

# Planning Committee

Council Chamber, Town Hall  
15 May 2014 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.

## 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**  
**15 May 2014 at 6:00pm**

**Members**

Chairman : Councillor Theresa Higgins.  
Deputy Chairman : Councillor Helen Chuah.  
Councillors Peter Chillingworth, Sonia Lewis, Cyril Liddy,  
Michael Lilley, 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 Christopher Arnold, 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, 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 applications in which they are interested. Could members of the public please note that any further information which they wish the Committee to consider must be received by 5pm 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**

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

## **5. Declarations of Interest**

The Chairman to invite Councillors to declare individually any 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**

**1 - 12**

To confirm as a correct record the minutes of the meeting held on 24 April 2014

## **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.

- |  |                       |
|--|-----------------------|
| <p>1. 142481 5 Queens Road, West Bergholt<br/>(West Bergholt and Eight Ash Green)</p> <p>Stationing of a mobile trailer for hot food takeaway sales</p>                              | <p><b>13 - 32</b></p> |
| <p>2. 142131 Haye Yard, Upper Haye Lane, Fingringhoe<br/>(Pyefleet)</p> <p>Erection of single dwelling in place of mobile home builders yard and scrapyard</p>                       | <p><b>33 - 50</b></p> |
| <p>3. 132247 Lexden Wood Golf Club, Bakers Lane, Colchester<br/>(Lexden)</p> <p>Landscaping and re-modelling of existing golf course, with the addition of Adventure Golf Course</p> | <p><b>51 - 66</b></p> |
| <p>4. 143672 Meadowside Lodge, Olivers Lane, Colchester</p>  | <p><b>67 - 71</b></p> |

(Stanway)

Canopy to front entrance

## **8. 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

24 April 2014

*Present:-* Councillor T. Higgins\* (Chairman)

Councillors Chillingworth\*, Lewis\*, Liddy\*, Lilley,  
Maclean, Manning, P. Oxford and L. Sykes\*.

*Substitute Members:-* Councillor Cook\* for Councillor Chuah,

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

## 135. Minutes

The minutes of the meetings held on 20 March 2014 were confirmed as a correct record.

**Councillor Manning (in respect of his employment at a school in the proximity of the application site) declared a pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination.**

**Councillor T. Higgins (in respect of her children being alumni of Colchester County High School for Girls) declared a non-pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5).**

## 136. 131604 Former ECC Offices, Park Road, Colchester CO3 3UL

The Committee considered an application for the erection of 31 dwellings, the creation of a new vehicular access via Park Road and the provision of an access road to the development, refuse and bicycle store, landscaping, public open space and groundworks.

The Committee had before it a report in which all information was set out together with additional comments on the 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.

Peter Dodgson addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He expressed concern that the applicants indicated that the boundary of the site extended to the edge of the greensward on Park Road.

If the greensward were to disappear, this would be to the detriment of the street scene in Park Road. He suggested that boundary of the site be shown with hedging or fencing with the greensward maintained as it was, except for the access roads and drives running across it. If this could be secured, this would help make the scheme more acceptable to local residents.

David Bradley addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He indicated that the application had originally been submitted in 2013 but a series of meetings with officers had led to an improved scheme. The site had previously been developed and therefore was suitable for development. The demolition of the existing buildings had improved the amenity of the area. The development was low density with large gardens. The proposed access was safe and there was no objection from the Highway Authority. He confirmed the applicants had right of access to the site. He confirmed that with the exception of access roads, no development was proposed for the greensward. All planting would be on site. A section 106 contribution would be made to allow affordable housing to be provided off site.

Members of the Committee were pleased to note that the developers had listened to the concerns of residents and made improvements to the scheme to meet those concerns. However, the Committee sought reassurance that the concerns of the residents of Park Road about the protection of the greensward (verge to street frontage) would be met, possibly through the withdrawal permitted development rights to the front boundary of the site. Whilst it was necessary for the boundary between the site and the greensward to be marked, this needed to be done in a way that did not detract from the open character of Park Road. Members also noted the concerns of Mossfield Close who claimed that the revisions to the site plan had moved plots nearer to the rear of their properties. It was noted that the section 106 contribution would be used for the provision of affordable housing off site but there was also a pressing need for investment in education facilities in the area

The Principal Planning Officer highlighted the efforts the applicants had made to ascertain the ownership of the land along the frontage of Park Road and that they were confident they had right of access. In any case, it was not for the planning system to resolve disputes about land ownership. The Principal Planning Officer explained that the proposed plots were sufficiently distant from properties on Mossfield Close and that no overlooking or amenity issues arose. The application had been considered by the Council's Development Team who had considered that the section 106 funding should be directed towards affordable housing, which was the one of the Council's key strategic priorities. If any section 106 funding was left following the provision of the affordable housing, this would be directed toward education provision. She confirmed that the greensward on Park Road would be retained with planting along the front boundaries of the gardens. However an additional condition could be imposed to control the means of enclosure to the frontage on Park Road to help protect the verge and maintain the character of the street scene.

*RESOLVED* (UNANIMOUSLY) that –

(a) The application be approved subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Commercial Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

- a commuted sum of £509,416 to be provided to the Borough Council for the provision of affordable housing across the Borough to meet the policy requirements

for this site. If following the provision of affordable housing there is any of the contribution remaining it will be passed to Essex County Council for use as a contribution towards the provision of education

- a revised viability assessment to be undertaken, should the development have not commenced within 18 months from the date of the grant of planning permission, through a review mechanism.
- agreement to form a management company whereby the roads are maintained to a suitable level and retained as fit for purpose
- agreement to form a management company whereby the public open space is maintained to a suitable level and retained as public open space thereafter.

(b) On completion of the legal agreement, the Head of Commercial Services be authorised to grant planning permission subject to the conditions and informatives set out in the report and the Amendment Sheet, together with an additional condition withdrawing permitted development rights for front boundary means of enclosure on the grass verge to protect the verge and the streetscene.

### **137. 141087 62 Brook Street, Colchester CO1 2UT**

The Committee considered an application for the erection of 12 dwellings, the provision of a new access road, the upgrading of the right of way and other ancillary development.

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.

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

Jane Clarke addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She urged the Committee to refuse the application on traffic noise and air pollution issues. The application would generate more traffic and increase air pollution in an area where air pollution levels already exceeded European Union limits. Traffic levels on Brook Street were increasing and resulting traffic queues were increasingly frequent and longer. The poor visibility and speed of traffic would make it difficult to pull out safely onto Brook Street from the proposed access. The proposed traffic islands would reduce the on street parking provision on Brook Street. The application would lead to the loss of trees and habitats for small animals

Councillor Frame attended and, with the consent of the Chairman, addressed the Committee. He explained that he had called in the application, despite it being recommended for refusal due to concerns on air quality. He noted the comments from Environmental Protection but stressed that there was a very real problem with air quality on Brook Street and that the traffic generated by the proposed scheme must create further air pollution. This site was a green lung for Brook Street and should be retained in its current state. He considered that air quality issues should be added to the reasons for refusal of the application.

Councillor Hayes attended and, with the consent of the Chairman, addressed the Committee to support the representations made by Jane Clarke and Councillor Frame. She stressed the air

quality was an important health issue. It was not just a technical issue, but had a real impact on people's lives. The duty under the Environment Act to take action on air quality should impinge on planning issues. The application also posed a flood risk as the proposals for a ditch to deal with water runoff were inadequate

The Principal Planning Officer explained that whilst Brook Street was included in the Borough's Air Quality Management Area (AQMA), Environmental Control was not recommending refusal as the development did not include frontage development to Brook Street. Environmental Control's view was that whilst the proposed development would lead to increased traffic, the percentage increase was small. Therefore a refusal on air quality issues would not be sustainable. However, it was confirmed that the policy would be reviewed in light of this application. She also was confirmed that the Flood Risk Assessment submitted complied with Environment Agency advice.

The Committee noted this advice but requested that an informative be added to the refusal highlighting the adverse impact of the proposal on the AQMA and the impending revision of the Council's policy. The Committee also highlighted the other concerns about the proposal set out in the report and noted the objection from the Highways Authority. Whilst there was a need for affordable housing, this needed to be of higher quality than was proposed by this development.

*RESOLVED (UNANIMOUSLY)* that the application be refused for the reason set out in the report with an additional informative to be included highlighting the adverse impact of the proposal on the AQMA and the impending revision of the Council's policy.

### **138. 142148 9 Walters Yard, Colchester**

The Committee considered an application for the erection of a new 1 bedroom detached dwelling with basement, following the expiry of the permission granted under 090732.

The Committee had before it a report in which all information was set out including additional comments on the Amendment Sheet.

Mark Russell, Principal Planning Officer, and Simon Cairns, Planning Projects Manager, attended to assist the Committee in its deliberations.

Susan Jennings addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She explained that historically, no building had been built on this site. The site was in a conservation area, with three listed buildings in the near vicinity. It would also prevent any renovation work to the listed wall running between the site and 59 West Stockwell Street. The garden of 59 West Stockwell Street was higher than the plot and contained a sink well. The proposed design was out of character and out of context with the area. The work to clear the plot had led to damage to neighbouring properties and building works would be hugely disruptive to other properties on Walters Yard. For instance it would be likely to block access to emergency vehicles.

Councillor Frame attended and, with the consent of the Chairman, addressed the Committee. He stressed that the development was completely out of context with the conservation area and he disagreed with comments about the design in the Committee report. Whilst it was only a small site, the development would cause huge problems. Construction would be very

difficult. To get materials on site would be expensive and very disruptive to other residents of Walters Yard. He urged the Committee to judge the application on its merits and not be bound by previous approvals. The application should be refused on the grounds of inappropriate development.

Councillor Barlow attended and, with the consent of the Chairman, addressed the Committee. He noted that the applicant had advised that they no longer wished to include the basement within the application. This meant the development would be very small and could set a precedent for smaller properties. The design was flawed and incompatible with the area and would give a cramped feel to the environs. The large glass windows would lead to light pollution. If the Committee were minded to approve the application, they should consider deferring the decision so that full consideration could be given to the implications of the removal of the basement. A proper ground survey would be required as they may be an underground stream and a full archaeological survey should also be undertaken.

Some members of the Committee expressed their concern about the proposed design and one member suggested that the Committee defer for further consideration of the policy position.

It was explained that the principle of the development had been accepted on two previous occasions and a similar design had received approval in 2010. Since the previous approval there had not been any material change in relevant national or local planning policies. Therefore there was no reason in planning terms to either refuse the application or to defer it for further consideration of the application. Neither did the removal of the basement from the application justify deferral as the major consequence of this was to remove one of the reasons for objection. Whilst the difficulties in implementing the permission were noted, strict conditions could be imposed to control the construction works and therefore this would not be sufficient grounds to justify refusal of the application.

*RESOLVED* (EIGHT voted FOR, ONE voted AGAINST and ONE ABSTAINED from VOTING) that the application be approved subject to the conditions set out in the report, the additional conditions set out on the Amendment Sheet and the following amended/additional conditions:

Condition 5 to be reworded as follows:-

The following windows and walls shall be sand-blasted and obscured to a level 4 or more of the Pilkington scale prior to development and shall remain as such at all times thereafter: The first floor gable window, the ground floor glass screen, the first-floor fire escape door.

Reason: In the interests of residential amenity.

### **Additional conditions**

#### **Non-standard:**

Prior to the commencement of any works, additional drawings that show details of any proposed new windows, doors, eaves, verges, cills and arches, fenestration reveals, external joinery, lintel details, all extract and flue terminals and rainwater goods, by section and elevation, at scales between 1:20 and 1:1, as appropriate, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: There is insufficient detail with regard to these detailed architectural issues to protect the special character of the conservation area in accordance with the requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

**Non-standard:** Prior to the commencement of any works a sample panel of the self-coloured render shall be made available for inspection by the Local Planning Authority and the materials and methods demonstrated in the sample panel shall have been approved, in writing, by the Local Planning Authority. The approved sample panel shall then be retained on site until the work is completed and all brickwork shall be constructed in all respects in accordance with the approved details.

Reason: In order to ensure that the render can be satisfactorily considered on site in context with regard to preserving the character of the conservation area and the setting of neighbouring listed buildings.

### **139. 142481 5 Queen's Road, West Bergholt**

The Committee considered a retrospective application for the stationing of a mobile trainer for hot takeaway sales in the car park of the Queen's Head Public House.

The Committee had before it a report in which all information was set out together with additional comments on the 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.

Peter Hill, Planning Officer, and Simon Cairns, Planning Project Manager, attended to assist the Committee in its deliberations.

Parish Councillor John Gili-Ross addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that the Parish Council objected to the application on behalf of the majority of residents of West Bergholt on the grounds of adverse impact on the village environs and the well-being of residents. The Parish Council encouraged village based businesses provided they were good neighbours and when they were established in a respectful and caring manner. Granting planning permission in this case would threaten village life as the applicant had proceeded in a way that breached planning procedures. The application could set a precedent for the use of the other pub car parks in the village. The business could and should have been set up within the public house. The owners of the Queen's Head had shown little regard to working with the local community by allowing this business to be set up within their car park. The Queen's Head was in a prominent and attractive location in the village. If the application were to be approved, it would encourage the further occupation of this or other village car parks by other inappropriate businesses which jeopardise village wellbeing.

John McGivern addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that the Queen's Head public house was struggling economically. Twelve years ago, he had applied for permission to open an Indian Restaurant within the Queen's Head public house. The Parish Council had objected to that application and to any other proposal he made. When he had been approached about the siting of the trailer on the premises he had not been aware it would require planning permission. He also had not expected it to be as successful as it had proved to be. He charged the owner a low rent and therefore did not gain much from the trailer being located in the car park. It did not cause noise or odour and no trouble was caused by customers. Whilst the Parish Council had actively campaigned against the use of the trailer, it enjoyed wide support within the community as was shown by the petition signatures

Councillor Harrington attended and, with the consent of the Chairman, addressed the Committee. He explained that that he had called in the application to ensure both sides had an opportunity to put their case. He understood that the latest figures on the petitions were that the petition for had 166 signatures and the petition against had 77 signatures. He had not expressed an opinion on the application although he had advised both supporters and opponents of the application. On behalf of the objectors he agreed with paragraph 15.3 of the Committee report that the trailer was incongruous. It was not residential or semi-rural in character. However, he also agreed with the paragraph 15.2 that it would increase the viability of the Queen's Head. He disagreed with the assertion in the report that viability of a community facility was a factor that should be given little weight. He was worried about the sustainability of the pub and the siting of the trailer did bring economic benefits. He felt that the allegation that the pub showed little regard for the community was unfair. He noted the comments of Environmental Protection at paragraph 8.1 of the report but explained that the facility had been open for a few months and could not agree with the conclusion at paragraph 2 that the benefits were outweighed by the noise, disturbance and odour pollution caused.. He lived approximately 100 metres from the pub and had done a number of site visits and had experienced no significant noise or odour disturbance from the trailer. A potential way forward would be to grant a temporary permission which would give an opportunity for the impact of the use to be assessed, particularly over the summer months when the impact might be greatest.

Councillor Harris attended and, with the consent of the Chairman, addressed the Committee. He explained that he had visited the site and as he had approached the Queen's Head he had been unable to see or hear the trailer, or to smell any odours from it. There had been no litter. Customers of the trailer and also patrons of the Queen's Head had been supportive. He believed that there was a need for such a facility in the area and that it could become an asset for the area. He supported the granting of a temporary permission.

