape content of the proposals, subject to conditions.

8.3 Archaeology:

Following the negative results of an archaeological evaluation carried out at this site, there are no objections to the proposal.

8.4 Arboricultural Officer:

No objections to the proposals, subject to conditions regarding tree protection.

8.5 Natural England: No objections. Mitigation proposed in accordance with guidance. Should the development affect any great crested newts or habitat, this would require a detailed mitigation strategy.

Case Officer Note: Natural England has agreed, verbally, that an informative note regarding mitigation measures for great crested newts can be added in lieu of a condition.

8.6 Environment Agency:

No objections to the proposal, but recommend that further consultation is carried out with the Council's Emergency Planner with regards to flood risk in the event of failure of the reservoir. The proposal does not fall under the Reservoir Act 1975 as it would contain less than 25,000 cubic metres of water. A water storage licence is required.

8.7 Emergency Planner:

No objections to the proposal. There is no requirement under the Reservoir Act 1975 to produce a full offsite plan or modelling. However, the Emergency Planner would wish to meet with the developer/contractor on site to enable emergency planning/emergency services to assess where the 'at risk' properties are and encourage/support a warning and informing project by the site management.

8.8 Highway Authority:

No objection subject to conditions requiring a fence along the boundary with the Public Right of Way, a French drain around the base of the reservoir embankment, and that the Public Right of Way is kept clear at all times.

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

9.0 Parish Council Response

9.1 N/A

10.0 Representations

10.1 Comments have been received from Cllr Goss in respect of inaccuracies within the Ecology Report submitted, and ensuring that the footpath does not become damaged.

Case Officer Note: A response was sent to Cllr Goss on 14th August 2013 to advise that the Ecology Report has been amended and Natural England has no objections to the proposal, as well as details of the Flood Risk Assessment and how the reservoir relates to the adjacent footpath.

10.2 One letter of objection has been received from a local resident. Following the provision of further information, the local resident commented that, whilst they consider the reservoir to be a very good idea, they object to the proposal on the basis of the potential impact on their property unless two key conditions are met / verified:

1. "The reservoir should be shown to be at a lower level than our property, 7 Braiswick. Specific written confirmation on height of proposed reservoir versus land on our property is needed to condition that it is lower;" and
2. That potential flooding to the public footpath is not made worse.

Case Officer Note: The local resident has been advised that the base of the reservoir would be lower than their property and that the embankment would be higher (as shown on the topographical survey submitted). The levels of the reservoir, embankment, and water levels were explained. The local resident was also advised of the measures proposed to prevent flooding, as set out in the Flood Risk Assessment submitted, as well as the Highway Authority recommendation that a French drain be included at the base of the reservoir embankment to mitigate surface water run off towards the adjacent public footpath. The local resident has responded to state that they do not feel that there has been enough assurance that the proposal would not have a detrimental impact on their property.

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

11.0 Parking Provision

11.1 Not applicable.

12.0 Open Space Provisions

12.1 The site would remain as private open space as existing.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

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

15.0 Report

15.1 The main planning considerations are: planning policy; impact on residential amenity; impact upon landscape and trees; nature conservation; flood risk; and highway safety.

15.2 Planning Policy:

In terms of policy principles, the application site is within the LDF allocated NGAUE area, which is expected to be redeveloped for residential use. The site is also designated as private open space and this use is expected to be safeguarded for that purpose. There is a current planning application for the redevelopment of the NGAUE, although this does not include the reservoir site as it is within separate ownership (the golf club). The proposal is considered to preserve the use of the site as a private amenity area and, following consultation with the Council’s Policy Team, is not considered to conflict with the NGAUE allocation. There are, therefore, no objections to the principle of the proposal in terms of planning policy.

15.2.1 Core Strategy Policy ER1 puts forward the Councils commitment to carbon reduction, including the promotion of efficient use of energy and resources, alongside waste minimisation and recycling. The proposed reservoir would enable the existing golf club to water the site by using water from natural resources rather than relying on mains water supply. This is considered to be an efficient use of natural resources which is supported by policy ER1.

15.3 Impact on neighbouring amenity:

The proposal is not considered to have a negative impact upon residential amenity in terms of privacy or outlook, the nearest residential property being 100 metres away from the site. The main consideration in terms of existing development is flood risk, which is discussed in detail below.

15.4 Landscape and Trees

The proposal is within an open area of land that is partially visible from public vantage points (e.g. the public footpath). Due to the modest height of the bunds proposed within the wider site, and following justification for the wild flower planting proposed, the Landscape Officer does not have any objections to the visual impact of the proposals subject to planning conditions.

15.4.1 The application site is adjacent to a small woodland (to the south) and a hedgerow (to the east along the footpath). The Council’s Arboricultural Officer does not have any objection to the proposal in terms of its impact upon these features, subject to conditions regarding protection during construction.

15.5 Nature Conservation:

An Ecology Report has been submitted as part of the application. Unfortunately, the original report submitted did contain some errors in terms of the location plan, which differed from the application site, although the information contained within the report did relate to the correct site. This generated an objection from a local resident. Following the necessary revisions to the report, Natural England confirmed that it does not have any objections to the proposal subject to a condition regarding the provision of a mitigating and monitoring strategy for Great Crested Newts (later agreed to be added as an informative). As the development site itself was not identified as a suitable habitat for great crested newts, and the areas of the site that are identified as being suitable habitats are unaffected by the development, a condition requiring a mitigation strategy is not considered to be necessary. However, good practice notes in terms of protection measures during construction have been included as an informative note.

15.6 Natural England did not choose to make any comment regarding any other protected species. The application site is not within a designated wildlife site, although the report has confirmed the presence of badgers in the vicinity. Badger activity has not been recorded within the construction area and the badger setts are a considerable distance away. The proposal is not, therefore, considered to have a harmful impact upon badgers. An informative can be added to the decision notice to remind the developer of the protected status of badgers. No trees are to be removed as part of the proposals so it is not considered that breeding birds would be affected by the proposal. No other protected species are recorded as being present on site according to the submitted report.

15.6.1 The proposal is not considered to pose any long term risks to protected species and any short-term impacts during the construction period can be adequately mitigated by condition. The provision of a reservoir water body with additional meadow planting is considered to provide some level of biodiversity enhancement which is supported by policy ENV1 and Natural England standing advice.

15.7 Flood Risk:

The application site is not within a flood zone, but as the proposal is regarded as being operational development of over 1ha, the Environment Agency was consulted as part of its consultation requirements. The Environment Agency does not object to the proposal, but did wish to put forward some comments with regards to future changes to legislation relating to reservoirs, as well as comments regarding emergency planning.

15.7.1 As the proposed reservoir is below 25,000 cubic metres in capacity, it does not fall under the Reservoirs Act 1975, which would require specific procedures during design, construction, and monitoring. The Environment Agency advised that this threshold may be reduced to 10,000 cubic metres under the Flood and Water Management Act 2010 (yet to be fully implemented, but expected early 2014). Following further consultation with the Council's Emergency Planner (as advised by the Environment Agency), it was confirmed that an onsite plan was not required for the proposal as the reservoir would be below the threshold for at risk reservoirs under the Reservoirs Act. The Agent has submitted a flood risk assessment which the Emergency Planner has considered. This assessment explains how the reservoir would be monitored and controlled in order to avoid a breach of the embankment and subsequent flooding.

- 15.7.2 As the reservoir is intended and constructed to hold water, it is not considered that the reservoir would create a flood risk under normal circumstances. The reservoir would be designed to prevent a breach of the embankment: The top water level would 0.5 metre below the top of the embankment, but water levels would be kept at 300mm below this level to allow for rain water attenuation, and there would be a piped overflow installed at the top water level in order to prevent overflow of the embankments. Further, in order to control the inflow of water to the reservoir, daily visual inspections would be undertaken during the winter and wet seasons and measures put in place in the event that water levels exceed the top level or breach the embankment.
- 15.7.3 As set out in the Flood Risk Assessment (FRA) submitted, water levels should not exceed the top level due to the regular checks that would occur. Should the water level increase above the top level, measures would be taken to cease the pumped inflow from the pond and take any further action, such as pumping water out of the reservoir with a portable pump kept on site. In addition to the manual checks, an overflow pipe would be installed to the southern side of the reservoir, where water that exceeds the top water level would flow into the adjacent ditch. Further, a section of the embankment at the southern side of the reservoir would act as a spillway, being set 100 mm below the remainder of the embankment so that, should any overflow occur, it would be in a controlled manner to the adjacent ditch.
- 15.7.4 In terms of a breach of the embankment, the FRA states that the reservoir would be designed, constructed and managed so that breaching of the structure did not occur. However, the FRA has considered flood risk, should this occur. Failure of the reservoir, meaning overflow of water and partial erosion of the embankment, would result in water flowing through the ditch system that runs eastward in a natural valley. The valley would have capacity for the water flow should a breach occur: the capacity of the valley is calculated to be 150 m³/s and the peak water flow from the reservoir is calculated to be 135 m³/s. Therefore, water would remain in the valley and would not flow towards the residential properties to the south. The FRA has identified that there may be a risk of flooding where the ditch runs into a piped watercourse that flows under the urban area to the east. A full breach of the embankment (i.e. the full height of the embankment fails) would pose a risk of flooding, but is considered to be exceptionally unlikely due to the management procedures that would be undertaken.
- 15.7.5 There is proposed residential development to the east and south of the site as part of the NGAUE (planning application ref: 121272). This development would be required to provide drainage solutions so that the development has a neutral impact on surface water run off. Therefore, this development would not affect the capacity of the valley to hold water should a breach of the reservoir occur and would not, therefore, increase the flood risk from the reservoir in the event of failure.
- 15.7.6 In order to prevent a breach or failure of the reservoir, the construction of the reservoir and the management procedures are important. It is therefore recommended that the conditions are applied to ensure that the reservoir is constructed in accordance with best practices and the safety features described in the FRA (e.g. the overflow pipe and spillway), and that a detailed management plan is submitted for approval.

15.7.7 The Highway Authority has recommended that a French drain is included around the base of the embankments in order to protect the adjacent footpath by mitigating any increase in surface water drainage from the embankments. This can also be secured by condition.

