

PLANNING COMMITTEE
26 APRIL 2012

Present :- Councillor Ray Gamble* (Chairman)
Councillors Peter Chillingworth*, John Elliott*,
Stephen Ford, Peter Higgins*, Theresa Higgins*,
Sonia Lewis*, Jackie Maclean, Jon Manning and
Laura Sykes*

Substitute Member :- Councillor Mike Hardy
for Councillor Christopher Arnold*

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

139. Minutes

The minutes of the meetings held on 29 March 2012 and 12 April 2012 were confirmed as a correct record.

Councillor Sonia Lewis (in respect of her acquaintance with the public speaker, Brian Sinclair, during his former role as the Mayor of Wivenhoe) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Stephen Ford (in respect of his acquaintance with the public speaker, Parish Councillor Brian Sinclair) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Jon Manning (in respect of his membership of Wivenhoe Town Cricket Club) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

140. 120012 and 120013 St John Ambulance Site, Chapel Road, Wivenhoe, CO7 9DX

The Committee considered planning application 120012 together with application 120013 for conservation area consent for the demolition of the superstructure of the existing St John Ambulance building and the erection of a two storey building of mixed use C3 Residential and D1 Gallery/Studio. These applications were resubmissions of 110608 and 110609. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

The Committee had undertaken a site visit on 29 March 2012 in order to assess the impact of the proposal upon the locality and the suitability of the proposal for the site. However, both applications were withdrawn by the Head of Environmental and Protective Services in advance of that meeting in order to give consideration to information which had been submitted after the committee report had been prepared.

Simon Osborn – Planning Officer, Karen Syrett – Spatial Policy Manager, Vincent Pearce – Development Services Manager and Andrew Tyrrell – Planning Manager, attended to assist the Committee in its deliberations.

The Planning Officer drew attention to the additional information on the Amendment Sheet which included reference to policy DP4 Community Facilities and alleged non-compliance with policy together with comments relating to the National Planning Policy Framework (NPPF). He explained the changes made to the scheme which were submitted to address some of the objections to the earlier scheme. He also referred to the extent of the D1 community use during and after the time the hall was used by the St John Ambulance, and the extent to which policy DP4 applied. He advised the committee to consider whether this proposal was in accord with the council's adopted policies.

Brian Sinclair, Chairman of Wivenhoe Community Trust and a former Mayor of Wivenhoe, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He referred to an offer made by the Trust to purchase the building a year ago. He explained that the William Loveless Hall was so heavily booked on a daily basis that they could not accommodate all requests. There were other organisations which had their own facilities but they only had limited availability because the facility was primarily used by the organisation itself. He believed the demolition of the hall would be contrary to the NPPF and challenged the applicant to demonstrate that the proposal would be a genuine community building, that there was an excess of community provision, together with other issues regarding community use both past and proposed in the future. The Trust was in a position to complete within 28 days and they had a business plan, management skills and the prospect of an Essex County Council Big Society grant.

Robert Pomery, Chartered Town Planner, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He described the application as a modest proposal which had been designed to add to the townscape and comply with planning policy. Apart from the offer by Pru Green, there had been no other offers to purchase the property, either from an individual or a group, during the 5 years the property had been for sale. This offer was from a local artist for a modest home above a studio and gallery where she could work, teach and display her work and that of other artists. Whilst the Wivenhoe Community Trust had wanted to acquire the building, he believed it was nothing more than ambition. He believed the proposal was consistent with policies, including DP4, and the proposal would continue a community use. The scheme accords with the up to date development plan and approval was recommended.

County Councillor Julie Young attended and, with the consent of the Chairman, addressed the Committee. She believed it would be difficult to determine whether the proposal complied with adopted policies. She referred to five reasons for refusal of the proposal:- it was overbearing; it did not meet the private amenity space requirements, it did not comply with parking standards, it would impact on a tree which would cause long term disputes; and it would result in the loss of a modest community

building. Wivenhoe Town Council believed the application should be refused. She referred to planning policies DP4 and DP1 and confirmed that the William Loveless Hall was at capacity and could not provide alternative facilities; she did not believe there was sufficient capacity for the needs of Wivenhoe residents. In her opinion the building had made little contribution to the lives of the population, but she believed it would be difficult for the Gilbert and Sullivan Society to find an alternative place to work on their scenery.

