

# Planning Committee

Council Chamber, Town Hall  
19 February 2009 at 6:00pm

## **This committee deals with**

If you wish to come to the meeting please arrive in good time. Attendance between 5:30pm and 5:45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

## Information for Members of the Public

### Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services.

### Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at [www.colchester.gov.uk](http://www.colchester.gov.uk).

### Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

### Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

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## **Material Planning Considerations**

The following are issues which the Planning Committee can take into consideration in reaching a decision:-

- planning policy such as local and structure plans, other local planning policies, government guidance, case law, previous decisions of the Council
- design, appearance and layout
- impact on visual or residential amenity including potential loss of daylight or sunlight or overshadowing, loss of privacy, noise disturbance, smell or nuisance
- impact on trees, listed buildings or a conservation area
- highway safety and traffic
- health and safety
- crime and fear of crime
- economic impact – job creation, employment market and prosperity

The following are **not** relevant planning issues and the Planning Committee cannot take these issues into account in reaching a decision:-

- land ownership issues including private property rights, boundary or access disputes, restrictive covenants, rights of way, ancient rights to light
- effects on property values
- loss of a private view
- identity of the applicant, their personality, or a developer's motives
- competition
- the possibility of a "better" site or "better" use
- anything covered by other types of legislation

## **Human Rights Implications**

All applications are considered against a background of the Human Rights Act 1998 and in accordance with Article 22(1) of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 there is a requirement to give reasons for the grant of planning permission. Reasons always have to be given where planning permission is refused. These reasons are always set out on the decision notice. Unless any report specifically indicates otherwise all decisions of this Committee will accord with the requirements of the above Act and Order.

## **Community Safety Implications**

All applications are considered against a background of the implications of the Crime and Disorder Act 1998 and in particular Section 17. Where necessary, consultations have taken place with the Crime Prevention Officer and any comments received are referred to in the reports under the heading Consultations.

# COLCHESTER BOROUGH COUNCIL PLANNING COMMITTEE 19 February 2009 at 6:00pm

## Members

Chairman : Councillor Gamble.  
Deputy Chairman : Councillor Ford.  
Councillors Chillingworth, Blandon, Chapman, Chuah, Cory, Elliott, Foster, Hall, Lewis and Offen.

**Substitute Members** : All members of the Council who are not members of this Committee or the Local Development Framework Committee. The following members have undertaken planning training which meets the criteria:-  
Councillors Arnold, Barlow, Barton, Bentley, Bouckley, Cook, Dopson, Fairley-Crowe, P. Higgins, T. Higgins, Hunt, Lilley, Lissimore, Maclean, Manning, Martin, Pyman, Quarrie, Sykes, Tod, Turrell and 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. An amendment sheet is circulated at the meeting and members of the public should ask a member of staff for a copy to 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 on the day 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 off or to silent;
- 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 personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

### **6. Minutes**

To confirm as a correct record the minutes of the meeting held on 5 February 2009.

## **7. Planning Applications**

In considering the planning applications listed below, the Committee may chose to take an en bloc decision to agree the recommendations made in respect of all applications for which no member of the Committee or member of the public wishes to address the Committee.

**1. 081951 Former Rowhedge Port, Rowhedge** **10 - 34**  
(East Donyland)

Redevelopment of port to provide 300 dwellings (mixture of 1, 2, 3 and 4 bed units) and buildings for retail use (use class A1), cafe and restaurant uses (use class A3), business class (use class B1) and community uses (use class D2), public waterfront area incorporating dinghy park and car park; landscaping and associated works. The application includes an Environmental Statement.

**2. 090003 12 Headgate, Colchester** **35 - 38**  
(Castle)

Change of use from estate agents office to sandwich bar - Mixed A1/A5 use.

**3. 090021 48 St Christopher Road, Colchester** **39 - 44**  
(St John's)

Siting of a single Tomra recycling unit and associated works.

**4. 081938 3 Priory Street, Colchester** **45 - 52**  
(Castle)

Continued use of building and rear amenity area for worship.

**8. Legal Action // Land at Turnpike Close, Old Ipswich Road, Colchester** **53 - 62**  
(Dedham and Langham)

See report by the Head of Environmental and Protective Services.

## **9. 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

## 5 FEBRUARY 2009

*Present:-* Councillor Gamble\* (Chairman)  
Councillors Blandon\*, Chapman\*, Chillingworth\*, Chuah\*,  
Cory, Elliott\*, Ford, Foster\* and Hall.

*Substitutes:-* Councillor P.Higgins for Councillor Offen  
Councillor Martin for Councillor Lewis.

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

### 197. Minutes

The minutes of the meeting held on 22 January 2009 were confirmed as a correct record.

**Councillor Martin (in respect of his professional relationship with the applicant's agent) declared his personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).**

### 198. 082101      **Park Farm, Coopers Lane, Dedham, CO7 6AX**

The Committee considered an application for the provision of a manege on part of grassland to the north-west of existing stables and other associated buildings. The area of the parcel of land is given as 0.08 hectares and would be enclosed by a timber post and rail fence with a surface comprising rubber strip over sand, gravel and stone. The Committee had before it a report in which all information was set out.

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

### 199. 082064      **Stanway Green Lodge, Stanway Green, Stanway, CO3 0RA**

The Committee considered an application for an extension and alterations to upgrade existing facilities of the care home for elderly residents to current standards and to increase the number of residents from 27 to 30. This application was a resubmission of application 081655. The Committee had before it a report in which all information was set out.

The Committee had made a site visit prior to the meeting on 22 January 2009 in order to assess the impact of the proposal upon the locality and the suitability of the proposal for the site. However, the application had been withdrawn from consideration at that meeting as it had not been possible to inform all objectors that the application was being considered.

Bradly Heffer, Principal Planning Officer, attended to assist the Committee in its deliberations. It was explained that the key issue was the impact on amenity at the property known as Tabors. It was proposed that a replacement hedge would be planted along the boundary with Tabors at two metres high with the capacity to grow to three metres. In respect of noise nuisance, any incidents could be controlled by Environmental Control.

Ms Conner addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The footprint of the building had increased by 36%. She quoted planning policy UEA 11, 12 and 13 which applied to this development in respect of its overbearing effect on neighbouring properties; the scale not being in harmony with its setting and a cramped appearance. There was an unacceptable reduction of the garden area and the building would sit uncomfortably in its surroundings. The parish council strongly objected on the grounds of the lack of privacy, undue overlooking and overshadowing. There would not be 35 metres between inhabitable rooms. She strongly disagreed that the screening would be adequate; it would have a negative effect on neighbours property in summer months. The trees make a contribution and should be protected, and some of the trees had been planted as a result of previous consents. In summary, the hedge screen would be inadequate; the proposal was cramped, the site was over developed; there was harm to the neighbours caused by the negative outlook and loss of privacy; the proposal was unreasonable; and she urged that it be refused.

Ms Morehen addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. Key areas have been important in the past 5 years and the facility had been graded as 'good' for 2007. When older people live in a residential home there can be a loss of independence and choice. However the provision of someone to promote events and provide activities encourages social activities with friends and relatives when they visit. Currently activities have to take place in the dining room and not in a purpose built dayroom; which is not ideal. These activities give residents the opportunity to achieve social aspirations, and take part in hairdressing, music, etc. in a purpose built space. The atmosphere can be relaxed and allow residents time to enjoy the activities, in contrast to having to clear the area for mealtimes.

Councillor Scott-Boutell attended and, with the consent of the Chairman, addressed the Committee. She had called in the application because she wanted the decision to be open and transparent and give all parties the opportunity to hear both sides.

It was explained that the development would enable each resident to have their own bedroom rather than a sharing arrangement. There were no standards in planning terms in respect of amenity and overdevelopment of residential homes, but there may be standards required by Social Services. The authority had to consider each of these applications on its own merits. The key issue was the acceptability of the proposal and how appropriate was the method of mitigating its impact on neighbours. In this case the mitigation was considered appropriate and the proposal therefore acceptable. There would be places where trees were removed but it was considered that the new hedge would be sufficient to prevent overlooking and loss of amenity, bearing in mind the proximity of gardens and the fall in land levels. The previous appeal had been lost because the majority of the additions were two storeys.

Some members of the Committee considered this to be an essential facility for the community. It was a well managed, long established home which lacked some facilities and this application would improve those facilities. The Committee had made a site visit which included the garden and first floor of Tabors. The new hedge would improve the protection throughout the year; currently the boundary was bare because of the time of year. It was recognised that the loss of trees was always a problem, but the loss has to be balanced against the provision of a new hedge and the amenity of residents. The residents in Tabors were the most seriously affected by the removal of the trees which would be most noticeable in the outlook from the first floor. It was expected that the outlook for residents in Tabors from the living areas would be improved when the new hedge was established.

Other members of the Committee had concerns regarding the cumulative effect of a succession of extensions to the current position where the residential home was now out of proportion to all the surrounding private properties. In respect of planning policy DC1, there were concerns whether a property like this could have regard to the local area. It should be acceptable in terms of its design. Care in the community was important and appropriate facilities need to be provided. It was believed this was a good residential home where people were happy. However, some members considered the home to be in the wrong place. It should have been developed in a more appropriate place but the facility was established in its current location and the most should be made of it. There would be an increase in visitor numbers and there should be a proportionate increase in parking spaces. In regard to particular existing difficulties, smells and noise from the residential home have built up over the years, in particular problems with night time noise, e.g. cleaning at night and a note should be added to express the Committee's concern in this respect.

It was explained that there was an increase of two parking spaces from nine to eleven. Parking standards required twelve spaces, a shortfall of one space. In terms of incremental growth, as a residential home it does not fall within the rules for dwelling houses. At the rear there were only single storey extensions. Undoubtedly the building has a greater impact now than when it was a single dwelling house. The officer view was that this scheme was satisfactory. There had been a proposal to infill with a second storey on both sides which had been considered by the Planning Inspector to be inappropriate. As there were no Permitted Development Rights it was not possible to withdraw them; neither would it be possible to prevent further applications being made in the future. If and when they were submitted, they would need to be determined on their own merits as is the case with this proposal. A similar situation had arisen elsewhere and in that case it had been decided that the site had reached its capacity and no further development should be permitted. A note could be added to any permission to indicate that further proposals were unlikely to be regarded favourably.

*RESOLVED* (MAJORITY voted FOR) that the application be approved with conditions and informative as set out in the report, also see Amendment Sheet. Informative notes be added to indicate that the Planning Committee note the incremental expansion of this site and consider that further additions to this building are unlikely to be acceptable. Also suggestions of noise from the premises at unsocial hours are noted and the applicants are required to take steps to reduce this problem as appropriate.

## **200. 081947      143 Coast Road, West Mersea, CO5 8NX**

The Committee considered an application for the removal of a wall and its replacement with posts and chain. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

Bradly Heffer, Principal Planning Officer, attended to assist the Committee in its deliberations. It was explained that whilst objections regarding encroachment onto the village green and rights of access were important legal issues, they were not matters which were of concern in planning terms. Compliance with any relevant legislation would be necessary but was not a matter of concern for the Committee.

Councillor Steve Vince, West Mersea Town Council, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Town Council preferred the posts to be rounded and made of wood without a chain linking them. Such an arrangement would prevent vehicle access whereas a chain would infringe on other relevant legislation and be dangerous for pedestrians as there was no footpath to enable them to avoid traffic. In addition the area is sometimes flooded and if the chain was submerged it could be a hazard. The Town Council preferred a post-only scheme.

Members of the Committee were aware that they needed only to consider the effect of the scheme on the Conservation Area. The Town Council's views were noted and the comment was made that if the loop of the chain was no higher than the existing wall, then no improvement would have been achieved. There was no information available on whether this area was subject to flooding.

It was explained that the post and chain was a traditional treatment on a boundary and whilst the proposal as submitted was appropriate, it would also be possible to consult with the applicant to achieve a robust boundary which could take account of the views of West Mersea Town Council. Members of the Committee suggested that a post-only barrier as suggested by the Town Council be pursued.

*RESOLVED* (UNANIMOUSLY) that –

- (a) Consideration of the application be deferred for negotiation on an amended scheme comprising white timber posts set closer together without chains.
- (b) Upon agreement of a satisfactory scheme, the Head of Environmental and Protective Services be authorised to grant consent with conditions and informatives determined by the Head of Environmental and Protective Services.
- (c) In the event that there is no agreement of a satisfactory scheme the application be brought back to the Committee for determination.

**201. 081997 Dawes Lane and East Mersea Road, West Mersea**

The Committee considered an application for the construction of a new access to an allotment site. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

*RESOLVED* (UNANIMOUSLY) that –

- (a) Subject to the Highway Authority having no objections, the Head of Environmental and Protective Services be authorised to grant planning permission with conditions and informatives as set out in the report.
- (b) In the event that objections are received from the Highway Authority, the Head of Environmental and Protective Services be authorised to refuse the application for reasons identified by the Highway Authority.

**Councillor Martin (in respect of his professional relationship with the applicant's agent) declared his personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).**

**202. 082102 Turkey Cock Lane, Eight Ash Green, Colchester, CO3 5ND**

The Committee considered an application to regularise the current use. The extant permissions restrict retail activity in the barn to antiques, pine and used furniture and in the other building to the sale of antique and secondhand furniture. There was also a personal condition for the use of the barn but not on the other building. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

Bradly Heffer, Principal Planning Officer, attended to assist the Committee in its deliberations. He explained that the sale of new furniture was carried out in both buildings and that it was appropriate to take into consideration the previous planning history of the site. It was confirmed that the building was not a listed Essex barn.

Mr Franklin addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. There were doubts as to the intended use. The business was advertised as a wholesale furniture trader on the internet and advertised elsewhere as suppliers to the trade. There has been an investigation of activity on the site. This application is for full retail use of the site. Despite planning conditions being imposed, if this application was granted the planning conditions could be challenged. He asked for a refusal of the application on the basis of a retail use in the countryside being contrary to planning policy. New furniture sales could be carried out at the applicant's new retail outlet at Stanway.