15.7.8 Following consideration of the FRA submitted and the comments received from the Environment Agency and Emergency Planning it is concluded that there are no objections to planning permission being granted on flood risk grounds subject to conditions. The Emergency Planner confirmed that, as there is no requirement for an onsite plan, he would like to meet with the developer on site so that any potential issues can be discussed. This can be suggested to the developer and contact details provided within an informative attached to the planning permission.

15.8 Highway Safety (i.e. impact on adjacent footpath 41):

The application site is adjacent to a public footpath, although the two areas are clearly separated by a reasonably strong hedge line. The proposal would not have a direct impact upon the footpath, but would have an indirect impact. The integrity of the footpath and the impact of the proposal upon users of the footpath have been considered. The Highway Authority has confirmed that it does not object to the proposal. The proposed reservoir should not affect the integrity of the footpath due to the distance between the two, and the provision of a fence along the footpath should prevent any users of the footpath straying towards the reservoir.

16.0 Conclusion

16.1 In conclusion, the proposal is considered to respect local plan policies in terms of its impacts upon landscape quality, biodiversity, flood risk, and highway safety. In addition, the proposal has particular benefits in terms of sustainability principles by enabling the efficient use of natural resources for the long term management of the golf club.

17.0 Recommendation

APPROVE subject to the following conditions

18.0 Recommended Reasons for the Decision

Non-Standard Reason for Approval

The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because the proposal respects local plan policies in terms of its impacts upon landscape quality, biodiversity, flood risk, and highway safety. In addition, the proposal has particular benefits in terms of sustainability principles by enabling the efficient use of natural resources for the long term management of the golf club. Thus, having had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the objection received from a local resident in terms of the impact of the proposal upon their property and the adjacent public footpath.

The Flood Risk Assessment submitted with the application sets out the safety features that would be incorporated to prevent failure of the reservoir, as well as action that would be taken should failure occur in order to prevent flooding. Subject to a condition requiring a detailed management plan, these details are considered to be acceptable.

19.0 Conditions

1 - Time Limit for Full Permissions

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

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

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawings 'Location Plan', 1086.L.300, and 847-9, received on 17th May 2013.

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

3 - Non-Standard Condition/Reason

The reservoir shall be constructed using industry best available construction methods and in accordance with the inflow and water level control measures set out in paragraphs 3.2 and 3.6 of the Amazi Flood Risk Assessment AMA339 Rev 0, dated 22nd July 2013.

Reason: To reduce the risks associated with flooding.

4 - Non-Standard Condition/Reason

No development shall commence until a detailed management plan is submitted to, and agreed in writing by, the Local Planning Authority that shall then be implemented as approved.

Reason: To reduce risks associated with flooding.

5 - Non-Standard Condition/Reason

Before the development is first used, a French drain shall be constructed around the base of the reservoir embankment in its entirety. Reason: To reduce the risks associated with flooding.

6 - Non-Standard Condition/Reason

A 1.3 metre high post and rail fence shall be erected along the northern and eastern boundaries of the reservoir in accordance with details showing the position of the fencing that shall have previously been submitted to and agreed in writing by the Local Planning Authority.

Reason: To discourage users of the footpath from straying towards the reservoir in the interests of public safety.

7 - *Full Landscape Proposals TBA

No works shall take place until full details of all landscape works shall have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- proposed finished levels or contours;
- means of enclosure;
- car parking layouts;
- other vehicle and pedestrian access and circulation areas;
- hard surfacing materials;
- minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.);
- proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.);
- retained historic landscape features;
- proposals for restoration;
- planting plans;
- written specifications (including cultivation and other operations associated with plant and grass establishment);
- schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and
- implementation timetables and monitoring programs.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

8 - Implementation of Acceptable Landscaping Scheme As Shown

The landscaping details as shown on the approved drawings shall be carried out in full prior to the end of the first planting season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

Reason: In order to ensure that there is a sufficient landscaping scheme for the development where there is insufficient detail within the submitted application.

9 - Tree and Natural Feature Protection: Protected Areas

No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans shall have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

20.0 Informatives

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

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

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

(4) The Applicant/Agent/Developer is advised that, whilst the reservoir is below 25,000 cubic metres in capacity and does not, therefore, fall under the Reservoirs Act 1975, the threshold may be reduced to 10,000 cubic metres under the Flood and Water Management Act 2010, expected early 2014. This Act will update the Reservoirs Act and will reflect a more risk-based approach to reservoir regulation, although the Government is yet to confirm capacity thresholds. The Applicant/Agent/Developer is therefore advised that responsibilities under the Reservoirs Act may change.

(5) The reservoir is below the 25,000 cubic capacity that would require an on-site plan and, as such, one has not been required as part of the planning process. However, it is advisable that contact is made with the Council's Emergency Planner so that any potential issues can be discussed at an early stage. The Emergency Planner can be contacted via: 01206 507157.

(6) No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

(7) The public's rights and ease of passage over the adjacent public footpath shall be maintained free and unobstructed at all times.

(8) All works affecting the highway 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 to the Essex County Council on 0845 603 7631

(9) The applicant has a water abstraction license that appears to be sufficient to fill the reservoir. However, it will need varying from a spray irrigation license to a storage license. The applicant is advised that this would be a good opportunity to change the license from operating in summer to operating in winter, which will reduce license fees and provide greater reliability of abstraction.

(10) For the avoidance of doubt and in accordance with the provisions of the Natural Environment and Rural Communities Act, 2006 and the provisions of Conservation of Habitats and Species Regulations, 2010 in relation to protected species, the Applicant is advised that:

(i) The Protection of Badgers Act 1992 was introduced in recognition of the additional threats that badgers face from illegal badger digging and baiting. Under the Act, it is an offence inter alia to:

- Wilfully kill, injure or take a badger, or to attempt to do so;
- Cruelly ill-treat a badger; or
- Intentionally or recklessly interfere with a badger sett by
 - (a) damaging a sett or any part of one;
 - (b) destroying a sett;
 - (c) obstructing access to or any entrance of a sett;
 - (d) causing a dog to enter a sett; or
 - (e) disturbing a badger when it is occupying a sett.

The purpose of this legislation is to ensure that badgers are humanely treated. There is no provision in the legislation to issue licences to kill badgers for the purpose of development and no provision to issue licences that will cruelly ill-treat badgers. The following mitigation should also be adhered to avoid impacts on badger setts:

- Foraging areas for badgers should be maintained or new foraging areas created.
- Access between setts and foraging/watering areas should be maintained or new ones created.
- Development that isolates a badger territory by surrounding it with roads or housing should be avoided as this can often result in problems such as increased road traffic collisions and badger damage to gardens and houses.
- If main setts need to be demolished, an artificial badger sett can be created as close to the original sett as possible, however this should only be considered as an option as a last resort as natural setts are usually favoured over artificial ones.
- Fires and chemicals should not be used within a 20m radius of a sett.
- Trees should be felled so that they fall away from active setts and badger paths should be cleared of felled timber and scrub wherever possible.
- Disturbances, such as loud noise or vibrations, that might agitate badgers occupying a sett should be avoided or limited to areas well away from the sett.

(ii) The development hereby approved is situated within 400 metres of a water body, which may serve a suitable habitat for great crested newts. Great crested newts are fully protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). A licence is required in order to carry out any works that involve certain activities such as capturing the animals, disturbance, or damaging or destroying their resting or breeding places. Note that damage or destruction of a breeding site or resting place is an absolute offence and unless the offences can be avoided through avoidance (e.g. by timing the works appropriately), it should be licensed. In the first instance it is for the developer to decide whether a species licence will be needed. The developer may need to engage specialist advice in making this decision. A licence may be needed to carry out mitigation work as well as for impacts directly connected with a development. The Ecology Report submitted confirms that the site of the development does not form a suitable habitat for great crested newts and the water body habitat identified does not appear to be directly affected by the development.

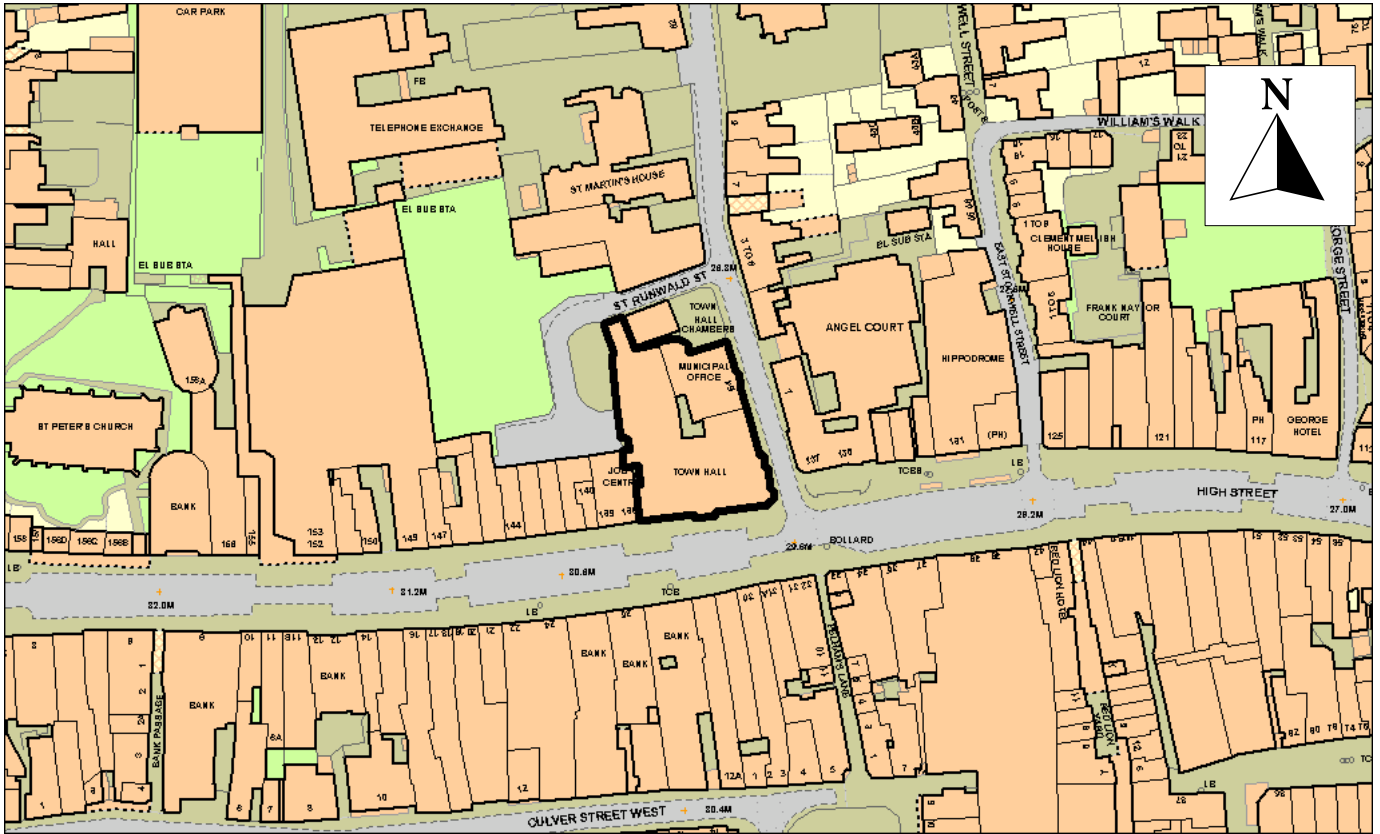
However, the following good practice examples should be taken into consideration:

- Cover any trenches overnight to prevent newts falling into them.
- Do not leave any piles of bricks, tiles, building rubble etc lying around as newts may attempt to take refuge and/or overwinter in them.
- Store any building materials above ground on pallets.
- Put building waste into skips.
- Mow any lawns regularly to discourage newts.
- Dismantle any existing potential hibernation sites (e.g. brick rubble) by hand during the summer months (NB: if newts are found, works should stop immediately and the situation re-assessed and a mitigation licence applied for if necessary).
- Prevent damage to the water body and the immediate terrestrial habitat from damage (NB: the use of temporary amphibian fencing to exclude newts from construction areas requires an EPS licence).
- Provide enhancements for great crested newts by pond and terrestrial habitat management. Further information can be found at: www.naturalengland.org.uk.

(iii) Nesting birds are protected under the Wildlife and Countryside Act (1981) (as amended), which gives protection to all wild birds and makes it an offence (subject to certain exceptions) to intentionally kill, injure or take any wild bird; take, damage or destroy the nest of any wild bird, whilst it is in use or being built; or take or destroy the egg of any wild bird. Further advice can be sought from Natural England www.naturalengland.org.uk.

21.0 Positivity Statement

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



Application No: 130472

Location: Town Hall, High Street, Colchester, CO1 1PJ

Scale (approx): 1:1250

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7.5 Case Officer: Lucy Mondon

LISTED BUILDING

Site: Town Hall, High Street, Colchester, CO1 1PJ

Application No: 130472

Date Received: 8 March 2013

Agent: NPS Property Consultants Limited

Applicant: Colchester Borough Council

Development: Application for Listed Building Consent – Installation of internal partition to corridor

Ward: Castle

Summary of Recommendation: Listed Building Consent

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because the Applicant is Colchester Borough Council.

2.0 Synopsis

2.1 The proposal is for the installation of a partition within a corridor of the Town Hall, between the former Law Library and Law Courts. The partition is required to provide separation between the Town Hall and the former Law Courts and Old Library so that they can be used independently by different occupiers.

2.2 The main issue raised by this application is whether the proposed alteration works are acceptable in terms of their impact on the special architectural and historic interest of this Grade I listed building. The proposed partition has been assessed as acceptable as its design reflects existing partitions within the corridor and it would have minimal disruption to the historic fabric of the building, being a 'reversible' feature.

2.4 As the application for listed building consent is being made by the Borough Council, the application must be referred to the Secretary of State. This is required under s82(4)(a) Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 13 The Planning (Listed Buildings and Conservation Areas) Regulations 1990. Therefore, the recommendation is to refer the application to the Secretary of State with a Local Planning Authority recommendation of a conditional approval.

3.0 Site Description and Context

3.1 The Town Hall is a Grade I listed building located on Colchester High Street. Grade I is the highest listing, meaning that the building is of exceptional interest. The list description for the building is as follows:

'1898, by John Belcher. Exceptionally rich design in free classical style: red brick and Portland stone. Three storeys, lowest one stone-faced with central entrance, carved brackets to porch support balcony above. Three pairs of engaged Corinthian columns rise through 1st and 2nd storeys to support two segmental and one triangular pediment. Large coat of arms above latter, breaking balustrade to roof. Statues in high relief between 2nd storey windows. Victoria tower, on return, rises above pair of bay windows. 162 ft high topped by statue of St Helena. Lower stage of brick, upper part of stone: very elaborate with four bronze ravens and four stone figures - Fishery, Engineering, Military Defence, Agriculture. One of the bells is from the Old Town Hall. Circa 1400 (RCHM).'

- 3.2 The corridor that is the subject of this application runs between the former Law Library and former Law Courts. The corridor is of a classical style, with decorative skirtings, cornice detailing and arched openings. There are a number of modern partitions within the corridor, the nearest one being adjacent to the lift lobby. The existing partition has a distinctive design with glazed panels and fits within an arched opening. Joinery is timber and painted white.

4.0 Description of the Proposal

- 4.1 The proposal is for the installation of a partition within a corridor of the Town Hall, between the former Law Library and Law Courts. The partition is required to provide separation between the Town Hall and the former Law Courts and Old Library so that they can be used independently by different occupiers.
- 4.2 The partition would be positioned within an arched opening within the corridor and would fit between two moulded posts. The partition would have panelled detailing to match the existing partition at the lift lobby, although the panels and top of the archway would be solid rather than glazed. The moulded skirting and cornice detailing would be repeated on the partition for continuity of design.
- 4.3 The partition would include a fire door for means of escape. The fire door would be painted white to match the remainder of the partition on the more public Law Court side; the Town Hall side would have an oak finish.
- 4.4 The original application submission included works to the former Law Library, but this element of the proposal has now been omitted from the application.

5.0 Land Use Allocation

- 5.1 The Town Hall is located within the Outer Core of the Town Centre.

6.0 Relevant Planning History

- 6.1 The most relevant planning history is as follows:
- 6.2 The lift lobby partition was granted listed building consent as part of a proposal for the lift shaft within the Town Hall in 2007 (ref: 072003).

- 6.3 More recently, planning permission has been granted for a change of use of the former Law Courts and Old Library to a restaurant, café and function rooms (ref: 130578) and listed building consent has been granted for the internal alterations required for the change of use (ref: 130579).

The proposed partition would separate the Town Hall from the restaurant, café and function room use.

7.0 Principal Policies

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

UR2 - Built Design and Character

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

DP1 Design and Amenity
DP14 Historic Environment Assets

8.0 Consultations

- 8.1 An initial consultation was carried out for the proposed partition and works to the former Law Library. As the works to the former Law Library are no longer proposed, comments relating to those works have been omitted from the consultation comments set out below.

English Heritage:

Colchester's Town Hall is a tour de force of the Edwardian Baroque, and its special architectural and historic interest is reflected in its listing at Grade I.

To separate the space outside the room [law library] from the corridor leading to the former courts it is proposed to install a plasterboard partition. The corridor is a space of considerable architectural quality, articulated in a cold classical manner consistent with the character of the building. While the necessity for the proposed partition is easily understood, it would seem appropriate that its design should answer the architectural character of the corridor as a whole. There are a number of screens in the corridor which provide precedents as to how this might be achieved.

English Heritage... recommend[s] that your Council amend the design of the proposed partition in the corridor.

Planning Projects Manager:

A new full height fire screen is proposed within the adjacent arcaded corridor. No design details of this proposed screen are provided although there are precedents immediately adjacent and it is suggested that these design details are replicated.... The screen could be conditioned to match that adjoining.

Environmental Protection:

No comments

Archaeology:

No comments

- 8.2 Following revisions to the proposal, received on 5th August 2013, further consultation was undertaken with the Council's Historic Buildings Officer and English Heritage.

English Heritage:

'The amendments respond to the observations made on behalf of English Heritage in my letter of 28 March 2013. In principle, therefore, English Heritage considers that the proposed works would be unobjectionable. The division of the corridor would be regrettable, but its justification is clear and the amended design provides a means of effecting the division that would be as sympathetic as possible. Your Council should, however, condition any consent, so as to require detailed drawings to be submitted for your approval prior to the implementation of the work.'

Historic Buildings Officer: Revisions as discussed. No objections.

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

9.0 Parish Council Response

- 9.1 No comments received.

10.0 Representations

- 10.1 No comments received.

11.0 Parking Provision

- 11.1 Not applicable to listed building applications.

12.0 Open Space Provisions

- 12.1 Not applicable to listed building applications.

13.0 Air Quality

- 13.1 Not applicable to listed building applications .

14.0 Development Team and Planning Obligations

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

15.0 Report

15.1 The main planning consideration is the impact of the proposal upon the special interest of the listed building.

15.2 The NPPF states that, in determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

15.3 The NPPF goes on to explain that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

15.4 Development Plan Policy DP14 states that development affecting the historic environment should seek to preserve or enhance the heritage asset and any features of specific historic, archaeological, architectural or artistic interest.

15.5 The Town Hall is a Grade I listed building, which means that it is of exceptional historic and architectural interest. The corridor that is the subject of this application is to the rear of the Town Hall building and does not form part of the main public part of the building, but is still of very good quality, being in the classical style in terms of its architecture. The corridor has been altered over the years with modern partitions dividing elements of the building and providing fire protection.

15.5 The proposal would have some impact on the character of the listed building as it would subdivide a corridor. However, the corridor has already been subdivided with modern partitions and the proposal is not, therefore, introducing an overly disruptive feature within the corridor. As commented by English Heritage, the design of the partition should answer the architectural character of the corridor as a whole. One way to achieve this is to reflect the design of existing partitions in the corridor. The proposal has been amended so that its design reflects the nearest partition at the lift lobby. This is considered to be appropriate and in-line with English Heritage advice. The precise details of the partition can be established via condition.