Councillor J. Young attended and, with the consent of the Chairman, addressed the Committee. She indicated that she had visited the site. She drew attention to the fact that a number of rural pubs were closing and that this proposal would bring business to the Queen's Head. Whilst she noted the concerns expressed by Environmental Protection, no information on the level of noise or the density of smells was provided. She understood that the applicant had offered to install a filtration system which indicated that he was trying to be responsive to concerns and integrate into the village. The trailer could also be moved to the rear of the car park. She believed that a temporary permission was the way forward.

In response to the comments made by the speakers, the Principal Planning Officer explained that the Queen's Head was a community facility and support for it was therefore a material planning consideration. However, there was no evidence that the operation of the trailer improved the viability of the Queen's Head and in the absence of such evidence, little weight should be attached to this argument. In respect of the amenity issues, the Committee had a report from professional officers explicitly stating that problems had occurred which were sufficiently serious to warrant investigation and potential prosecution. This should be given considerable weight. Little weight should be attached to the numbers of signatures on the petitions. It was possible for an argument to be made that granting this application could set a precedent for similar uses in other car parks, but it would depend on the particular circumstances of each case. Whilst the trailer could be moved to the rear of the site, which would reduce its prominence, this would be likely to increase the impact on neighbouring properties. If the Committee were minded to grant a temporary permission, the Committee would need to be clear as to its reasons and what issues it wanted to assess during the period of the temporary permission. As this was a retrospective application, the trailer was already in operation and complaints about its use had already been received. Whilst it was

noted that the applicant appeared to be responsible and willing to work with residents, limited weight should be attached to this factor.

Members of the Committee expressed the view that there appeared to be some community benefits from the application and also economic benefits to the Queen's Head PH, although it was noted that no direct evidence had been supplied to support this. Members of the Committee expressed the view that the closure of the Queen's Head could have a detrimental impact on the village and the wider community. If it were to close, it was very unlikely that it would be able to reopen. These community and economic benefits needed to be balanced against the concerns raised about the impact on amenity. However, some members expressed some concern about the lack of detailed information about the complaints received. No information had been provided about the number of occasions on which concerns had been raised or about the noise levels involved. It was proposed that a temporary permission for 12 months be granted which would provide an opportunity to monitor the impact of the operation of the trailer on the amenity of neighbouring properties. It would also give an opportunity to assess the contribution it made to the viability of the Queen's Head. The Committee also expressed the view that, given the submissions made about the responsible approach of the applicant, the permission should be made personal to the applicant. This would also prevent the permission being sold or transferred to another, less responsible, operator. It was also suggested that the colour of the trailer be toned down so it was not so prominent.

It was explained by the Planning Officer and the Planning Projects Manager that the guidance from central government was that personal permissions should only be granted in exceptional circumstances and should relate to unique personal circumstances, which was not the case here. The colour of the trailer was not considered to be an issue but it was possible that the signage could be amended to make it less prominent. In respect of the issues raised about the viability of the Queen's Head there was no evidence to demonstrate that the business made a significant contribution to the viability of the Queen's Head or that this was the only solution to any economic difficulties it may be facing. If Committee were minded to grant a 12 month temporary permission then it was important that this period be used to demonstrate the contribution the trailer made to the viability of the Queen's Head.

As the discussion within the Committee suggested that the Committee may be minded to reject the recommendation in the Committee report the Chairman proposed that the Delayed Decision Protocol be invoked. This would provide for a further report to be submitted to the Committee which would report on the issues raised by the Committee including:-

- the potential for 12 month temporary consent;
- the use of a personal consent condition;
- issues relating to the viability of the Queen's Head;
- potential upgrading of noise/odour attenuation and the monitoring of noise and odour by Environmental Protection.

**RESOLVED** (NINE voted FOR) that the Delayed Decision Protocol be invoked and that a further report be submitted to the Committee which would report on the following issues:-

- the potential for 12 month temporary consent;
- the use of a personal consent condition;



- issues relating to the viability of the Queen's Head;
- potential upgrading of noise/odour attenuation and the monitoring of noise and odour by Environmental Protection.

#### **140. 142947 Hill Farm, School Lane, Great Wigborough**

The Committee considered an application for the replacement of the existing farmhouse with a four bedroom dwelling.

The Committee had before it a report in which all information was set out.

Nadine Calder, Planning Officer, and Simon Cairns, Planning Projects Officer, attended to assist the Committee in its deliberations.

Ted Gittens addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that this application was a resubmission of a previously refused application. The areas of dispute were the quality and scale of design. The proposed design was influenced by other local buildings, Brick Lane House and Birch Hall. It was misleading to suggest intransigence on behalf of the applicants. Significant changes had been made since the previous refusal and the applicants had confidence in the approach taken by a popular local architect. No criticism of the design had been made by the Parish Council and no objections had been received from the consultation exercise. The overall increase in floor space was 29% (excluding the attic storey served by dormers). If necessary the applicants were willing to remove the dormer windows from the side elevations but did not believe that the design would be enhanced by the removal of the second floor or the roof space.

Councillor Ellis attended and, with the consent of the Chairman, addressed the Committee. He stressed that design was subjective and explained that within its setting the proposed design worked in terms of scale and character. It was designed to look like another property in Layer Breton. Whilst it was in an elevated position it was not as visible as the Committee report suggested. It was a more attractive design than the current property on site. The applicant had addressed the concerns that led to the previous refusal. The height and scale had been reduced. The applicant had not introduced a double pile roof as they wished to use the roof space. There had been no objection from the local community or from consultees. The only objection was on design grounds, which was a subjective criteria. He believed that it would be an asset to the landscape and it would be unreasonable to refuse the application.

Members of the Committee noted the arguments made about the lack of impact of the new dwelling and the lack of objections to the application. Members sought confirmation as to whether the removal of the dormer windows would meet the policy objections set out in the report.

It was explained that the Council's policy on Replacement Dwellings in the Countryside specified that the replacement should not significantly increase the size of the building beyond the original. The proposed increase in this case was 29%, even without taking account of the roof space. It was not possible to define exactly what percentage increase would be defined as significant, as that would partly depend on the proportions of the existing building. However, in the case it was the officer view that this was a significant increase in size. The size of other

buildings in the area, or of the holding on which the building was to be built, was irrelevant to this policy test. There were no other material planning considerations that applied that could justify setting aside this policy.

*RESOLVED* that the application be refused for the reasons set out in the report (EIGHT voted FOR, ONE voted AGAINST and ONE ABSTAINED from voting).

**Councillor Chillingworth (in respect of being the applicant) declared a pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting during its consideration and determination.**

**141. 142146 Oak Farm, Vernons Road, Wakes Colne CO6 2 AH**

The Committee considered an application for the demolition and replacement of a porch to the annex to Oak Farm.

The Committee had before it a report in which all information was set out.

*RESOLVED* that listed building consent be granted subject to the conditions and informatives set out in the report.

**142. 142633 Briar Cottage, Mill Lane, Birch, Essex CO2 0NH**

The Committee considered an application for a Lawful Development Certificate for a proposed conversion of an existing attached garage into a bedroom and store.

The Committee had before it a report in which all information was set out.

*RESOLVED* that the recommendation set out in the report be approved.

**143. 142929 31 Egerton Green Road, Colchester, CO2 9DL**

The Committee considered an application for single storey front extension. The report was presented as the applicant was a former employee of the council and subsequently a consultant contractor.

The Committee had before it a report in which all information was set out together with additional comments on the Amendment Sheet.

*RESOLVED* that the application be approved subject to the condition and informatives as set out in the report.

**Councillor Maclean (in respect of her knowledge of the applicant) and Councillor L. Sykes (in respect of pre-determination) declared a pecuniary interest pursuant to the provisions of Meetings General Procedure Rule 7(5) and left the meeting**

**during its consideration and determination.**

**144. 142419 24 Marram Close, Stanway, Colchester CO3 0PJ**

The Committee considered an application for retrospective permission for a single storey rear extension.

The Committee had before it a report in which all information was set out together with additional comments on the 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.

Peter Hill, Principal Planning Officer, attended to assist the Committee in its deliberations.

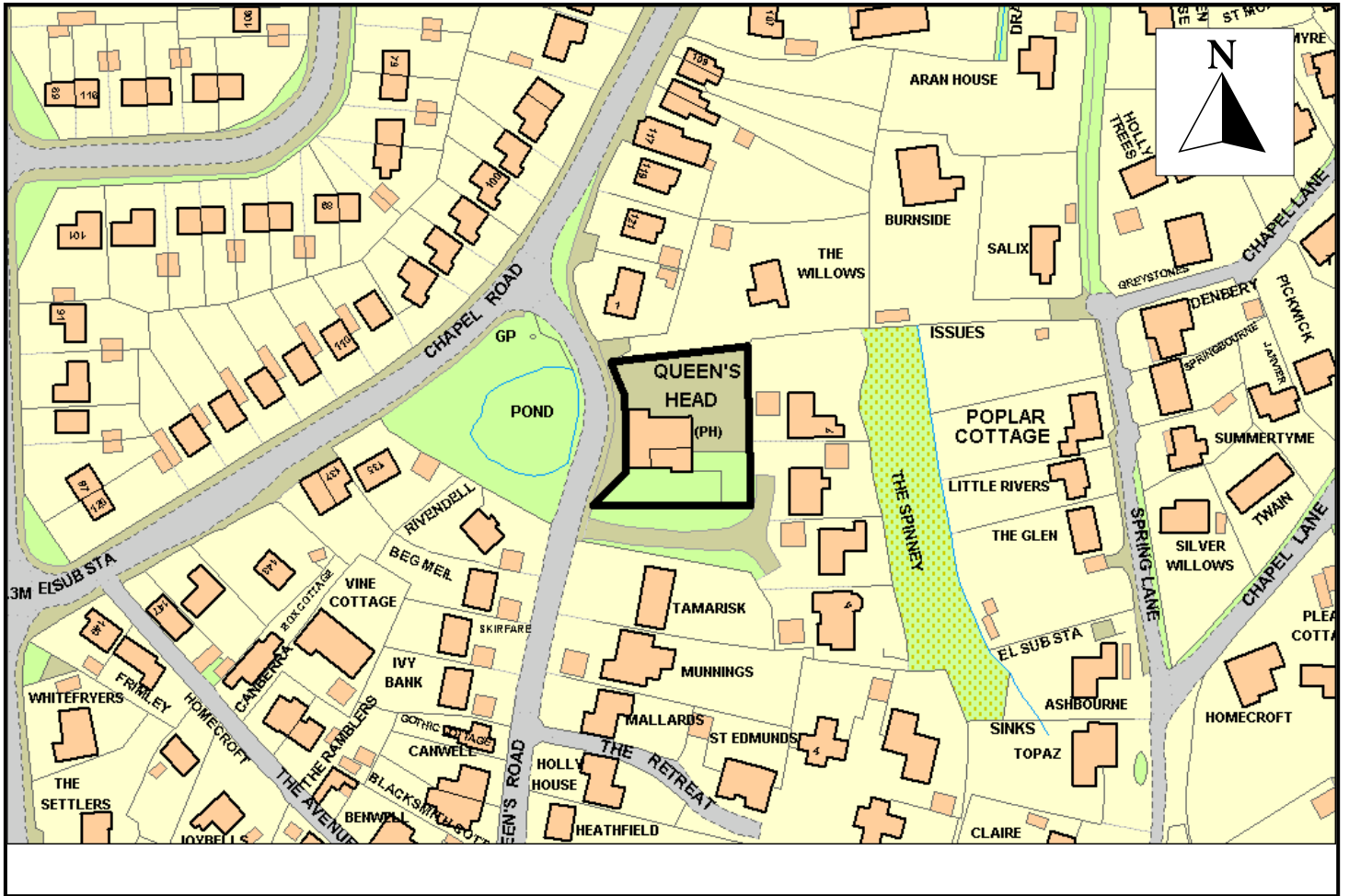
Sarah Drain addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She explained that the occupant of 1 Woodrush End, Mrs Stanley, had received very little notice of the development and therefore had not had the opportunity to check the deeds to her property before work began. During the building works a common boundary wall had been removed without her permission and not replaced. A pergola attached to the wall had also been removed and not replaced. In addition during the works, a portaloo had been placed in her garden. An enforcement visit had been carried out by a planning officer and although this had established that planning permission was required, it had not required building works to cease. Retrospective permission had been applied for, but this meant that Mrs Stanley had not had the opportunity to consider or comment on the plans before the development began and therefore the planning process had failed to protect her interests. These events had caused Mrs Stanley great stress. Attention was drawn to paragraph 15.21 of the Committee report where it stated that the design was "not ideal".

Councillor C. Sykes attended and, with the consent of the Chairman, addressed the Committee. He noted that the extension was half a metre larger than that allowed under permitted development rights. The development had had a considerable impact on Mrs Stanley's amenity. The boundary wall had been in place in place for at least 15 years. This was also a party wall. The applicant had removed this wall without permission and had also removed a pergola and damaged the beds in her garden. No regard had been shown for Mrs Stanley's amenity and she should therefore be recompensed. Therefore conditions should be attached to the permission requiring the reinstatement of the party wall in the same place and at the same height and the replacement of the pergola. Amenity was a material planning consideration and if the application had been considered in the normal way, conditions would have been imposed to protect neighbour amenity.

The Planning Officer explained that the issues raised were not planning matters and it would be inappropriate to use conditions on a planning permission to resolve a dispute about the position of the boundary between two properties and the removal or damage of private property. These were civil matters which should be pursued through the courts. There were no good planning reasons to support the proposed conditions and if the enforcement of the conditions were challenged, it was likely that they would be ruled ultra vires and, if applied for, costs awarded against the Council.

Members of the Committee expressed their sympathy for the way Mrs Stanley appeared to have been treated and their concern about the retrospective nature of the application. However, the issues raised were outwith the scope of the planning system to resolve and should be pursued through other avenues. It was suggested that the applicant may wish to consider replacing the pergola as a matter of goodwill, but the Planning Committee was not in a position to direct this

*RESOLVED* that the application be approved without conditions (SIX voted FOR and TWO voted AGAINST).



**Application No:** 142481

**Location:** Queens Head Public House, 5 Queen's Road, West Bergholt, Colchester, CO6 3HE

**Scale (approx):** 1:1250

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# Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **15 May 2014**  
Report of: **Head of Professional/Commercial Services**  
Title: **Planning Applications**

## 7.1 Case Officer: Peter Hill

**MINOR**

**Site:** 5 Queen's Road, West Bergholt, Colchester, CO6 3HE

**Application No:** 142481

**Date Received:** 3 March 2014

**Agent:** Mr Ozlem Ipek

**Applicant:** Mr Morat Kokcu

**Development:** Stationing of a mobile trailer for hot food takeaway sales.

**Ward:** W. Bergholt & Eight Ash Green

**Summary of Recommendation:** Refusal

## 1.0 Introduction

- 1.1 This item is put before the Planning Committee in accordance with the Delayed Decision Protocol which was invoked at the Planning Committee of 24/4/14. The report presented by Officers at that committee is appended to this report. Officers recommended refusal on the basis of visual amenity and harm to the amenities of the occupiers of nearby dwellings through smells/odours and noise/disturbance. Members set out that they were minded to approve the application but utilised the delayed decision protocol before making such a decision so that they could understand the risk and implications of overturning the Officer recommendation.
- 1.2 The following report seeks to address some of the key points raised by Members during at the previous committee meeting and to draft some possible conditions that Members may consider whether they wish to impose.