Mr Gittins, agent, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. This was an ideal site for retail; old furniture in one barn and new furniture in the other building. This was not a hobby use; it has been a full time business for at least 10 years or more comprising an eclectic mix of furniture. It was extremely low key relative to the neighbouring business which generates far more traffic. There was never more than two delivery vehicles per month which was reduced to one per month because of more lightweight vans visiting more frequently. This small family business is well established and as far as legal aspects are concerned the age of the furniture is not a material planning consideration. There is no intention to operate a large retail furniture store in this location.

*RESOLVED* (UNANIMOUSLY) that the application be approved with conditions and informatives as set out in the report, also see Amendment Sheet.

**203. 082110      342 London Road, Stanway, CO3 8LT  
082111**

The Committee considered an application for advertisement consent, 082110, and an application for listed building consent, 082111. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

*RESOLVED* (UNANIMOUSLY) that, both applications 082110 and 082111 be approved with conditions and informatives as set out in the report.

**204. 081848      Halstead Road, Eight Ash Green, Colchester**

The application was withdrawn from consideration at this Planning Committee meeting by the Head of Environmental and Protective Services to enable the applicant to provide further information regarding their rights of access to Blind Lane and an amendment to the application site boundary.

**205. 081938      3 Priory Street, Colchester, CO1 2PY**

The Committee considered an application for the continued use of the building and rear amenity area for worship. The former garden of 3a Priory Street also forms part of this application. The Committee had before it a report in which all information was set out, also see Amendment Sheet.

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

Ms Whiting addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She invited the Committee to visit the site which was in a predominantly residential area. The application sought to change the nature and character of the area. The site was used for open air worship and funerals with up to 150 people present. This will have an overbearing effect on neighbours particularly at no. 4 Priory Street. which was visible from all windows at the rear of properties. Activities of people in gardens may be considered disrespectful to mourners. The area of concrete should not be there. The area is steeped in history and this activity does not improve the area in any way. It will cause detriment rather than improvement. The Committee was requested to reject the application.

Councillor Barlow attended and, with the consent of the Chairman, addressed the Committee. His main concern was that it would set a precedent. It is a predominantly residential area and it is within the Conservation Area. Removing the hard surface would be a positive move because it is an eyesore. There were not enough details to comment on, for example the separating wall and planting. There were positive aspects in the extra conditions but he would like to see more detail.

It was explained that there would be a change in the character of the Conservation Area. There are no external changes to the building at all and its appearance remains as a traditional Victorian dwelling. It was proposed that a low wall be erected between nos. 3 and 4 Priory Street. The applicant is proposing to put a wall around the site with planting. There have been no major problems in terms of impact on the neighbour because of the use of the site.

Members of the Committee expressed a view that this site started as a small activity and has now increased in use. Members of the Committee wanted the opportunity to visit the site. Reference was made to the Catholic Church which had its own car park and after services people congregate outside.

*RESOLVED* (UNANIMOUSLY) that the application be deferred for a site visit and for additional information to be provided in respect of boundary treatments, levels and the numbers of persons using the buildings.

## **206. 082051 Chapel Road, Tiptree, CO5 0RA**

The Committee considered an application for a new 15 metre mini macro telecommunications column with a small headframe with six antennae and four new Flexi BTS units on a pole mounted support column on the existing tower base to replace the existing 15 metre telecommunications column and three spine mounted antennae. The development is required to improve the network coverage and the use of the existing site is seen as the best environmental solution with no requirement for a new separate stand-alone structure.

The Committee had before it a report in which all information was set out, also see Amendment Sheet.

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

**Councillor Gamble (in respect of having patronised the establishment) declared his personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).**

**207. Injunction Action // Roxi, 118 High Street, Colchester, CO1 1SZ**

The Head of Environmental and Protective Services submitted a report seeking authorisation to take out an injunction to restrain the continued use of the ground floor of 118 High Street, Colchester as a restaurant/café in breach of a planning condition. The premises was trading as Roxi. In 2002 the premises had been given planning permission for the change of use of the basement to A3 use, Restaurant; the first floor to B1 use, Office; and the second floor to residential use. One of the conditions imposed required the use of the ground floor to be for A1 use, Retail, purposes only, however, this condition had not been complied with. The Committee had before it a report in which all information was set out.

The report set out the actions taken since January 2006 to effect compliance with the condition. The owners have been prosecuted twice for non-compliance with the requirements of the Breach of Condition Notice (BCN) and the unauthorised use is continuing. The only action which may realistically restrain the breach of the BCN is to obtain an injunction.

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

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

Mrs El-Sayed addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the proposal to take out an injunction. Prior to the planning application a discussion was held with the planning office and they were told that a coffee shop was what was wanted to create a café culture. It is a small family business and they have lived in Colchester since 1983 and supported the local economy. They were trying to work with the Council to rectify the planning situation. The rules have changed. They have tried a takeaway, a café, sandwiches and pictures. They were now trying to have an internet café, but circumstances prevent them from doing this fully; they have four laptops, and a wi-fi connection. Their intention is to comply fully and they have written to the Member of Parliament who supports them. They have gone to appeal and both times lost and could not appeal properly. There was an issue with the appeal and what the Council considered the frontage and she suggested that it be looked at again along the High Street.

Members of the Committee supported the proprietors of the business to the extent that some members wanted to allow them more time to bring the proposed internet café into operation to prevent the business from failing. However it was explained that considerably more time than six months had been available to bring about compliance with the planning conditions. All attempts to effect compliance had been unsuccessful, and the situation was considered a clear breach of policy; an injunction was now considered the best course of action.

There had been no overall change in the usage of shop fronts along the street which might change the decision. The entire High Street frontage should comprise no more than 70% non-retail frontage, but the current situation is that this figure is already exceeded and so the circumstances have not changed. In contrast to an internet café on St. John's Street, there was no visible evidence from photographs, observations on the site visit, or any sign of advertising or of any computers present, to demonstrate that the proposal to turn the ground floor into an internet café was being implemented.

Members considered that this was a good independent business offering an attractive facility in the High Street, but it had occurred without planning permission. Some members considered that the proprietors had had ample warnings and opportunity to take action. Whilst they understood the motives of those members who wanted to allow more time for compliance, the time had been reached when action had to be taken. The Council had attempted to enforce the conditions twice and the proprietors had appealed twice and the Planning Inspector had supported the Council. The Council was proposing to apply for an injunction which was conducted by means of a hearing in front of a judge giving both sides the opportunity to put their points of view following which the judge would make a decision. An injunction would buy time and members hoped the internet café would materialise.

*RESOLVED* (MAJORITY voted FOR) that an application be made for an injunction to restrain the use of the ground floor of 118 High Street, Colchester, being used as a restaurant/café.

**208. Enforcement Action // Wine Me Up, 35 North Hill, Colchester, CO1 1QR**

The Head of Environmental and Protective Services submitted a report seeking authorisation to take enforcement action requiring the removal of external shutters across the frontage of the premises with a proposed compliance period of three months. The Committee had before it a report in which all information was set out.

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

Mr Yamak addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the proposal to take enforcement action. There was alcohol and tobacco on the premises and the shutters were required to protect the premises from breaking and entering and theft. It also gave protection to the glass window and afforded some safety to the general public. If the shutters were not in place the premises would be vulnerable to break in. The entranceway is at an angle making it very difficult to install the shutters inside without an unacceptable loss of space within the shop.

Members of the Committee considered that the appearance of the shutters was unacceptable. No planning application for the retention of the shutters has been sought and neither had any preliminary planning application discussion been held. There was some sympathy with the proprietor because some security measures and protection was required. However the area needs a more sympathetic solution to the situation. The business appears to be well run, but advice regarding the type of shutters which would be acceptable should have been sought at an earlier stage. This was a well lit, well used thoroughfare and not the most vulnerable location. It was suggested that a letter be sent to the proprietor to assist in identifying an alternative solution.

*RESOLVED* (MAJORITY voted FOR) that –

- (a) An enforcement notice be served with a compliance period of three months requiring the removal of external shutters across the frontage of the premises.
- (b) A letter be sent to the owner inviting him to negotiate appropriate alternative security measures.



**209. Enforcement Action // 25 Barrack Street, Colchester, CO1 2LJ**

The Head of Environmental and Protective Services submitted a report seeking authorisation to take enforcement action requiring the removal of external shutters to reveal the original shopfront with a proposed compliance period of two months. The Committee had before it a report in which all information was set out.

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

*RESOLVED* (UNANIMOUSLY) that an enforcement notice be served with a compliance period of three months requiring the removal of external shutters to reveal the original shopfront.

**Councillor Ford (in respect of having previously made his views known on the application) declared his personal interest in the following item which was also a prejudicial interest pursuant to the provisions of Meetings General Procedure Rule 7(10) and left the meeting during its consideration and determination.**

**210. Minor Amendments to 080879 // 13 Stanley Road, Wivenhoe, CO7 9LP**

The Head of Environmental and Protective Services submitted a report seeking the Committee's agreement to two minor amendments to permission 080879. The first comprised an external full height chimney on the southern elevation to replace an existing chimney which was found to be structurally unsafe and non-compliant with Building Regulations. The second amendment comprised changes to external materials to render finish to the side and front elevations and black weatherboarding to the front garage and rear single storey extension to avoid a mismatch of existing and new brickwork. These changes were considered to be genuinely "non-material" in nature and therefore did not warrant the requirement of a fresh planning application. The Committee had before it a report in which all information was set out.

David Whybrow, Development Manager, attended to assist the Committee in its deliberations.

Mrs Emms addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the proposal to take enforcement action. The chimney will increase the impact on the skyline. The chimney has been moved towards no. 11 Stanley Road. The weatherboarding increases the overbearing effect and is out of keeping with other houses and bungalows. She did not have professional representation or advice.

Some members of the Committee were sympathetic towards the residents who were of the opinion that it was not a minor change and should be the subject of a retrospective planning application. However, it was explained that this was a relatively minor change.

*RESOLVED* (MAJORITY voted FOR) that the two minor amendments to permission 080879 be approved as set out in the report by the Head of Environmental and Protective Services be approved.





## Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **19 February 2009**  
Report of: **Head of Environmental and Protective Services**  
Title: **Planning Applications**

Relevant planning policy documents and all representations at the time this report was printed are recorded as BACKGROUND PAPERS within each item. An index to the codes is provided at the end of the Schedule.

**7.1 Case Officer: Sue Jackson**

**EXPIRY DATE: 04/03/2009**

**MAJOR**

**Site:** Former Rowhedge Port, Rowhedge, Colchester

**Application No:** 081951

**Date Received:** 12th November 2008

**Agent:** Mr Simon Neate

**Applicant:** Glpf Two Limited

**Development:** Redevelopment of port to provide 300 dwellings (mixture of 1,2,3 and 4 bed units) and buildings for retail use (use class A1), cafe and restaurant uses (use class A3), Business class (use class B1) and community uses (use class D2) public waterfront area incorporating dinghy park and car park; landscaping and associated works. The application includes an Environmental Statement.

**Ward:** East Donyland

**Summary of Recommendation:** Refusal

## **1.0 Site Description**

- 1.1 The application site comprises land described as the former Rowhedge Port plus former pits and part of Donyland Woods. It is located on the south side of Rowhedge village. The total site is approximately 35 hectares - the port approximately 7.9 hectares and pits/woods approximately 27 hectares.
- 1.2 The port area has a frontage onto the River Colne facing Wivenhoe it also fronts the Roman River where it joins the Colne and overlooks part of the Roman River Valley designated as a Site of Special Scientific Interest, (SSSI). The port area shares a short boundary with Rowhedge High Street and its west boundary abuts the pits. It contains several large buildings currently used as warehouses and smaller buildings used for offices.
- 1.3 There are several public rights of way (PROW) close to and within the site. A PROW passes north- south through the port area from the High Street joining other PROW to the south. This PROW divides the site of the former port in two parts approx 1/3 and 2/3 of the site area. The larger area has a frontage to the Roman River and the Colne. The smaller area whilst described, as former port contains buildings last used as a concrete block making works and the East Donyland shooting club. A PROW extends along the frontage adjacent to the rivers
- 1.4 The former pits extend along the south boundary of the village and include part of Donyland Woods to the west. The pits have been left untouched for many years and are now designated as a Site of Importance for Nature Conservation, (SINC) and a potential Local Nature Reserve.
- 1.5 The site is accessed east - west by an unmade haul road off Rectory Road at the western edge of the village. The haul road runs through the centre of the pits into the port area. There is limited access from the High Street.

## **2.0 Description of Proposal**

- 2.1 The application proposes the development of the former port with the erection of 300 dwellings and approximately 1975 square metres of mixed use.
- 2.2 Whilst this is an outline application it seeks planning permission for the following:
  1. 300 dwellings comprising 28 1-bed flats, 77 2-bed flats, 46 2-bed houses, 95 3-bed houses and 54 4-bed houses (a mix of 35% flats and 65% houses). 25% of the units would be affordable which is divided into approximately 30% intermediate housing and approximately 70% socially rented units
  2. 168 square metres of A1 retail floorspace.
  3. 180 square metres of A3 restaurant /café floorspace.
  4. 566.5 square metres of B1a office floorspace.
  5. 432 square metres of B1c light industrial floor space.
  6. 628 square metres of D2 community floorspace.
  7. 20 space dingy park

- 2.3 The application includes 590 parking spaces (480 residential parking spaces) and 300 cycle spaces. The submitted information indicates 10% of the car parking spaces will be developed for ease of access and would be located in convenient locations spread around the scheme for use by disabled persons and adults with young children. The drawings show a bus turning area to allow an extension of the existing service.
- 2.4 The main area of public open space is shown either side of the PROW, which runs north - south through the site, this PROW is retained. Other open space comprising LEAPS, LAPS are indicated. A public area between the frontage buildings and the River Colne is also indicated which appears to vary in width between 10-15 metres although it narrows to approximately 5 metres at the confluence of the rivers.
- 2.5 Whilst land ownership is not normally a planning matter in this case it is relevant to the determination of this application because of the implications for securing financial and other obligations, the access and the future of the pits area.
- 2.6 The site description explains the former port is crossed by a north- south PROW dividing this part of the site into two areas approx 1/3 and 2/3 . The larger area, 2/3 of the site, faces Wivenhoe and has a frontage onto both rivers. A 3rd party owns the smaller 1/3 area all the pits/wood and the haul road.
- 2.7 The application proposes the development of the site in two phases.
- 2.8 Phase 1 the land in the applicants control will comprise the 2/3 site and will comprise approximately 200 dwellings, mixed use, open space and the public area next to the River Colne. Access will be via the existing haul road with an improved shared surface and the introduction of speed bumps. Whilst the applicant has a right of access over the existing haul road its width and alignment cannot be amended without the agreement of the owner. It is indicated the financial contributions and other obligations will be secured by a section 106 agreement.
- 2.9 Phase 2, the 1/3 site, and former pits will comprise approximately 100 dwellings, mixed use and open space. The application indicates options for the haul road to be realigned, improved with junction improvements subject to agreement with the highway authority prior to the commencement of this phase. It also indicates a management plan for the pits areas will be required prior to the commencement of this phase.
- 2.10 As the owner of the phase 2 land is not willing to be a signatory to the legal agreement the applicant proposes these matters should be secured by Grampian condition.