Members of the committee were aware that the applicant was a much valued member of the community. Reference was made to the significant increase in the population in Wivenhoe and to the William Loveless Hall being the only hall serving the community. They were also aware of other halls run by various organisations but that those organisations' own needs took precedence over any external bookings. Reference was made to policies DP1, DP4, DP14, UR2 and the NPPF. Members were aware that policy DP4 related to community facilities and the test was whether or not the building had been in community use, particularly since the St John Ambulance use had ceased in 2006. Mention was made of its historical community uses and to more recent community uses. It was recognised that the hall had historical significance within the locality. Wivenhoe Town Council had stated that demolition of this building would be a loss to the community and was therefore contrary to DP4. The Town Council did not believe the hall had been abandoned but marketing of the building had attracted few potential purchasers. There was a view that the proposal for a modern replacement building was contrary to DP1 because it would not fit within the Chapel Road townscape. The officer report highlighted that there was a difference of opinion on whether or not the proposal achieved the aims of UR2. There were also concerns regarding overbearing and amenity space.

The Spatial Policy Manager explained that all parties were in agreement that the hall had been used in the past by St John Ambulance who also hired the hall out to local groups, which demonstrated that the building had functioned as a community asset. However, at the time the building had been put on the market for sale the community use had become more infrequent and informal. Currently there was no connection to water and the hall was in a poor condition. A survey had been undertaken by a film group which indicated that it would cost £400,000 to bring the hall up to the required standard. She also referred to a letter from the St John Ambulance organisation which listed all those parties who had shown an interest in purchasing the property together with any previous users of the hall of which they were aware. She referred to the Wivenhoe Town Plan of 2008 which had been prepared by the local community, and which acknowledged a high level of social activities and community groups. However, she believed it did not do justice to Wivenhoe because she had identified a significant number of clubs and musicians bands/groups, etc., together with a number of venues including the William Loveless Hall, pubs and clubs and other various venues. She also acknowledged that Wivenhoe had undergone considerable expansion in recent years including developments at Cooks Shipyard and the Cedrics site, and although there was space on Cooks Shipyard for a community use there had been no attempt to use or offer the space for such use. She confirmed that the NPPF was a material consideration, however where there was any conflict the existing policies carried full weight for twelve months. The NPPF required that consideration

be given to whether the community would be able to meet its day to day needs in the event that a change of use was proposed. She was also of the opinion that it was a difficult decision on a finely balanced proposal.

In response to a query regarding whether the committee was able to look at potential uses of the building under policy DP4, or whether it was restricted to looking at previous uses, the Spatial Policy Manager explained that the Committee could take into account a potential use but it should relate to any previous use of the building.

The planning officer responded to the five reasons given for refusal of the application as stated by Councillor Young:-

- the proposal failed the tests for overbearing but so did the existing building. However, the amended proposed new building increased the degree of overbearing impact on the neighbour's garden over and above the impact of the existing building, but it was a relatively small additional impact which was not sufficient to warrant a refusal
- the amenity space provided for the new proposal was deficient when compared with the standard. However, there were a number of properties in the vicinity with similarly deficient areas of amenity and there was a public park nearby
- the Tree Officer had stated that the tree was not worthy of a Tree Preservation Order and the impact on the tree cannot therefore be used as a reason for refusal
- the proposal was deficient in parking spaces but the parking standard for a community building would be much higher, and so that was not a good reason for refusal
- DP14 provided for the protection of heritage assets which were in a Conservation Area, but that did not preclude any building in the Conservation Area from being demolished, even if that building was on the local list. Consideration should be given to the particular building and its proposed replacement. In this case, the historic connection with the building was not in dispute, but it had a utilitarian and ordinary appearance. The proposal was a modest two storey building and was considered to be an improvement on what currently existed.

The Planning Manager confirmed that parking provision was a material consideration for the proposed building. The parking standard for residential properties was a minimum whereas the parking standard for a community facility was a maximum. Therefore under the current criteria as a community hall the building did not exceed the criteria.