## **2.0 Personal Permissions**

2.1 Members indicated that they considered that permission should be granted on a personal basis. Officers strongly recommend that such a condition is not imposed as it would be *ultra vires*.

2.2 The Governments Planning Practice Guidance deals with this matter specifically and the following extract is reproduced for Members' benefit;

*“Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?”*

*Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.*

*A condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, but might, for example, result from enforcement action which would otherwise cause individual hardship.*

2.3 The exceptional circumstances referred to in this extract do not exist on this site. Members' should give serious consideration to what the stated reason for such a condition would be if they decide to impose such a condition against officer advice. The key thing is whether or not the development is acceptable on its merits, not who operates it and their reputation at the time; which is not a material planning consideration and would not reasonably be controllable through planning in the event that circumstances changed post-decision. A personal condition would not be a suitable control to ensure the proper running and management of a food van at the site if this were the intention. Additionally a personal permission should only be used if we did feel that it would be unacceptable for any other person to run the food van, which would seem to be an argument contrary to all relevant planning guidance.

2.4 On this basis, your Officers advice is that the Council would face a risk of a challenge that it could not defend against if it were to use such a condition.

## **3.0 Temporary permissions**

3.1 The Governments Planning Practice Guidance also gives specific guidance on the use of temporary permissions, stating;

*“Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.*

*It will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission should be granted permanently.”*

- 3.2 Officers have expressed their professional opinion that a trial run is not necessary in this case. If Members conclude differently, then it is essential that they give consideration to the precise reasons for the condition. The most logical would be for the fumes and odours to be monitored further, for the number of complaints received during the trial run to be observed, and for the applicant to try and undertake any best endeavors they can to reduce the issue within this period. However, this does not alter the Officer opinions on a temporary basis, it would nonetheless be better than a permanent permission with no opportunity to review the situation in due course.
- 3.3 When the temporary permission expires, and (assuming) a fresh application is submitted, it will not be appropriate to grant a further temporary permission. It is the stated reason for the temporary condition that will give clear direction as to what the Local Planning Authority will be considering in its determination as to whether such permanent planning permission is granted.
- 3.4 In the section on possible conditions, a possible stated reason is provided that is based upon Officers’ understanding of Members’ conclusions. This can of course be changed by Members.

#### **4.0 Appearance and Character**

- 4.1 Members should be clear whether they consider
1. This trailer to be an appropriate permanent solution from which to operate businesses, harmless in visual amenity terms, or
  2. Whether they consider it to cause some harm, but for that harm to be outweighed by other material considerations. If Members consider this latter to be the case, they should consider what planning benefits outweigh such harm.
- 4.2 Being clear on this issue demonstrates in the event of later challenge that visual amenity was properly considered and that an on balance view was taken as to the acceptability of the physical structure on site.

#### **5.0 Viability of the Queen’s Head**

- 5.1 At the previous committee, there was some discussion surrounding the benefits of the proposal in securing the long-term viability of the Queen’s Head as a community facility.
- 5.2 As a generality, it is known that many village pubs struggle for survival, and Members’ may feel that they have reason to believe that such circumstances exist in the case of the Queen’s Head, based on anecdotal information. However, Members had no evidence before them in order to allow them to give such potential planning benefits any material weight. Speakers also gave the impression that little financial benefit existed in terms of securing the long term viability of the pub.



- 5.3 Members also have no information before them to assess whether this is the only method by which the pub's viability can be secured. If pub viability is a serious concern, Members should be assured that this proposal is the best way of achieving such viability, rather than (for example) a purpose-built extension, internalising the takeaway within the existing building etc. If, similar benefits to pub viability could realistically be achieved without visual harm or harm to neighbours' amenities, then the particular solution proposed can be given little weight in overriding identified harm.
- 5.4 Furthermore, even were it evidenced that the pub itself was at risk of survival and this proposal was the only means of resolving that situation, the planning weight that should be given to the loss of the pub must be tempered by the fact that there are two other pubs in the village. The closest is 700 metres away. Whether or not there is an alternative facility within 800 metres is one of the considerations in Development Policy DP4 for assessing whether applications involving the loss of community facilities are acceptable. Just as it could be argued that this development improves the viability of the Queen's Head, it could also be argued that the survival of one pub is to the detriment of the viability of the others, but with no evidence on any of these matters it would be unreasonable to draw such conclusions or give them any weight.
- 5.5 The CAMRA document "The Pub is The Hub" and various other guidance and information sources on rural shop/pub diversification schemes offer guidance on other means to secure the viability of small rural community facilities and members may wish to peruse this prior to the Committee meeting.

## **6.0 Noise and Odours**

- 6.1 It is understood from the previous discussion that Members are not of the opinion that there is no unacceptable noise or odour, only that the extent of such harm has not been demonstrated to Members' satisfaction. Members were of the view that a longer period of time was required in order for the Council to be able to form a useful view on the matter.
- 6.2 The further comments of Environmental Control Officers are presented below;

### **Odours**

To assess odour nuisance under the Environmental Protection Act 1990 officers witness the odour in person. There is no standard equipment used in the Environmental Profession to measure smell levels, it is simply a case of 'if it can be smelt, it is a potential nuisance. Officers will consider the type of odour, how strong it is, frequency, duration and how likely it will be to affect residents. If an Abatement Notice is served and a prosecution was brought before magistrates, it would be the officer's professional, impartial opinion that would be taken under oath that would be the key evidence that is considered by the Court.

The legislation acknowledges odours from domestic cooking are inevitable however makes provisions to control any **dust, steam, smell** or other effluvia arising from industrial, trade or business premises that may be prejudicial to health or a nuisance. An affected premises can include a residential gardens.

Once a use has planning permission Environmental Protection has to consider this when investigating a complaint. If a nuisance exists and a business has planning permission, it can use a 'Best Practical Means' defense. This effectively means that the defendant has done the best that they can in the circumstances. In other words, if the Council has granted planning permission for a particular use / building then they have accepted any nuisance that is inherent in that use / building and the operator need only do what could reasonably be asked within the bounds of the building/use that they lawfully have. Problems may exist, but Environmental Protection may be unable to take further action.

Environmental Protection has received complaints from four separate residential properties regarding cooking odours from the hot food take away van. Diary sheets were kept and two of the residents have returned the records. One resident logged 11 incidents of odour between 1/3/14 and 13/4/14 and the other logged 3 incidents between 20/3/14 and 5/4/14. One resident stated they had to close doors on a lovely sunny day.

The odour I witnessed on 11 April 2014 was strong and a distinctive smell which was apparent approximately 50 metres away as the crow flies. It was my professional opinion that if this smell occurred when residents wanted to use their garden it could be a nuisance. I also believe, due to the strength and type of smell, the inside of dwellings would be affected if windows were open.

On 22 April 2014 Rita Parkin, Environmental Protection Officer witnessed the odour in two front gardens and in one of the gardens the smell was strong.

The nature of a mobile van is that it is open fronted and this will permit cooking odours to escape out the front. Controlling odours from enclosed kitchens is difficult and normally requires more than one type of abatement technology. For example grease filter, carbon filters and electro static precipitators are installed. Noise control measures often need to be used if in close proximity to another premises. The Environmental Protection standard condition for a planning application generating a new odour source is:

**ZGO - Food Premises (Control of Fumes and Odours)**

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed 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 and odours 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.

However this condition is for a building not a mobile van and is not wholly applicable. For example the Colchester Odour Control guidance stipulates the “duct stack should be taken straight up the rear of the building to **at least** 1m above the eaves or windows of the building to which it is attached or 1m above the eaves or windows of adjacent buildings, whichever is the higher. NB If surrounding buildings are higher than the subject building, then the duct may have to be taken higher.”

Locating of hot food take away vans is normally within a large car park such as at a DIY store or on road sides to allow distance to disperse the odour and prevent nuisance.

Temperature and wind direction will also affect how the odours disperse and which premises may be affected.

### **Noise and Disturbance**

Fan noise can be controlled using quiet fans, low speeds, and acoustic enclosures with baffles. The use of abate machinery and equipment may be restricted on a mobile van. The Environmental Protection standard condition for a planning application generating a new noise source is:

#### **ZGG - Site Boundary Noise Levels**

Prior to the first use or occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dB(A) above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to 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.

Environmental Protection has not received a complaint about noise but this is not surprising considering the time of year. Residents are not in their gardens in the evenings and do not have their windows open.

The noise that I heard from the extraction of the hot food take away van on 11 April 2014 exceeded this standard. I assessed this without a noise monitor and purely on the grounds it was clearly audible. A 0dB(A) limit means the noise will not be heard and therefore will not be detrimental to the amenity of residents. I do not believe it is possible for this standard to be met.

The maximum decibel limit that could be applied to such a condition without being (by definition) a potential noise nuisance is 5dB. In this case, I could not be confident that a level of less than 5dB would be achievable. I am told by planning officers that conditions cannot be imposed unless the Council is confident that they are achievable, consequently I cannot recommend any condition that specifies noise levels. Following on from discussions with planning officers, it is

not considered that there is any planning condition that would achieve a minimisation of noise and disturbance from such a trailer, whilst still meeting with the tests in the circular.

Noises will of course not only be generated by plant and equipment, but by conversation, chatter and general activity within this trailer and outside it, but both staff and by customers.

I consider it is not necessary to have a temporary permission for 12 months to monitor the situation as the past four months have given rise to complaints and these have been validated by Environmental Protection officers. Complaints have occurred during cooler weather when residents are not in their gardens and do not have their windows and doors open and therefore we expect the impact of the business to be more detrimental in the warmer weather.

### **Possible Conditions**

#### Restriction of Hours of Operation

The use hereby permitted shall not take place outside of the following times:

Thursday & Friday 3pm -11pm

Saturdays: 3pm -11pm

Sundays and Public Holidays: Not at all

Reason: To reduce the impact of the use hereby permitted so it is less detrimental to the amenity of the area and/or nearby residents by reason of undue odour and noise for the avoidance of doubt as to the scope of this permission.

#### Measures to reduce odours

Within 2 months from the date of this permission, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that has been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed 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 and odours in place so as to reduce detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

Samantha Riley, Environmental Protection Officer

## **7.0 Further Representations**

- 7.1 Subsequent to the previous Planning Committee, further representations from a 'West Bergholt Residents Group and its individual members have been sent to individual Members of the Planning Committee. These representation do not raise new planning issues, although they express arguments as to why they consider particular weight should be given to certain matters. As no new planning issues are raised and as all members have received a copy directly, the letters are not replicated within this report.

## 8.0 Possible Conditions

Should Members remain of the opinion that an approval, against officer recommendation should be granted, then Officers have drafted the following conditions that seek to reflect the discussion at the previous committee.

### 8.1 Z00 – Temporary condition

The planning permission hereby granted shall expire on 1<sup>st</sup> May 2015. On, or prior to that date, all use of the curtilage outside of the existing permanent building for takeaway sales shall permanently cease and the trailer that is used for this purpose shall be permanently removed from site.

Reason: This development would only be acceptable for a longer period of time if it was demonstrated that it did not cause unacceptable harm to the amenities of neighbouring dwellings. Furthermore, the permanent stationing of this trailer would only be acceptable in visual amenity terms were the benefits to the long-term viability of the Queens Head public house to outweigh the visual harm. The temporary time limit provides adequate time for such additional information and evidence to be collected and provided in support of an application for a permanent planning permission.

### 8.2 Z00 – Position and scale of activity

The preparation, cooking and retail of food shall only take place within the existing permanent building of the Queens Head, or from within a single roofed trailer of type and dimensions as shown in the drawing entitled 'ground floor plan', approved as part of this permission and within the precise position shown in the drawing entitled 'Block Plan' that forms part of this permission.

Reason: A larger trailer, a trailer in a different position, or more open vending / preparation of food have the potential for greater harm to the amenities of the occupiers of neighbouring properties, to be more visually prominent and to interfere with safe access of the site.

### 8.3 Z00 – Hours of operation

There shall be no preparation, cooking or sales of food from the trailer outside of the following times:

Thursday & Friday 3pm -11pm  
Saturdays: 3pm -11pm  
Sundays and Public Holidays: Not at all

Reason: To ensure that the hours of activity are concentrated within times when the pub is open and so there is already an element of noise, whilst giving local residents 1 day in the weekend free from odours and noise/disturbance

#### 8.4 Z00 - Measures to reduce odours

Within 2 months from the date of this permission, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that has been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed 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 and odours in place so as to reduce detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

#### 8.5 Any trailer used in connection with this planning permission shall be permanently removed from site within 1 month of the cessation of its use for the purposes approved by this permission.

Reason: To ensure that the trailer does not remain on site materially longer than it is needed for its approved purpose, to avoid unnecessary harm to the visual appearance of the site.

## PREVIOUS REPORT

<b>7.4 Case Officer:</b> Peter Hill	<b>Due Date:</b> 28/04/2014	<b>MINOR</b>
<b>Site:</b>	5 Queen's Road, West Bergholt, Colchester, CO6 3HE	
<b>Application No:</b>	142481	
<b>Date Received:</b>	3 March 2014	
<b>Agent:</b>	Mr Ozlem Ipek	
<b>Applicant:</b>	Mr Morat Kokcu	
<b>Development:</b>	Stationing of a mobile trailer for hot food takeaway sales.	
<b>Ward:</b>	W. Bergholt & Eight Ash Green	
<b>Summary of Recommendation:</b> Refusal		

### 1.0 Reason for Referral to the Planning Committee

1.1 This application is before the Planning Committee because it has been referred by Council Marcus Harrington for the following reason;

*“This application has created a division in West Bergholt between some residents, especially some living in the immediate vicinity of the site, who object to the application on the grounds of unacceptable noise and smell and such an enterprise being out of place in West Bergholt, and the wide village community who largely support the application on the grounds of provision of an important stimulus to the local economy which creates minimal noise or smell, minimal light pollution and is in an unobstrusive position. It is appropriate that a representative from both sides of the division will be able to address the committee. I believe at least one petition will be presented to the chairman. The call in is not conditional.”*

### 2.0 Synopsis

2.1 The key issues explored below are;

- Employment and economic benefits
- Community Benefits
- Appearance and Character
- Impact on neighbours' amenities.
- Parking and highway safety
- Other matters – matters that are not pertinent to the determination of this application.

2.2 It is set out that the proposal offers positive planning benefits in the employment and economic contribution made by the business as well as through the service it provides for its customers. However, it is concluded that such benefits are outweighed by the noise and disturbance and odour pollution caused to the occupiers of nearby residential properties and by the harm caused to the appearance and character of the site and the wider area. The application is therefore recommended for refusal.

### **3.0 Site Description and Context**

3.1 The Queens Head is an attractive public house, opposite a large pond and area of public open space that infills the corner of Queens Road and Chapel Road. The pub has its vehicular access and car park to the side (North). The car park is an unmarked area of hard surfacing.

3.2 The hot food trailer subject of this application is already in situ towards the front of the car park and adjacent to the access. It is not situated in the position suggested in the application drawings. The trailer appears to be connected into the ground floor utilities and has an advertising panel attached to it that touches the ground. Whilst it could clearly be relatively easily re-adapted to be mobile, it evidently is not mobile or intended to be mobile.

3.3 The car park (and trailer) are partially screened from the road to the west by a hedge. To the north (beyond a further hedge) is the access to the residential property 'Willows', beyond which is 1 Queens Road. 1 Queens Road is the nearest dwelling-house to the trailer, being 10 metres away. The dwelling house of 'Willows' is 30 metres from the trailer and 10 metres from the car park. Behind the car park (east) are further residential dwellinghouses, the closest of which is in a similar proximity to the trailer and car park as 'Willows'.