### **Application documents**

- 2.11 The following documents are submitted in support of the application
- Planning statement
  - Design and Access Statement
  - Environmental Statement this covers the following topics, ecology, landscape and visual, transport and access, noise and vibration, air quality, ground conditions, flood risk and surface water drainage and socio-economic and well being and impact interactions.

- Transport Assessment
- Flood Risk Assessment
- Foul Sewerage and Utilities Assessment
- Statement of Community Engagement
- Heads of Terms for Section 106 Agreement

### **3.0 Land Use Allocation**

#### **3.1 Regeneration area**

The pits are designated as a SINC and potential local nature reserve and are covered by a TPO.

PROW

Countryside Conservation Area

### **4.0 Relevant Planning History**

4.1 There is no relevant planning history.

### **5.0 Principal Policies**

5.1 The Adopted Review Colchester Borough Local Plan includes a specific policy for this site, this is a saved policy, CE8, and is quoted below

“Development proposals for Rowhedge Port Regeneration Area, as defined on the Proposals Map will be required to meet the following criteria:

- (a) To provide a comprehensive, balanced and integrated mix of uses for the whole site
- (b) To preserve and enhance the character of the river frontage
- (c) To minimise the need for private car usage, having regard to the mix of uses on the site
- (d) To provide or allow for sustainable and managed public access to the river frontage”

5.2 Other relevant policies are

DC1 - Development Control considerations

CE2 - Risk of Flooding

CE8 - Cooks Shipyard & Rowhedge Port Regeneration Areas

CO3 - Countryside Conservation Areas

CO4 - Landscape features

UEA11 - Design

UEA15 - Incidental Areas of Open Space

P1 - Pollution

P2 - Light Pollution

P3 - Development in Floodplains and Washlands

P4 - Contaminated Land

L3 - Protection of existing public open space

L5 - Open space provision within new residential development

L14 - Public rights of way

L15 - Footpaths, cycleways and bridleways

- 5.3 Core Strategy  
 ENV1 - Environment  
 CE1 – Centres and Employment  
 ENV2 – Rural Communities  
 SD2 – Delivering facilities and infrastructure  
 TA1 - Accessibility  
 TA2 – Walking and cycling  
 H1 – Housing Delivery  
 H2 – Housing Delivery  
 H3 – Housing Diversity  
 H4 – Affordable housing  
 UR2 – Built design and character  
 PR1 – Open space  
 PR2 – People Friendly Streets  
 TA5 – Parking  
 UR1 – Urban Renaissance  
 SD1 – Sustainable Development  
 SD3 – Community facilities  
 TA3 – Public Transport
- 5.4 There is a development brief for the site adopted in 2004 Rowhedge Port Development Brief (RPDB)
- 5.5 The Development Brief identified five primary issues:
1. Treatment at rivers edge
  2. Public benefit
  3. Nature protection
  4. Arrangement of development
  5. Access
- Plus 3 primary objectives
1. Set development back from waters edge.
  2. To develop a true sense of place.
  3. Connectivity
- 5.6 Recommendations/Requirements
- Development to
- Reflect local character and scale
- The Waterfront
- Set back from water edge to avoid visual harm and link with Wivenhoe community waterfront activity encourage visits and departures from the wharf
  - Repair/ replacement of the sea wall, creation of a floating pontoon for temporary moorings, programme and funding for future ownership and management of the waterfront areas to the River Colne and Roman River

- Creation of soft landscape frontage to the roman river SINC (former pits), future protection and management of the SINC.
- Creation of a significant area of functional hardsurfaced and well designed open space fronting onto the River Colne.

#### Access

- Appropriate public access
- Principal access via the haul road, safe and adequate junctions at rectory road and Fingringhoe Road, promote footpath and cycle permeability contributions
- 25% affordable housing
- 10% open space and play area

#### Mixed use/Community benefits

- Focal point public attractor building public house /restaurant 150 customers possible function rooms
- OfficeB1/office area equal to at least 2% of the gross floor area of the non-affordable residential development including management arrangement setting of initial rent which reflect building costs rather than the land value to be negotiated in the section 106
- Flexible designed houses and polyfunctional buildings
- Non-residential buildings to be completed in proportion to new dwellings
- appropriate sites for new community buildings
- Provision of public toilets
- Contributions for schools
- Contribution for art

Whilst this adopted guidance is a material planning consideration it is not sufficient to say the proposal does not comply with the Brief and is therefore unacceptable - it has to be explained why the development is not acceptable.

## 6.0 Consultations

- 6.1 Environmental Control raises no objection subject to conditions.
- 6.2 ECC Schools have no objection subject to a developer contribution for primary school provision, pre-school age pupils and secondary school transport.
- 6.3 CBC Legal Services comments as follows:-
- "Government Circular 11/95 specifically states that a condition should not be imposed if it cannot be enforced and Grampian style conditions should only be imposed where there is a reasonable prospect of the condition being carried out."
- 6.4 The Arboricultural Officer recommends refusal as the application contains insufficient information regarding the impact of the development on preserved trees. It is also considered the position of the proposed buildings would cause conflict between the built form and trees shown to be retained.
- 6.5 The Environment Agency objects on flood risk grounds. The Agency has no objection on contaminated land issues.



- 6.6 The Health and Safety Executive have no objection provided the hazardous substances which can be stored under license on the site cease before any development takes place and the hazardous substances consent issued by CBC is revoked.
- 6.7 The Landscape Officer makes several detailed comments.
- 6.8 Essex Wildlife Trust raises no objection but comments on several matters including:-
1. The proposed widening of the road may impact on protected species.
  2. Further clarification is required on the enhancement of the nature conservation value of the site.
  3. Further clarification is required on the management plan and future funding.
- 6.9 Anglian Water gives advisory comments.
- 6.10 EC Highways recommend refusal.
- 6.11 Natural England have no objection. They have been asked to provide further clarification on moorings/jetty/use of the waterfront.
- 6.12 The Design Officer comments as follows:-

"There are major contradictions between the ambition and text of the Design and Access Statement and the proposals shown on the accompanying plans. Some aspects of the scheme also disregard the direction of the development brief for this site.

#### Layout

The character areas are indistinct from each other in the layout. The Design and Access Statement described differences in the locations and some changes in approach but the plans show a similar estate layout over the whole scheme. The only variation is the waterside frontages. It is very difficult to understand how this layout has responded to the context of this site as it appears much like a typical suburban scheme found across Essex towns and no doubt beyond.

The density varies little over the scheme which makes a considerable contribution to the lack of distinction between character areas.

The riverside buildings are predominantly three storeys with elements of four storeys. This is far more comparable to Wivenhoe than the adjoining context of Rowhedge but it is distinct within the development brief that the scheme must be designed not to merge the two settlements. For this reason and to secure an appropriate contextual relationship this height must be reconsidered. I would consider the contemporary approach suggested to be satisfactory providing that it makes good contextual references to the scale and mass of the better elements of Rowhedge character. It would have been a worthwhile exercise to establish such references in the Design and Access Statement rather than use standard house types of volume housebuilders as illustrations.

The Roman River edge development claims to have arcadian aspirations in the Design and Access Statement but has a density of 46 dwellings per hectare. The arcadian appearance is welcome but should be implemented at a suitable low density.

The security of the layout must be brought in question. Behind the riverside buildings are some overly large car parking areas and similarly dominant vehicular routes adjacent to

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the rear of private amenity spaces. The ambiguity afforded to large car parks is a security issue as the fear of crime is amplified by strangers where people need security. The overall parking standard appears low for an area where the main generators of movement, such as supermarket, school, rail link and employment are not within walking distance. The emerging standards of 200% per two bedroom unit with an additional 25% for visitor parking should be implemented in this relatively remote location."

6.13 Planning Policy comment as follows:-

"Recommendation - Refusal

General

By far the most important issue with this application is the fact that the applicants do not own the whole site.

This raises some concerns regarding the delivery of sufficient contributions and infrastructure, as identified in the adopted Development Brief, to support the development i.e. road and transport upgrades, open space provision, affordable housing and environmental enhancements to the Pits.

There are several issues about the boundary of the site area. They have excluded an area to the rear of Donyland Way which is within the other owners control and covered by the brief. They have not edged blue marsh land they have control over to the east and around the perimeter of the site (i.e. where the footpath runs). Have they served notice on the Telecom mast owners? No notice served on Colchester Dock Lease. The boundary lines between Phase 1 and 2 differ on different plans i.e. as to whether Phase 1 adjoins access to the High Street. I also believe the line between the two phases is incorrectly drawn based on ownership details.

They only say they suspect the land to be contaminated - it is known to be.

Policy Context

The original Rowhedge Port Development Brief was produced in 2004. At the time of production the Adopted Local Plan included a Policy CE8 which covered the Rowhedge Regeneration Area.

Policy CE8 along with a number of other policies in the Adopted Local Plan have been superseded and replaced by a suite of new strategic policies in the recently adopted Core Strategy for Colchester.

The following policies in the Core Strategy relevant to the proposed Rowhedge Wharf application include:-

SD1 - Sustainable Development

SD3 - Community Facilities

H1-H4 which covers housing provision, density and diversity as well as affordable housing provision

UR1 - Urban Renaissance

UR2 - Built Design and Character

PR1 - Open Space

TA2 - Walking and Cycling

TA3 - Public Transport

TA5 - Parking

ENV1 - Environment

The planning application for development of the Rowhedge Wharf site therefore needs to give greater weight to the new Core Strategy policies. Page 4 of the Design and Access Statement suggested that the planning application had been submitted prior to the adoption of the Core Strategy. A notice was placed on the Council's website on 12 October confirming that the Core Strategy had been found sound and would be used to access applications submitted after 16 October 2008.

This application was lodged on 12 November 2008. In light of this the application should have been revised in light of the Core Strategy policies.

### **Policy Considerations**

#### Housing Density and Design

The original Development Brief prepared for Rowhedge Wharf site emphasised the importance of reflecting the predominant built character and scale of existing buildings in Rowhedge within the new development. The Design Brief suggested that buildings should be no more than two storeys in height to achieve this. The submitted application however contains proposals for 1, 2 3 and 4 storey buildings which is not in accordance with the Design Brief principles. The four storey development will be 5m higher than the existing buildings. In addition, the higher density buildings which will be a maximum of four storeys according to the Design and Access statement are being proposed to the Colne and River zones at 52 dwellings/ha and 46 dwellings/ha on the frontages to the River Colne and Roman River. The higher densities on the frontages on both these rivers would greatly urbanise what is currently a soft landscape and create a very hard edge southwards beyond Rowhedge along the Colne Estuary and Roman River particularly where there is limited development already.

#### Affordable housing

Whilst the broad aspirations of the Rowhedge Port Development Brief remain 'valid in principle' some of the detailed aspirations set out in the original development brief are no longer in accordance with Core strategy policies.

One example of this is where the original brief and a letter submitted from Indigo Planning Ltd, as part of the application dated 31 October 2008, identified the need to provide 25% affordable housing as part of the overall scheme. The Strategic Market Housing Assessment completed in 2007 identified the need for 1,104 affordable homes per year in the Borough and recommended a 35% target for the provision of affordable housing. This revised target of 35% affordable housing has been included in Policy H4 in the new Core Strategy and in light of these revisions the current application is not in accordance with Policy H4 of the Core Strategy and would need to be revised.

#### Access

Any development on the site should be served by an adoptable road in accordance with Core Strategy Policy PR2.

If Phase 2 remains in employment use would the haul road be acceptable to serve HGV's at the same time as the 200 dwellings in Phase 1?

What route will buses use? 1km of private road - unlikely but the applicants have no useable access rights from High Street. Same issues for emergency and service vehicles. There is no pedestrian/cycle link shown between the site and the playing field/village hall/school. Cycle routes and bus information needs to be more detailed.

### Environmental Protection

The original development brief makes no mention of the proximity of the site to the Mid Essex Estuaries Special Area of Conservation (SAC) designated under the Habitats Directive. The SAC designation is referred to on Page 9 of the Environmental Statement accompanying the application. The proposed development is situated approximately 1km to 1.5km north east of the boundary of this SAC which starts 200m south of the Wivenhoe barrier.

Although extensive wildlife surveys for protected species (Dormouse, Bats and Reptiles) have been completed and submitted with the application as part of the EIA, insufficient information has been submitted to enable the Council to assess any likely adverse impacts, direct or indirect, and either alone or in combination, that could affect the integrity of the European Site(s) and determine whether an Appropriate Assessment is required. This is particularly important in light of the proposed dinghy park within the proposed development which could potentially increase recreational pressure with an associated increase in disturbance levels within or close to the SAC. Further information should be supplied to the Council to enable the need for such an assessment to be furthered considered to ensure compliance with Regulation 48(1) of the Habitats Regulations 1994.

### Open Space

The existing proposal incorporates various areas of open space and public realm along the water front, through the development and to the west of the area known as the Pits. Open space requirements should comply with the revised standards set in PPG17 study and Policy ENV1 and Policy PR2. This includes standards for both public and private/communal space. Further detail is also required on this issue including long term management of the newly created areas.

No provision has been made for allotments which are required in accordance with the adopted Brief."