- 15.6 The proposal would not result in the removal or demolition of any historic fabric and is reversible as it could be removed in the future should the need arise.
- 15.7 As the proposed partition would not disrupt the layout and understanding of the corridor and would reflect the design and appearance of an existing partition it is considered that the alteration works to maintain the special character of the Town Hall.

16.0 Conclusion

- 16.1 The proposed partition has been designed to reflect the existing partitions within the corridor and would have minimal disruption to the historic fabric of the Town Hall. It is therefore considered that the proposal would not have a detrimental impact on the special interest of the listed building, subject to conditions requiring precise details of the partition.

17.0 Recommendation

- 17.1 It is recommended that Members endorse this application and that the application is referred to the Secretary of State for his approval.

18.0 Recommended Reasons for the Decision

YES - Reason for Approval (No Objections - Standard)

The proposal accords with the relevant policies in the Statutory Development Plan (as set out above). Having also had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged planning importance.

19.0 Conditions

1 - Time Limit for LBCs

The works hereby permitted shall begin before the expiration of 3 years from the date of this consent.

Reason: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - Non-Standard Condition/Reason

No works to which this consent relates shall be commenced until detailed large scale drawings (consisting of a 1:10 elevation and 1:2 horizontal and vertical sections) for the new partition have been submitted to and agreed in writing by the Local Planning Authority and which thereafter shall be implemented as approved.

Reason: In the interest of the character, integrity and preservation of the listed building.

20.0 Informatives

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

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

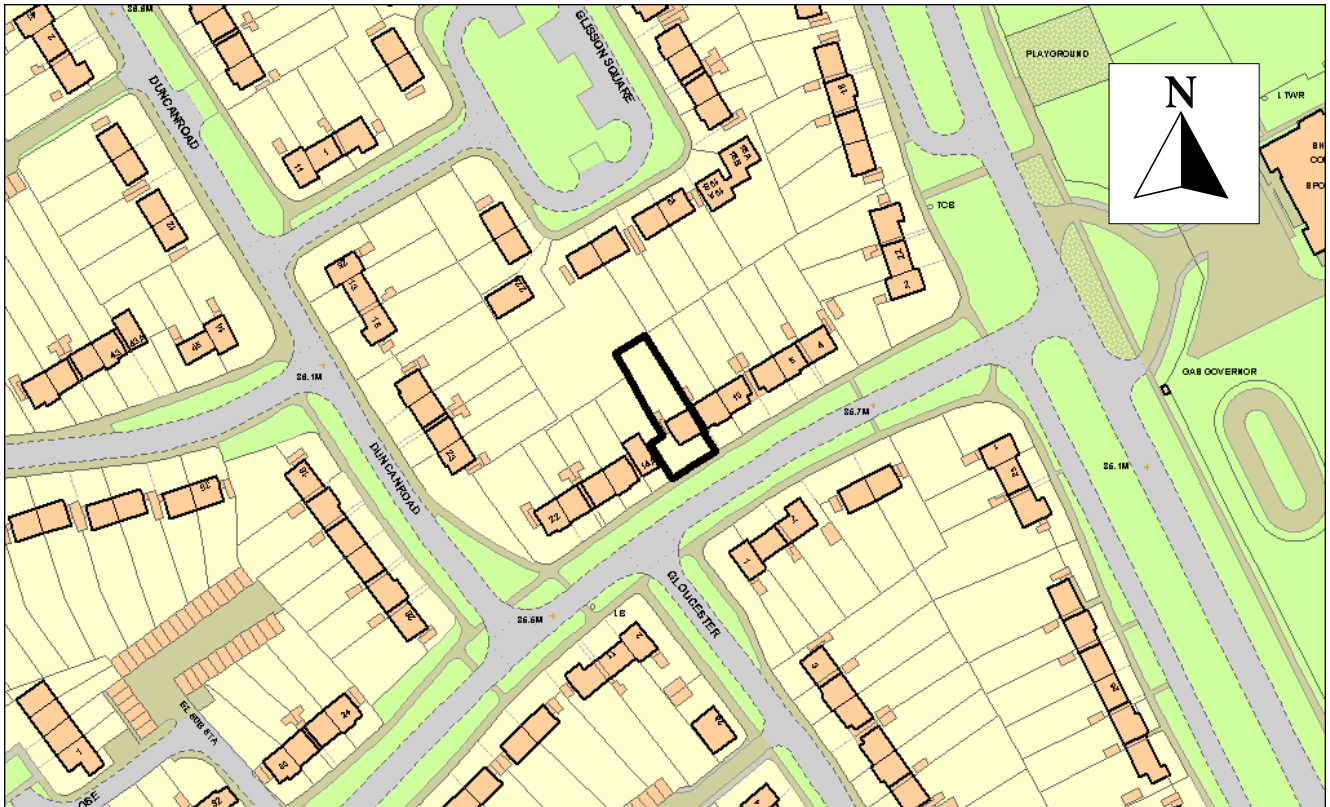
(3) **ZTA-Informative on Conditions Stating Prior to Commencement/Occupation**
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of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

(4) This consent relates solely to the detail submitted with the application. No other works to the Listed Building are inferred and any revisions or additions to the agreed scheme of works require the prior written consent of the Local Planning Authority as part of an application for Listed Building Consent. Unauthorised works to a Listed Building constitute a criminal offence under the Planning (Listed Building and Conservation Areas) Act 1990. For the avoidance of doubt, the approved drawing is MS136107 01 Rev A, received by the Local Planning Authority on 5th August 2013.

(5) This consent contains conditions that have to be discharged before the work is commenced. If you do not comply with the condition precedent you could invalidate this consent. A condition precedent cannot legally be complied with retrospectively and a new application could be required. There is no charge applicable to discharge a condition of a Listed Building Consent. The applicant/developer is advised to submit relevant details for all conditions in a single request.

21.0 Positivity Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant listed building consent for an acceptable proposal, in accordance with planning policy.



Application No: 131417

Location: 14 Eldred Avenue, Colchester, CO2 9AT

Scale (approx): 1:1250

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7.6 Case Officer: Nadine Calder

HOUSEHOLDER

Site: 14 Eldred Avenue, Colchester, CO2 9AT

Application No: 131417

Date Received: 10 July 2013

Agent: Mr Peter Tyler

Applicant: Mr M Khan

Development: Single storey side and rear extensions.

Ward: Shrub End

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because the agent is a former employee of the Borough Council.

2.0 Synopsis

2.1 The key issues explored below are the design of the proposed development, as well as its impact on neighbouring amenity in terms of outlook, light and privacy. It is considered that the proposal would not result in any design or amenity issues and accords with national and local policy requirements. The application is therefore recommended for approval subject to conditions.

3.0 Site Description and Context

3.1 The application site is located within the defined settlement boundary and comprises a two storey, end of terrace dwelling. The site lies within a predominantly residential 1950s estate and benefits from a reasonable sized rear garden with additional amenity space in the form of hardstanding to the front of the dwelling. The adjoining property to the east (No. 12 Eldred Avenue) benefits from a single storey rear extension itself.

4.0 Description of the Proposal

4.1 Planning permission is sought for the erection of a single storey side and single storey rear extension. The side extension would be 5.35 metres wide and 3.71 metre deep with a pitched roof and a maximum height of 3.8 metres while the rear extension would be 4.04 metres wide and 4 metres deep with a mono-pitched roof and a maximum height of 3.6 metres.

5.0 Relevant Planning History

- 5.1 There is no site history that is particularly relevant to the decision regarding this proposed development.

6.0 Principal Policies

- 6.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 6.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

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

DP1 Design and Amenity
DP13 Dwelling Alterations, Extensions and Replacement Dwellings

- 6.4 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

Extending Your House?
The Essex Design Guide

7.0 Consultations

- 7.1 No consultation responses have been received.

8.0 Parish Council Response

- 8.1 No response has been received from the Parish Council at the time of writing this report.

9.0 Representations

- 9.1 One letter of support has been received.

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

10.0 Report

- 10.1 The design of the proposed development is considered satisfactory on its own merits. Both the extensions would read as minor, subservient additions to the original dwelling and would not result in the dwelling appearing cramped on its plot. It is proposed to use materials that would match the materials used on the existing dwelling. As such, the proposed development is visually acceptable and would not detract from the appearance of the original dwelling. Consequently, the design and layout are considered acceptable and in compliance with Policies UR2, DP1 and DP13.
- 10.2 Similarly, there are no concerns regarding loss of light. The combined plan and elevation tests are not breached and the proposal therefore satisfies the Council's standards for assessing this issue as set out in the Essex Design Guide and the Extending Your House SPD.
- 10.3 The adjoining neighbour to the east (No. 12 Eldred Avenue) currently benefits from a single storey rear extension. Whilst this extension comprises a flat roof, the eaves height of the proposed rear extension has been kept slightly lower than the height of the eaves of the neighbouring extension thus not resulting in any negative impact in terms of overbearing or overshadowing effects. Furthermore, both extensions are of single storey height and therefore the proposal does not include any windows that would offer an unsatisfactory angle of overlooking that harmed the privacy of the neighbouring properties, including their protected sitting out areas as identified in the above SPD
- 10.4 Finally, in terms of other planning considerations (e.g. damage to trees or highway matters), the proposed development does not raise any concerns.

11.0 Conclusion

- 11.1 To summarise, the proposed development fully accords with the Council's policy requirements and no objections have been received.

