

PLANNING COMMITTEE 26 AUGUST 2010

- Present :-* Councillor Theresa Higgins* (Chairman)
Councillors Peter Chillingworth*, Helen Chuah*,
Andrew Ellis*, Stephen Ford*, Jon Manning*,
Philip Oxford*, Ann Quarrie and Laura Sykes*
- Substitute Members :-* Councillor Richard Martin for Councillor John Elliott*
Councillor Barrie Cook for Councillor Ray Gamble*
Councillor Wyn Foster for Councillor Jackie Maclean
- Also in Attendance :-* Councillor Kevin Bentley
Councillor Bill Frame
Councillor Martin Goss
Councillor Mike Hardy
Councillor Pauline Hazell
Councillor Sonia Lewis
Councillor Sue Lissimore

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

70. Minutes

The minutes of the meeting held on 12 August 2010 were confirmed as a correct record.

71. 101378 30 St Clare Road, Colchester, CO3 3SZ

The Committee considered an application for the temporary use of a new garage to make it habitable for the duration of the development permitted by planning application 090785. The Committee had before it a report in which all information was set out.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations. She acknowledged the neighbour's concerns which were understandable. She reported an amendment to Condition 1 to include all temporary doorways and internal fittings and fixtures to be removed and the building restored to its original floor plan and elevation treatment. Condition 2 to be amended to clarify that the only change to the external appearance of the garage is the front and rear doorways as described in this application as shown on the drawing received on 25 August 2010.

Councillor Hardy attended and, with the consent of the Chairman, addressed the Committee. He referred to the possibility of policy UEA21, Areas of Special Character, being compromised. The policy provided protection for the trees, open spaces and other aspects of the environment in the area, and enabled any development leading to a loss of that character to be refused. He also referred to a restrictive covenant dated 1924 which required the protection of the area. If this was an application for a dwelling on this site it would be refused under delegated powers, but this is an application for

the conversion of a garage and when the use ceases the shell and utilities for a dwelling would remain. He agreed that this was a better solution for the area but he also believed it left the council vulnerable. He considered the mobile home gave the best protection for the area and avoided any compromise.

Members of the Committee acknowledged the concerns but the development was in a Special Character Area and was a substantial development. It was probably in the best interests of all concerned that there was residential occupancy on the site because that provided a more suitable accommodation which was protected by condition. If it was intended to remain as a dwelling after completion of the development a further planning application would be required.

The planning officer suggested an additional condition to specify that once the residential use had ceased it should be used only as a garage and should be retained as such and not converted to any other incidental residential use.

RESOLVED (UNANIMOUSLY) that the application be approved for two years temporary use expiring on 31 August 2012 with conditions and informatives as set out in the report together with the following amendments to Conditions 1 and 2 and an additional condition:-

Condition 1 – after “all temporary doorways” add “and all internal partitions and fittings” and after “elevational treatment” and “and internal floor plan”.

Condition 2 – after “application documents” delete rest of condition but add “as shown on the layout drawing received on 25 August 2010”.

Additional Condition – to require the garage, once the residential use ceases, to be used only for garage purposes and to be retained as such and not converted to any other incidental residential use.

72. 091245 Bellwood, Colchester Road, Great Wigborough, CM9 8HG

The Committee considered an application for a proposed conservation woodland and meadow with support facilities comprising a tractor/grass cutter storage shed with internal toilet area and an implement store. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

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.

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

Councillor Bentley attended and, with the consent of the Chairman, addressed the Committee. It had taken eight months for the applicant to provide an explanation about planting the woodland and a justification for the buildings. The explanation regarding the woodland should have included a timetable for planting, establishing and

maintenance. He considered the buildings were excessively large and there was still no explanation about the need for a toilet and washroom given the size of the field. The site was part of the Coastal Protection Belt and should be retained as open countryside. He did not consider that all the information requested had been provided and asked the Committee to refuse the application or defer the matter for the submission of the required information.

It was explained that the applicant's responses to the request for information had been reported as submitted and that the applicant had been in discussions with the borough and parish councils. This matter was extremely complicated with a complexity of associated planning issues and enforcement issues. It was also explained that compared to modern farm buildings these structures were quite modest. The principal concern was the 12metre building in the Coastal Protection Belt which states that only in exceptional circumstances are buildings permitted.