## **7.0 Parish Council's Views**

- 7.1 The following is a summary of the comments received from East Donyland Parish Council - a full copy is available on the Council's website:-

"Due to the size of this application a Planning Committee meeting was held by the Parish Council on Thursday 15 January 2009. At this meeting it was resolved that the Parish Council recommends refusal.

The Parish was involved in an extensive consultation a few years ago when the Port Development Brief was created. This document was adopted by Colchester Borough Council as supplementary planning guidance. Whilst we understand that any application submitted cannot follow the brief to the letter, we felt that the proposed development strayed too far from what was set out in the brief so we have recommended refusal based on the following:

### Application Site

The most obvious difficulty with the application is that the applicant does not own or control the 'phase 2' area, the haul road or the surrounding site which is designated as being of importance to nature conservation.

According to existing records land identified red may not reflect the ownership correctly in respect of the reclaimed area of land at the site's boundary with Old Rowhedge, and the area of land seaward of the sea wall.

The levels shown do not appear to be accurate; in particular levels between phases 1 and 2 appear not to reflect the situation on the ground. No topographical information has been provided for the Phase 2 area.

#### Access

The access to the site does not appear to belong to the applicant and it has been expressed by the landowner that the land ownership documents submitted are inaccurate as they do not own either of the access points to the site (haul road and High Street). The Parish Council would like it stressed that access to the site through the High Street can never be considered as the High Street is already congested constantly due to the parking problems within the village and increased traffic flow would adversely affect the use of the river front and undermine the ambience of the village.

There is a blanket Tree Preservation Order on the woodland that borders the current haul road. This woodland is also the habit of large amounts of wildlife and these issues must be addressed before changes or improvements are made to the haul road.

The proposal seeks to implement limited improvements to the haul road as part of Phase 1, and propose that it will remain in private ownership. This arrangement is unacceptable. It is not clear what access arrangement is being proposed at the interface with the High Street. In particular bus and emergency access does not appear to have been included for Phase 1.

The application should have an improved adopted highway in place before the first house is occupied and access arrangements with the High Street should be clarified.

#### Contamination

The site has significant levels of serious contamination which are identified within the Environmental Impact Assessment (although the seriousness is not reflected on the application form). However, Phase 2 has not been subjected to any contamination assessment.

The application does not contain any proposals for allotments. The need for allotments was an important issue in the design brief and the subject of considerable stakeholder comment. We feel that this matter should be addressed further as many people want to grow their own produce.

#### Layout and Design

The scheme proposals are generally very disappointing and make significant departures from the Adopted Design Brief. Importantly the layout does not reflect local distinctiveness. Roads follow a standard residential estate layout instead of the layout objectives set out in Section 11 of the Development Brief.

The central parking court in Phase 1 will not form a sufficiently important townscape feature.

Page 11 of the applicant's Design and Access Statement shows an urban design framework plan which accurately reflects the objectives of the development brief. However, the scheme layout does not follow this approach.

The Development Brief goes to significant lengths to explain the importance of scale along the waterfront and how past mistakes should not be repeated. The proposals show large blocks of 3 & 4 storey flats along the waterfront constructed on raised ground necessary for flood protection and thus higher than suggested in the application. This arrangement is not acceptable and does not reflect the objectives of the design brief.

With the differing heights of the land long the river the area where the proposed three and four storey buildings are is considerably higher (2m). This will make the proposed buildings appear larger than they are and dominate the river scene.

The location of the proposed three and four storey buildings on the river front could create a visual effect that Rowhedge and Wivenhoe are one development and the Parish would like to keep its own identity.

The proposed three and four storey buildings that front the river create a walled effect. This also blocks the river views to the rest of the development which creates the impression of an urbanised area.

#### Phasing of the Development and Community Facilities

We feel the following should be considered:

1. Clear-cut proposals for the restoration and management of the nature area along with its future maintenance and funding.
2. Full details of proposals for the waterfront area including levels, finishes, dimensions of land to be given to public ownership and arrangements for future maintenance of the public area and river wall, equipment, details of the launching ramp and provision of trailers.
3. Details of polyfunctional houses to include ground floor ceiling heights, access and fire separation between the floors, indicative arrangements to show future flexibility of use.
4. Contributions to public open space and community facility provision.

#### General Comments

1. Overall the application does not appear to be complete. It is too flimsy and it leaves too many questions unanswered.
2. The site currently suffers from poor drainage and this will need to be addressed before any building works commence to ensure the site does not flood.
3. The sewerage system within the area is already stretched and creates unpleasant smells in the area. With an additional three hundred dwellings this problem will simply increase and for this reason the Parish Council feels the system should be upgraded to cope with the additional proposed dwellings.
4. The public right of way that runs along the edge of the current riverfront and sea wall needs to remain unaffected as this is one of the most used public rights of way in the village.
5. The junction of the "Roman" and "West" developments blocks and takes no account of the private right of way which is the only access to Semaphore Cottage."

#### 7.2 Wivenhoe Town Council comment as follows:-

##### "Recommendations

Provided the development has the full support of Rowhedge Parish Council and the community of Rowhedge the only concerns the Town Council has is for:-

1. Light pollution
2. Visual impact (overbearing at 16 metres high).
3. The need for an Environmental Impact Study on the brownfield site itself.
4. Pollution into the river from construction works
5. It appears that the Environmental Statement refers to the access road only.
6. Noise from the construction work.

Wivenhoe Town Council is pleased to note that lessons have been learnt from both developments on the Wivenhoe side of the river and in regard to Section 106 contribution it is suggested that some monies be set aside for improvements to the landing site of the Rowhedge to Wivenhoe Ferry on the Rowhedge side of the river, particularly at the Fingringhoe landing."

### 7.3 Fingringhoe Parish Council comment as follows (summarised):-

"Fingringhoe Parish Council discussed this proposal at its meeting on 2 December 2008. It was the unanimous decision of the Council that a letter should be written vigorously objecting to the grant of permission for this proposed development.

#### Lack of Consultation

Concern was expressed by both members of the Council and members of the public present that there had been no prior notification of these proposals to the residents, or the Parish Council, of Fingringhoe. No notice was given of the exhibition on 21 August 2008. It is to be noted that the feedback form from that exhibition fails to provide an open opportunity to object to this proposal.

Fingringhoe will be directly affected by this proposed development and yet the applicant has chosen not to engage with this community contrary to the objectives of PPS12 and Colchester's Statement of Community Involvement. One of our Councillors was particularly concerned that he did not have any prior knowledge of this development even though he had previously sat on the committee considering the potential development of Rowhedge port. As is outlined below, this proposed development is contrary to the various objectives developed by that Committee - particularly with respect to transport.

#### Impact on Fingringhoe

Fingringhoe is a village with approximately 800 residents, with a Church, community hall, primary school, public house (the Whalebone) and a village shop. Residents are of a mixed age and the majority of those working age travel to, and through, Colchester for the purpose of work. Nearly all the residents access Colchester, the Hythe, the railway station and the A12 for the purposes of work, shopping and leisure via the Fingringhoe Road.

The Fingringhoe settlement is a ribbon development with properties at the north-eastern end of the village overlooking the proposed development site.

The proposed development will adversely impact upon Fingringhoe in the following main respects:-

1. Increased traffic movements leading to increased congestion and potential for accidents (with particular problems through Old Heath).
2. Increased strain upon the sewage system (which is already failing).
3. Increased strain upon doctors' services.
4. Increased strain upon both primary and secondary schooling.
5. Interference with visual amenity and rural nature of area.
6. Development on a flood plain
7. Interference with local ecology."

A full copy of the Parish Council's objection can be found on the Council's website.

## 8.0 Representations

### 8.1 Campaign to Protect Rural comment as follows:-

#### Design and Access Statement

##### Para 4.30 - Informal River Parkland

States that this area will include "wildflower meadows". This seems to be included just to look good, as there is no actual space for any meadows, and in any case "wildflower meadows" are notoriously difficult to establish and need frequent attention.

Para 4.31 states that there will be no allotments due to contamination.

This is a large development and it is likely that only a relatively small proportion will be contaminated and as the Design Brief pays particular attention to this requirement we believe that this should be re-examined.

Plan Page 14 - The southern section seems to show the perimeter houses where there is currently a public footpath.

Paragraph 5.23 - The plan indicates buildings including 2.5, 3 and 4 storeys.

This is contrary to the Design Brief which specifies on page 5 "Limitations for height of buildings to create predominantly TWO storey development" then on Page 15 "closely opposing waterfront buildings would create a canyon effect and over-urbanise this semi rural section of the river. Finally, page 25 states New development should also be predominantly TWO storey with OCCASIONAL taller buildings to assist architectural composition.

We find no specific mention of parking, which is a serious problem in Rowhedge. It is clear that the higher of the buildings, the more occupants they contain, and the more vehicles are required. This aspect should have more consideration.

We recommend that the Design Brief be more closely followed, that 4 storey buildings be eliminated and 3 storey buildings be strictly limited and be sited nearer the back of the scheme, not by the riverside.

#### Environment Statement

Volume 2, Figure 3 - This shows almost the whole of the River Colne frontage with a virtual wall of 3 and 4 storey buildings, completely destroying the intended "village" atmosphere intended in the Design Brief and repeating the sterile urban block of flats on the Wivenhoe side of the river immediately opposite. Furthermore, blocking out the river views from the rest of the development.

We recommend that this part of the development be drastically changed, to take note of the Design Brief.

Para 5.20 and 6.20 - Phasing. We believe that comprehensive development of the whole site will be difficult to achieve if it is done in two phases, and would be very disruptive to the residents of Phase 1.

We are strongly opposed to the proposal to upgrade the haul road in two phases, and believe that it is essential for the upgrade to be complete BEFORE any of the buildings are occupied.

Plan 3.2 "Roman" development. The southernmost buildings are shown considerably further south than on the Design Brief, and contrary to the statement on Page 24 of the Brief ---"A view looking down the River towards the Colne is currently an open aspect --- The New Development should not appear within this vista, to avoid harming the open setting of the river valley".

The junction of the "Roman" and "West) developments blocks and takes no account of the private right of way which is the only access to Semaphore Cottage.



We recommend the exact siting of the southernmost development be carefully checked to ensure it complies with the Design Brief.

#### Summary

In the absence of any detailed housing plans, our main worry is that the planned development immediately along the Colne river front seems to be the exact opposite to that envisaged by the design brief.

### 8.2 The Rowhedge Society comment as follows:-

"The Rowhedge Society was born out of the work undertaken in creating the Rowhedge Port Development Brief. Our president was an active member of the community group who instigated and contributed heavily to the creation of this excellent document which has subsequently been adopted as supplementary planning guidance.

Some of the most significant issues concerning this Society are:-

1. The proposals are out of character with the layout and architecture of Rowhedge.
2. The height of proposed dwellings.
3. The impact of the proposed "wall" of dwellings along the riverfront which would seriously impact on this visual amenity and a sense of community.
4. Any permitted vehicular access along the High Street.
5. Proposal that the spine road is not upgraded prior to first phase.
6. Road layout is a complete departure from the village of Rowhedge and is therefore totally out of keeping.
7. A need for specific assurance that materials from building works will not be allowed to enter the river (as occurred in the last phase of development in Rowhedge).
8. Insufficient allocation of car parking spaces and the impact of this on safety.
9. The proposed design of premises for business use is likely to have a negative impact on both crime levels and fear of crime in the area.
10. That community engagement has to date been insufficient.
11. Proposal that community benefits are not provided in phase one.
12. No allocation of land for allotments to be used by the community.
13. Concern regarding any potential damage to local ecology and woodland areas, some of which are designated as areas of special scientific interest.
14. There is very little likely employment opportunity within the plan considering the size of the proposed development and the likely number of residents."

### 8.3 The Wivenhoe Society comment as follows:-

"The Wivenhoe Society is concerned that the Design and Access Statement places far too little emphasis on the visual impact any development of this site will have upon Wivenhoe. Probably few Wivenhoe people will be sorry to see the existing industrial sheds demolished, but what replaces them is of great importance to us. In particular, it is not clear from the Statement which and how many of the structures would be more than 10 metres high. We urge that the very tall buildings that were unwisely permitted on the old port site in Wivenhoe should not be taken as a precedent for allowing similar heights across the Colne and 9.6m should be adopted as the maximum ridge height.

We are also concerned about the lack of consideration of the impact of 300 new homes upon traffic volumes from the Old Heath right through to the centre of Colchester, the Hythe area and the Greenstead roundabout, where the road network is already operating at or beyond capacity for large parts of the working day."

8.4 Wivenhoe and Rowhedge Yacht Owners Association comment as follows:-

"We wish to make the following observations regarding the proposals for redevelopment of Rowhedge Wharf, in particular, the layout and design of the River Colne frontage:

1. The massing of the buildings along the quay looks very uncomfortable, discontinuous and out of place - semi formal, with a car park where, if not buildings, there should be recreational space; and a surely unnecessary roundabout at the Northern end of the site.
2. The height of the buildings appears unnecessary for the quoted storey content.
3. The frontage buildings appear to be some 5 metres nearer the quay edge than previously agreed, thereby increasing the buildings' dominance of the river and exacerbating the reduction of sun lighting along the river frontage.
4. The arrangement of building heights is inappropriate, the taller buildings along the river frontage obscuring the view for those smaller buildings behind.
5. There is no indication of the floating pontoon and other facilities for yachts and boats, which, it is understood, is a requirement for this development.
6. There is apparently no evidence of the Riverside Management Plan included with the proposals.

Summary

The site is in a very important and prominent position requiring high quality and sensitive design; any development should not be permitted to dominate the area in the way that these proposals would."

8.5 The Ramblers Association comment as follows:-

"Colchester District - no comments concerning the housing or other buildings. The public rights of way seem to have been left clearly in their existing positions."

8.6 Grange Marsh Properties have comments as follows:-

"We act on behalf of the Executors of T F Hunnable and have a controlling interest in the land and wish to comment as follows: Having viewed the application documents we would like to draw to your attention the fact that the land ownership drawings that have been submitted are inaccurate. The applicants do not show that we own the land within Phase 1 that is necessary for any access or egress to the High Street.