### **4.0 Description of the Proposal**

4.1 The development is described by the applicant as "stationing of a mobile trailer for hot food take away sales". The application is retrospective, with the mobile trailer already in situ.

4.2 Opening hours are stated as being 15:00-23:00, 7 days a week.

### **5.0 Land Use Allocation**

5.1 The site is within the defined settlement limits and has no specific allocation

### **6.0 Relevant Planning History**

6.1 None relevant



## 7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. The Government's Planning Practice Guidance ( is also relevant all decisions.

Also relevant is the National Planning Practice Guidance (NPPG) of 2014.

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

CE2c - Local Centres

UR2 - Built Design and Character

TA1 - Accessibility and Changing Travel Behaviour

ENV1 - Environment

ENV2 - Rural Communities

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

DP1 Design and Amenity

DP17 Accessibility and Access

DP19 Parking Standards

DP21 Nature Conservation and Protected Lanes

7.4 Regard should also be given to the following adopted Supplementary Planning

- Guidance/Documents:
- Vehicle Parking Standards

## 8.0 Consultations

8.1 Environmental Protection objects to the proposal for the following reasons;

*“A mobile trailer for hot food take away has been stationed at this location and we have received a complaint from a non adjacent resident about odour from cooking. The mobile trailer is less than 10 metres from the nearest domestic garden and 13 metres from the house. Mobile trailers are not able to have odour extraction and odour abatement technology that would lessen or prevent the cooking fumes from being a nuisance.*

*The clients of the mobile trailer are likely to cause some noise and again due to close proximity to domestic properties are likely to cause annoyance and/or nuisance.”*

- 8.2 Environmental Protection Officers have expanded upon these comments by email as follows;

*“Further to our conversation I am writing to confirm my reasons for objecting to the above application.*

*Firstly I am concerned about cooking odours affecting neighbouring properties. We have historically had complaints regarding cooking odours from the Queens Head Indian Restaurant and Takeaway. The kitchen is fitted with comprehensive odour abatement equipment and is within an enclosed kitchen. There are limits to the type of abatement technology that can be fitted to a mobile trailer and by its nature it is not enclosed and odours can escape out the serving area and is likely to affect neighbouring properties. Prior to the application being received we had received complaints regarding odour from the mobile trailer.*

*Secondly I am concerned about noise from the extraction system and noise from customers. Again as the trailer is out doors there is no solid structure to insulate against noise transmission. The very close proximity of the mobile trailer to residential properties means noise from customers talking, laughing etc is likely to cause disturbance and this is uncontrollable.”*

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 West Bergholt Parish Council objected to the proposal for the following reasons;

*“The proposed mobile trailer is sited in an attractive part of the village with its pleasing pub frontage and opposite the village duck pond. The presence of the trailer does not enhance the environment in this sensitive location and runs contrary to VDS Policy DG34 and is not an acceptable proposition for this reason.”*

- 9.2 The Chair of the Parish Council then elaborated as follows in a separate email;

*Through this submission my Parish Council provides its perspective on this application in terms of the threat it possesses and the negative impact it has for nearby residents and the village as a whole. The Parish Council actively encourages village-based businesses providing they operate as ‘good neighbours’ and when they are set up in a respectful and caring manner from a wider community perspective. To grant planning approval in this instance would jeopardise the very foundation of village life not for what this planning application intends to provide but for the manner in which it is being implemented. Granting planning permission in this case would set a dangerous precedence, potentially affecting the nature and activities of the three other village pub car parks.*

*This kebab business could and should have been set up entirely within the building fabric of the Queens Head public house alongside the existing food outlet already provided. In our opinion the owners of the Queens Head pub have demonstrated scant regard to work in harmony with the community by allowing the Kebab unit to be placed in their car park, seemingly only to be interested in boosting their income by whatever means they hope to get away with.*

*The Queens Head pub occupies a prominent and attractive position within the village and lies opposite the village pond. Our Parish Council uses this location within the photo collage in its letterhead to highlight some of the many charms of our village. West Bergholt has won the Essex Best Kept Village competition on more than one occasion and part of this success is because village facilities are appropriately located and in a manner that helps to positively enhance the look and feel of our thriving village community.*

*Should CBC Planning Committee be mindful to allow this planning application it would openly encourage further occupation of this car park for any number of possibly inappropriate business ventures. The consequences of agreeing to such a blatant 'try it and see' initiative would be to jeopardise village well being with residents living in trepidation as to what may suddenly appear next on the car park.*

*We respectfully request that CBC Planning Committee reject this planning application and thereby give a clear message to the owners that it is not what they are offering that is a problem but the entirely inappropriate manner in which they intend providing their Kebab food services."*

## **10.0 Representations**

10.1 28 letters of objection have been received, plus a petition containing 77 names. Objections raised are summarised as follows;

1. Visual intrusion spoiling a classic view. Out of character
2. Would set precedent for further takeaways in other shop and pub car parks
3. Litter and vermin and harm to wildlife from litter
4. Noise and disturbance to nearby residential properties
5. Congregation of people around pond area, causing disruption
6. Alternative takeaway facilities already available – new one not needed
7. Inaccuracies in the application form
8. Congestion with vehicles coming and going - highway safety hazard.
9. Health and safety and legality – propane bottles may get tampered with
10. No provision for dirty water and food waste
11. Increase traffic and parking
12. Existing problem from pub and Indian restaurant / takeaway above it.
13. Encourages unhealthy eating amongst school children

10.2 57 Letters of support have been received, plus a petition containing 166 names. Reasons for support are summarised as follows;

1. No smell, no litter
2. Cannot be seen from road
3. Useful facility
4. Very nice food, good service, friendly staff, good prices etc
5. Social hub
6. Good service to disabled people who have meals delivered to them
7. Supports the pub and makes this business more viable
8. Local service reduces carbon footprint as reduces the need for travel

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 trailer would not be a planning unit in its own right, but would form part of a mixed use of the wider pub site. It would utilise the access and parking facilities of that pub. Parking bays are not marked and with no plan annotating bays, it is difficult to give a precise number of bays. However, it is estimated by officers that without the trailer, the car park affords parking for up to 19 cars, but with the trailer utilising some of those spaces, potential parking is reduced to approximately 15 cars.

## **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 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 Employment and economic benefits**

15.1.1 This proposal would generate the equivalent of 2 full-time posts. It will furthermore generate economic activity of benefit to the local economy. These factors are material planning considerations that carry weight.

### **15.2 Community Benefits**

15.2.1 The proposal clearly meets a local demand and is well thought of by many members of the local community. By meeting such local demand, the development furthermore reduces the need to travel. These factors are material planning considerations that carry weight.

15.2.2 It may be speculated that the business benefits to the Queens Head pub (both from inter-connected business, and from rental incomes) may lead to increased viability for that pub and therefore an increased chance of survival for that community facility. However, no information has been provided that would allow such a conclusion to be drawn and so such arguments can be given little weight.

### 15.3 Appearance and Character

15.3.1 Whilst described by the applicant as a mobile trailer, this is clearly not intended to be mobile. It is not therefore comparable with fish and chip vans that drive between sites and are not stationed in any one location for longer than a day at a time. Mobile fast food trailers as more permanent features are sometimes found in industrial estates and within large urban car parks, but not commonly in village locations or in the car parks of public houses. The trailer, therefore, appears incongruous in its setting adjacent to a village public house, opposite an attractive village pond that affords a semi-rural character, in an otherwise residential area. The trailer has neither a residential character nor a semi-rural character and so the distinct local character is harmed.

15.3.2 The physical appearance of this trailer is not attractive. It is bland, unsubstantial and wholly utilitarian in appearance, offering nothing positive to the appearance of the site or surroundings and harming the setting of the pond and attractive public house. It is hard to imagine a similarly designed structure being acceptable in this location were it to fully meet the definition of a new building and so officers see no reason why reduced standards of appearance should be acceptable merely because the trailer is theoretically movable.

15.3.3 Whilst partially screened by the hedge, the trailer is publicly visible.

### 15.4 Impact on neighbours' amenities.

15.4.1 The cooking of food generates smells and it is evident from colleagues in Environmental Protection that such smells cannot be adequately mitigated against in a trailer, as they could be within a building. Furthermore, the trailer will generate increased noise and disturbance from people queuing for their food and eating their food in the vicinity. Due to the proximity of the trailer to residential properties, such smells, noise and disturbance is likely to harm the amenities of the occupiers of those dwellings. Further details about these concerns are set out by Environmental Protection in paragraph 8.1 of this report. Planning Officers fully share these concerns.

### 15.5 Parking and highway safety

15.5.1 There are no adopted minimum parking standards for takeaway uses. The site is sustainably located, and the business likely to serve mostly the local village and so is not dependent on car travel. Local roads do not have parking restrictions. It is not therefore considered that an inadequacy of parking is grounds for refusal. Planning Officers do not consider that the trailer interferes with the safe access of the pub. There is already pedestrian activity in the area from the pub and associated with the pond/green. Cars turning into the car park will be doing so slowly. Increased activity in the area is, if anything, likely to slow cars down further. The Highway Authority has not been formally consulted on the proposal but informally advises it has no concerns.

## 15.6 Other matters.

- 15.6.1 Both objectors and supporters of the proposal raise other issues that are not planning matters and so are not addressed within this report. The impact on children's dietary health can in extreme situations be considered to be a planning matter (for example where a takeaway is located close to a school and its business is clearly reliant upon the custom of pupils), but arguments that takeaway food per se is unhealthy can be given no weight. Claimed inaccuracies in the application form have been highlighted by objectors, but none of these are pertinent to the planning merits of the case, except where already addressed.
- 15.6.2 Claims that the proposal may cause litter are not considered to present a reason for refusal. It is a criminal offence to drop litter and, it is noted that the Council can require businesses to clear litter from the footway and adjacent land within 100 metres of their premises. Planning should not seek to replicate what can be achieved under other legislation. Appropriate storage and disposal of waste from the business could be required by condition and in some cases enforced under environmental health legislation, so do not constitute a reason for refusal. There is no reason why, managed properly, this development should harm wildlife.
- 15.6.3 Finally, objectors have highlighted that this development would set precedent for other car parks in West Bergholt to be developed. Each development must be considered on its own merits, however clear differences would need to be identified by the Council were such proposals to come forward and a different outcome reached.

## 16.0 **Conclusion**

- 16.1 In determining this application, Members must weigh the employment, economic, social/community benefits of this proposal with the identified harm to the character and appearance of the area and the amenities of nearby residents.
- 16.2 In officers' opinion, there is no planning reason why the identified benefits of the takeaway service should not be achievable without causing the harm that has been identified. A takeaway service in West Bergholt could be located within an appropriate existing building or within a new building, appropriately designed and located. This limits the weight that can be given to the planning benefits of the scheme. Even were it demonstrated that this specific proposal was the only way to achieve such planning benefits, planning officers are of the opinion that the identified harm would still outweigh such benefits.
- 16.3 Whilst Core Strategy policies such as SD1 and SD2 are broadly supporting of economic development and new services / facilities in sustainable locations, they do require such development to achieve a high standard of design and compatibility with local character. This proposal has not achieved that objective and consequently, the application is recommended for refusal.

## 17.0 Recommendation

Refuse planning permission for the reasons set out below:-

### 1 - Non-Standard Refusal Reason

The National Planning Policy Framework (NPPF) requires that developments "establish a strong sense of place...(and) are visually attractive as a result of good architecture and appropriate landscaping". It goes on to state that "permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area...". These objectives are reflected in Colchester Borough Council's Local Development Framework, through Policy UR2 of the Core Strategy (December 2008) and Policy DP1 of the Development Policies (October 2010), both of which require a high standard of design, an appropriate architectural approach and an enhancement in the character of an area.

The proposed trailer appears incongruous in its setting adjacent to a village public house, within what is otherwise a residential close to the rural edge of the village. The proximity to an attractive village pond that affords a semi-rural character further adds to this incongruous appearance and harms the distinct local character.

The use of a structure designed as a mobile and transient facility for what, to all intents and purposes, is a permanent building, is an inappropriate form of development. As a permanent or semi-permanent feature, it is bland, unsubstantial and wholly utilitarian in appearance, offering nothing positive to the appearance of the site or surroundings and harming the setting of the pond and attractive public house. For these reasons, the proposal is harmful to the character and appearance of the site and the surrounding area. As such, it conflicts with the requirements of the afore-mentioned policies.

### 2 - Non-Standard Refusal Reason

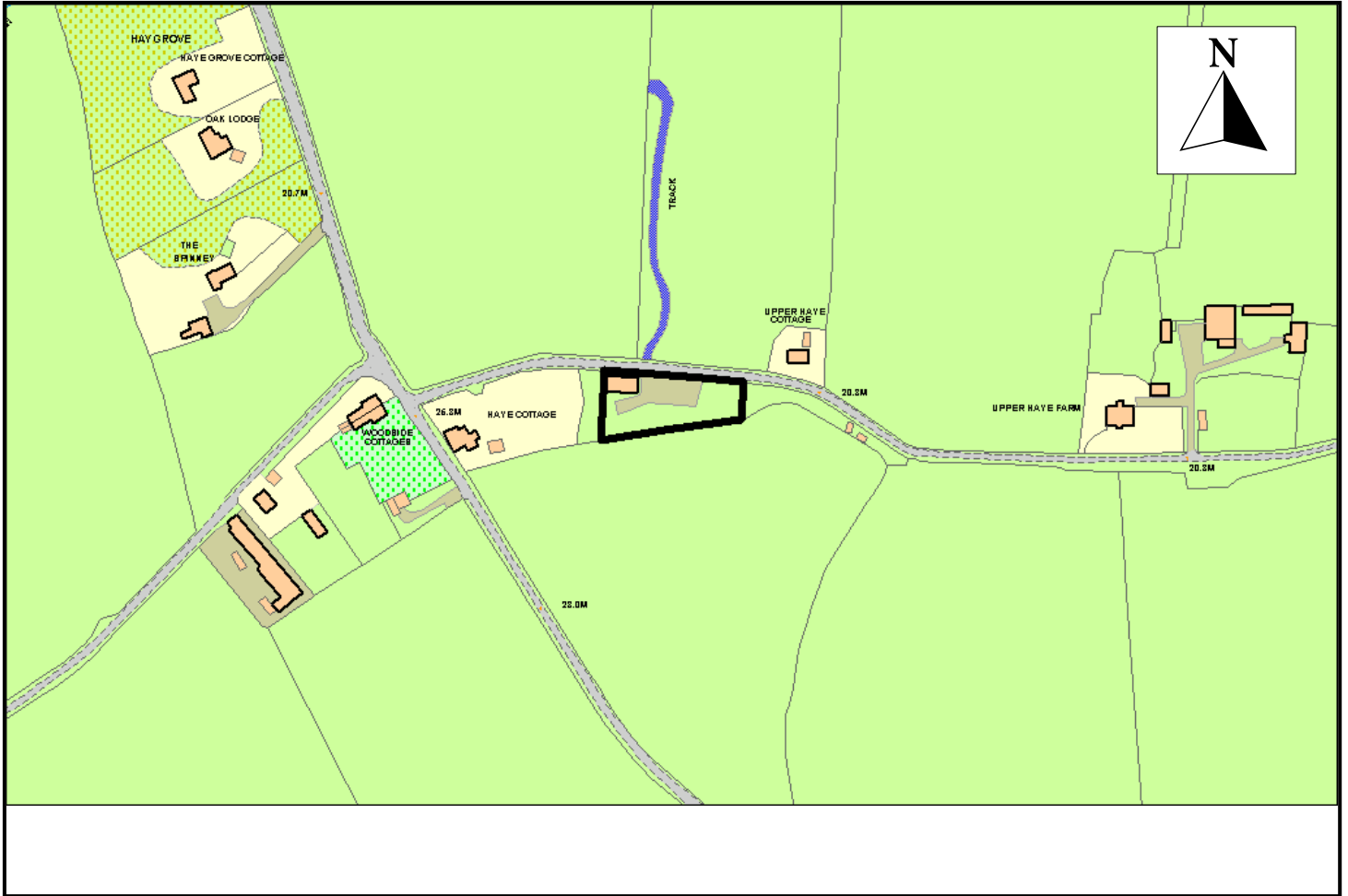
The National Planning Policy Framework (NPPF) further requires that planning decisions should ensure "a good standard of amenity for all existing and future occupants of land". New Development should avoid noise from giving rise to significant adverse impacts on health and quality of life. Policy DP1 of Colchester Borough Council's Local Development Framework Development Policies (October 2010) makes similar requirements, stating that development should protect existing public and residential amenity, particularly with regard to noise, disturbance and odour pollution (amongst others).