Members of the Committee remained concerned about the site being in a Coastal Protection Belt. They believed that other agencies would be able to plant up to 2,500 trees in days and the Committee struggled to believe it would take two years. There did not seem to be any justification for the toilet, and on the grounds that there would be very little required in the way of large implements one building should be sufficient. They acknowledged that once planted, the trees would require monitoring and failed trees would need replacing, but it would mainly be a question of waiting for the trees to grow. They believed some of the tree species proposed were not suited to the soil conditions nor to the proximity to the coast and they asked for an independent assessment of the proposals by the Council's tree officer.

RESOLVED (UNANIMOUSLY) that –

(a) Consideration of the application be deferred for consultation with the Landscape Officer and other Council specialists as appropriate to assess the information submitted in respect of the managed woodland aspect of the application. To consider in particular whether the tree species are appropriate for the soil conditions and proximity to the coast; whether the buildings proposed are justified; the work requirements and timescale, including monitoring and management; and the siting of the buildings.

(b) Upon the receipt of the response to the consultations, the matter to be referred back to the Committee for a decision.

73. 101267 6 Braiswick, Colchester, CO4 5AX

The Committee considered a retrospective application for the retention of an unauthorised storage building erected early in 2009. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

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.

Alistair Day, Principal Planning Officer, attended to assist the Committee in its deliberations.

Gavin Holt addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He was concerned that if a section of the hedge had to be removed to resolve an ongoing subsidence problem the visual impact would be increased. He referred to the start date of the 28 day period and wanted to know what would happen if deadlines were missed. In regard to the provision of parking spaces he hoped that the Committee would seek the views of the Highway Authority who did not appear to have been consulted on this application. The report stated that the applicant had erected a building which, under planning rules would not have been permitted as it was so close to the tree. It appeared that the applicant was determined to develop the site and he was concerned that it would indicate to other developers that they too could ignore the planning procedures.

Steve Harbrow addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He apologised for not submitting a planning application; he and his professional advisors had not realised that permitted development rights had been withdrawn from the site. Building Control inspectors had viewed the building and advised that it would come within permitted development rights if they were retained on the site. He was aware of the situation regarding the structural damage and believed that the best solution was to removal of the hedge to prevent further damage. Nothing had changed in respect of the parking provision and it was still possible to enter and leave the site in a forward gear. The building would be used for domestic storage.

Councillor Goss attended and, with the consent of the Chairman, addressed the Committee. The area comprised a mix of housing types with a settled community. He questioned the motives for the building. He considered it was a massive over development of the site; the building was monstrous and showed disregard and disrespect for the planning process which should not be tolerated. The parking provision was extremely tight and he believed it would result in cars being reversed out into the road. He considered the site was untidy and was concerned that the weatherboarding may not be maintained properly in keeping with the area; he asked for a condition in this regard. He referred to gas and electricity being provided in the shed and questioned the purpose of the shed.

It was explained that the removal of the hedge was related to an insurance claim for subsidence, but if the hedge was removed the owners could erect a boundary fence up to two metres. The conditions would take effect within 28 days of the date of the planning notice and thereafter the applicant would be in breach of the conditions if not complied with. The tree was not protected and could be felled, but if the application had been submitted in the usual way the council may have sought to reposition the building away from the tree. Reference was also made to the proposed conditions securing satisfactory treatment of the tree and an additional condition could be added to require a replacement tree if it died within five years. In response to the Committee's query it was explained that in principle there was no objection to the erection of a building in the rear garden and the application would be assessed on the basis of whether it complied with the local plan policies, the Essex Design Guide and

the usual impacts on neighbouring properties. In this instance it did not infringe the amenity of adjacent buildings and if the correct process had been followed it would still be acceptable as a storage building.

Members of the Committee considered the site visit and visits to the neighbours' gardens to have been very useful and some reservations had been removed as a result, particularly those regarding the impact on neighbours' amenity. The neighbours' concerns regarding the view from their properties was understood but so was the fact that a view was not a planning consideration. Referring to the appearance of the building, a weatherboarding cladding in a dark colour was preferred, for example black, brown or green was considered to be essential and the existing white plastic should also be replaced with something less stark. In response to a query regarding the Committee's preference for all three flats to have the use of the storage building, it was explained that it would be necessary to consult the applicant and come back to the Committee if it was only for the use of one flat.