Furthermore, we own the majority (some 73 acres or 83% of the total) within the land edged red plan for the application. At this stage we have no intention of signing any Section 106 Agreement with regard to this application nor do we intend to implement any such approval should the application be successful. We note that GLPF Two Ltd are suggesting that a Grampian condition could be used in lieu of a Section 106 Agreement. This we understand to be wholly unacceptable in light of the tests of precision as set out in DoE 11/95 and PINS advice on similar cases.

I therefore confirm that we object to the above application for the reasons stated above."

8.7 39 residents have objected to the application for the following reasons:-

1. Introduction of 2800 vehicle movements a day from the site onto Rectory Road.
2. Lack of sustainability.
3. Congestion on the roads towards Colchester and travelling west.
4. Introduction of roundabout at junction of Fingringhoe Road and Rectory Road.
5. Increased danger of accidents.
6. Removal of environmentally important woodland.
7. Damage to local ecology in both woodland and on the river.
8. Adverse impact on rural and visual amenity.
9. Overburdening of already failing sewage system.
10. Overburdening of local primary and secondary schools.
11. Increase in noise and light pollution.
12. Building on flood plain.

Colchester Borough Council should not grant permission for a development of this size in this area, when other more suitable sites are being developed and are available for development.

8.8 A further 21 letters have been received, many reiterate objections raised by Rowhedge and Fingringhoe Parish Councils, but also raise the following objections:-

1. The launching possibilities for the dingys needs further thought. The slipway on the Browns boatyard development is a fiasco - access is in legal limbo. There should be provision for mooring pontoons. The slipway shown on the drawings is in private ownership. There is already insufficient berths for existing needs.
2. Buildings fronting the River Colne are too tall and too close to the river edge and to one another. Buildings are out of scale and will overwhelm the village.
3. There should be tree planting to reduce the visual impact of the site from the Roman River Valley.
4. The route via Old Heath is already very busy and passes through a residential area and past a school and route via Fingringhoe is also a busy rat-run in both directions.
5. Damage to ecology.
6. Sewerage system is inadequate.
7. Failure to adhere to the Development Brief.
8. The plans talk about a vegetative screen at the back of houses in Ferry Road, Fingringhoe. This is incorrect, there are a number of individual deciduous trees. The views are in fact quite open.
9. A resident states that the slipway shown is within their ownership.
10. Coastnet, the occupiers of the Gatehouse on the site, comment that they are a charity working with deprived communities and young people in coastal areas and with Government and its agencies regarding coastal policy. The proposals show the building retained and they wish to continue to occupy it whilst it should be made over to community use the building requires refurbishment.
11. The owner of 55 High Street objects to buses coming down the High Street. A footpath adjacent to their property cannot be moved. Removal of warehouses must be down in a safe way.

12. There is a shortage of larger family houses in Rowhedge and the Borough and this application should address this.
13. The information fails to fully capture the ecological status of the Pits.

## **9.0 Report**

### **Introduction**

- 9.1 There have been pre-applications discussions during which the need for comprehensive and mixed use development was explained. Concerns about the use of conditions to deliver phase two were also set out. Your officers also explained that an application for outline permission, but for a specific number and mix of units, should be accompanied by sufficient detail to demonstrate the development could be satisfactorily accommodated on the site.
- 9.2 A meeting due to take place on the 17th December was cancelled by the applicant and your officers wrote on 31st December setting out your officers concerns, a written response was received on the 27<sup>th</sup> January two days before the re-arranged meeting. At the meeting the applicant indicated further drawings and information, including Counsels advise on the appropriateness of using Grampian conditions, would be submitted. At the time of drafting this report no further information has been received and the time available to give any information proper consideration or carry out consultation is limited but any further submissions will be described on the amendment sheet.

### **Main issues**

#### 1. Phased development

- 9.3 The development is proposed in two phases as described in the description of the proposal. Phase 1 relates to land within the applicants control and phase 2 land owned by a third party. As the owner of the phase 2 land has indicated he will not be a signatory to any section 106 agreement the applicant proposes to use Grampian conditions to secure obligations, infrastructure and financial contributions for phase 2. A Grampian condition is worded to require specific matters to take place prior to the commencement of development or prior to other specified time. The Council's Legal Services advise the use of such conditions in this case is inappropriate and that they should only be used where there is a reasonable prospect of the condition being carried out. This advice reflects advice given by the Planning Inspectorate to their inspectors based on advice from the Secretary of State. Members will note the owner of the phase 2 land has stated he will not implement the development if approved.
- 9.4 If conditions were imposed they would need to secure the following matters
  - Open space and a commuted sum for maintenance
  - 35% affordable housing with a mix reflecting the development and acceptable tenure
  - mixed use with mechanism to provide low rents
  - financial contribution for education
  - improvements to the haul road and junction
  - management plan for the SINC, including a financial contribution for ongoing maintenance.

- 9.5 Even were it appropriate to use Grampian conditions the information regarding the road improvements is ambiguous. For example although the Transport Assessment indicates a possible scheme of improvements for phase 2 it states the details would have to be agreed with Highway Authority. The Environmental Statement indicates these improvements could impact on protected species, other fauna, habitats and protected trees and woodland. Before they could be implemented further survey work and mitigation would be necessary. It is therefore possible that even if phase 2 were to be implemented the road improvements could not take place. The survey work should therefore form part of this application and agreement reached with the highway authority. The Environmental Statement also suggests mitigation for the phase 1 development, which involves land in phase 2 and therefore outside the applicant's control.
- 9.6 Members will note the Highway Authority has recommended refusal. One of the reasons relates to the unsafe means of access from Rectory Road to the port area. An access road, to meet the requirements of the Highway Authority, would affect preserved trees and woodland and protected species and other fauna. This does not necessarily mean the access would be unacceptable as the SINC area is substantial but detailed survey work would be required to assess its impact and any mitigation required. This work has not been carried out.
- 9.7 The submitted information seems to suggest the proposed phase 2 road improvements; the management plan for the SINC would be paid for by the owner of phase 2 owner. This would be in addition to the other financial contributions, infrastructure and obligations required.

## 2. Amount of development/height/density

- 9.8 The application includes a design and access statement, DAS, which includes a master plan layout for both phase 1 and 2. However the drawings are not to a large enough scale or sufficiently detailed to satisfy your officers that the site can satisfactorily accommodate the number and mix of dwellings proposed. Plot numbers are not shown nor are dwelling footprints so it is not possible to determine whether the 300 dwellings can be achieved. It is not possible to measure garden sizes, parking areas or bin storage areas. From the information that is available it is considered 300 dwellings would represent overdevelopment of the site.
- 9.9 The DAS includes a storey height plan indicating 3 and 4 storey buildings forming an almost continuous frontage to the river Colne. The information indicates the existing warehouse buildings are between 10-12 metres high and the stated height of the 3 storey buildings is 13 metres and the 4 storey 16 metres. Rowhedge comprises mainly 2 storey buildings with only a limited number of 3 storeys. It is considered the 4 storeys and large number of 3 storeys would be out of keeping with and detract from the character of Rowhedge. The continuous high buildings on the river frontage opposite Wivenhoe would also lead to coalescence of the two settlements reducing historic separation and individual waterfront character. The development would also over-urbanise this section of the river.

- 9.10 A zonal plan indicates 4 development zones Colne, fronting the river Colne, density of 52 dwellings per hectare, Roman, fronting the Roman river density 42 dwellings per hectare, Centre, behind the river areas, density 37 dwellings per hectare, and West, the phase 2 land, with a density of 34 dwellings per hectare. The written information indicates each zone would have a separate character area each with its own distinct identity. However this is not reflected in the layout or density plans which show a uniform layout and character of development throughout the site. Of particular concern is the roman zone facing the Roman River and SSSI. The zonal plan indicates a density of 42 dwellings per hectare with a continuous built frontage. This is not acceptable on this sensitive location where a low density arcadian development with landscape as a dominant feature is required.
- 9.11 The proposed parking provision, even if it could be accommodated, is considered to be inadequate and below the emerging standards for residential development.
- 9.12 The arboricultural officer has objected to the application due to the proximity of the built development to the SINC boundary and protected trees. The construction is likely to impact on preserved trees and dwellings would be close to preserved trees leading to pressure for their removal.

### 3. Mixed use/ community benefits

- 9.13 The application proposes 1975 square metres of mixed use comprising:
- 168 square metres of A1 retail
  - 180 square metres of A3 restaurant /café
  - 566.5 square metres of B1a office
  - 432 square metres of B1c light industrial
  - 628 square metres of D2 community
  - 20 space dingy park
- 9.14 The B1 uses do not equate to 2% gross figure set out in the development brief and there is only limited detail of consideration of other community benefits. A socio-economic assessment has been submitted.
- 9.15 An active waterfront is considered essential for any development whilst the master plan shows buildings set back an acceptable distance the future maintenance of this area is ambiguous and uses have not been explored. The planning statement indicates the section 106 agreement would secure the management of the waterfront but there is no reference to maintenance of the area or the sea wall. The DAS states the Council would be offered these areas but this is not referred to in the draft heads of terms for a 106 agreement. A structural survey of the sea wall has not been submitted. In respect of the waterfront the slipway indicated near the proposed dingy park is in private ownership. The proposal does not include either a pontoon or moorings. The Environmental Statement indicates alternative ways of animating the waterfront were considered but rejected following consultation with Natural England as they may have ecological implications on the nearby Special Area of Conservation and Special Protection Areas and are unlikely to

prove viable. Natural England has been asked to comment on these matters. It is considered insufficient information has been submitted to demonstrate these facilities cannot be provided nor has proper consideration been given to providing alternative facilities.

- 9.16 The small element of commercial floorspace does produce a mixed use development required by the local plan policy. The application does not include a financial appraisal or any information to demonstrate more commercial use would be unviable. There is no assessment of identified local community needs or requirements and the use of the waterfront has not been adequately explored.

#### 4. 106 Contributions

- 9.17 A draft heads of terms for a 106 agreement has been submitted but does not refer to the contributions obligations required.
- 9.18 Members will be aware the requirement for affordable housing has increased for major developments from 25% to 35%. This application has been considered by the development team and 35% is required not the 25% offered in the application. Policy H4 in the core strategy sets out the new affordable housing requirements.
- 9.19 Essex County schools require a contribution for pre-school, primary school and transport for secondary school.
- 9.20 Open space including roman river parkland to be adopted to the council at an agreed time and condition and a commuted sum for maintenance. If the public realm waterfront was to be adopted by the Council a structural survey and repair would be required and a financial contribution for maintenance
- 9.21 Commercial uses remain in perpetuity rents.

#### **Other matters**

- 9.22 Members will note Essex County Highways and the Environment Agency have recommended refusal. At the time of drafting this report comments from the Council's Economic Development Officer are awaited and will be reported on the amendment sheet, together with clarification from Natual England on the acceptability of moorings/jetty/pontoon/use of the river frontage.

#### **10.0 Conclusions**

- 10.1 The development of the site in two phases as proposed is unacceptable and the use of Grampian conditions to secure phase 2 is inappropriate. To grant planning permission in this way would not secure the requirements/financial contributions and obligations for phase 2. The information submitted with the application is inadequate and ambiguous. The planning documents are insufficient to demonstrate the site can satisfactorily accommodate the 300 dwellings and the mixed use proposed. Furthermore the layout, height and density of development are unacceptable. The mixed use and community benefits are inadequate; alternatives and/or identified community requirements have not been properly explored.

## **11.0 Background Papers**

11.1 ARC; HH; ECC Schools; CBC Legal; AT; NR; Health and Safety Executive; TL; EW; AW; HA; Natural England; Design Officer; PTC; Campaign to Protect Rural Essex; Rowhedge Society; Wivenhoe Society; NLR

### **Recommendation - Refusal**

**Additional reasons may be added on receipt of comment from Natural England and the Council's Economic Development Officer**

#### **Reasons for Refusal**

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

The application proposes the development of the site in two phases with financial contributions and other obligations required for phase 2 secured by Grampian conditions. It is considered this is an inappropriate use of conditions contrary to Circular 11/95. It is also contrary to Policy CE8 in the Adopted Borough Local Plan as it would not secure a comprehensive development.

##### **2 – Non Standard Refusal Reason**

This outline application is for the erection of 300 dwellings with the mix of the proposed dwellings set out in the application documents. The Design and Access Statement includes drawings, which contain insufficient detail to satisfy the local planning authority that the site can satisfactorily accommodate the 300 dwellings proposed. In deed the submitted information indicates the proposal would overwhelm Rowhedge constituting over development and result in a development out of keeping with the scale and character of the village. Furthermore the plans indicate a uniform suburban development across the whole site with no variation or distinct character areas. The layout does not respond to the context of the site. The development indicated would result in the coalescence of the settlements of Rowhedge and Wivenhoe leading to a loss of their unique identity. In addition the development proposed would have an urban appearance resulting in an adverse visual impact on the River Colne, Roman River and the adjacent SSSI. In addition it is considered the parking provision is inadequate for the scale of development proposed and fails to meet the Council's emerging standards. This would lead to an unacceptable environment in visual terms and for the amenity of residents.

The application is therefore contrary to policies DC1, CE8, CO3, UEA11 and UEA12 in the Adopted Review Colchester Borough Local Plan and policy SD1, SD3, H2, UR2 and ENV1 in the adopted Core Strategy



### 3 - Non-Standard Refusal Reason

The application proposals contain insufficient mixed use floorspace to satisfy the Council and meet the objectives of the local plan policy CE8 and Core Strategy policy SD2, SD3 and SD4. The application does not include a financial appraisal and there is no information to demonstrate the inclusion of additional floorspace would be unviable. Further more the application has made no assessment of identified local community needs or requirements and the use of the waterfront and River Colne has not been properly explored. The application is therefore contrary to policy CE8, L5 and L18 in the Adopted Review Colchester Borough Local Plan and policy SD1, SD2 and SD3 in the adopted Core Strategy.

### 4 – Non Standard Refusal Reason

The application does not include a satisfactory mechanism to secure the financial contribution, infrastructure and community obligations required for a development of this scale and is therefore contrary to policy CE8, L5 and L18 in the Adopted Review Colchester Borough Local Plan and policy SD2 in the adopted Core Strategy.

### 5 - Non-Standard Refusal Reason

The application contains insufficient information for the Highway Authority to ascertain whether the applicant has control over the land required to deliver the proposed access road between Rectory Road and the proposed development.

