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**Item No:** 7.4

**Application:** 232148

**Applicant:** Oakbourne Management

**Agent:** Euan Shepherd

**Proposal:** Retrospective application for erection of a fence in the alleyway adjoining John Castle Way and Bourne Court to prevent documented anti social behaviour such as: drug dealing, trespassing and threatening behaviour.

**Location:** John Castle Way, Colchester

**Ward:** Berechurch

**Officer:** Phillip Moreton

**Recommendation:** Refusal

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

1.1 This application is referred to the Planning Committee because the application has been called in by Cllr Martin Warnes and is controversial locally.

## **2.0 Synopsis**

2.1 The key issues for consideration are: the principle of development, the impact on the character and appearance of the Area, pedestrian/cycle connectivity and amenity. Other material planning matters are also considered. The comments submitted by statutory consultees, as well as other consultees and local representations are considered.

2.2 The application is subsequently recommended for refusal.

## **3.0 Site Description and Context**

3.1 The site is a footpath/cycleway that is located to the East of John Castle way and west of Bourne Court. The site is a footpath and cycleway associated with the development of residential properties of John Castle Way that was secured by condition 30 of the approved outline permission (132075) for this development to connect King George Avenue with Dudley Court. See below:

30. Prior to occupation the new cycleway/footway linking King George Road to Dudley Close will be constructed entirely at the Developer's expense.  
Reason: To make adequate provision within the highway for the additional pedestrian and cycling traffic generated within the highway as a result of the proposed development.

3.2 A complaint was made to the Councils planning enforcement team that the footpath/cycleway had been closed off by a close boarded fence. The complaint was investigated, and a site meeting took place on site with residents of the estate, the estate managers, planning officers and ward councillors where the issues were discussed. It was explained that a planning application would need to be submitted to the City Council to seek the retention of the fence and that this should be presented to Colchester's Planning committee for determination to consider the pro's and con's of the application in the context of the Councils adopted plan policies which encourage walking and cycling.

## **4.0 Description of the Proposal**

4.1 The application seeks retrospective planning permission for a fence to block the pedestrian/cycleway link which connects John Castle Way and Bourne Court

## **5.0 Land Use Allocation**

5.1 Residential predominantly.

## **6.0 Relevant Planning History**

6.1 132075 – Outline – Residential development comprising up to 24 no. dwellings, associated landscaping and vehicular access from King George Road. Approved 18/11/2014.

6.2 160071 – Full – Erection of 27 residential units, complete with access and parking provision. Approved 10/08/2016.

## **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 be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in conformity with these national policies and is made up of several documents as follows below.

### 7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP7 Place Shaping Principles

### 7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

PP1 Generic Infrastructure and Mitigation Requirements

DM15 Design and Amenity

DM20 Promoting Sustainable Transport and Changing Travel Behaviour

7.4 Regard should also be given to the following adopted Supplementary Planning Documents (SPD): The Essex Design Guide

## **8.0 Consultations**

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.2 **Transport and Sustainability** – We note that the landowner is applying for retrospective planning approval for blocking off the foot and cycleway they installed only 5-6 years ago. We note that they claim this will stop antisocial behaviour, but I believe they have severed a foot and cycle path leaving two dead-end paths. With no people passing through this space, with passive policing to those using the path, surely the potential for antisocial behaviour is higher.

The original planning approval for the development (132075) required a new cycleway/footway linking King George Road to Dudley Close to be constructed entirely at the developer's expense, and the reason for this condition was to make adequate provision for the additional pedestrian and cycling traffic generated as a result of the proposed development. We would suggest that this is a well-used east west route linking the Bourne Road/ Mersea Road area with the LCWIP route 5 Garrison route which serves the residential areas to the west as well as linking into the city centre. This link also enables cyclists and pedestrians to access the LCWIP 5 Garrison route from The Hythe area via Distillery Lane and Bourne Pond nature reserve and avoiding the busy Mersea Road. Of course, the residents of this development also enjoy the foot and cycle access that this link provides, including access to St Georges Primary school.