RESOLVED (UNANIMOUSLY) that –

(a) Consideration of the application be deferred for confirmation from the applicant that the storage building will be available for the use of occupants of all three flats.

(b) Upon receipt of confirmation that the storage building will be available for the use of occupants of all three flats, the application be approved with conditions and informatives as set out in the report and including the following amendments:-

Condition 1 be amended to include reference to all three flats.

Condition 6 to be amended so that in the event of any tree dying or being removed as a consequence of the approved development within 5 years from the date of the planning permission, it shall be replaced in accordance with details submitted to, and in agreement in writing with, the Local Planning Authority.

(c) In the event that the storage building will be available only for the use of occupants of only one of the flats, the application to be referred back to the Committee for a decision.

74. 091539 Land to rear of 185 Shrub End Road, Colchester, CO3 4RG

The Committee considered an application for a change of use of a log cabin from ancillary residential use to a training room in connection with the child care nursery. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

Alistair Day, Principal Planning Officer, attended to assist the Committee in its deliberations. He explained that at the previous meeting amongst other issues, the Committee had sought guidance in respect of various issues and the applicant had sought to address these in the letter appended to the committee report. The recommendation was for a temporary approval in order that the use could be monitored

for any disturbance to nearby residents.

Dr Atul Shah addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He lived and worked immediately adjacent to the application site and would be directly affected by any noise and disturbance. He had suggested to the applicant that her residential property be used for the training but the applicant did not consider the suggestion to be commercially viable. In respect of the written evidence provided by the applicant in response to the Committee's earlier request for further information about the training activity to be verified by an independent party. In the event that the Committee were minded to approve the application he sought reassurance that he would not be required to monitor the activity and that measures would be taken to curtail excessive noise or any unauthorised activities.

Catherine House addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. She spoke about the work of the nursery over the last 25 years and their contribution in respect of enabling students to gain practical qualifications; this facility would enhance their training facilities. She gave a reassurance that the cabin would only be used between the hours of Monday to Friday from 9am to 5pm and any profit from the training would be used to subsidise childcare fees. She was willing to operate with the temporary permission and would work with neighbours to overcome any difficulties that may arise from the activity. The officer report had concluded that the use was unlikely to cause undue disturbance and that there was no planning reason for a refusal.

Councillor Lissimore attended and, with the consent of the Chairman, addressed the Committee. This issue had been ongoing for many years and with some resentment from residents remaining from the construction of the log cabin. It was acknowledged that there were a number of business premises in the road but residents from other streets should not have to tolerate unacceptable nuisance. She referred to the comments made by the Council's Environmental Control team who considered that 20 pupils may create too much noise and if windows were open it would impact on the surrounding area. She was also concerned about the behaviour of pupils in the outside areas during break times and about the building itself being used for this purpose. Information that the building was fit for purpose had still not been received. She wanted the application to be refused, but if it was to be approved she wanted the permission to be temporary, the door closest to the neighbour to be used only for emergencies, the hours of use to be 9am to 5pm and the use to be limited to a maximum of 15 people. She was pleased that Springlands was a successful business but did not want it to be at the detriment of local residents.

It was explained that the building has been accepted as currently forming part of a residential curtilage and as such was a structure that could be erected under permitted development rights without needing planning permission. Members of the Committee should consider whether the change of use would have a detrimental impact on the surrounding area and a one year temporary permission had been suggested by Environmental Control to enable any such impact to be quantified. However, it would be incumbent upon neighbouring residents to make the Council aware of any noise issues by keeping a formal log. The issue of whether the building was fit for purpose

was not a planning issue and the applicant would need to consult Health and Safety Regulations or other appropriate bodies in this matter.

Members of the Committee supported the amended and additional conditions to achieve the revised hours, the use of the rear door for emergency purposes only, and with the suggestion that Council officers make unannounced visits to take noise readings they were satisfied that the neighbour's concerns had been addressed regarding the premises and their operation and the temporary period would enable the operation to be monitored.

RESOLVED (MAJORITY voted FOR) that the application be approved with conditions and informatives as set out in the report with Condition 2 being amended to read 9.00am to 5.00pm, and an additional condition restricting the door in the rear elevation to emergency use only.

Councillor Andrew Ellis (in respect of the applicant being well known to him) declared a personal interest in the following item which is also a prejudicial interest pursuant to the provisions of Meetings General Procedure Rule 7(10) and he left the meeting during its consideration and determination.