The proposed access is unsafe, as it does not provide a complete and direct route for pedestrians and cyclists between Rectory Road and the proposed development. Further it does not include any street lighting, has insufficient protection from vehicles for pedestrians and cyclists and is not suitable for use by buses and coaches.

The proposed development is located in excess of 400 metres of a bus service.

The application contains insufficient information regarding public transport infrastructure and service improvements to be delivered as part of the development.

There is no direct pedestrian/cycle link between the proposed access road, the recreation ground, village hall and St Lawrence C of E School.

The application does not include a financial contribution towards the Rowhedge Trail.

The application is therefore contrary to the County Council's Highways and Transportation Development Control Policies, as originally contained in Appendix G of the Local Transport Plan 2006/2011 and refreshed by Cabinet Member Decision dated 19 October 2007.

### 6 – Non Standard Refusal Reason

The application does not include any survey information to satisfy the Local Planning Authority the provision of an access road from Rectory Road to the development site, to meet the requirements of the Highway Authority, would not have an adverse impact on protected species, other fauna, habitats and protected trees and woodland. Furthermore the information submitted in respect of the application for the phase 1 and phase 2 haul road improvements and junction improvements are ambiguous and indicate the impact of these works has not been fully assessed.

The application is therefore contrary to policy CO3, CO4 and CO5 in the Adopted Review Colchester Borough Local Plan and advice in PPS9 Biodiversity.

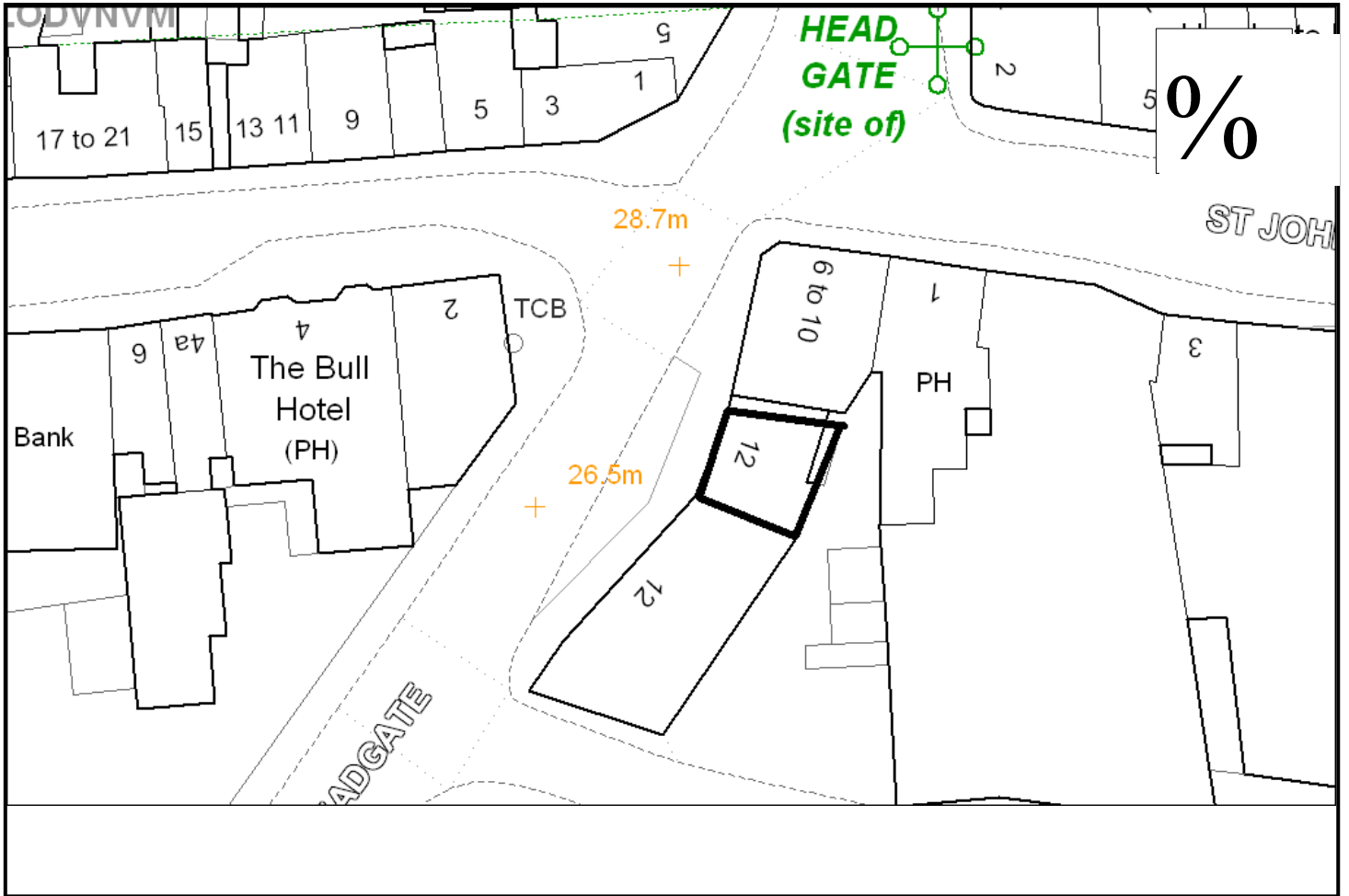
## 7 - Non-Standard Refusal Reason

The submitted flood risk assessment does not fully meet the requirements of Planning Policy Statement 25 “Development and Flood Risk” and the proposal is therefore unacceptable on flood risk grounds and contrary to policy CE2 in the Adopted Review Colchester Borough Local Plan.

### **Informatives**

In making this recommendation the highway authority has treated all planning application drawings relating to the internal road layout of the proposed development as illustrative only.

In making this recommendation the Highway Authority has assumed the proposal site internal road will not be laid out and constructed to adoptable standards and that the applicant does not intend to offer it to the Highway Authority for adoption. All residential developments which lead to the creation of a new street will be subject to the Advance payments Code under the Highways Act 1980. The developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development shall provide guaranteed deposits, which will ensure that the new street is constructed to a specification sufficient to ensure its future maintenance.



**Application No:** 090003

**Location:** 12 Headgate, Colchester, CO3 3BT

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

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**7.2 Case Officer: Mark Russell**

**EXPIRY DATE: 27/02/2009**

**OTHER**

**Site:** 12 Headgate, Colchester, CO3 3BT

**Application No:** 090003

**Date Received:** 2nd January 2009

**Agent:** Mr Steve Norman

**Applicant:** D G Rose Ltd

**Development:** Change of use from estate agents office to sandwich bar – Mixed A1/A5 use

**Ward:** Castle

**Summary of Recommendation:** Conditional Approval

## **1.0 Site Description**

1.1 The site comprises the ground floor and basement of the former Foxwells Estate Agents on the eastern side of Headgate.

## **2.0 Description of Proposal**

2.1 The proposal is for “change of use to sandwich bar” with a heavy reliance on hot food take-away.

## **3.0 Land Use Allocation**

3.1 Mixed Use Area A, in Colchester Conservation Area 1.

## **4.0 Relevant Planning History**

4.1 No relevant planning applications

## **5.0 Principal Policies**

5.1 Adopted Review Colchester Local Plan:  
DC1- Development Control considerations;  
TCS5 – Mixed Use Area A P1 - Pollution

## **6.0 Consultations**

6.1 None received

## 7.0 Representations

- 7.1 One objection was received from 3 Hospital Road as follows: “I object to the proposal, on the grounds that my business *bon appetite*, (that has been trading for 15 years) is already struggling with the new arrival of Tesco express and other food providers on Crouch Street/Headgate and, with the opening of a rival sandwich bar in this area, this will force the closure of my business. In these hard times if I lose any more of my customers my business will not survive”
- 7.2 Colchester Civic Society responded as follows: “Colchester Civic Society has no objection subject to the opening hours remaining as proposed; we would not wish to see another late night take-away in the area. We note that a delivery service is proposed and trust that off street parking is available in view of the location at a busy junction. Wheelchair access appears difficult. Is this a planning consideration?”

## 8.0 Report

- 8.1 The extant use of this property is “A2” (financial and professional services). As such, a change of use to A1 (retail) does not require planning permission. A sandwich bar falls under the use class A1, and therefore the proposed use feasibly does not require planning permission.
- 8.2 The applicant has, however, intimated that a large part of activity (perhaps half) could be hot food (“jacket potatoes, soup, toasted sandwiches, sausage rolls, pasties, pies, etc.”) it is possible that this could constitute a de facto change of use to a mixed A1/A5 use. Hence this planning application. As the extant use is non-A1, then there is no policy reason for refusal.
- 8.3 For avoidance of a general A5 permission, with the tendency towards odour nuisance and possible later opening hours, it is proposed that a condition forbidding the frying of food be imposed.
- 8.4 The applicants have also provided information regarding their proposed hours of use, which indicate that there is no intention to partake in the night-time economy. As such, these can be imposed by condition so that any creep into this can be properly regulated by Colchester Borough Council, in terms of a separate application which may then look at issues of possible odour control if this is felt to be acceptable.
- 8.5 Regarding the objection, whilst the comments of the owner of *bon appetite* are noted, it should be remembered that the use as sandwich bar (in competition with *bon appetite*) does not require planning permission of itself, and in any case competition is not a reason for refusal.
- 8.6 Regarding Colchester Civic Society’s comments, the proposed delivery service is of concern, and the applicants have been advised that use of a motor vehicle to achieve this will not be acceptable. Given that the supporting statement states that this service “will be available to commercial and residential premises within the town centre” then it is likely that this can be achieved on bike or foot. In addition, if this service becomes a major part of the activities, then arguably a change of use to B2 (food preparation) will have occurred.

8.7 Regarding the comments about wheelchair access, this is not a Planning matter.

## **9.0 Conclusion**

9.1 In conclusion, the change of use applied for barely requires planning permission, does not run counter to policy and does not raise any issues of amenity. Approval is, therefore, recommended.

## **10.0 Background Papers**

10.1 ARC; NLR

### **Recommendation - Conditional Approval**

#### **Conditions**

1 - A1.5 Full Perms (time limit for commencement of Development)

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

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

2 - Non-Standard Condition

No fat friers shall be used within the premises.

Reason: The applicant has indicated that hot foods shall be of a non-fried type, and as such shall not cause odour nuisance. Colchester Borough Council would wish to regulate the future use of the premises should fried foods be for sale.

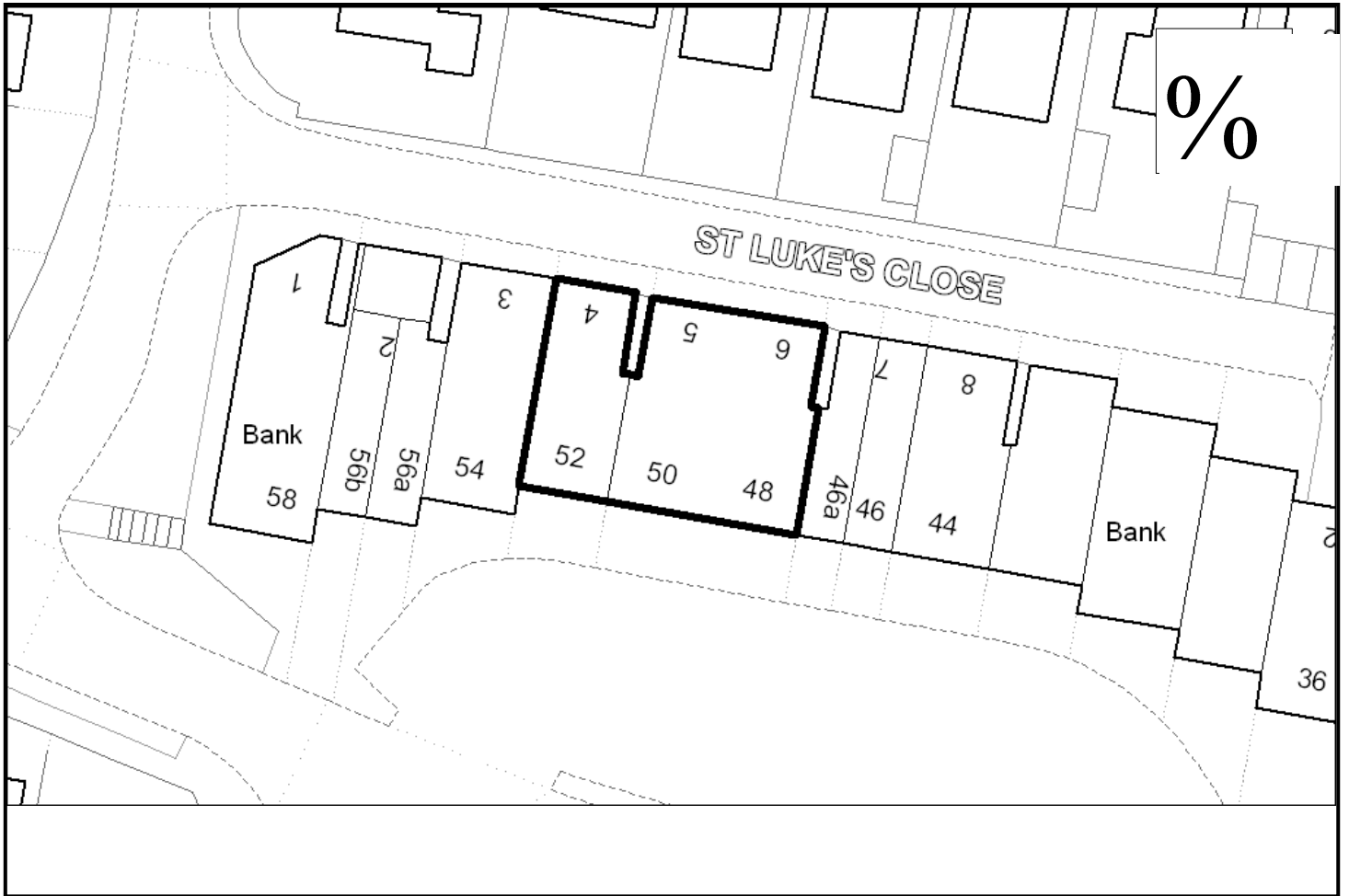
3 - Non-Standard Condition

The use hereby permitted shall not be carried out outside of the following hours: Monday to Saturday 08:00 – 17:00, and at no time on Sundays.