12.0 Recommendation

APPROVE subject to the following conditions

13.0 Recommended Reasons for the Decision

The proposal accords with the relevant policies in the Statutory Development Plan (as set out above). Having also had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged planning importance

14.0 Conditions

1 - Time Limit for Full Permissions

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

Reason: To comply with the requirements of Section 91 of the Town and Country Planning

Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 1 (Location and Block Plan), 2 (Existing Elevations), 3 (Existing Ground Floor Plan), 4 (Proposed Elevations) and 5 (Proposed Ground Floor Plan) unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Materials as Stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that materials are of an acceptable quality appropriate to the area

20.0 Informatives

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

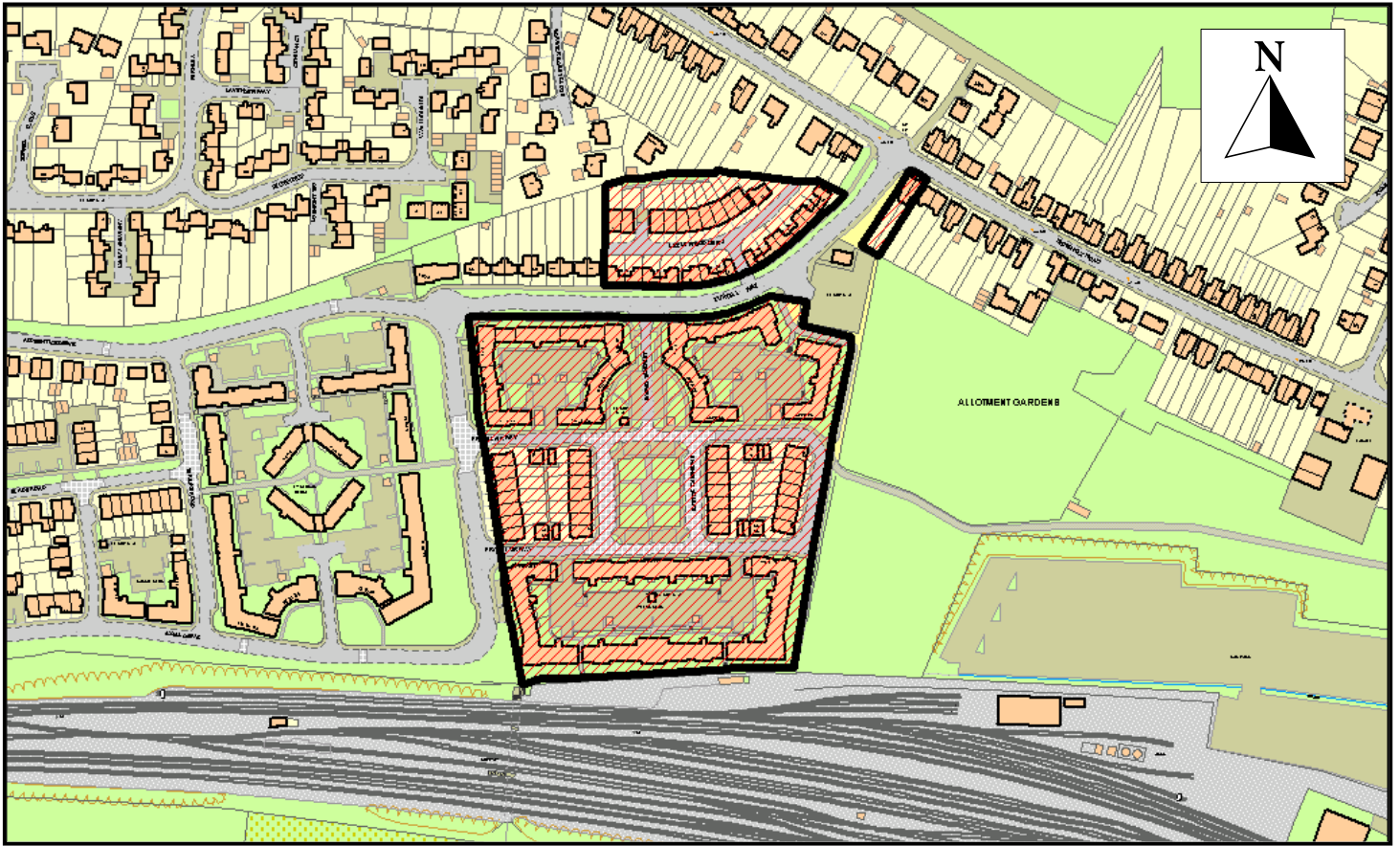
(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

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

21.0 Positivity Statement

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

Agenda Item



Application No: O/COL/03/1019

Location: Land At Flakt Woods, Tufnell Way, Colchester

Scale (approx): 1:1250

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Planning Committee

Item

Date 12/9/13

Report of	Head of Planning Services Services	Author	David Whybrow ☎ 01206 282444
Title	Mixed Development at New Braiswick Park, Bergholt Road, Colchester.		
Wards affected	Mile End		

This report concerns an amendment to a transport contribution which means that Essex County Council will need to repay the applicant a sum £29,136

1. Decision(s) Required

- 1.1 To agree a deed of variation between the applicant, Taylor Wimpey & Persimmon Homes, and Essex County Council, of a section 106 agreement dated 7 May 2004.
- 1.2 The variation relates to an amendment to a transport contribution which, consequently, means that Essex County Council will need to repay the applicant the sum of £29,136. The variation does not impact on Colchester Borough Council's position, nor requires CBC to do anything further. However, CBC were a party to the original section 106 agreement, so will need to enter into this deed.
- 1.3 In essence, Essex County Council and the developer have an "in principle" agreement that they can spend some of the public transport contribution they are currently holding on other items in exchange for refunding part of the contribution.

2. Reasons for Decision / Supporting Information

- 2.1 It is understood that the variation has been promoted by ECC and they have been requested to provide full justification in time for the Meeting. This will be included on the Amendment Sheet. From the information available it would appear that funds from the public transport contribution can be spent more profitably elsewhere with the result that less monies are required overall.

3. Alternative Options

- 3.1 To not agree to the deed of variation. The ramifications of so doing cannot be determined until ECC fully explain their position and reason for agreeing to the deed, however at this stage it appears that the proposals will be of overall benefit in highway terms.

4. Strategic Plan References

- 4.1 The redevelopment of this substantial site is now nearing completion and accords with Strategic Plans objectives. The S106 agreement has delivered a significant range of financial contributions and other community benefits and it is emphasised that S106 contributions to CBC are unaffected.

5. Consultation

- 5.1 N/A.

6. Publicity Considerations

- 6.1 N/A.

7. Financial Implications

- 7.1 Additional information will be provided once ECC's full explanation is available.

8. Equality, Diversity and Human Rights Implications

- 8.1 None.

9. Community Safety Implications

- 9.1 None.

10. Health and Safety Implications

- 10.1 None.

11. Risk Management Implications

- 11.1 None.

12. Background Papers

- 12.1 S106 Agreement dated 7/5/04 accompanying outline planning permission O/COL/03/1019.



Planning Committee

Item

22 August 2013

Report of	Head of Professional Services	Author	Andrew Tyrrell
Title	Congruence, Consolidation & Confirmation Reports (CC&CR)		
Wards Affected	All		

This report sets out proposed changes to the Colchester Borough Council Planning Procedures Code of Practice to formalise a process for considering the implications (primarily risk) of overturning a recommendation made to the Planning Committee by its Officers before that decision is formally voted upon. The purpose would be to ensure that any decision is as robust as possible, to strengthen the committees case as put forward by Members and to allow an opportunity to agree the formal wording for any decision at the tie of the vote as opposed to the current system whereby officers are required to expand upon a usually brief motion in order to produce a reasonably detailed decision notice that can be defended in the event of any later challenge. This process requires a name, and the suggested name is "Congruence, Consolidation & Confirmation Report" (CC&CR). Whilst amending the Code of Practice, is it also suggested that several references in the Code be updated to reflect the new Service names resulting from the UCCFSR (where planning now sits within 2 different Services); however these changes do not alter the requirements of the Code of Practice or the way that we work.

1. Decisions Required

- 1.1 Members are asked to agree, with immediate effect, that;
1. the suggested new deferral process is introduced to allow the Committee a formal protocol to minimise any risk implications from taking a decision contrary to Officer recommendation. This process would then need to be followed in any such event in future as it would form a new Schedule to the Planning Procedures Code of Practice.
 2. this process carry the name of "Congruence, Consolidation & Confirmation Report (CC&CR)" or, alternatively, that Members suggest any other name as may be agreed at the Committee meeting
 3. all references to "Environmental & Protective Services" in the Code of Practice are updated to either "Professional Services" and/or "Commercial Services" as appropriate.

2. Reasons for Decisions

- 2.1 Members are being asked to minimise risks associated with overturning an officer recommendation by agreeing to the CC&CR protocol so that the Planning Committee has a clear process for deciding whether or not to overturn an Officer's recommendation. Members are perfectly entitled to make a decision contrary to their professional officers' advice and in the past the record has shown that there have been successful examples of such decisions then being defended with success at appeal. However, a review of the process has shown that there are elements of risk that need to be addressed.

2.2 In such events, the usual course of events is that an officers report to the Committee sets out a recommendation but through the course of examining all of the evidence for themselves, two or more (a proposer and seconder as a minimum) of the members of the committee have a contrary view that is suggested as a motion to overturn the recommendation. The motion will often be briefly explained and experience shows that it is virtually impossible for formal wording (usually needing to be long, detailed reasons for refusal) to be agreed at a meeting due to the need to wait until all evidence has been heard. This need means that members can not premeditate a formally worded reason for overturning a decision. Similarly, it is often impossible for Officers to give a contrary view to the original recommendation without being able to further explore past examples of appeals or case law or even seeking legal advice to support them. Consequently, it is suggested that a deferral be given to allow officers to consider the explanation of the Members views and to have time to attempt to formalise the wording of the opinions into a robust decision. In doing so, officers will use the direction given to them, investigating the implications of that opinion, and reporting back any levels of risk involved so that members are fully informed before they then vote on that motion to confirm if that becomes the decision of Colchester Borough Council. This will also allow members the chance to confirm the exact wording of decisions too.

2.3 In some less complex cases, it is proposed that when officers can give an indication that there are no known risks at the Committee meeting, members may still wish to allow Officers to formalise the wording under delegated powers and only to be agreed by the Head of Service so that no unnecessary deferral occurs. That way, where Officers and Members are in agreement that the risks are known to be minimal, it would sometimes remain possible to immediately take a vote where there may have been a large audience participation expecting to have a decision by the time the meeting ends. A clear justification to take a contrary decision would be recorded in the minutes and where officers and members can agree on the merits of the motion this would be considered sufficiently robust as to then not require the CC&CR.