We would suggest that any antisocial behaviour is addressed by the landowner other means, which do not conflict with their original planning condition and allow local residents to make their journeys on foot or bike in line with Council policy to help reduce congestion and enable healthy lifestyles.

8.3 **Community Safety Officer** – No response received at the time of writing the report.

- 8.4 **Police Designing Out Crime Officer** –The Essex Police Designing Out Crime Office (DOCO) thank you for the opportunity to comment on retrospective planning application 232148.

It is important that public realm spaces are designed where safety and security is subliminal to the user of that space, as the perception of crime and the fear of crime can be an influential factor in determining the synergy and ongoing sustainability of a neighbourhood and the wider community. From a reported crime perspective, Essex Police data and records for the location (over the last twelve months), do not appear to reflect the crime and ASB as proposed. However, Essex Police records alone will not equate for public perception or consider incidents that are not reported. The fear and perception of crime can play a significant factor in enhancing the health and wellbeing of the residents and wider community. We, the DOCO, would welcome the opportunity to meet with the applicant to discuss this location and gain a clearer understanding of the concerns voiced by the residents. If you have any further queries, please do not hesitate to contact the team via [designingoutcrime@essex.police.uk](mailto:designingoutcrime@essex.police.uk).

#### 8.5 – Environmental Protection – No Comment

- 8.6 – **Highways Authority** - The Highway Authority observes that the fence is located on private land and not highway Maintainable at Public Expense and therefore does not object to the proposals as submitted.

- 8.7 - **Colchester Cycling Campaign** – The cycling campaign objects to this proposal. Please note that the original conditions for this development (plan 132075) specified that the developer provide a pedestrian/cycle link between King George Road and Dudley Close/Bourne Court. What prevents antisocial behaviour is frequent passing and repassing by ordinary citizens. Creating what amounts to two cul-de-sacs is likely to increase not decrease any such activity. We request that the fence is removed and also (in line with LTN 1/20 and the principles set out in Gear Change) that any staggered barrier is taken out. It is clear from the other comments on the application that this is a valued link for cyclists and pedestrians. Retaining the blockage would result in significant diversions and possibly more journeys by car.

#### 9.0 Representations from Notified Parties

- 9.1 The application resulted in a number of notifications to interested third parties including neighboring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

Objection comments summary:

- Concerns about loss of walkable access to amenities e.g., Doctors surgery, schools
- Concerns about the loss of pedestrian and cycle path are at odds with Council policy.
- Concerns over loss of access to public transport.
- Concerns about the access for emergency vehicles.
- Fears over isolation from the wider community.
- Walkway improved connectivity in the local community

Support comments summary:

- Alleyway allegedly used for criminal activity.
- Antisocial behaviour on pathway.

- Safer for children

## **10.0 Air Quality**

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

## **11.0 Planning Obligations**

11.1 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 (s.106) of the Town and Country Planning Act 1990.

## **12.0 Report**

### **Connectivity and Amenity**

12.1 Local Plan Section 2 Policy DM20 sets out criteria that will be applied to increase modal shift towards sustainable modes by improving accessibility of development through the promotion of walking and cycling as an integral part of development with sustainable transport being improved to provide better connections between communities and their needs. This will be achieved by Safeguarding existing and proposed routes for walking, ensuring new developments are supported by quality public transport linking them to the main urban areas and major centres of employment, health and education. Access to public transport should be within walking or cycling distance of any new development.

12.2 Local Plan Section 2 Policy DM15 states that development should protect and promote public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight and create a safe, resilient and secure environment, which supports community cohesion and is not vulnerable to neglect, whilst also stating that development should provide attractive, well connected and legible streets and spaces, which encourage walking, cycling, public transport and community vitality, whilst adequately integrating safe vehicle access.

12.3 In this instance, the proposal seeks retrospective planning permission for the retention of a close boarded fence that closes off the formerly existing path and cycleway. The path/cycleway in question was secured by condition 30 of the outline planning application (130072) as a part of the approval. It is clear that the intent of the condition was for the path/cycleway to be retained as a part of the development to improve and increase access to local amenities by the local community via sustainable means e.g., walking and cycling and therefore reduce the need to drive in line with local policy to promote sustainable transport to help reduce congestion and enable healthier lifestyles.