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

#### **Informatives**

The applicants are advised that the proposed delivery service should be conducted other than with a motor vehicle, given the non-availability of convenient parking and the likelihood of Highway nuisance.



**Application No:** 090021

**Location:** Tesco Express, 48 St. Christopher Road, Colchester, CO4 0NB

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

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**7.3 Case Officer: Andrew Tyrrell**

**EXPIRY DATE: 05/03/2009**

**OTHER**

**Site:** 48 St. Christopher Road, Colchester, CO4 0NB

**Application No:** 090021

**Date Received:** 8th January 2009

**Agent:** Mr Graham Ling Wills Gee Limited

**Applicant:** Tesco Stores Limited

**Development:** Siting of a single Tomra recycling unit and associated works

**Ward:** St Johns

**Summary of Recommendation:** Conditional Approval

### **1.0 Planning Report Introduction**

1.1 This application is referred to the committee as an objection has been received from Colchester Civic Society. There has also been correspondence from Councillors where concerns have been discussed, although the application has not been "called-in".

### **2.0 Site Description**

2.1 The site is Tesco's, in the shopping parade on St. Christopher's Road. This parade has a cluster of shops, including a newsagents, florists and bank etc. Above the shops are residential units, with rear access off St Luke's Close.

2.2 Parking is located at the front of the site, off the main road. There are bottle banks and recycling facilities in the car park area.

### **3.0 Description of Development**

3.1 The proposal is for a recycling unit that crushes cans and bottles. The recycling unit would be located adjacent the Tesco frontage, and the dimensions are 116 x 68 x 150 (width x depth x height). The footway is approximately 5m wide at points in front of Tesco and the adjacent newsagents is staggered forward of the Tesco frontage, with the pavement tapering round to accommodate this.

### **4.0 Land Use Allocation**

4.1 Local Shopping Centre



## **5.0 Relevant Planning History**

- 5.1 There is no particularly relevant history to this proposal, although several other applications have been made simultaneously by Tesco for these units. Each case should be determined on its own merits.

## **6.0 Principal Policies**

- 6.1 Adopted Review Borough Local Plan  
DC1 - Development Control Considerations  
UEA11 – Design  
P1 – Pollution (General)

## **7.0 Consultations**

- 7.1 ECC Highways – No response to date
- 7.2 Environmental Control – Any approval should limit hours to 7am to 10pm daily.
- 7.3 Street Services – Support the proposal in principle as it may increase the recycling habits of Tesco customers. However, the Council only benefits if we receive the recycling tonnage figures from Tesco regularly. Therefore, they are keen to explore a condition to ensure this is secured.
- 7.4 Colchester Civic Society – In favour of recycling but there are some disadvantages to these units. Servicing and emptying require front access, thereby blocking the pavement once the unit is opened. Removal of sacks will presumably require lorry parking in an area where parking is already a problem. It is not clear if the unit will take up public highway space. Applicant should be persuaded to withdraw and discuss with local residents.

## **8.0 Representations**

- 8.1 None received

## **9.0 Report**

- 9.1 The main issues are the design and visual appearance, highway movement, and noise pollution.

### Design and Visual Appearance

- 9.2 The design of the unit is reasonably standard and such units are unlikely to ever be exciting or innovative. However, consideration has to be given to what harm they might cause. The units are available in green (a cliché for most recycling paraphernalia) or silver/grey. The application indicates a grey/silver “city” model for this site and this should be clarified through condition. Similarly, there is an add-on horizontal feature that can be included at the top of the machine (usually with advertisement of its recycling function, however this feature is considered to be unnecessary given the writing on the machine itself. Therefore, it is suggested that this feature be restricted by condition.

- 9.3 In this instance, the backdrop for the unit would be the Tesco window frontage, which at this site is covered with an internal window advert stating that the opening hours are from 6am to 11pm. This advert does not need planning permission as it is internal, but cover the window from top to bottom. It is bright red and blue, with white writing. Therefore, given the backdrop, it would be hard to argue that a green machine would be harmful to the area. It is also noted that the shops predominantly have typical plastic fascia adverts and this shopping parade has a characteristic of bright plastic materials.

#### Highway Movements

- 9.4 The unit is of limited width, taking up less than 68cm of the adequate pavement width. Essex County Council Highways Authority has been consulted upon the application but they have so far been unable to confirm the extent of the highway ownership. If any comment is received prior to the committee meeting this will be updated, however the Highway Act would give them authority to remove any obstruction should they own and control the pavement. Therefore, this is not a significant issue. The Civic Society have stated that they are concerned about obstructions to the pedestrian footpath, however it is noted that there is adequate room for all users to pass any recycling unit. Given this, a refusal on the grounds that the unit would obstruct the pedestrian footpath is unlikely to sustain an appeal on its own.

#### Noise Pollution

- 9.5 The recycling unit is located beneath residential units. However, it operates at less than 70 dBA. Therefore Environmental Control have recommended that it would be acceptable with operating hours limited to 7am – 10pm daily. A condition is recommended to this effect. This will also limited noise from any vehicles associated with people using the unit, however it is anticipated that most users will be passers by and not people making purpose-made journeys to recycle in this unit. It is noted that there are bottle banks in the car park area, and the noise generated by these could be just as much of a disturbance.

#### Other Matters

- 9.6 Street Services have asked for a condition to secure recycling tonnage figures. However, this would not pass the six tests for planning conditions, being unnecessary to make the proposal acceptable in planning terms. Therefore, the condition should not be included on any approval.
- 9.7 The Civic Society are concerned that servicing and emptying require front access, thereby blocking the pavement once the unit is opened. Whilst this could occur, it is unlikely to be for significant amounts of time and would not justify a refusal in the officer's opinion. There is no detail about waste removal, however Tesco operate from the site already and must have a method of waste storage, therefore this is also considered to be a minor concern that would not justify refusal. A condition for further details regarding waste management can be incorporated into the decision.

9.8 There is no evidence that lorry parking will be required and the unit is unlikely to significantly increase the vehicular movement related to Tesco's overall operation. The Highway Authority also have controls outside of planning should a public highway be obstructed.

## **10.0 Conclusion**

10.1 Subject to appropriate conditions the application appears to be acceptable on its merits. The design of the unit is standard but will not have any material harm on the streetscene or public domain. The pavement will still be useable for people of all abilities. Furthermore, the noise can be limited to sociable hours.

## **11.0 Background Papers**

11.1 ARC; HA; HH; Street Services; Colchester Civic Society

### **Recommendation - Conditional Approval**

#### **Conditions**

1 - A1.5 Full Perms (time limit for commencement of Development)

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

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

2 - Non-Standard Condition

The "Tomra Recycling Unit" hereby approved shall not operate other than between 7am and 10pm in any one day, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the permitted development does not harm the amenities of the area by reason of undue noise emission.

3 - Non-Standard Condition

The "Tomra Recycling Unit" hereby approved shall be a "City" unit model finished in a silver/grey colour and shall be retained as such thereafter unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: To clarify the scope of this permission, and to ensure that a suitably designed appearance is achieved in the interest of the quality of the public domain.

4 - Non-Standard Condition

The "Tomra Recycling Unit" hereby approved shall be no more than 1.5metres in height, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: To clarify the scope of this permission, as the horizontal "add-on" feature that is shown in some of the submitted drawings appears to serve no functional purpose and is considered to be unnecessary to the recycling operation of the unit, to ensure that the visual impact of the unit is minimised.

#### 5 - Non-Standard Condition

Prior to the commencement of development, details regarding the emptying, storage and removal of waste produced by the “Tomra Recycling Unit” hereby approved shall be agreed, in writing, by the Local Planning Authority. The emptying, storage and removal of waste produced by the “Tomra Recycling Unit” shall be implemented in accordance with the agreed scheme thereafter.

Reason: To ensure that there is a satisfactory provision for the storage and disposal of recycled materials and that the highway is not obstructed for unreasonable amounts of time during emptying.

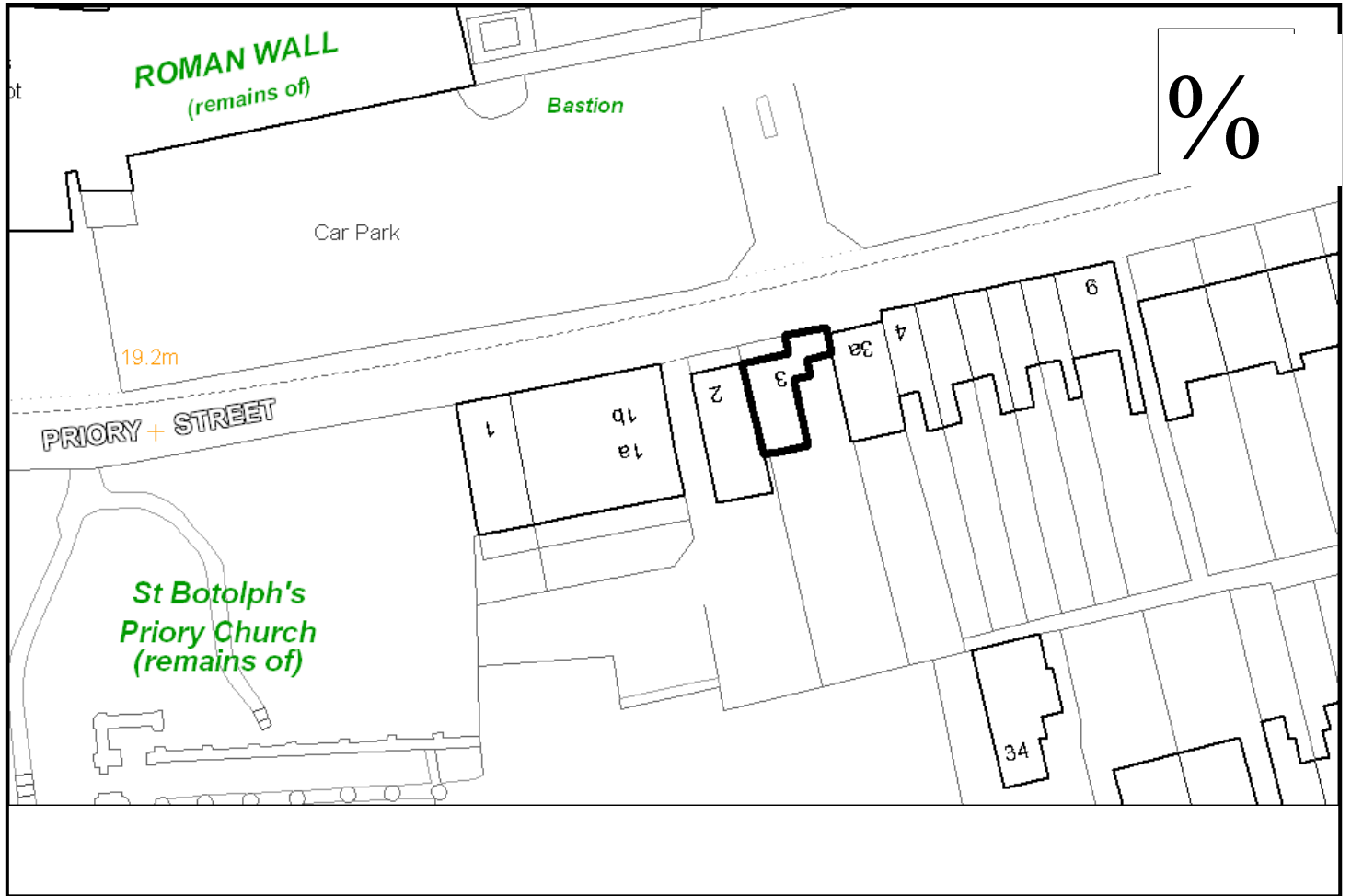
#### 6 - Non-Standard Condition

The “Tomra Recycling Unit” hereby permitted shall be removed within 28 days after it is no longer operated for recycling purposes for a continuous period of 56 days or more.

Reason: To ensure that the unit is removed once its use ceases, so that the street environment does not become cluttered by such redundant apparatus.

#### **Informatives**

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



**Application No:** 081938

**Location:** 3 Priory Street, Colchester, CO1 2PY

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

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#### 7.4 Case Officer: Mark Russell

**OTHER**

**Site:** 3 Priory Street, Colchester, CO1 2PY

**Application No:** 081938

**Date Received:** 24th November 2008

**Agent:** Pps Ltd

**Applicant:** Colchester Islamic Cultural Association

**Development:** Continued use of building and rear amenity area for worship.

**Ward:** Castle

**Summary of Recommendation:** Conditional Approval

#### 1.0 Planning Report Introduction

1.1 This item was deferred from Committee on 5 February for a site visit and to seek further information regarding numbers of worshippers and frequency of religious services, ground levels and boundary treatments including security measures.

1.2 Conditions 1, 3 and 6 have been amended and new conditions 8, 9 and 10 added. These are shown in bold.

#### 2.0 Site Description

2.1 The site comprises the left-hand side property of a pair of semi-detached houses and a rear garden which has been laid to hardstanding. This is in Colchester Conservation Area 1, and next to the grounds of St. Botolph's Priory. The other side of the pair (No. 2) is currently already under authorised use as mosque.

#### 3.0 Description of Proposal

3.1 The proposal is a retrospective one, to regularise the use of 3 Priory Street for worship, and also to use the rear garden for this purpose. The former garden of 3a is also part of this application.

3.2 The application also seeks to regularise the hardstanding, which requires planning permission in itself.

#### 4.0 Land Use Allocation

4.1 Residential in a Conservation Area.

## **5.0 Relevant Planning History**

### **5.1 For 3 Priory Street:**

080327 - Change of use from garden area to car parking area. Refused: 17th April 2008.