It appeared to members of the Committee that most of the issues that had been identified did not amount to matters which could be used as reasons for a refusal. However, the community had come together and made it difficult not to refuse this application. The Wivenhoe Community Trust and the Town Council stated that the building was needed as a community facility. There were various sources of funding and the Wivenhoe Community Trust had a plan and had demonstrated it was financially viable. On the other hand the proposal was a private facility which relied on the business of the applicant and how much access she wanted to give to the public.

Taking into account the historical context of the hall and it being within a Conservation Area, the retention of the hall appeared to be a better solution than the proposal.

The Spatial Policy Manager advised that policy DP4, required an alternative facility to be provided to meet local needs, which in this case was the ability to store scenery and meet on a regular basis. The Town Council believed the William Loveless Hall was almost at capacity. The Development Services Manager advised that the Committee should not put too much emphasis on the NPPF, but the proposal should be judged against existing policies. The NPPF did enable communities to build but they would need a neighbourhood plan which they did not have at present. He had seen the hall from the inside and although he was in no doubt that it had been used informally since 2006, he considered that it was currently under used.

Some members of the Committee were of the opinion that although the building had been put to a wide variety of uses throughout its life, it was now untenable. It had been used widely simply because of the altruistic nature of St John Ambulance in allowing the community to use the property, but that was regarded as a legitimate use and needed to be considered. The community had used the hall for painting scenery and rehearsals, but they considered whether the community use was at such a level that the application should be refused. They considered that it did not change the status of the hall and the loss of right for the property developer. The hall was extremely run down with no facilities and only one parking space; anything done to the hall would enhance the area. There was some sympathy with the Wivenhoe Community Trust but St John Ambulance would allow this offer to proceed to its conclusion before looking at other offers. Some members were not convinced that DP4 was applicable.

The Planning Manager advised members of the committee not to introduce reasons for refusal which were not cited for the refusal of the earlier application and that if the committee were minded to refuse the application then it was appropriate and right to cite policy DP4, on the grounds of the loss of community facilities.

RESOLVED (MAJORITY voted FOR) that planning application 120012 and conservation area application 120013 be refused on the grounds that they were contrary to DP4, by virtue of the loss of a community facility.

Councillor Peter Higgins (in respect of being employed by the University of Essex) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Theresa Higgins (in respect of her spouse being employed by the University of Essex) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

141. 120109 Land east of Boundary Road, Colchester, CO4 3SQ

The Committee considered an application for the erection of a new higher education research and training facility comprising 5,550 square metres of D1 floorspace including ancillary facilities with associated car parking and landscaping. The Committee had before it a report in which all information was set out.

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

RESOLVED (UNANIMOUSLY) that the application be approved with conditions and informatives as set out in the report.

142. 120151 University of Essex, Wivenhoe Park, Colchester, CO4 3SQ

This application was withdrawn from consideration at this meeting of the Planning Committee by the Head of Environmental and Protective Services in order that the design and Section 106 Agreement issues could be explored further. The application would be reported to the Committee at a subsequent meeting.

143. 100927 Land to rear of 19 and 21 Empress Avenue, West Mersea, CO5 8EX

The Committee considered an application for an extension of time for the implementation of outline planning permission O/COL/05/1024, a proposed new bungalow with a detached garage on plot 1. The Committee had before it a report in which all information was set out.

Nick McKeever, Planning Officer, and Vincent Pearce, Development Services Manager, attended to assist the Committee in its deliberations.

Jennifer Taylor addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She was concerned that the site plan shown in the agenda had been interpreted as land owned solely by the applicant, but she believed it was only acceptable as an indication of the site. The planting of the drive was her ultimate responsibility as confirmed in the case officer's report. The applicant had claimed ownership of the entrance drive, so she had registered her interest with the land registry and requested that the Committee include a copy of her land registry title to avoid any further misinterpretations. She had brought with her a number of documents which proved the extent of her ownership.