12.4 The management company/applicant representing residents has installed in path/cycleway that connects John Castle Way with Bourne Court to combat documented anti-social behaviour such as: drug dealing, trespassing and threatening behaviour. The problems experienced are acknowledged by officers who appreciate the burden this has imposed on residents of the dwellings fronting the link.

12.5 It is considered that the closing off of the path/cycleway leads to a loss of accessible link/route (that was secured by condition) for community access to local amenities and

public transport which promotes sustainable transport and reduces the need for journeys by car. As the cycle/footway has been blocked it results in pedestrians that need to head East to west towards Berechurch Road needing to head around the development either north via Mersea Road and Pownall Crescent, or south via Mersea Road and then east via The Willows resulting in a longer journey. This longer journey in turn may result in more local residents driving to their destination instead of walking and cycling.

### **13.0 Planning Balance and Conclusion**

13.1 This scheme was heard before planning committee on 30/11/23 by way of compromise, an approval was recommended, subject to condition, that a lockable gate be installed in place of the fence panels by submission of a scheme for approval to include details of the times at which the gateway will be closed and locked to be subsequently agreed upon following consultation with the ward councillors. This proposal was deferred to allow consultation with the applicant on whether the proposed compromise was acceptable.

13.2 The applicant, following consultation with the residents of John Castle Way, believe that the proposed installation of a gate would not work. As the residents feel that the lockable gate would cause further issues and disgruntlement. They would not feel comfortable going down to lock the gate as there would be a high likelihood of being threatened by those carrying out the anti-social behaviour. As it is assumed that the residents would be made to lock the gate and open it and this would make it a highly uncomfortable situation for them, putting further strain on them and would increase the chances of being threatened. The residents also believe that the problems would continue during the times the gate would be unlocked.

13.3 Whilst the need for the fence to combat perceived anti-social behavior is understood the demonstrable harm caused by the blocking of this conduit clearly fails to comply with Adopted Policy DM20 and the NPPF 2023 Paragraph 104 both of which look to promote active and sustainable modes of transport. A compromise of a lockable gate was suggested by way of condition, this was deemed unacceptable by the residents, for the reasons stated above. Therefore, the planning balance tips in favor of refusal of this scheme.

### **14.0 Recommendation to the Committee**

14.1 The Officer recommendation to the Committee is for:

REFUSAL of planning permission for the reasons set out below:

1. The National Planning Policy Framework (the Framework) (2023) Para 104 States that transport issues should be considered from the earliest stages of plan making and development proposals so that opportunities to promote walking, cycling and public transport use are identified and pursued.

Local Plan Section 2 Policy DM15 states that development should protect and promote public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, pollution (including light and odour pollution), daylight and sunlight and create a safe, resilient and secure environment, which supports community cohesion and is not vulnerable to neglect, whilst also stating that development should provide attractive, well connected and legible streets and spaces, which encourage walking, cycling, public transport and community vitality, whilst adequately integrating safe vehicle access.

Local Plan Section 2 Policy DM20 sets out criteria that will be applied to increase modal shift towards sustainable modes by improving accessibility of development through the promotion of walking and cycling as an integral part of development with sustainable transport being improved to provide better connections between communities and their needs. This will be achieved by Safeguarding existing and proposed routes for walking, ensuring new developments are supported by quality public transport linking them to the main urban areas and major centres of employment, health and education. Access to public transport should be within walking or cycling distance of any new development.

Whilst the need for the fence to combat perceived anti-social behaviour is understood the demonstrable harm caused by the blocking of this conduit clearly fails to comply with Adopted Policy DM20 and the NPPF 2023 Paragraph 104 both of which look to promote active and sustainable modes of transport. The Planning Balance therefore tips in favour of a Refusal of this scheme by reason of the resultant harm to the policy objective of promoting sustainable and active travel through the provision of permeable and well-connected development.