75. Enforcement Action // Pantile Farm, Peldon Road, Abberton, CO5 7PD

The Head of Environmental and Protective Services submitted a report on enforcement action which had been taken under delegated authority. The Committee had before it a report in which all information was set out, see also Amendment Sheet.

Sue Jackson, Principal Planning Officer, attended to assist the Committee in its deliberations. She referred to the Amendment Sheet which reported the progress made on the site since the report had been published. The enforcement team has had further discussions with the owner who has employed legal advice. The owner has agreed that the open storage on the site has taken place and on that basis he has agreed to submit a planning application for the unauthorised building and a second application in respect of the unauthorised storage, both to be submitted within two months. If they are not received within that time, or received within the period but refused, enforcement action will proceed as authorised on 17 June 2010.

Members of the Committee were content with the proposals offered by the owner which they considered was a much improved solution and regularised the uses on the site.

RESOLVED (MAJORITY voted FOR) that –

(a) The service of an enforcement notice as authorised at the Committee's meeting on 17 June 2010, see minute no. 27, be deferred to allow a period of two months for the submission of planning applications to regularise some of the unauthorised structures/uses within the site.

(b) If the planning applications are not received within two months, or if the planning applications are received within two months and refused, the Head of Environmental and Protective Services to take any enforcement action required and authorised on 17 June 2010 in line with the legal advice obtained.

76. Endorsement of Section 106 Agreement // Garrison Urban Village Development (O/COL/01/0009)

The Head of Environmental and Protective Services submitted a report seeking authorisation to issue planning approval notices for the conversion and alteration of retained Garrison buildings with a Section 106 agreement that links the said applications to the main Garrison legal agreement where the decision would otherwise be delegated, that is no objection is raised and/or there is not a requirement for additional Section 106 obligations. The Committee had before it a report in which all information was set out.

Alistair Day, Principal Planning Officer, attended to assist the Committee in its deliberations.

RESOLVED (UNANIMOUSLY) that the Head of Environmental and Protective Services be authorised to issue planning approval notices for the conversion and alteration of retained Garrison buildings with a Section 106 agreement that links such applications to the main Garrison legal agreement.

77. Variation to Legal Agreement // Land to rear and west of Essex Hall Road, Colchester

The Head of Environmental and Protective Services submitted a report seeking authorisation for a variation to the legal agreement accompanying application 082124 which achieves a reduction in the open space, sport and recreational facilities commuted sum associated with the above proposal from £138,154 to £59,234.80. It had been confirmed that this represented the correct sum for landscape maintenance having regard to the character and layout of the open space provision at the site. The Committee had before it a report in which all information was set out.

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

David Madden addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that the original financial contribution towards the maintenance of open space was based on a predominantly urban area, but following discussions it had been confirmed that the scheme to be delivered would have a rural character which was more appropriate as the site was some way from the town centre. A rural scheme has a reduced maintenance requirement and this was the correct contribution for the scheme to be provided.

Councillor Frame attended and, with the consent of the Chairman, addressed the Committee. He referred to the original Section 106 Agreement which contained £60,000 provision for a wildflower grass which seemed to have disappeared. This open space provision appeared to have changed character from urban to rural without anyone being notified. He considered that the developer appeared to be threatening the council by suggesting they may not go ahead with the development if the council insisted that they pay the larger sum. It may send a message to other developers that the council will accept a lower figure if threatened.

The planning officer explained that it was not a question of the developer trying to get out of his responsibilities; all other elements of the Section 106 Agreement remained in place. The Parks and Recreation Team apply a scale of contributions depending on the work required and in this case it is an area devoted to meadowland which may be cut once or twice a year which will support the ecology of the area and encourage wild flowers. It is not a reduction but an appropriate contribution for this type of open space and if members insist on the larger amount it is likely that the applicant may not proceed with the development.

Vincent Pearce, Planning Service Manager, added that the Council has been recognised nationally for best practice in monitoring all Section 106 Agreements and have trained a significant number of other councils. The Council is scrupulous in ensuring it can not be challenged by virtue of acting unreasonably and it operates a strict regime on behalf of the community.

Members of the Committee supported the reduction because in their opinion it was an administrative correction.

RESOLVED (UNANIMOUSLY) that the Head of Environmental and Protective Services be authorised to vary the legal agreement as set out in the report.