In this case, the development would cause cooking smells, noise and disturbance that would result in unacceptable harm to the amenities of the occupiers of nearby residential properties. As such, it conflicts with the requirements of the afore-mentioned policies.

## **18.0 Positivity Statement**

- 18.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application in a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development.





**Application No:** 142131

**Location:** Haye Yard, Upper Haye Lane, Fingringhoe, Colchester, CO5 7AB

**Scale (approx):** 1:2500

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**7.2 Case Officer: Simon Osborn****MINOR****Site:** Haye Yard, Upper Haye Lane, Fingringhoe, Colchester, CO5 7AB**Application No:** 142131**Date Received:** 24 February 2014**Agent:** Mr Robert Pomery**Applicant:** Mr Kenneth Papworth**Development:** Erection of Single Dwelling in place of Mobile Home Builders Yard and Scrapyard**Ward:** Pyefleet**Summary of Recommendation:** Refusal**1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee in accordance with the Delayed Decision Protocol. The Planning Committee at its meeting on 10<sup>th</sup> April 2014 considered the officer report that recommended refusal, but was minded to approve subject to there being no significant implications in doing so and it being possible to secure suitable controls to ensure that the benefits of granting permission justified a departure from policy. This report considers the implications (positive and negative) of granting planning permission and outlines the controls that have been offered. It also suggests the planning conditions that could be imposed if the Committee approves the application although the Officer recommendation remains unchanged as one of refusal (as per the original report). A copy of the original report to Committee is included at the end of the report as an addendum.

1.2 For clarity, the site was previously subject to Enforcement Action and indeed, had an application not been received the applicants was due to be prosecuted for failure to comply with a Notice. This relates back to the previous Inspectors decision on this site whereby there is no certificate of lawful use as such, but the Inspector's appeal letter makes it clear that he is satisfied that certain of the uses, although not all of them, mentioned had been continuing for ten years and are therefore immune from enforcement action. The Inspectors decision notice states that the "lawful" uses are storage, the restoration and breaking of motor vehicles and the keeping of pigeons as a hobby. The Inspector's requirements of the enforcement notice were as follows

(a) Cease the use of the land for the stationing of a mobile home and lorry back occupied as a residential unit and remove the said mobile home and lorry back from the land.

(b) Remove from the land all other items associated with the residential use of the land with the exception of operational development

This means that the storage, restoration and breaking of motor vehicles and keeping of pigeons as a hobby are lawful uses and can continue without intensification. However, as the residential use had not ceased and was not lawful the applicants were liable to prosecution and would be so again should the application be refused and be appealed unsuccessfully. If members overturn the Officer recommendation then no prosecution would take place.

## **2.0 Implications of Granting Planning Permission**

- 2.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the Council's LDF Core Strategy and Development Policies. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions and provides national policy against which applications should be considered.
- 2.2 Policy SD1 in the Core Strategy states that "growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy". This hierarchy defines Colchester Town and Stanway as the Regional Centres for growth, cascading down to District Settlements and Rural Communities, at village scale. The supporting text identifies that "focussing development on areas that are in need of regeneration and are accessible by a range of transport modes .... will protect our countryside by minimising the amount of development occurring on greenfield land. It will also help improve accessibility and reduce the need to travel, by ensuring that homes, employment and facilities are well located." Settlement boundaries are drawn around Fingringhoe – Abberton Road and Fingringhoe – High Park Corner. The site is over 0.5 miles from the edge of the Abberton Road settlement boundary. Two further Core Strategy policies address settlement patterns. Policy TA1 identifies that "developments that are car dependant or promote unsustainable travel patterns will not be supported" and Policy ENV1, states that "unallocated greenfield land outside of settlement boundaries will be protected.... within such areas development will be strictly controlled to conserve the environmental assets and open character of the Borough".
- 2.3 The NPPF looks to secure the promotion of sustainable development. Paragraph 55 states: "To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances". The special circumstances were set out in paragraph 15.2 of the original report. The proposal will not enhance or maintain the vitality of rural communities and does not meet any of the special circumstances.
- 2.4 Granting planning permission for an isolated dwelling in the countryside, which is clearly contrary to the development plan and NPPF, could set a precedent for the development of isolated dwellings in the countryside. There is nothing unique about this site that stands out as an exception to the rule as far as Officers can ascertain. Members should identify a material planning consideration that means that the benefits in this case outweigh the harm caused by departing from adopted planning policy. By identifying why this case is unique this will avoid creating an undesirable

precedent for future applications that may undermine our arguments in those instances. That the site is an “untidy” use that has become lawful may make this slightly different to unlawful untidy sites, however it should not be considered that the suggestion that a commercial operation could intensify this site is a fallback position as this is unfounded and would probably constitute a material intensification and possible change of use from that which is described as being lawful. Scrap yards are Sui Generis uses and the suggestion that this site could be sold to a commercial scrap yard operator is misleading and should not be considered to be a fallback position.

- 2.5 Without being able to identify a reason for departing from policy there is a risk that it would be difficult to refuse planning applications for isolated dwellings in the countryside where it is argued that this would ‘tidy up’ sites currently used for employment/storage purposes. Additionally the NPPF clearly states that planning decision should be taken in accordance with the development plan unless material planning considerations indicate otherwise: it is the material planning consideration that needs to be identified. Rural employment sites help to sustain the vitality of rural communities and the loss of sites to residential use would have a negative impact on the rural economy. It would need to be held by members that the removal of the buildings from this site is such a benefit to the countryside that this justifies allowing a new dwelling in the countryside. The introduction of isolated dwellings and associated domestic paraphernalia would have an urbanising effect on the countryside. Domestic use is materially different to storage/rural employment uses and the introduction of new dwellings in the countryside would adversely affect the character and appearance of the Borough’s countryside.
- 2.6 The original report to Committee acknowledged there were some potential benefits to the proposal. It would remove many of the buildings and materials that result in a site with an untidy appearance, although the large pigeon loft is not proposed for removal and the proposal would introduce an additional dwelling into this location. The application site benefits from lawful use rights associated with storage uses and the restoration and breaking up of cars/tractor bodies, etc. However, this is recognised as being almost “hobby like” in scale. Therefore, it is understood that the “commercial” (if it can be considered as such) use of the site is relatively low key at present and not comparable in any way to a typical scrap/breakers/storage yard; thus an intensification of the use would most likely require a new planning permission. An argument that commercial use of this site could take place should be given limited weight in justifying a new dwelling as a departure from policy as this may be a red herring.
- 2.7 The applicant has put forward a S106 Unilateral Undertaking that offers the following:

Prior to Commencement:

- Demolition of all buildings (except the pigeon loft);
- Lawful commercial uses to cease
- All materials, tractors, cars, etc removed from the site
- Planting scheme submitted

Prior to Occupation:

- Removal of mobile home from site
- Western access closed
- Planting Scheme implemented

- Payment to the Council of the Public Open Space and Community Facility contributions in accordance with its adopted SPD

Other Clauses:

- New dwelling to be completed within 18 months of commencement of development
- Not to exercise any permitted development rights to extend the dwelling, alter its roof (including the insertion of dormer windows), or construct any outbuildings.

2.8 The proposed Undertaking looks to secure the matters raised by Members at its earlier meeting. It would ensure the lawful commercial uses of the site would cease and all materials and buildings associated with these uses would be removed. It would also take away all permitted development rights to extend the dwelling. It would not however, secure the removal of the pigeon loft associated with the hobby use of the applicant.

### **3.0 Recommended Conditions**

3.1 Should Members remain minded to grant planning permission contrary to your professional officers opinions, and as a departure from our adopted policies and national guidance, it is recommended that a material Planning benefit that outweighs the harms caused and therefore justifies an “exception” be identified (to avoid risk of challenge and setting a precedent), and that any approval be subject of the S106 Unilateral Undertaking and the following conditions:

#### 1 - Non-Standard Condition/Reason

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

Reason: To secure the removal of an unauthorized mobile home from the site within a reasonable timeframe and in the interest of countryside amenity.

#### 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 1012/01A, 02A, 03 and 0033.

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

#### 3 - Contaminated Land Part 1 of 4 (Site Characterisation)

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;

(ii) An assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

#### 4 - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)

No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

#### 5 - Contaminated Land Pt. 3 of 4 (Implementation of Approved Remediation)

Prior to the commencement of development other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved,. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

#### 6 – ZG0 Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 3 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 4, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 5.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

#### 7 - \*Validation Certificate

Prior to the first occupation of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 5.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

#### 8 - Residential Code for Sustainable Homes (Part 1 of 2)

No works shall take place until 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 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.

#### 9 - Residential Code for Sustainable Homes (Part 2 of 2)

Within 3 months of the first occupation of any dwelling hereby approved, a post-construction Final Code Certificate issued by an accreditation body confirming that the 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.

#### 10 - 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.

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

## 11 - Non-Standard Condition/Reason

No works shall take place until precise details of the manufacturer and types and colours of the external roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. The details to be submitted shall be for a clay pantile. Such materials as may be approved shall be those used in the development. Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

## 12 - Removal of PD for All Residential Extensions & Outbuildings

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to ensure the development avoids an overdeveloped or cluttered appearance.

## 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.



## **Appendix – original officer report to committee**

### **1.0 Reason for Referral to the Planning Committee**

- 1.1 This application is referred to the Planning Committee by the planning officer in view of the general level of public support toward the removal of the commercial uses on the site and an improvement to the appearance of the site if planning permission were to be granted for the proposed new dwelling. However, whilst there are some potential long-term benefits, the application is recommended for refusal not least because the grant of planning permission for a new dwelling in the countryside would usually be considered as contrary to policy.

### **2.0 Synopsis**

- 2.1 The application is for a new dwelling to replace existing uses operating on the site. The report considers the proposal in the light of national and local planning policy and in relation to the planning history of the site. The application site has lawful commercial use rights and is of a “messy” appearance. The report acknowledges that clearance of the site and the removal of the commercial uses would be of local benefit. However, on balance, this is not considered to be sufficient to warrant the grant of planning permission for a new dwelling, as an exception to the usual policies of restraint in the countryside.

### **3.0 Site Description and Context**

- 3.1 The application site is a rectangular parcel of land measuring about 70m (road frontage), with an average depth of 30m. It is positioned on the south side of Upper Haye Lane, a Protected Lane that serves a small scatter of dwellings about a mile to the west of the village centre of Fingringhoe. Much of the site is covered by buildings (including an unauthorised residential caravan), vehicles and materials associated with the applicant’s business. There are two points of vehicular access onto the site.

### **4.0 Description of the Proposal**

- 4.1 The application proposes the removal of the mobile home from the site and all building materials, scrap vehicles and some of the existing buildings and containers. A building used for the keeping of pigeons is to be retained, which lies adjacent to Upper Haye Lane on the site’s northern boundary. The application proposes a single dwelling of one storey on the site. This is to be located centrally on the site, with 2 bedrooms, measuring approximately 17m by 8.5m with a ridge height of 5.5m. The design is traditional in appearance, and seeks to resemble a low barn or utilitarian agricultural building. The external materials follow this theme being black feather edged boarding, red brick and clay pantiles. The westernmost of the two access points would be closed off and replaced with a new native hedgerow.

### **5.0 Land Use Allocation**

- 5.1 Countryside outside settlement boundary  
Protected Lane

## **6.0 Relevant Planning History**

- 6.1 87/2188 – outline application for one dwelling, refused 1988
- 6.2 110274 – continued stationing of mobile home for 3 years, refused April 2011
- 6.3 110275 – certificate of lawfulness for existing use of land as builder’s yard, for storage of reclaimed materials, storage and renovation of vintage tractors and cars and for the housing of pigeons, refused April 2011
- 6.4 121302 – storage of building equipment, storage and/or sale of building materials, storage and/or restoration and/or breaking of tractors and other motor vehicles, storage and/or sale of scrap arising from use, storage and/or restoration of furniture, manufacture of concrete slabs, keeping of pigeons and hens as a hobby, application withdrawn April 2013
- 6.5 An enforcement notice was issued on 17 April 2012 alleging various unlawful commercial uses of the site and the stationing of a mobile home for residential occupation. The Inspector’s decision made in October 2012 found that storage, vehicle restoration and breaking and the keeping of pigeons as a hobby were all to be considered lawful uses. The stationing of a mobile home for residential use was not lawful. The Inspector also considered whether or not planning permission should be granted for the residential use under ground (a) of the appeal, but held that this should fail. The Inspector also considered under ground (g) of the appeal that the period of compliance to cease the residential use and removal of the mobile home should be 12 months.

## **7.0 Principal Policies**

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government’s planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 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  
UR2 - Built Design and Character  
ENV1 - Environment  
ENV2 - Rural Communities
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity  
DP9 Employment Uses in the Countryside  
DP12 Dwelling Standards  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings

DP16 Private Amenity Space and Open Space Provision for New Residential Development  
DP17 Accessibility and Access  
DP19 Parking Standards  
DP21 Nature Conservation and Protected Lanes

- 7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:  
Backland and Infill  
Community Facilities  
Vehicle Parking Standards  
Open Space, Sport and Recreation  
The Essex Design Guide

## **8.0 Consultations**

- 8.1 ECC Highways did not raise an objection subject to standard conditions relating to the provision of a pedestrian visibility splay, retention of parking facilities, etc.
- 8.2 Environmental Protection advised that a Phase One contaminated land assessment should be submitted in view of the past use of the site and its proposed use as a single dwelling.
- 8.3 Spatial Policy recommended refusal of the application on the following grounds:

“The Development Plan consists of the Adopted Core Strategy, Site Allocations and Development Policies DPDs. In accordance with policies SD1 (Sustainable Development Locations), H1 (Housing Delivery) and ENV1 (Environment) development within the Borough is directed to sites within existing settlement development boundaries. This is a remote site within the countryside and development would be contrary to the spatial strategy set out in the aforementioned policies. Paragraph 55 of the NPPF states that isolated new dwellings in the countryside should be avoided unless there are special circumstances such as: the essential need for a rural worker to live permanently at or near their place of work in the countryside; or where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or the exceptional quality or innovative nature of the design of the dwelling. Such a design should: be truly outstanding or innovative, helping to raise standards of design more generally in rural areas; reflect the highest standards in architecture; significantly enhance its immediate setting; and be sensitive to the defining characteristics of the local area.