2.4 However, planning is often less clear in the considerations of various material considerations and weighting attached thereto, and therefore the CC&CR process allows protection in such events where it may not be possible for Officers to adequately advise the Committee of a full and accurate account of the risks in taking a contrary decision. In that event, Members would need to consider whether to proceed with the vote, or to allow time for Officers to seek additional information to report back to the Committee (including legal advice if necessary).

2.5 In terms of the name suggested, this has been based on various definitions of each word as follows:

Congruence

- is the state achieved by coming together
- agreement, harmony, conformity, or correspondence

Consolidation

- the act of consolidating or state of being consolidated; unification.
- to combine, make secure and strengthen
- the process of becoming solid

Confirmation

- to make firmer or definite; corroborate; verification
- a corroborative statement or piece of evidence that confirms that something that was believed (a fact, hypothesis or theory) is correct
- making something valid by formally ratifying or confirming it

Report

- To write, make or present an official, formal, or regular account of.
- In law, a written account of a case decided at law, giving the main points of the argument on each side, the court's findings, and the decision reached
- To carry back and repeat to another the results of considerations

- 2.6 Congruence is proposed to recognise that the process is to try and bring the Officer recommendation in line with the proposed decision of the Committee so that there is agreement that the decision being proposed is a robust and defensible decision that the Council can justify having made, despite the initial Officer recommendation. Consolidation reflects that this makes any subsequent decision secure and strengthens the Committee's decision. Confirmation portrays the process of making the detailed wording for the decision valid by formally ratifying it.

3. Report on the Proposed Changes

- 3.1 The protocol provides a formal procedure for having a Congruence, Consolidation & Confirmation Report (CC&CR). It is proposed that this protocol would be appended as Schedule 3 to the Planning Procedures Code of Practice that the Committee follows. Within the main Code of Practice the only wording to be deleted is in Section 6 (6) and reads:

"If Councillors disagree with officers' professional advice, the reasons for rejecting a report's recommendation must be clearly stated at the meeting and recorded in the minutes. In this situation, councillors need to be sure that their decisions are based on sound planning reasons."

- 3.2 This section of wording would be replaced with:

"If councillors disagree with officers' professional advice, then reasons for rejecting this advice must be given as part of a motion to overturn the recommendation. In this situation, the Congruence, Consolidation & Confirmation Report (CC&CR) protocol should then be followed as set out in Schedule 3".

- 3.2 The wording of the CC&CR protocol would then form Schedule 3 as set out in Appendix A to this report, and as shown in the flowchart in Appendix B. The existing Code of practice is included in full in Appendix C to this report.

4. Alternative Options

- 4.1 An alternative option is not to have any formal procedure in place. However, in the past experience has shown some uncertainty as to how to proceed when Members and Officer's have experienced different levels of concern over the risk implications of a contrary decision. Where there is uncertainty over procedures there is a risk that the Council may be found wanting in the event of a complaint to the Local Government Ombudsman, or could be exposed to an award of costs for unreasonable behaviour in the event of an appeal or judicial review.

- 4.2 Another alternative option is to amend the suggested protocol if Members are unhappy with individual elements of the suggestion. This would need to be discussed at the Committee Meeting to provide direction to Officers as to how to amend the protocol. Depending on the amendments, this could be agreed at the Meeting or may need a second report including the changes.

5. Financial implications

- 5.1 The introduction is proposed in order to minimise the risk of costs being awarded for unreasonable behaviour in taking planning decisions. Following a formal process means that there is less risk of any adverse financial implications from the decisions taken in future. As established in *R. v Kensington & Chelsea LB 1991*, the risk of a costs award after a planning decision is a material consideration in a planning authority's determination of an application and this factor has become an important restraint on development management practice. Therefore, not having a formal procedure in place to consider the financial implications of a decision could be a financial risk in itself.

6. Equality, Diversity and Human Rights Implications

- 6.1 There are no significant equality, diversity or human rights implications

7. Publicity Considerations

7.1 There is no need to undertake any public consultation.

8. Risk Consideration

8.1 The protocol being proposed is designed to minimise existing risk by formalising a procedure for the Committee.

9. Strategic Plan References

9.1 The Planning Service contributes to all of the Council's key objectives.

10. Community Safety Implications

10.1 The proposed changes do not significantly affect community safety.

11. Background Papers

11.1 Members will need to consider both Appendix A and Appendix B to this report with regard to the proposed Protocol. The Planning Procedures Code of Practice is also set out in full with tracked changes in Appendix C to show what would be agreed including the updates to Service names.

Appendix A: Congruence, Consolidation & Confirmation Report (CC&CR)

When Members of the Planning Committee disagree with their professional Planning Officer's advice those Members can raise a motion to overturn the recommendation. This motion should include clearly stated planning reasons so that other Members of the Committee can decide whether or not they also agree or disagree. Once the mover of the motion has stated their reasons for suggesting the Committee act contrary to the Officer's recommendation this motion must be seconded.

Once seconded, the Officers should be asked to give an opinion on the strengths of the motion, in order to highlight the potential implications of such a decision prior to any vote being taken. The Chairman will be responsible for seeking this clarity and deciding on the appropriate course of action thereafter as outlined below.

Where the Chairman believes that there are reasonable planning grounds for overturning the Officer's recommendation then it would be appropriate for the motion to be voted upon immediately so that a decision is made at that same meeting. However, Officers should always be given the opportunity to explain the implications of what has been proposed to the Planning Committee in public before any vote is taken.

Where the Chairman believes that the reasons for a contrary decision to overturn the Officer recommendation is ambiguous, tentative or if Officers otherwise highlight specific weaknesses, risks or uncertainty about the implications that may need more time to investigate, then it would be more appropriate for the Chair to defer the vote to a later meeting of the Planning Committee through a "Congruence, Consolidation & Confirmation Report". The Chair can take this decision on their own, or through a vote whether or not to use a Congruence, Consolidation & Confirmation Report, but either way the decision regarding using the Congruence, Consolidation & Confirmation Report must be taken prior to any vote on the original motion to overturn the Officer's recommendation. If a Congruence, Consolidation & Confirmation Report is to be used then the item will be deferred, if not then the vote can proceed on the original motion to overturn the Officer's recommendation at this time.

The ability to instigate a Congruence, Consolidation & Confirmation Report prior to any vote protects the Council so that both Officers and Members have more time to reflect on the issues. In such cases, the Congruence, Consolidation & Confirmation Report allows Officers an opportunity to write a short supplementary report focussing on the proposed motion, highlighting any implications (whether positive or negative) of overturning the officer's recommendation, such as whether there is evidence to support a contrary decision if challenged, or whether there is a pattern found in similar decisions in case law or appeals, or to seek legal advice that may help Members decide if the decision is right before they have voted on it.

On complex and controversial cases, where an overturn has been suggested it will be the expectation that the final decision on the application will usually be deferred through the Congruence, Consolidation & Confirmation Report until a later meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that Officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval (including recommending suitable planning conditions) or refusal of the application. Officers should be asked for an indication as to likely timescale on a case by case basis as this will be dependent upon the further work required. When this report on the implications returns it is not envisaged that there would be a need for additional public speaking as the motion remains in place.

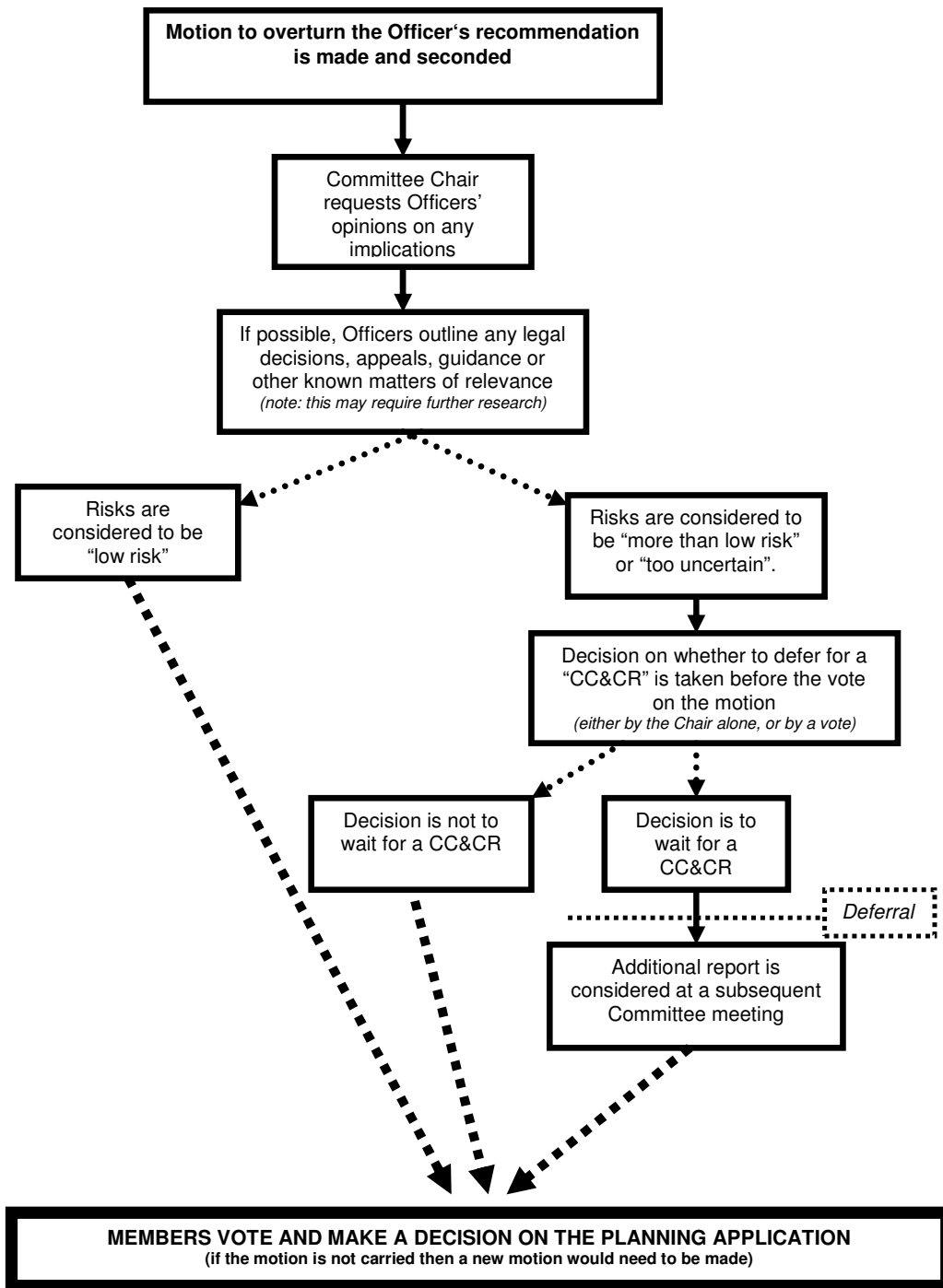
In all cases, there will be full and accurate minuting of resolutions with a careful record being kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise, or cause to be summarised, the salient points of the debate, and ensure the text of the proposition is clearly understood before putting the matter to the vote or deferring the item for the Congruence, Consolidation & Confirmation Report following a motion contrary to the Officer's recommendations.