The planning officer explained that the Unilateral Undertaking had been agreed on the basis of the plan shown on the screen. The applicant had correctly submitted the appropriate Certificate of Ownership Certificate B which confirmed that other parties owned land on which the application was made. It was not possible to revisit the condition relating to planting either side of the access drive which was attached to the 2007 permission. However, when the applicants came to implement and discharge the condition there was nothing to preclude them from negotiating with Mrs Taylor and

all parties concerned coming to a mutual agreement. However the Development Services Manager requested that the Committee defer consideration of the application to allow officers to check the situation regarding conditions and landscaping issues.

RESOLVED (UNANIMOUSLY) that consideration of the application be deferred to allow officers to check the validity of previous conditions and landscaping issues, particularly retention of established flora.

144. 120158 Fieldings, School Road, Little Horkesley, CO6 4DT

The Committee considered an application for the demolition of a double garage and the erection of a new double garage of a larger plan size, but with the same depth and height. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

RESOLVED (UNANIMOUSLY) that the application be approved with conditions and informatives as set out in the report.

145. Air Quality Management Areas // Briefing Note

The Head of Environmental and Protective Services submitted a report on Air Quality Management Areas (AQMA) which included a map and description of the four locations now the subject of an AQMA and the implications for future reporting of planning applications to the Committee.

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

RESOLVED (UNANIMOUSLY) that –

(a) The designation of four new Air Quality Management Areas within Colchester Borough brought into effect on 5 January 2012 be noted.

(b) The requirement for Air Quality Impact Assessments to be submitted with planning applications where it was considered appropriate and reasonable by the Planning Service in association with the Air Quality Officer, be agreed and endorsed.

(c) Air Quality Management Areas awareness be included in the 2012 planning workshops for members.

146. Performance Monitoring for the period 1 April 2011 to 31 March 2012 // Planning application determination and Appeals performance

The Head of Environmental and Protective Services submitted a report on

determination of planning application performance and appeals performance for the period from 1 April 2011 to 31 March 2012 judged against former key National Indicators (NI's) and important current local indicators.

In respect of Major, Minor and Other applications the actual percentage of applications determined within the relevant target time were higher than both the national target and the local target. These figures represented outstanding performance throughout the year and demonstrated that improved performance was now being sustained. It was also noted that this level of performance was achieved in the climate of an increase of 1.3% in the number of applications received compared with the year to March 2011. In respect of Household applications, whilst there were no national or local targets, the percentage determined exceeded the former national indicator NI 188.

In respect of appeals performance, the council lost only 18.8% of appeals and none of the appeals lost had resulted in an award of costs against the council. In addition no Ombudsman complaints of maladministration were upheld against the Planning Service.

Vincent Pearce, Development Services Manager, attended to assist the Committee in its deliberations. He added that Colchester still had economic viability and buoyancy and was attracting internationally recognised architects.

The Chairman noted that the performance results were outstanding and credit was due to all officers within the planning team together with members of the Planning Committee. On behalf of the Committee he asked the Development Services Manager to pass on their congratulations to all staff in the planning team.

RESOLVED (UNANIMOUSLY) that –

- (a) The planning application determination performance and appeals performance be noted.
- (b) The Planning Committee members' congratulations be conveyed to all staff in the planning team on their performance statistics for the year 1 April 2011 to 31 March 2012.

147. Members Call-in Procedure // Changes to the process

The Head of Environmental and Protective Services submitted a report on a proposed change to the members "call-in" procedure whereby members can ask for an application to be determined by the Committee rather than being determined by officers under the scheme of delegation.

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

The proposed change would extend the period within which members would be

permitted to "call-in" an application for determination by the Committee. The purpose of this change was to permit members to review all representations made, in order to make an informed decision on whether or not to "call-in" the application. It was proposed to extend the period from 21 days to 25 days from the date of being formally notified.

It was also intended to extend the member "call-in" facility to include those cases where the Planning Service had formally re-notified owner/occupiers/parish councils following receipt of accepted revisions prior to determination of an application. In such cases it was proposed that the member "call-in" period be extended to two calendar days beyond the time given to owner/occupiers/parish councils.