The dwelling is not needed for a rural worker and whilst there is a lawful use on the site there is no demonstrable need for a worker to live on the site. A dwelling on this site would not relate to a heritage asset, nor is the design exceptional or innovative. The Planning Statement explains that the third point is relevant as the proposal would replace the existing uses on the site and thus result in a visual improvement. Whilst an enhancement to the immediate setting of a site could be an exception to the presumption against residential development in the countryside, paragraph 55 of the NPPF uses the word ‘and’, which makes it clear that this exception only applies where the development would also reuse redundant or disused buildings. This is not the case for this proposal and so whilst it is accepted that the proposal would improve the

immediate setting this is not sufficient justification to support a proposal that it clearly contrary to the development plan and the NPPF. Furthermore, the Planning Statement explains that the applicant makes his living from the yard and so I am concerned that if this application is approved the existing commercial uses would remain or expand to a nearby site. I note that the Inspector states in paragraph 50 of the appeal decision into the enforcement notice that: "I conclude that the use of the site for the stationing of a mobile home and lorry back occupied as a residential unit has harmful implications for national and local objectives of sustainable development. I therefore find this component of the mixed use to be contrary to CS Policies SD1 and TA1, DP Policy DP1 and the relevant provisions of the NPPF." Another consideration is the impact on the protected lane. This was referred to in the appeal decision and the Inspector concluded that residential use would materially increase the amount of traffic on the protected lane, contrary to Policy DP21 (Nature Conservation and Protected Lanes). Whilst it is accepted that there is currently a commercial use on this site residential use would lead to numerous trips back and forth throughout the day."

- 8.4 Natural England advised that the proposal, if undertaken in strict accordance with the details submitted, is not likely to have a significant effect on the interest features for which the Abberton Reservoir, Colne Estuary and the Essex Estuaries have been classified. Natural England therefore advised that the LPA is not required to undertake an Appropriate Assessment to assess the implications of this proposal on the site's conservation objectives. In addition, Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which the Abberton Reservoir and Colne Estuary SSSIs have been notified. Natural England therefore advises that this SSSI does not represent a constraint in determining this application.

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 The Parish Council agree that providing the existing mobile home and various outbuildings associated with the scrap and builders yard are all removed that the proposed single dwelling will enhance the area. However the proposed dwelling is outside of the village envelope and the Parish Council do not wish to set a precedent by approving development and therefore look to the professional advice of the planning officers whether this development may be permitted.

## **10.0 Representations**

- 10.1 8 representations of support were received on the grounds that the existing use is an eyesore and proposed dwelling will improve the appearance of the area.
- 10.2 One representation of objection was received and raised the following issues:
1. Ribbon development along Upper Haye Lane would destroy its character
  2. Further development will increase traffic disturbing farm animals and to the detriment of the road surface
  3. The site is outside the village envelope and could set an adverse precedent.

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 application makes provision for a minimum of two off-street parking spaces to be provided on site in accordance with the Council's adopted standards.

## **12.0 Open Space Provisions**

12.1 There is no requirement for any public open space to be provided for an application of this size.

## **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. However, the application follows upon enforcement proceedings and the application is recommended for approval only on the basis of betterment that requires a Planning Obligation be sought via Section 106 (S106) of the Town and Country Planning Act 1990. A draft Unilateral Undertaking was put forward (just prior to drafting this report) if planning permission is granted, to include the following:

- Contributions towards Open Space, Sports and Recreation Facilities and Community Facilities (amounts unspecified)
- New Dwelling to be completed within 18 months of commencement
- To remove the mobile home following completion of the new dwelling
- Not to occupy the new dwelling unless and until all building equipment, plant, machinery, materials, tractors and other motor vehicles, scrap, furniture and concrete products have been removed, the western access closed and a planting scheme implemented.

14.2 The draft Unilateral Undertaking as submitted is not acceptable because the contribution amounts are not specified and has not been checked by the Legal Department. Any further progress on this will be reported to the Planning Committee at its meeting.

## **15.0 Report**

### Policy Principle

15.1 The application site is outside of settlement boundaries as defined on the adopted LDF Proposals Map. Core Strategy Policy ENV1 seeks to protect land outside of settlement boundaries and Policies SD1 and H1 seek to ensure that new housing will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy. Countryside locations such as Haye Yard do not feature on the

Settlement Hierarchy. The Spatial Policy Team commented: "This is a remote site within the countryside and development would be contrary to the spatial strategy set out in the aforementioned policies".

- 15.2 Paragraph 55 of the NPPF states that isolated new dwellings in the countryside should be avoided unless there are special circumstances such as:
- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or,
  - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or,
  - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or,
  - the exceptional quality or innovative nature of the design of the dwelling.
- 15.3 In relation to the first, second and fourth bullet points (above), the applicant is not an agricultural worker, the proposal does not relate to a heritage asset, and the proposed building is not of exceptional quality or an innovative nature. In relation to the third bullet point (above), the proposal does not re-use a redundant or disused building, although it will result in an improvement in the appearance of the countryside within the immediate setting. In strict terms therefore, the proposal for a new dwelling in this location does not satisfy this paragraph in the NPPF nor the aforementioned locally adopted policies.

#### Enforcement Appeal

- 15.4 As referred to in paragraph 6.5 of the Planning History section of this report, an enforcement appeal in relation to this site was heard in 2012. The Inspector decided that storage, vehicle restoration and breaking and the keeping of pigeons as a hobby were all to be considered lawful uses. In regard to the storage use this was held to include storage of building equipment, plant and machinery, tractors and other motor vehicles and the scrap arising from these. The stationing of a mobile home and its residential use was not considered lawful.

#### Design and Layout

- 15.5 The proposed new dwelling will be of single storey and seeks to resemble a low barn or utilitarian agricultural building. The external materials proposed include black feather edged boarding, red brick and clay pantiles. The proposed building measures approximately 17m by 8.5m with a ridge height of 5.5m. Internally there are 2 bedrooms. The proposed dwelling will be located centrally on the site.
- 15.6 The application also proposes that the westernmost of the two access points would be closed and replaced with a new native hedgerow. The application will remove a number of dilapidated buildings from the site in addition to the old vehicle bodies and other scrap material. However, a large pigeon loft is to remain. This is a substantial structure located adjacent to the lane and at the time of the appeal hearing held up to 150 racing pigeons for hobby purposes. There is a hedgerow between the building and the lane, albeit with gaps in, and the structure is not therefore totally hidden from public view particularly during winter months.

## Traffic Generation

- 15.7 The appeal Inspector considered whether or not planning permission should be granted for the retention of the mobile home for residential use under ground (a) of the 2012 appeal and held that planning permission should not be granted primarily on the grounds that the travel patterns associated with a residential use in this location are not sustainable and contrary to planning policy. A new dwelling in this location will generate trips (including for purposes related to shopping, employment, education, health and leisure) that would of course materially increase the amount of traffic on the protected lane. The planning agent argues that the commercial uses that currently prevail on the site would normally be refused planning permission, particularly as the site lies on a Protected Lane. This is fair comment; Policy DP21 in the Development Policies states that Protected Lanes of historic and/or landscape value will be protected from development that would adversely affect their physical appearance or would give rise to a material increase in the amount of traffic using them. The agent also argues that relinquishing the lawful uses permissible on the site, in favour of a modest residential property would secure a permanent reduction of vehicle movements over the Protected Lane. No comparison of the vehicular trip rate between residential use and commercial use has been submitted with the application in evidence of this. However, your planning officer agrees that the lawful commercial use of the site has the *potential* to create a greater number of vehicle movements than those associated with a modest dwelling. Whether or not this will happen (if planning permission is refused) is less clear.

## Land Contamination and Drainage

- 15.8 The Environmental Protection Team has advised that a Phase One contaminated land assessment should have been submitted in view of the past use of the site and its proposed use as a single dwelling. The NPPF requires that new development should not contribute to, be put at unacceptable risk from, or be adversely affected by, unacceptable levels of pollution and that where appropriate, remediation should be carried out. The effects of pollution on health should be taken into account. The site must be suitable for its new use. The uses that have taken place in the past, including car and tractor breaking, are likely to require remediation works to bring the site into an appropriate condition for future residential occupiers of the site. The Council normally encourage the submission of this initial assessment before planning permission is granted, firstly to ensure that the land can be made safe for future residential occupants and secondly, because it gives applicant the opportunity to consider the costs involved. The Environmental Protection Team has advised that these costs are unknown, but may be substantial.
- 15.9 The new National Planning Policy Guidance advises that applications for development relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment. No such assessment has been provided.

### Planning Obligations

- 15.10 The planning agent in his original submission acknowledged that the proposal will be qualifying development for contributions to public open space and recreational facilities, but noted that whilst they are likely to be capable of being funded by the applicant they could also challenge viability of the project. As noted in Section 14 of the report, a draft unilateral undertaking has been submitted. However, at the time of the preparation of this report, the amount of contribution proposed is unspecified.
- 15.11 The draft Unilateral Undertaking also proposes all building equipment, plant, machinery, materials, tractors and other motor vehicles, scrap, furniture and concrete products will be removed prior to the occupation of the new dwelling. If planning permission is granted, it is essential that the clearance of the site is secured together with the complete cessation of the commercial uses. It should be pointed out under the terms of the draft undertaking submitted this would not immediately follow the grant of planning permission, as the applicant would normally be permitted 3 years in which to make a start to the works and the new dwelling may not be ready for occupation until some time after this (up to 18 months later as proposed by the draft undertaking).

### A Case for Betterment?

- 15.12 The site as it exists today is without question a local “eyesore” and the “commercial” uses referred to in paragraph 15.4 above have in effect been authorised by the Inspector on appeal in 2012. This application offers the opportunity to improve the physical appearance of the site and to remove the “commercial” uses. The majority of the public representations that have been received to this proposal support the application.
- 15.13 In visual terms it is undeniable that a general clearance of the site will be an improvement. Public views of the site, however, are mainly limited to those from the Protected Lane within the close vicinity of the site. The Protected Lane is of narrow carriage width for most of its length and is likely to be used by walkers as well as motorists. There are also views of the site from Upper Haye Lane to the south-west of the site, although these tend to be more distant glimpses through gaps in the roadside hedgerow. The application does not propose the removal of the large pigeon lofts, which can also be seen through gaps in the hedgerow.
- 15.14 A purely commercial use of the site, in accordance with the current lawful use, may in the future lead to an increase in the number of vehicles using the Protected Lane. It is accepted that the Local Planning Authority has no control over traffic generation and the intensity of use by future operators of the site who used the site for its authorised commercial purposes.
- 15.15 If planning permission were to be granted for a new dwelling in this location, it would have to be as an exception to the Council’s adopted policies, which seek to ensure that new residential development is not within relatively remote parts of the countryside. There are of course many commercial sites in countryside locations throughout the Borough. Granting planning permission for this site need not set a precedent for other commercial sites to be converted to residential use as each site and each application falls to be considered on its own merits. If planning permission



were granted for residential use on this site it would in part be because of concerns of additional traffic being generated along a Protected Lane if the existing commercial use were to remain. Notwithstanding this, the recommendation of the planning officer is for refusal.

- 15.16 There is a degree of uncertainty with regard to the viability of the proposal and the benefits that would accrue were planning permission to be granted. The application has been submitted without a contaminated land assessment, nor any justification that discharge of foul drainage to a septic tank is appropriate. There are potential costs involved with bringing the land to a condition suitable for residential occupation. The agent acknowledged that this proposal would normally qualify for contributions toward public open space and community facilities, but added they could challenge the viability of the project. However, at the time of drafting this report the amount of contribution proposed had not yet been specified within a Unilateral Undertaking.

## **16.0 Conclusion**

- 16.1 This is a remote site within the countryside and the development for a new dwelling would be contrary to the NPPF and adopted planning policy. Additionally, there is some further concern that in the absence of a contaminated land assessment and an estimate of the costs of remediation that the proposal put forward may not be fully viable. The officer recommendation in this case is therefore for refusal. However, the report also recognises that there may be some long-term benefits resulting from the proposal. If Members were minded to grant planning permission, it is recommended that a decision on the application should be deferred so as to allow the applicant to provide the following:
- (a) phase one contaminated land assessment with an estimate of the likely cost implications for remediation;
  - (b) clarification of the planning obligations proposed; and
  - (c) a viability report to demonstrate the viability of the proposal taking the former provisions into account.

## **17.0 Recommendation**

- 17.1 REFUSE planning permission for the reasons set out below.

## **18.0 Positivity Statement**

- 18.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal.

## **19.0 Reason for Refusal**

### **1 - Non-Standard Refusal Reason**

The Development Plan consists of the Adopted Core Strategy, Site Allocations and Development Policies DPDs. In accordance with policies SD1 (Sustainable Development Locations), H1 (Housing Delivery) and ENV1 (Environment), development within the Borough is directed to sites within existing settlement development boundaries. Paragraph 55 of the

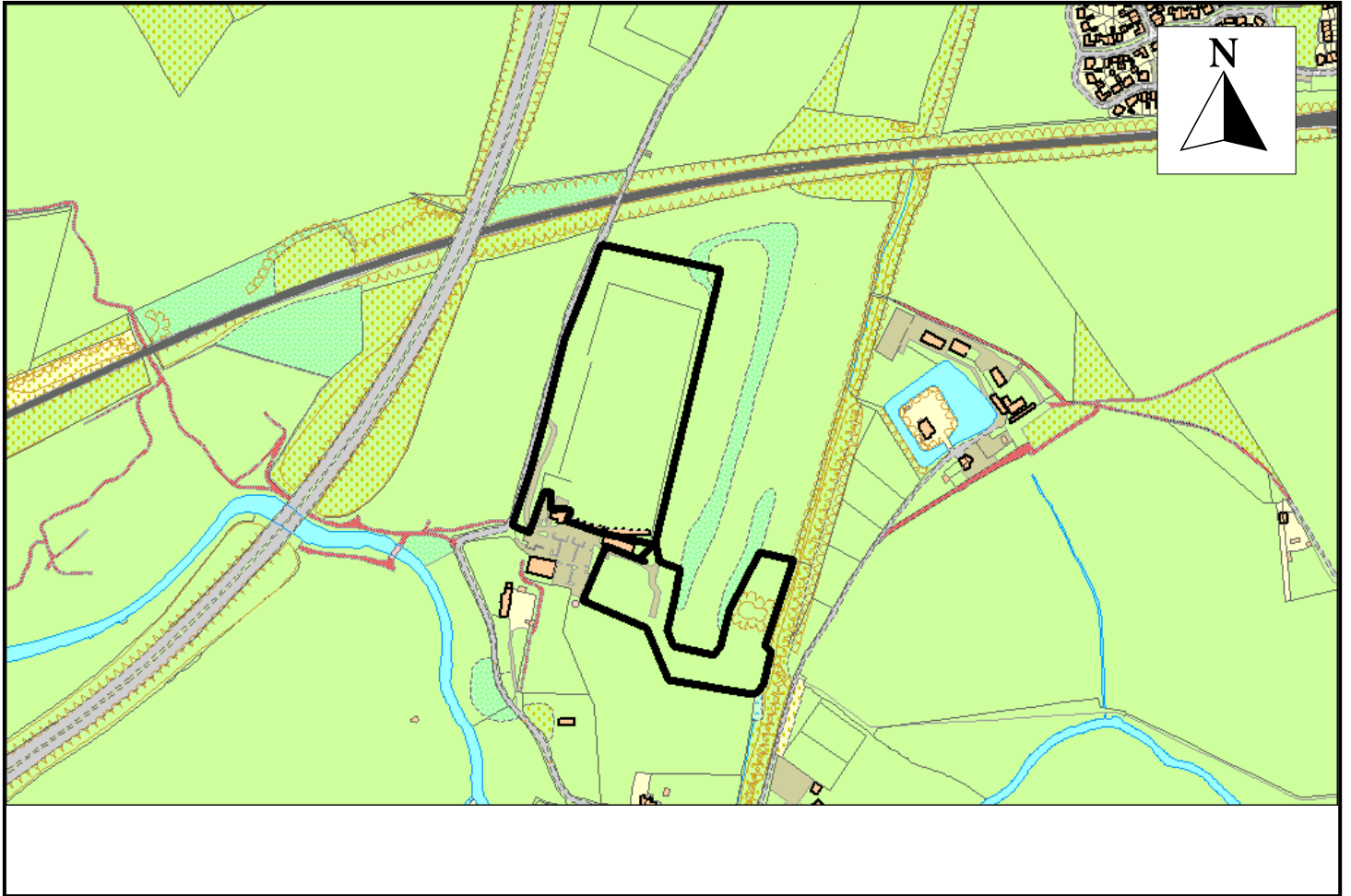
NPPF also states that isolated new dwellings in the countryside should be avoided unless there are special circumstances, which include where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.