When the subsequent further written report highlighting the implications of a contrary decision returns to the Planning Committee, it shall also set out the detailed formal wording proposed for the decision notice, which will be based solely on the reasons given through the Committee's original motion. However, Officers will be allowed to add relevant policies and set out the exact wording as interpreted from the Committee's previous discussions (which will be minuted).

It would be for Members to decide to modify the motion should they wish to amend their reasons for their decision when the focussed report returns to a subsequent meeting. This will be formally recorded in the minutes of the meeting to provide transparency alongside the justification for departing from Officers' recommendations which must also be given in public so that the justification is not subject to later elaboration.

The Courts have expressed the view that reasons should be clear and convincing. Members must satisfy themselves that where they reach a decision contrary to an Officer's recommendation their reasons are substantiated by evidence and that they are able to demonstrate reasonable planning grounds for taking a decision contrary to an Officer's advice. Where a decision is taken to refuse an application but the Officer's recommendation is to approve, the Committee must consider whether any conditions could have allowed the development to have proceeded. In addition, Members should exercise caution in not giving undue weight to any particular consideration.

Appendix B: Congruence, Consolidation & Confirmation Report (CC&CR) Flowchart



Section 1 - The role of Councillors

- (1) In making decisions on applications, councillors will:
 - act fairly and openly
 - approach each application on its own merits and with an open mind
 - carefully weigh up all the relevant material planning considerations
 - avoid undue contact with interested parties
 - ensure that the reasons for any decision are clearly stated
- (2) The planning system exists to consider development proposals in the light of the wider public interest. Councillors must take into account the interests of the whole of the Borough of Colchester and act in a way which is fair and is clearly seen to be so.
- (3) Councillors will not give instructions to officers, and they will not put pressure on officers to make a particular recommendation on an application. This behaviour would amount to a Councillor using his/her position improperly which would constitute a breach of the Members Code of Conduct.
- (4) Councillors can expect officers to give them every help in answering questions on planning matters.
- (5) Councillors who are members of the Planning Committee will be free to vote on planning applications in the way they consider appropriate, that is, without a Party 'whip'. They will also take account of all the relevant information, evidence and arguments. These will include the Development Plan and all relevant planning considerations.
- (6) In the event that the Chairman of the Planning Committee is required to exercise his/her casting vote on an application, the Chairman will exercise his/her vote based solely on the planning merits of the application before them and the debate on the application by the Committee.

NB: For more detailed guidance on Councillor/Officer relationships, please refer to the Council's Member/Officer Protocol in the Constitution.

Section 2 - The role of Officers

- (1) In making decisions on applications, officers will:
 - give professional and impartial advice
 - make sure that all the information is given that is needed for a decision to be made
 - put the application in context, in terms of the Development Plan and all other relevant material planning considerations
 - give a clear and accurate written analysis of the issues
 - give a clear recommendation, with reasons.
- (2) Officers will give advice only. The exception is if they have been given further powers under the Council's Scheme of Delegation to Officers, or when the Planning Committee gives specific delegated authority.
- (3) Officers are responsible for carrying out the decisions of the Planning Committee.
- (4) The Council endorses the Royal Town Planning Institute Code of Conduct in particular that Chartered Town Planners must not make or subscribe to any statements or reports which go against their own professional opinions.

Section 3 - Discussions with Applicants

- (1) The Council encourages officers to have meetings with prospective applicants before they make an application. To avoid misunderstanding, in most instances these meetings will only involve officers and should only be held at the Council's offices or on site. However, Councillors will be able to participate in pre-application discussions on major planning proposals in instances that accord with the Council's adopted protocol entitled "Member Engagement in Pre-Application Planning Discussions". The only other exception when Councillors will be allowed to participate in planning application discussions will be when the Planning Committee has passed a resolution that meetings will involve councillors. The resolution must have been passed during a meeting with the public present. In all of the above instances minutes of all such meetings must be recorded and inserted in the relevant planning application file, as well as being reported in any delegated officer report or planning committee agenda.
- (2) Officers will chair all pre-application meetings and they shall make it clear at each meeting that:
- only informal opinions and provisional views can be given, and these shall be based on the Development Plan, other Council policy and material planning considerations;
 - no advice or opinions expressed at this time can bind or affect the Planning Committee (or the Head of Professional Services and/or Commercial Services, if he/she is delegated to make the decision) because not all of the relevant information will have been made available at this time.
 - Members are present to ask questions that may clarify elements of proposal and to raise awareness of any issues that their constituents may raise in due course, but they will not take part in any negotiation, which shall remain a role of the relevant officer(s).

Deleted: Head of Environmental and Protective Services

All Council representatives taking part in these discussions will make it clear that decisions on planning applications are taken either:

- by the councillors on the Planning Committee; or
- under specific circumstances by the Head of Professional Services or Commercial Services (as appropriate*) or an officer specified using delegated powers as under the Scheme of Delegation to Officers.

Deleted: Environmental

Deleted: and Protective

(3) The officer will make a written note of all issues discussed at each meeting. If appropriate, the Officer will also send a follow-up letter if the prospective applicant has left documentary evidence with the Council. The Officer will also make a note of any telephone conversations.

(4) If a pre-application meeting involves councillors, at least one officer will be present at all such meetings and a note of the discussion will be made. If an application is then made, the note will be made available for public inspection, as long as this is allowed under the usual rules about access to information.

(5) A note of any discussions will be taken. This will be made available for public inspection, as long as this is allowed under the usual rules about access to information. At least one officer will be present at all such meetings.

* Where "as appropriate" is used in reference to a Head of Service within this document this is to distinguish that only the relevant Head of Service to the team handling the planning case is "appropriate": i.e. The Head of Commercial Services cannot intervene in cases handled by Professional Services and vice versa.

Section 4 - Role of Informal Briefings

- (1) To assist in the decision making process, officers will undertake informal briefings where appropriate to explain underlying issues/policies relating to major development proposals.

Section 5 - Lobbying

(1) It is quite common for people to want to discuss a proposed development with councillors before an application is decided. Given their roles as elected community representatives, councillors should be free to meet with residents and other people not associated with the planning application submission to better understand local opinion. However, to avoid compromising the probity of planning, councillors should not meet an applicant or their appointed agent or architect in connection with a planning application on their own (i.e. without officers being present). In all cases, councillors (and in particular members of the Planning Committee) will:

- not make it known in advance whether they support or oppose a proposal until they have received all the relevant information, evidence and arguments from all sides.
- not publicly express an opinion which could be taken as support for, or opposition to, a proposal by any reasonable person.
- not organise support or opposition for a proposal or lobby other councillors (except when speaking before the committee).
- direct lobbyists or objectors to the case officer.
- inform the Monitoring Officer, Head of Professional Services and/or Commercial Services (as appropriate) and the Chairman of the Planning Committee about the existence of any lobbying interests.

Deleted: Environmental

Deleted: Protective

(2) Councillors who are **not** members of the Planning Committee may express predisposed support for a particular body of opinion before the matter is considered by the committee. But they must make it clear that they will not reach a final view on a proposal until all the relevant information, evidence and arguments have been put before them.

(3) A councillor who had previously expressed support for a particular body of opinion as referred to in Paragraph (2) above who is subsequently substituted onto the Planning Committee will not be able to speak or vote on any item that they have expressed support for in advance. This will also apply if any item is referred to full Council for a decision.

(4) Any member of the Planning Committee (or councillor who is substituted onto the Planning Committee) whose impartiality has been compromised by them expressing a prejudicial view on an application prior to the Committee considering the matter will need to withdraw from the decision-making process. Any councillor who finds his/herself in this position should seek advice from the Monitoring Officer.

(5) Councillors must avoid putting themselves in a position that could lead to the public thinking that they are receiving preferential treatment for themselves, friends or relatives, or for any firm or body they are connected with. The Council's Members Code of Conduct gives more information about this.

Section 6 - Reports to Planning Committee

- (1) Committee papers will normally be available at least five clear working days before the meeting.
- (2) All applications presented to the Planning Committee for decision will have a full written report from officers. This will include:
 - the substance of any objections
 - the views of people who have been consulted
 - a clear explanation of the Development Plan, site and related

- history
 - any other material planning considerations
 - a reasoned consideration of the proposal
 - a clear recommendation.
- (3) Any relevant planning information which is received after the written report has been prepared and prior to 5pm on the day preceding the Planning Committee meeting will be presented to the Committee by officers. Any representations received after 5pm, the specified cut off time will not be presented to the Committee. In the event of significant new information being received after the specified cut-off time, the Head of Professional Services and/or Commercial Services (as appropriate), may recommend that the Planning Committee defers consideration of the application.
- (4) If the circumstances of an application change between the preparation of the report and its discussion by the Planning Committee, the Head of Professional Services and/or Commercial Services (as appropriate), may remove any item from their respective Services that is on the agenda of the meeting.
- (5) If an application is decided in the way an officer's report recommends, the decision will be worded as in the report. Any amendments that officers or councillors put forward at the Committee meeting will be taken into account.
- (6) If councillors disagree with officers' professional advice, then reasons for rejecting this advice must be given as part of a motion to overturn the recommendation. In this situation, the Congruence, Consolidation & Confirmation Report (CC&CR) Protocol should then be followed as set out in Schedule 3. Councillors must be aware that they may have to justify their decision at any appeal and may be held accountable by local residents.
- (7) Applicants and third parties will be entitled to speak at the meeting, as allowed by the Council's "Have your Say" planning procedure.
- (8) There will be an officer from the Council's Corporate Management at all meetings to make sure that procedures are properly followed.