Members of the Committee welcomed this proposal as an improvement to the Scheme of Delegation to Officers. However some members had found it difficult to access the council's intranet system (The Hub) in order to register a request for a call-in. It was also suggested that the wording be amended to reflect that the application was being called-in on behalf of residents. Officers advised that when members were calling-in an application they should record that they were doing so on behalf of their residents.

It was explained that the process by which all members can access The Hub had not yet been resolved corporately. However, planning officers were working with ICT colleagues to give councillors a webpage. Members wanted the technical issues around the call-in process resolved.

RESOLVED (UNANIMOUSLY) that –

- (a) The initial notification period for the member "call-in" facility be extended to 25 calendar days from the date of initial formal notification be agreed.
- (b) The member "call-in" process be extended to include those applications where the Planning Service had decided to formally re-notify owner/occupiers/parish councils following the receipt of accepted revisions prior to determination of an application. In such cases the member "call-in" period will be the time given to owner/occupiers/parish councils plus two calendar days.
- (c) The revised "call-in" process be introduced on or prior to 1 June 2012 and on-going technical difficulties regarding the process be noted and efforts be made to find a resolution.
- (d) The Legal Services Manager and Monitoring Officer be instructed to make such changes to the Constitution/Committee Procedures as appropriate to formally facilitate these changes into the Adopted Council Governance.

148. Scheme of Delegation to Officers // Section 106 Agreements

The Head of Environmental and Protective Services submitted a report on a proposed change to the Scheme of Delegation to Officers in respect of minor

material applications which required linking to Section 106 Agreements.

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

The proposed extension to the Scheme of Delegation to Officers would enable minor material amendment applications that effectively required linking to an existing Section 106 Agreement, to be determined by officers instead of having to be determined by the Planning Committee. The applications affected were those which were by their nature minor and unlikely to generate any new demands on the original Section 106 Agreement. However, excluded from these provisions would be those situations where an applicant submitted a minor material amendment application to amend an existing extant planning permission that was already the subject of a Section 106 Agreement.

The Development Services Manager referred to the Amendment Sheet which set out a further extension to the current Scheme of Delegation to Officers to include applications for renewal of an extant planning permission which was the subject of a valid Section 106 Agreement where there had been no material change of circumstance since the original planning application was considered or when the original agreement was signed. Material factors include changes to relevant adopted planning policies or guidance, relevant impacts arising from the adoption of a Community Infrastructure Levy regime in the future and relevant physical contextual changes on or around the site.

RESOLVED (UNANIMOUSLY) that –

(a) The following amendments to the Scheme of Delegation to Officers (the Head of Environmental and Protective Services) be agreed as two additional categories:-

- “Where a minor material amendment application that requires a new Section 106 Agreement that is to all intent and purpose a mirror of an extant Section 106 Agreement (or a variation of an existing Agreement) without a material change to Obligations being entered into by the parties who are signatories (or where such changes are already allowed without referral to the Planning Committee by virtue of paragraph 23 of the delegated powers) then delegated authority is given to the Head of Environmental and Protective Services to determine that application provided that to do so does not conflict with other restrictions within the Scheme of Delegation.”
- "Where a renewal of planning consent/permission application that requires a new Section 106 Agreement that is to all intent and purpose a mirror of an extant Section 106 Agreement (or a variation of an existing Agreement) without a material change to Obligations being entered into by the parties who are signatories and where in judging the merits of the proposal there has been no material change in circumstances since the original planning application was considered or when the original agreement was agreed (or where such changes are already allowed without referral to the Planning Committee virtue of paragraph 23 of the delegated powers) then delegated authority is given to the Head of Environmental and Protective Services to determine that application

provided that to do so does not conflict with other restrictions within the Scheme of Delegation.

Material factors that may constitute a change of circumstance include changes to relevant adopted planning policies or guidance, relevant impacts arising from the adoption of a Community Infrastructure Levy regime in the future, and relevant physical contextual changes on or around the site.”

(b) The Legal Services Manager / Monitoring Officer be instructed to take the appropriate steps to secure the formal amendment of the Constitution to reflect the change desired by the Planning Committee as described in (a) above.