In this instance, the proposed new dwelling is situated on a remote site within the countryside and development would be contrary to the spatial strategy set out in the aforementioned policies. It is acknowledged that the proposal for a new dwelling is on an untidy site relating to its lawful use for storage, restoration and breaking of vehicles, and the keeping of pigeons as a hobby, and that the relinquishing of the commercial uses in favour of a new dwelling would lead to an improvement in the appearance of the site. However, whilst there would be an enhancement to the immediate setting of the site, the paragraph 55 exception only applies where the development would also reuse redundant or disused buildings. This is not the case for this proposal and so whilst it is accepted that the proposal would improve the immediate setting this is not sufficient justification to support a proposal that is clearly contrary to the development plan and the NPPF.

It is further acknowledged that relinquishing of the lawful commercial uses would secure a future reduction in the commercial traffic using Upper Haye Lane, which is a Protected Lane. Policy DP21 in the Development Policies states that Protected Lanes of historic and/or landscape value will be protected from development that would adversely affect their physical appearance or would give rise to a material increase in the amount of traffic using them. However, this reduction in commercial traffic would have to be balanced against the number of vehicles using the Lane in connection with the proposed residential use. The travel patterns associated with a residential use in this location are not sustainable and contrary to planning policy.

The NPPF also requires that new development should not be put at an unacceptable risk from, or be adversely affected by unacceptable levels of pollution and that where appropriate, remediation should be carried out. No such assessment has been submitted with the application, or an assessment with regard to the implications to the water environment resulting from connection other than to a public sewage treatment plant. In the absence of such assessments the Local Planning Authority cannot be certain that the proposed residential dwelling would be appropriate and viable. Furthermore, in the absence of a legal mechanism to secure contributions toward the cost of the provision of public open space, sport and recreation and community facilities the proposal is contrary to Adopted Core Strategy Policy SD2 and Development Policy DP3 and Colchester Borough Council Supplementary Planning Document Provision of Community Facilities Adopted 28th September 2009 (and updated July 2013) and Colchester Borough Council Supplementary Planning Document Provision of Open Space, Sport and Recreational Facilities Adopted 24 July 2006.

Accordingly, it is not appropriate to grant a planning permission that would be an exception to the aforementioned planning policies.



**Application No:** 132247

**Location:** Lexden Wood Golf Club, Lexden Wood Golf Club, Bakers Lane, Colchester, CO3 4AU

**Scale (approx):** NOT TO SCALE

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**7.3 Case Officer: Lucy Mondon**

**Due Date: 23/05/2014**

**MAJOR**

**Site: Lexden Wood Golf Club, Bakers Lane, Colchester, CO3 4AU**

**Application No: 132247**

Date Received: 15 January 2014

Agent: Icon (uk) Consulting

Applicant: Mr Andrew Coleman

Development: Landscaping and re-modelling of existing golf course, with the addition of Adventure Golf Course

Ward: Lexden

**Summary of Recommendation:** Conditional Approval subject to signing of Section 106

### **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 where material planning objections have been received.

### **2.0 Synopsis**

2.1 The key issues explored below are: impact on the character of the area; impact on historic environment; highway safety; flood risk; biodiversity; contamination; and impact on local amenity.

2.2 The report describes the site and its setting, the proposal itself, and the consultation responses received. Material planning matters are then considered together with issues raised in representations.

2.3 The planning merits of the case are assessed leading to the conclusion that the proposal is acceptable as it would not have a detrimental impact on the character of the area, historic environment, highway safety, flood risk, contamination, or local amenity, and would result in some improvements to the biodiversity of the area. A conditional approval is recommended.

### **3.0 Site Description and Context**

3.1 The application site is an existing golf course: planning history for the site as a golf course dates back to 1990. The site is located in the countryside and is accessed via Bakers Lane, an unclassified road. The site is within an area of archaeological importance and there is a Scheduled Ancient Monument to the east of the site: Lexden Dyke. The dyke is also recorded as being a Local Wildlife Site. There is a flood zone to the south of the site on Spring Lane.

3.2 The closest residential properties to the site are: West House, a Grade II Listed Building to the south-west of the golf course; West House Farm, to the south; and Lexden Lodge, a Grade II Listed Building to the east.

#### **4.0 Description of the Proposal**

4.1 The proposal is to remodel the existing golf course. This would include: bunding and site contouring within the existing driving range; the creation of an adventure golf course; and the creation of a pond.

4.2 The works would take approximately six months to complete and would involve the importation of 56,000 cu metres of inert clean soils onto the site (to create the bunding). The soil would be imported by 20 tonne HGVs at a rate of 155 per week (30 each weekday and 18 on Saturdays). Due to the weight restriction on Spring Lane, works vehicles will access the golf club via Braiswick/Bakers Lane (route: A12 – A133 – A134 – B1508 – Bakers Lane).

4.3 The bunding would result in a maximum level increase of 4.2 metres. Each bund would be turfed and would have a French drain at the bottom in order to reduce water run-off. Additional landscaping is proposed to the boundaries of the driving range.

4.4 The adventure golf course would be sited on an existing practice area close to the car park. The course would arrive to the site pre-made and would be constructed on a concrete surface. There would be a shallow water feature, which would have a concrete base to prevent water infiltration. In order to compensate for the additional hard standing on site, a swale is proposed to the south of the adventure golf course in order to reduce water run-off rates.

4.5 The pond would be sited to the east of the site in an area where gravel pits are recorded and there is a noticeable depression in the ground. In order to create the pond, the site would be excavated to a depth of 1.15m – 1.2m and would be lined.

4.6 Along with drawings showing existing site levels, the regrading proposals, and sections of the regrading, the application is accompanied by the following supporting documents:

- Supporting Statement
- Ecological Assessment
- Hydrological Assessment (as appended by Evans letter report, dated 14<sup>th</sup> February 2014)
- Transport Statement
- Cultural Heritage and Archaeological Assessment
- Desktop Contamination Assessment

4.7 The Agent has also provided individual responses to each letter of objection. These responses can be viewed on the Council's website.

#### **5.0 Land Use Allocation**

5.1 Private open space.

## 6.0 Relevant Planning History

6.1 The site has an extensive planning history. The most recent planning decisions are as follows:

Application Number	Development Description	Decision	Decision Date
<a href="#">080248</a>	Clubhouse improvements	APPROVED WITH CONDITIONS	01-04-2008
<a href="#">080651</a>	Clubhouse improvements - extension to previously approved changing room addition	APPROVED WITH CONDITIONS	21-05-2008
<a href="#">120708</a>	Erection of single storey coffee house internal alterations to existing refreshment bar & relocation of existing parking spaces.	APPROVED WITH CONDITIONS	21-06-2012
<a href="#">121465</a>	Golf club facilities consisting of first floor extension over ground floor as approved under planning application no. 120708, and associated works.	APPROVED WITH CONDITIONS	04-10-2012
<a href="#">121961</a>	Variation of condition no. 2 of planning permission 121465 - minor alterations to building layout and elevations	APPROVED WITH CONDITIONS	29-11-2012
<a href="#">131031</a>	Proposed golf club facilities consisting of roof conversion and extension over ground floor as approved under planning applications No.121465 & No.121961, associated works, plus remodelling of existing golf range canopy.	APPROVED WITH CONDITIONS	24-07-2013
<a href="#">132145</a>	Proposed golf club facilities consisting of provision of enclosure over existing stairs, ground floor extension to provide a Junior Golfer's recreation room and minor amendments to extant planning applications 121465, 121961 and 131031 and associated works.	APPROVED WITH CONDITIONS	11-12-2013

## 7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

Also relevant is the National Planning Practice Guidance (NPPG) of 2014

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

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

DP1 Design and Amenity  
DP14 Historic Environment Assets  
DP17 Accessibility and Access  
DP20 Flood Risk and Management of Surface Water Drainage  
DP21 Nature Conservation and Protected Lanes

## **8.0 Consultations**

8.1 Environment Agency:

- No objections;
- Satisfied that consideration has been given to the existing run-off characteristics and there will be no impact on permeability/infiltration for the course area;
- Suggested informative to advise that run-off/flow paths from the finalised landscaping mimic the natural flow regime;
- Advice regarding waste, including advice that if any waste to be used on site, the applicant will be required to obtain the necessary waste exemption or permit from the Environment Agency.

8.2 English Heritage:

- No objection;
- The pond (located within an area of 19<sup>th</sup> century quarrying) and adventure golf course (which is to be raised slightly to avoid ground disturbance) are considered to have a negligible impact on the monument;
- The remodelled driving range, which will be elevated by 2.5-4.2 metres in height and defined by a steep grassed bund on its eastern side, would be visible from the scheduled dyke. However, the proposed landscaping is of a scale and sufficient distance away not to significantly impact on or visually detract from the scheduled dyke, the setting of which is already partially compromised by the presence of the existing golf course.

8.3 Natural England:

- No objection in respect of statutory nature conservation sites;
- No comments regarding protected species; and
- Suggestions for biodiversity and landscape enhancements.

- 8.4 Highway Authority:
- No objections subject to all public rights of way being kept clear of obstruction at all times;
  - Requirement for inspection of route used by construction vehicles before and after construction period and any damage caused by construction traffic to be repaired to an acceptable standard (paid for by the developer) secured by bond of £20,000;
  - Requirement for construction route to be clearly signed; and
  - Requirement for wheel washing facilities.
- 8.5 Landscape Officer:
- Potential impacts on public viewpoints from Bakers Lane, but only filtered and winter views mitigated by planting on western boundary;
  - Minimal impact on PROW 23 so no objection and no justification for mitigation;
  - Long views to eastern embankment of driving range from PROW 10. Recommend planting on eastern side of driving range to give organic, rather than engineered, profile and to blend with the existing golf course; and
  - Subject to amendment, no objections. Recommended conditions: details of earthworks; details of tree/shrub planting; and details of landscaping.
- 8.6 Archaeological Officer: No objection. The proposal should not impact on the known archaeological features that exist.
- 8.7 Arboricultural Officer: Arboricultural Impact Assessment and Method Statement required in order to assess impact on trees.
- 8.8 Contamination Officer: This is an acceptable report for Environmental Protection purposes. It is noted that imported soils would be under the control of the Environment Agency and that the historically imported soils to the east of the 6<sup>th</sup> hole are too far away from the proposed development to represent any unacceptable risk. Further investigation is recommended (at the soil bund to north of existing driving range, and at the potential fill in vicinity of the proposed pond, 'Area C') and the Council would expect to see a minimum of three samples taken from any single source (a minimum of 2 has been suggested in the report). Based on the information provided, it would appear that these matters would not preclude the safe development of this site, subject to conditions for investigation.

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 Councillor Goss has commented that the golf course is a welcome addition to the area (providing jobs and local investment), but there are two concerns:

1. Drainage and flooding issues: require assurances that the works will improve the situation and not make matters worse; and
2. The road surface on Bakers Lane and Spring Lane is poor: request that something is done to minimise movements; no major lorries onto Braiswick, Bakers Lane, and surrounding area; and roads are swept. Spring Bridge will be closed early February for a period of months.

10.2 Five letters of objection have been received, the contents of which are summarised as follows:

- Flooding on Spring Lane due to drainage issues;
- Potential damage to road and railway bridge from excessive use by HGVs.;
- A S106 should be required to secure money for remaking Bakers Lane/Spring Lane road surface, railway bridge repairs, and a new bridge over the river in Spring Lane;
- Potential gridlock from increased traffic and impact on North Station roundabout;
- Road sweeping is required in order to keep the roads clear of dirt;
- Construction traffic would be outside permitted hours;
- Noise and pollution during construction. Impact on local residents and environment from construction traffic (30-50 twenty-tonne lorries each day), as well as buses, skip hire lorries, and other vehicles;
- Can no longer walk, cycle, or horse ride on Bakers Lane due to increase in traffic over the years; and
- The proposal is a ploy to dispose of waste soil.

10.3 An objection was received from Lexden Lodge relating to flooding and ecological issues. However, following correspondence from the Agent, this objection has subsequently been withdrawn.

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 does not impact upon the current parking provision on site.

## **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 considered that Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The Obligations that would be agreed as part of any planning permission would be:

- To secure a bond or cash sum of no more than £20,000 from the owner/developer to be used if any damage is caused to Bakers Lane as a result of the development. An inspection by the Highway Authority will take place before development begins and one taken after completion of development. The bond will not be drawn upon unless the developer fails to rectify any damage to Bakers Lane caused as a result of the development construction traffic. On final inspection, if no damage is visible, or any damage caused is rectified to the satisfaction of the Highway Authority, the bond will be released back to the developer.

## **15.0 Report**

15.1 The main planning considerations are: impact on the character of the area; impact on the historic environment; highway safety; flood risk; biodiversity; contamination; and impact on local amenity.

15.2 Impact on the character of the area:

In terms of the character of the area, the site is well-established as a golf club and there would not, therefore, be an immediate or significant impact on the overall character of the area as the site would continue as a golf club. The main impact of the proposal is upon the character and appearance of the landscape when viewed from public vantage points, such as the numerous public footpaths in the area. The Council’s Landscape Officer has assessed the proposals in terms of their landscape impact and has concluded that there would be potential impacts on public views from Bakers Lane and some of the surrounding footpaths, but that either existing or proposed planting would filter these views. There would not, therefore, be a significant impact upon landscape characteristics.

15.3 Recommended conditions include: details of earthworks; details of tree/shrub planting; and details of landscaping to ensure that the scheme is appropriate in terms of visual amenity.

15.4 Impact on the historic environment:

The site is within an area of archaeological important and adjacent to a Scheduled Ancient Monument (SAM), so the impact of the proposals upon the historic environment is an important consideration. A detailed Cultural Heritage and Archaeological Assessment has been submitted with the application, which concludes that the proposals will respect the historic environment.