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Deleted: If councillors disagree with officers' professional advice, the reasons for rejecting a report's recommendation must be clearly stated at the meeting and recorded in the minutes. In this situation, councillors need to be sure that their decisions are based on sound planning reasons

Section 7 - Disclosure of interests – Councillors

- (1) The law and the Council's Members Code of Conduct set out rules and guidance for councillors on declaring their interests. Councillors must follow these rules and guidance and also review their own situation regularly. Under the Council's Code of Conduct impropriety must be avoided, and also any appearance of or grounds for suspicion of improper conduct. Where there is the possibility of an allegation of bias or predetermination, councillors must seek advice from the Monitoring Officer.
- (2) Councillors who are unsure whether an interest should be declared must seek the advice of the Monitoring Officer, or the Democratic Services Officer at the meeting.
- (3) Councillors are discouraged from receiving hospitality from people with an interest in a planning proposal. In accordance with the Council's Member's Code of Conduct councillors are required to register any gift or hospitality over the value of £25 on their Notice of Registerable Interest within 28 days of its receipt and declare the nature and existence of the gift and hospitality at the relevant committee meeting for a period of 3 years from the date of receipt.
- (4) Any member of the Planning Committee who has expressed a prejudicial view on an application will not participate in the determination of that application. If they do not wish to make representations in accordance with the Council's Member's Code of Conduct then they will leave the room for the duration of the discussion and vote on the application. If they wish to make representations they may do so as a visiting ward member (provided they are an eligible ward member) or from the public gallery in other instances (only if the public are so entitled) and must leave the room once they have

finished their representations or the Committee decides that they have finished. They must not remain in the room when the vote is taken on the application.

- (5) If a councillor has acted in such a manner as to give rise to an allegation of bias or predetermination they must seek advice from the Monitoring Officer prior to seeking to make any representations or participation at Planning Committee.

Section 8 - Disclosure of interests – Officers

- (1) If an officer has an interest in any planning matter then they must declare this to their Head of Service/Manager in writing. This is recorded on the relevant application file and they must take no part in the processing of the particular matter. Deleted: Planning Service
- (2) No officer will, when exercising a power granted by the Scheme of Delegation to Officers, exercise that power in the case of an application where they have been responsible for writing the report and making the recommendation to the Planning Committee. In these circumstances the officer will refer the case to another officer for advice.
- (3) No officer will deal with any planning application within a radius of 500m of their own property.
- (4) Officers are discouraged from receiving hospitality from people with an interest in a planning proposal. If this is unavoidable, officers will declare its receipt, as soon as possible, in the relevant register of gifts and hospitality. Any concerns in this regard must be raised with the Monitoring Officer.

Section 9 - Applications submitted by Councillors or Officers

- (1) All applications which are submitted by or on behalf of councillors, former councillors or officers or their spouse/partners, will be reported to the Planning Committee for a decision. Wherever this becomes apparent, they will not be dealt with under the Scheme of Delegation to Officers. The Monitoring Officer will be informed of all such applications as soon as it becomes apparent to the Planning Service.
- (2) The councillor (in accordance with the Members Code of Conduct) or officer concerned will take no part in the processing or deciding of the application.

Section 10 - Training

- (1) All councillors must receive training in planning procedures. The subjects covered by the training will be decided by officers in consultation with councillors. A councillor who does not undertake this training will be disqualified from the Planning Committee and from being a substitute for members of the committee who are unable to attend. They will also be disqualified from taking part in deciding an application referred to full council. They will also be unable to participate in any pre-application or planning application meetings that include the developer, applicant(s) or their agent(s).
- (2) A programme of training will be available each year, covering issues of current importance as well as updating knowledge. From time to time, specialist training will be provided to cover particular topics or to look at matters in greater depth.

Section 11 - Complaints and compliments

- (1) Complaints and compliments about the Council's development management process will be dealt with under the Council's corporate complaints and compliments procedure.

Section 12 - Review of this Code of Practice

- (1) This code will be reviewed regularly to make sure that it reflects changes in the law, the Council's structure or other relevant considerations.

AMENDMENT SHEET

Planning Committee
12 September 2013

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.1 and 7.2 131452 and 131453 St John's Ambulance Hall,
Church Road, Wivenhoe

11 further representations have been received. 10 objected to the proposal and 1 supported the proposal. The new material issues raised were the following:

- One representation stated that a small section of the site is not in the applicant's ownership or control.

In response: Land ownership is not a planning matter and therefore would not warrant a refusal of this scheme.

- The Wivenhoe Community Trust (WCT) have submitted a further 11 page representation detailing their own analysis of available community facilities in Wivenhoe.

Replicating the representation in full is beyond the scope of this update sheet. To summarise, it states the following:

The WCT have completed a site by site analysis of the venues the applicant has used in their justification, have produced a comparison graph of the site areas, an analysis of venue suitability and an analysis of hiring availability.

The total floor space as measured by the WCT is 2317.27 square metres as opposed to 4181.965 as measured by the applicant.

The difference in the figure is because the WCT have measured internal floor space only, have not measure the storage areas and toilets, have not measured the top floor of the British Legion, have not measure the ground floor of the Nottage and have removed the Philip Road Centre as it is closed. The Library was also considered to be inadmissible as it is not for hire. Clubs such as the Bowls club and Colne Social Club have been removed as they are not for hire or are not for hire to non-members. The one of the churches have also been removed as has the Masonic Hall.

In response:

- The Spatial Policy Team has seen this additional study but is still satisfied that the scheme meets the requirements of Policy DP4.

The applicant's statement must be assessed in line with the wording of the policy. Policy DP4 does not differentiate between community spaces that are open to the public or to members or at the owner's discretion or where facilities are presently closed or run commercially.

Paragraph 3.11 of DP4 has a list of examples of community facilities and specifically mentions churches and libraries amongst a number of other buildings. Therefore it is entirely acceptable for the applicant to have included these buildings in their report. In terms of the policy it does not matter if the facility is unavailable for hire as the fact it exists contributes to community life which makes it a community facility. There is no requirement to measure the internal floor space, nor is there a requirement to discount the internal storage areas and toilets – these all make up part of a community facility.

It is therefore officer's opinion that the report supplied by the WCT has been based on a set of criteria which is overly restrictive and considerably more restrictive than the policy actually requires. Therefore the scheme does not warrant a refusal on the basis of this report.

- One of the letters considered that the applicant deliberately misquoted the appeal Inspector, deliberately included buildings that do not qualify as community facilities and has incorrectly measured the areas of these facilities.

It also considered the preliminary enquiry advice given by the Policy Team to amount to collusion.

The report before Members set out the applicant's approach and the alternative approach that objectors have demonstrated with their own studies. There are clearly two sides to the argument however in line with the Policy Team's response and the details in relation to the WCT's own report as addressed above, officers consider that the applicant has successfully demonstrated that there is an excess of community provision in Wivenhoe.

The Policy Team did agree the approach and methodology with the applicant prior to the submission. This is entirely acceptable and does not amount to collusion.

- 7.3 131231 Trafalgar Farm, 183 London Road, Stanway, Colchester
- 1) The summary of recommendation at the top of the page should read: "Approve conditional"
 - 2) Paragraph 3.1 should read "Agricultural land just inside Employment Zone...."

7.4 130937 Colchester Golf Club, 21 Braiswick, Colchester

An additional objection comment has been received from No. 11 Braiswick, as follows:

"With regards to the application for the proposed reservoir on the golf course I am aware of discussions going on regarding the potential impact on properties in Braiswick. Whilst we have not formally lodged an objection to the proposals we do have concerns regarding the size, and level of the reservoir and its proximity to our property. As such we would like an undertaking that there will be no impact, as a result of the proposals, on the existing ground water levels in the locality and in particular in the vicinity of our property because as you may be aware there have been issues in the past of water runoff from the golf course causing flooding to our property and those below us in the past. Furthermore we would like clarification that we will not be at risk of stagnant smells or infestation from water borne insects, such as mosquitoes or midges, that are often associated with standing water.

Please provide clarification of what measures have been taken by the applicant to ensure that the above issues will not occur to allay our concerns."

Agenda Item 8 New Braiswick Park, Bergholt Road, Colchester

The Highway Authority confirm:

Of the £121,136 they currently hold they would like to retain £92,000 to provide all or any of the following:

- A pedestrian refuge in Tufnell Way at its junction with Bergholt Road
- 3 no. bus shelters with RTPI on New Braiswick Park
- A continuation of the cycle route from NBP across the station forecourt to the cycle/pedestrian bridge over the A134
-

Also, to cover the cost of the Deed of Variation they would need to retain £2,000.

Based on the above they would be returning to Persimmon Homes approximately £29,136.



Colchester Borough Council Development Control

Advisory Note on Parking Standards

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

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

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

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

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



Colchester Borough Council Environmental Control

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

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

Best Practice for Construction Sites

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

Noise Control

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

Emission Control

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

Best Practice for Demolition Sites

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

Noise Control

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

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

Emission Control

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

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

Class A1. Shops

Use for all or any of the following purposes—

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

Class A2. Financial and professional services

Use for the provision of —

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

Class A3. Restaurants and cafes

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

Class A4. Drinking establishments

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

Class A5. Hot food takeaways

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

Class B1. Business

Use for all or any of the following purposes—

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

Class B2. General industrial

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

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

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

Class C2. Residential institutions

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

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

Class C3. Dwellinghouses

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

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

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

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

Class C4. Houses in multiple occupation

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

Class D1. Non-residential institutions

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

Class D2. Assembly and leisure

Use as —

(a) a cinema,

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

(d) a dance hall,

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

Sui Generis Uses

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

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

Interpretation of Class C3

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

Interpretation of Class C4

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