15.5 English Heritage have confirmed that the proposed works are located in the vicinity of Moat Farm Dyke, a linear earthwork of late Iron Age date, which is designated as a Scheduled Ancient Monument (NHLE 1019964). The dyke survives as a substantial earthwork, comprising a bank flanked by a ditch on its western side, and represents one of the best surviving examples amongst the linear earthworks which defined the perimeter of the Iron Age oppidium at Colchester. As well as being a prominent historic landscape feature, the ditch and bank will retain valuable archaeological

evidence relating to its construction and use. This stretch of the dyke forms the eastern boundary of the Lexden Wood golf course. English Heritage have concluded that the pond (located within an area of 19<sup>th</sup> century quarrying) and adventure golf course (which is to be raised slightly to avoid ground disturbance) would have a negligible impact on the monument and that the remodeled driving range, although visible from the monument, would be of a scale and sufficient distance away not to significantly impact on or visually detract from the scheduled dyke, the setting of which is already partially compromised by the presence of the existing golf course. The proposal would not, therefore, have a detrimental impact upon the Scheduled Ancient Monument or its setting.

- 15.6 As the proposal does not include any excavation, other than at the pond site, which has already been disturbed by 19<sup>th</sup> century quarrying, there would not be any impact upon physical archaeology.
- 15.7 Highway Safety:  
The impact of the proposal upon the safety and quality of surrounding roads has generated a number of objections from local residents. The main concerns are: the poor quality of the road surface on Bakers Lane and Spring Lane and the potential damage from HGVs; potential grid lock from increased traffic; and mud on the road.
- 15.8 The access to the site is via a narrow road (Bakers Lane or Spring Lane). The road is not considered to be of particularly poor quality, but due to it being narrow, there is the potential for HGVs associated with the construction phase of development to cause damage. The Highway Authority has recommended that a bond (of £20,000) be secured from the owner/developer to be used if any damage is caused to Bakers Lane as a result of the development. A similar mechanism has been used for the recent extensions to the golf club buildings and has proved to be successful. In using this mechanism it is considered that, should any damage occur to the road as a result of the development, it would be rectified.
- 15.9 The construction phase of the development would generate additional traffic, although this would be for a temporary period of six months. The additional vehicles required would be 20-tonne lorries, at a rate of 155 per week (up to 30 per week day and 18 on Saturdays), which equates to no more than three lorries per hour. At this rate of traffic generation, the Highway Authority has no objections on highway safety grounds. The increase in traffic is not considered to justify refusal of planning permission as it would only be for a temporary period and the Highway Authority has no objections.
- 15.10 The development is not considered to cause significant issues with regards to mud on the road. The Transport Statement submitted confirms that there would be wheel washing and associated facilities provided on site and this would also be secured by condition.
- 15.11 One objection stated that a S106 should be required to secure money for remaking the Bakers Lane and Spring Lane road surface, railway bridge repairs, and a new bridge over the river in Spring Lane. It is not considered reasonable to require the developer to pay for works that are not connected with the development. Although visitors to the golf club will use Bakers Lane and Spring Lane (as they do now) the number of visitors are not considered to significantly increase as a result of the development so as to justify repairs and improvements to the road network in general.

15.12 Flood risk:

The application site is within a flood zone 1 and is therefore unlikely to be susceptible to flooding, having a less than 1 in 1000 annual probability of river or sea flooding. The site is classified as water compatible, being for outdoor sport and recreation, and further development of this type is considered to be appropriate in a flood zone 1 in accordance with National Planning Practice Guidance 'Flood Risk and Coastal Change'.

15.13 The NPPF (at paragraph 103) states that, when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere. The use of Sustainable Drainage Systems (SuDS) is recommended to follow natural drainage. These matters have been addressed in the Hydrological Assessment submitted with the application, which explains the following:

- The alterations to the driving range will not change the existing surface water run-off direction (south-easterly) and the infiltration of the surface water will occur in the same way and at the same capacity;
- The impermeable areas within the adventure golf course will increase surface water run-off rates, but a swale will be introduced to intercept run-off and gradually return surface water to the ground; and
- The pond will provide some attenuation and would not adversely disturb the drainage regime of the site or baseflow of Lexden Dyke.

15.14 The Environment Agency have no objections to the proposals, being satisfied that consideration has been given to the existing run-off characteristics and that there will be no impact on permeability/infiltration for the course area.

15.15 A number of objections have been received from local residents, who are concerned with drainage issues and flooding on Spring Lane. There is no evidence to suggest that the flooding in Spring Lane (which is in a flood zone 2 so is susceptible to flooding) is as a direct result of drainage issues at the golf club site. Even if this were the case, it has been demonstrated that the proposal would have a negligible impact on the natural flow regime of the site and surface water run-off rates (subject to mitigation) so would not increase flood risk. The proposal is considered to be acceptable on this basis.

15.16 Biodiversity:

The application site is not a statutory designated area for protected species, although the site is adjacent to a Local Wildlife site (the dyke along the eastern boundary). The proposals would not have a direct impact upon the Local Wildlife Site and Natural England do not have any objections.

15.17 A detailed Ecological Assessment has been submitted with the application, which sets out that there is either no evidence of, or no suitable habitat for, protected species; with the exception of bats and breeding birds. The assessment identifies the eastern boundary of the site as being suitable for foraging bats and the treed boundaries of the site offering foraging and nesting opportunities for birds. The proposed development would not result in the loss of these habitats, but would be in close proximity to them. Recommendations in the assessment include the requirement that the clearance of vegetation should be outside the main bird breeding season (March-July inclusive) and that all vegetation should be checked by a qualified ecologist prior to clearance. This approach is considered to be appropriate and can be secured by condition.

- 15.18 Planning policy, including policies ENV1 and DP21 of the Local Development Framework, encourages ecological enhancements within developments. It is considered that the proposals provide a number of enhancements, which are to be supported. For example, the Ecological Assessment proposes the use of wildflower seed mixes at the boundaries of the site, as well as less intrusive management regimes to allow plants to grow and improve habitat. The new planting proposed as part of the development, as well as the new pond, will also enhance the existing habitat for bats and birds: there would be increased invertebrates for bats to feed on as well as more nesting opportunities for birds.
- 15.19 Contamination:  
Although the responsibility for securing a safe development, in terms of contamination and land stability, rests with the developer and/or landowner, the NPPF makes it clear that in order to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. It is therefore necessary to assess any potential contamination risks at the planning stage.
- 15.20 In terms of potential risk of contamination, historic maps, dating from approximately 1867-1912, show an area of land either on or adjacent to the application site annotated as being gravel pits. It is not known whether there has been any subsequent filling of the voids created. There have also been anecdotal evidence that unregulated soils (therefore being of unknown contaminative status) have been imported onto the site by previous owners, although it is unsure whether this is indeed the case or exactly where this material has been placed. The Applicant has submitted a contamination assessment that identifies areas of potential risk and recommends that samples are taken in order to establish whether there is any real contamination risk. The Council's Contamination Officer is satisfied by this approach and has recommended conditions to ensure that the investigation is carried out, along with any necessary remediation measures. It is concluded that, subject to conditions, the site is appropriate for development.
- 15.21 Impact on local amenity:  
The use of the golf course will not change as a result of the proposal so the proposal is not considered to have an impact on local amenity in terms of noise or privacy. There would, however, be some disruption during the construction period as the proposal would require the importation of 56,000 cu metres of soil onto the site (to create the bunding). The soil would be imported by 20 tonne HGVs at a rate of 155 per week (30 each weekday and 18 on Saturdays). The Supporting Statement confirms that construction would take place from 8am to 6pm on weekdays and 8am to 1pm on Saturdays. These hours of working comply with Environmental Control best practice for construction sites and can be conditioned to ensure that construction does not take place during unsociable hours when nearby residents may be disturbed.
- 15.22 Some objections have been concerned with a potential breach of conditions relating to hours of working. It would be unreasonable to assume that a developer would consciously ignore planning conditions. However, if it did transpire that works were being undertaken outside the permitted hours, this would be dealt with by the Enforcement Team.

#### 15.23 Other matters:

The majority of local objections have been addressed in the main body of the report. However, there are some additional comments that need to be addressed as follows.

15.24 A comment has been received that concerns the changing nature of Bakers Lane: that people can no longer walk, cycle, or horse ride on the lane due to increased traffic. Whilst these concerns are sympathised with, this situation would remain regardless of whether the proposed development takes place and is therefore not a justification to refuse the application. Traffic will increase during the construction period, but this is for a temporary period of six months and is not a permanent consequence of the current proposals and the Highway Authority have no objections in terms of highway safety.

15.25 A comment has been received that surmises that the proposal is a 'ploy' to dispose of waste soil. The proposal would be achieved by utilising waste soil that would otherwise go to landfill, but there is nothing in the application to suggest that this is the sole purpose of the development. The application puts forward the case that the proposal is for the regarding and recontouring of the site for the benefit of the golf club and this is considered to be satisfactory. The importation of waste would be subject to an Environmental Permit from the Environment Agency.

### 16.0 Conclusion

16.1 In conclusion, the proposal would not have a detrimental impact on the character of the area, historic environment, highway safety, flood risk, contamination, or local amenity, and would result in some improvements to the biodiversity of the area.

### 17.0 Recommendation

17.1 APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

- A bond or cash sum of no more than £20,000 from the owner/developer to be used if any damage is caused to Bakers Lane as a result of the development.

17.2 On completion of the legal agreement, the Head of Environmental and Protective Services be authorised to grant planning permission subject to the conditions at paragraph 19 of this report.

### 18.0 Positivity Statement

18.1 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.

## 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 permitted shall be carried out in accordance with the details shown on the submitted Drawing 'Proposed Regrading, dated 6th August 2013, received on 25th March 2014.

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

Notwithstanding the submitted details, no works shall take place until details of all earthworks have been submitted to and agreed, in writing, by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that any earthworks are acceptable in relation to their surroundings.

### 4 - Tree or Shrub Planting

No works shall take place until details of tree and/or shrub planting and an implementation timetable have been submitted to and approved, in writing, by the Local Planning Authority. This planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

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

### 5 - \*Protecting Public Rights of Way

The public's rights and ease of passage over public footpaths 23 and 24 shall be maintained free and unobstructed at all times.

Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility.

#### 6 - Wheel Washing Facilities During Construction

No works shall take place until details of a wheel washing facility within the site and adjacent to the egress onto the highway have been submitted to and approved, in writing, by the Local Planning Authority. The wheel washing facility shall be provided at the commencement of the development and maintained during the entire period of construction unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that loose materials and spoil are not brought out onto the highway, in the interests of highway safety.

#### 7 -Non-Standard Condition/Reason

The development hereby approved shall be carried out in accordance with paragraphs 4.5 and 4.6 of the Transport Statement, dated 15th August 2013.

Reason: In the interest of highway safety and for the avoidance of doubt as to what has been approved.

#### 8 - Limits to Hours of Construction Deliveries/Worker Traffic

No construction deliveries to or from the site, worker vehicle movements, or construction work shall take place outside of the following times;

Weekdays: 0800-1800

Saturdays: 0800-1300

Sundays and Bank Holidays: None

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

#### 9 - Non-Standard Condition/Reason

The development, hereby approved, shall be carried out in accordance with the Evans Hydrological Assessment Ref 1196/RE/08-13/01 Revision A (August 2013) and the Evans letter report ref 1196/RE/01, dated 14th February 2014.

Reason: In order to minimise the risk of flooding.

#### 10 - Contaminated Land Part 1 of 4 (Site Characterisation)

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos; (ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).



This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

#### 11 - Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)

No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

#### 12 - Contaminated Land Pt. 3 of 4 (Implementation of Approved Remediation)

Prior to the commencement of development other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

#### 13 - Contaminated Land Part 4 of 4 (Reporting of Unexpected Contamination)

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 10, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 11, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 12.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

#### 14 - \*Validation Certificate

Prior to the first occupation/use of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 10.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

### 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) PLEASE NOTE: This application is the subject of a Section 106 legal agreement and this decision should only be read in conjunction with this agreement.

(5) The Developer is advised to ensure that the run-off/flow paths from the finalised landscaping of the site should mimic the natural flow regime.

(6) In respect of the contamination investigations required, the developer is advised that a minimum of three samples should be taken from any single source.



**Application No:** 143672

**Location:** Meadowside Lodge, Olivers Lane, Colchester, CO2 0HJ

**Scale (approx):** 1:1250

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**7.4 Case Officer: Carl Allen**

**Due Date: 22/05/2014**

**Site: Meadowside Lodge, Olivers Lane, Colchester, CO2 0HJ**

**Application No: 143672**

**Date Received: 27 March 2014**

**Agent: Mr Peter Tyler**

**Applicant: Mr R Bailey**

**Development: Canopy to front entrance.**

**Ward: Stanway**

**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 member of staff and is a consultant who undertakes some work for the Council.

### **2.0 Synopsis**

2.1 The key issues explored below are those of design and amenity. In these regards the proposal is considered to be acceptable and conditional approval is recommended.

### **3.0 Site Description and Context**

3.1 Meadowside Lodge is a detached bungalow which has no neighbouring dwelling in close proximity. To the north of the dwelling is a detached garage with Olivers Lane beyond. To the east are fields, to the south-east is the rear garden whilst to the west is the garden of Eldred Barn. The site is in the countryside.

### **4.0 Description of the Proposal**

4.1 The proposal is for a canopy to the front entrance. The canopy would be with a pitched roof and approximately 3.5 metres high, 2.3 metres long and 3.2 metres deep. This would come forward of the front entrance, whilst also infilling a recessed area to the front door. Materials would be hardwood posts and plain tiles to match the existing.

### **5.0 Land Use Allocation**

5.1 Residential within unallocated land.

### **6.0 Relevant Planning History**

6.1 F/COL/05/2068 Single storey extension to front of dwelling. Approved.

6.2 F/COL/04/1722 Enlarging roofs to existing (and proposed extension) dwelling. Approved.

## **7.0 Principal Policies**

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

Also relevant is the National Planning Practice Guidance (NPPG) of 2014.

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  
SD2 - Delivering Facilities and Infrastructure  
SD3 - Community Facilities  
UR2 - Built Design and Character

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

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

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

Extending Your House?  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

8.1 n/a

## **9.0 Parish Council Response**

9.1 The Parish Council has stated that it has no objections.

## **10.0 Representations**

10.1 No comments have been received.

## **11.0 Parking Provision**

11.1 No change.

## **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 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 proposal is for a canopy/open porch that would infill an existing void to the front elevation and would also come forward of the front entrance. The proposed roof would be 1 metre lower than the ridge of the existing dwelling. This along with the open design of the proposal would mean that the canopy/porch would not distract from the overall design of the dwelling. The materials are also considered to be sympathetic with the existing dwelling. For these reasons the proposal is considered to comply with Policies UR2 and DP1.

15.2 The proposal would be approximately 10 metres from the highway of Olivers Lane and there would be no clear view of it, given the hedging and garage to the front. With these factors there would be no impact on the street scene. The site has no immediate neighbours who could be overshadowed from the proposal and no accommodation would be gained – so no opportunity for overlooking. This is considered acceptable in regards to amenity and Policy DP1.

## **16.0 Conclusion**

16.1 The design is acceptable and there would be no amenity impacts.

## **17.0 Recommendation**

17.1 APPROVE subject to the following conditions.

## **18.0 Positivity Statement**

18.1 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.

## 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 Drawing Numbers 241-1, 241-2, 241-3 and 241-4 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 - Non-Standard Condition/Reason

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) 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.



## **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.*