### **5.2 For 2 Priory Street:**

92/0352 - Change of use as a meeting place for Colchester Islamic Cultural Association. Approved 8th June 1992;

### **5.3 93/0343 - Single storey rear extension and porch. Approved 3rd June 1993; 93/1559 - Single storey rear extension and alterations. Approved 10th March 1994;**

F/COL/01/1857 - Single storey rear extension to form enlarged prayer room. (Renewal of COL/93/1559). Refused 22nd February 2002;

F/COL/02/1281 - Extension to Prayer Room (re-submission Of COL/01/1857). Approved 6th September 2002.

## **6.0 Principal Policies**

Adopted Review Colchester Local Plan (March 2004):

DC1- Development Control considerations;

UEA1 – Conservation Areas;

UEA2 – Alterations affecting Conservation Areas;

UEA5 – Listed Buildings (setting of);

UEA7 – Setting of Ancient Monument;

P1 – Pollution

## **7.0 Consultations**

### **7.1 The Highway Authority did not object**

### **7.2 Comments are awaited from Environmental Control, but it is noted that there have been some complaints about the usage of 2 Priory Street. Most of these were in 2000, although there was one complaint about late night meetings in 2004. Sound insulation conditions were previously required in earlier applications at that address, and a judgement from Environmental Control is awaited as to whether this would be required in this case.**

## **8.0 Representations**

### **8.1 Two letters of objection were received from neighbouring dwelling 4 Priory Street and nearby 9 Priory Street. The points raised in these objections were as follows:**

1. This is the only non-residential use in a long stretch of Priory Street;
2. Increased footfall for this non-domestic use;
3. Removal of walls between the properties would result in the loss of smaller dwellings;
4. The facility could be located in an existing, disused, church building;
5. Increase in parking, especially in light of the proposed future reduction of parking spaces on Priory Street itself;

6. Encouraging off-street parking (against policy);
7. The freeholders of 4 and 5 Priory Street had not been contacted regarding the application;
8. The use does not improve the character of the area;
9. The opening up of the rear has led to an increase in crime/the fear of crime;
10. If the premises are becoming inadequate, then the organisation should look at moving to a different site;
11. Potential noise due to the call to prayer (even without amplification);
12. Funerals are not appropriate in this location, especially in view of windows of neighbouring residences;
13. Ground levels mean that privacy is further invaded;
14. Drainage may be insufficient;
15. Fear of day-long use of the rear garden by a possible future user.

8.2 Objector's wished to make it clear that their objections were not based on any opposition to the Colchester Islamic Cultural Association itself.

8.3 An additional letter was also received from 9 Priory Street complaining that the neighbour consultation deadline, and that on the public notice, differed. It claimed that this had led to confusion, and also stated that insufficient time had been allowed for comment, and that more neighbours should have been consulted.

*OFFICER'S COMMENTS: All immediate neighbours were notified, as was the case with the previous application. In all nineteen properties were consulted, and each one was given 21 days to respond, so the claim that these had "only a few days to respond" is incorrect.*

*Neighbours are notified immediately that an application is lodged. If the application also needs to be advertised with a site notice and in the local press, then this is done a very short time later. These advertisements are weekly, and thus there is often a slight discrepancy between the two deadlines for comment. Clearly the later date is the cut-off (although in practice Colchester Borough Council accepts even later comments) and there does not appear to be any confusion on this point.*

*Regarding the earlier point 7, that freeholders of 4 and 5 Priory Street were not notified, letters were sent to the "Owner/Occupier" of each of these properties on 12th December. Details of the freeholders' addresses, whilst these may be held for purposes of Council Tax, are not available for the purposes of neighbour notification due to Data Protection. Clearly both freeholders were aware of the application whether by being notified by their tenants, or by the public or press notice, given that representations have been made by them.*

## **9.0 Report**

9.1 Priory Street is a largely residential street, with some commercial properties at the St. Botolph's end, but also with several religious institutions – such as the Mosque, a Synagogue, the Catholic Church and the Spiritualist church. The principle of religious use in this location (at number 2) was also sanctioned in 1992, under planning application 92/0352.



- 9.2 The principle of use of the building at number 3 is also acceptable, and should comply with policy DC1 which seeks to protect residential amenity. Therefore, and only if Environmental Control request this, a sound insulation condition can be imposed.
- 9.3 There is no doubt that when the mosque is in use, and particularly before and after worship, there is briefly a large number of people outside the building, but in the context of a site so close to other town centre uses including the surface car park, this can be argued to not contrast too starkly with the prevailing pattern of activities.
- 9.4 It is the rear, outside use which seems to raise the most concerns. These concerns manifest themselves in terms of disturbance and loss of privacy to neighbouring properties, as well as visual blight due to the amount of unrelieved hardstanding which has been laid. This latter point is also of relevance when viewed from the grounds of the Grade I St. Botolph's Priory. Photographs in the Committee presentation indicate what the gardens used to look like prior to this planting.
- 9.5 The hardstanding has also had the effect of raising the ground levels considerably when compared to neighbouring gardens. Whilst the fence between 3a and 4 is not a very high one to begin with, this dates from a time when both properties were residential gardens, well planted in the case of numbers 3 and 3a. For residents of number 4, and indeed any of the next few houses, to be confronted by a large number of people – sometimes up to three figures – must be very unsettling, and this is obviously exacerbated when taking into account the ground levels.
- 9.6 The applicants have, therefore, been advised that, if permission is granted, this will be on the basis of a renewed surface treatment and extensive planting which would have the effect of screening the mosque garden from neighbouring properties, and from the grounds of the priory.
- 9.7 The applicants have offered many of these features in their supporting statement, which is a good basis to start from. It is proposed that, in addition to this, a planting belt be introduced to the boundary with number 4 to provide additional screening and comfort.
- 9.8 The proposed level of outdoor use does require some further explanation. The applicant has advised that this breaks down into three elements: Friday prayer, funeral prayers, and Eid.
- 9.9 Friday Prayer. This lasts from 12:30 to 13:30. There is no call to prayer using amplification, and no verbal congregation response. There is no music or singing.
- 9.10 Funeral Prayers: A prayer service where only the Imam speaks, and lasting 30 minutes. There is no verbal congregation response. There is no music or singing. The coffin is placed outside during the prayers. The applicant advises that there have been three such services in the last three years.
- 9.11 Eid Prayers: These take place twice a year, (currently towards the end of the year) and have variable dates attached to them. Prayers last for 45 minutes.

- 9.12 It would appear, therefore, that the level of outdoor usage is not extensive, but without a doubt it may be unnerving for neighbouring properties to have a large number of people in the rear, being addressed by an individual. Some separation and screening is, therefore, a way of offsetting this.

The 2007 application was refused for the following reasons:

“It is considered that the replacement of the private garden area with a slab of concrete for parking is harmful to the character and appearance of the Town Centre Conservation Area. Furthermore the proposal would result in loss of privacy and security to the rear garden areas of the neighbouring properties fronting Priory Street and a lack of private amenity space for No 3 Priory Street, harmful to the amenity of the residents. For the reasons above the proposal would be contrary to Local Plan policies DC1, UEA1 and UEA11 and fails to take the opportunities available for improving the character and quality of the area contrary to PPS1.

The proposal would result in a large area for private car parking in this sustainable town centre location, promoting the use of the private car, contrary to the sustainable development objectives of PPS1.”

- 9.13 The first clause has been addressed by the above commentary, and can be resolved by condition. The second point has been mostly resolved by the reinstatement of a wooden barrier between the former gardens of numbers 2 and 3, which has limited the parking area to the former garden of number 2, which is a much reduced area for parking. A condition is suggested which confirms this as a permanent fixture, thus preventing future access to the rear of number three by motor vehicles.
- 9.14 Regarding the other points raised: 3) This does not require planning permission; 4) and 10) It is not for the Local Planning Authority to suggest better venues, but to judge the merits of each application; 8) With effective planting and boundary treatment, the character of the area should be properly re-instated; 14) should be ameliorated by the proposed planting and different surface treatment; (15) is overcome by a personal condition.

## **10.0 Conclusion**

- 10.1 In conclusion, and whilst the objections are noted, the application is held to be acceptable in this location, and is recommended for approval, with conditions to ensure satisfactory planting and boundary treatments, to limit car parking, to lay new surface treatments, to have hours of use restrictions and to have a personal condition of use. A sound insulation condition will be imposed if Environmental Control deem this to be necessary.

## **11.0 Background Papers**

- 11.1 ARC; HA; HH; NLR

## Recommendation - Conditional Approval

### Conditions

#### 1 - C12.2 Details of Walls or Fences

**Prior to the commencement of the development, details of screen walls/fences/railings /means of enclosure etc shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the position/height/design and materials to be used. These details shall be agreed in writing by the Local Planning Authority and shall be implemented within 56 days of permission, and shall be retained thereafter.**

Reason: To ensure a satisfactory form of development and in the interests of visual amenity.

#### 2 - Non-Standard Condition

Within 28 days of this permission, details of tree and/or shrub planting and an implementation timetable shall be submitted to and approved in writing by the local Planning Authority. This shall be to the boundaries of St. Botolph's Priory and number 4 Priory Street, and shall be to a minimum depth of 1.5 metres to the boundary with 4 Priory Street. 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: In the interests of visual and residential amenity and to soften the appearance of the development as seen from St. Botolph's Priory.

#### 3 - Non-Standard Condition

A permanent barrier shall remain in place between the former gardens of 2 and 2 Priory Street at all times, of such a height and spread to prevent the passage of motor vehicles.

Reason: To avoid overuse of motor vehicles in this predominantly residential, town-centre location.

#### 4 - Non-Standard Condition

The premises shall not be used other than between the hours of 8.00am and 10.30pm.

Reason: To protect the amenity of the occupants of residential properties in this area.

#### 5 - Non-Standard Condition

**No amplified music or sound shall be played, nor dancing take place on the premises, including the outside area.**

Reason: To protect the amenity of the occupants of residential properties in this area.

#### 6 -Non-Standard Condition

The permission hereby granted shall be for the use of Colchester Islamic Cultural Association only.

Reason: Colchester Borough Council wishes to control the use of this building and curtilage against the use by future users which may not be acceptable.

**7 – Non Standard Condition**

Use of the external area to the rear of number 3 Priory Street shall be restricted to silent Friday prayer, silent funeral prayers and Eid prayers at the times and durations specified in the application only.

Reason: In the interests of residential amenity.

**8 – Non Standard Condition**

The existing 1.8 metre high fence along the boundary with number 3a shall be maintained as such at all times.

Reason: In the interests of residential amenity.

**9 – Non Standard Condition**

Prior to the installation of any boundary treatments, the applicants shall submit details of ground levels from which all measurements shall be taken. These shall be agreed, in writing, by the Local Planning Authority prior to any boundary measures being agreed.

Reason: For avoidance of doubt, in the interests of residential amenity.





## Planning Committee

Item  
**8**

19 February 2009

<b>Report of</b>	<b>Head of Environmental and Protective Services</b>	<b>Author</b>	<b>John Davies</b> ☎ 507838
<b>Title</b>	<b>Land at Turnpike Close, Old Ipswich Road, Colchester</b>		
<b>Wards affected</b>	Dedham & Langham		

**This report concerns a parcel of land at a site in Turnpike Close off the Old Ipswich Road, which is being used for the storage of commercial vehicles, portacabins and other structures without compliance with the terms of a Unilateral Agreement dated 8 November 2006 connected with Application F/COL/06/1054.**

### 1. Decision(s) Required

- 1.1 To agree that civil action in the County Court pursuant to S.187B of the Town and Country Planning Act and /or other legal action be undertaken to secure the removal of the unauthorised vehicles and structures from the land together with a palisade fence which has been erected to sub-divide the site.

### 2. Reasons for Decision(s)

- 2.1 The storage of these vehicles and structures is in direct contravention of the terms of the Unilateral Undertaking which regulated the use of this land in the interests of safeguarding the character and appearance of the countryside.

### 3. Alternative Options

- 3.1 If no action was taken the unauthorised use would become lawful at the end of ten years after which no enforcement action could be taken.

### 4. Supporting Information

- 4.1 This site has a long planning history. The background to the case is set out in the attached Committee report which recommended the grant of planning permission for use of the site for storage, bagging, grading and distribution of aggregates and associated ancillary development. At the time the site was divided into two parcels. Site A to the north was allowed to be used for these uses and Site B to the south was required to be cleared of various unauthorised structures, vehicles and hard surfacing and restored to its former undeveloped rural appearance. In addition a site layout plan and a landscaping plan were agreed for both sites and restrictions on activities on the site, structures and were set down in the Unilateral Undertaking. These restrictions included that there should be no vehicles stored on the site except in connection with the approved uses nor any excluded articles including portacabins, containers and equipment.

4.2 These matters first came to light during a visit to the site on 8 October 2008 to check compliance with the terms of the Unilateral Undertaking. There have been subsequent visits which have confirmed that the breach is continuing. Apart from the part of the site that has been separated off by fencing for the storage of the vehicles and structures, the rest of the site is being used by a company (Agrimix Ltd) who are operating the aggregate depot business in accordance with the planning permission.

## **5. Proposals**

5.1 The action proposed is to take legal action against the owners of the land to secure the removal of the vehicles, structures and fence which are not in compliance with the Agreement. The Council's Legal Services have already been instructed to take action and any progress will be reported at the meeting.

## **6. Standard References**

6.1 There are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications.

## **Background Papers**

Case File

Adopted review Colchester Borough Local Plan 2004

<b>Case Officer:</b>	<b>Mr J Davies</b>
<b>Site:</b>	<b>Land adjacent A12/A120 interchange, Turnpike Close, Colchester</b>
<b>Application No:</b>	<b>F/COL/06/1054</b>
Date Received:	22nd June 2006
Agent:	Andrew Martin Associates
Applicant:	Agri-Mix Ltd
Development:	Change of use to storage, bagging, grading and distribution of aggregates and associated ancillary development.
Ward:	Dedham & Langham

### **Site Description**

The application site comprises a parcel of land to the west of the northbound slip road onto the A12 leading from the Crown Interchange. It extends over 1.3 ha in size. It is predominantly hard surfaced. There is an access from the north-east corner leading from Old Ipswich Road.

The land is currently used for a variety of commercial purposes as set out in the following Notices.

The land to the south is included in the application as 'blue' land in the applicant's control. It is 1.2 ha in size and there is a public footpath running through the middle of it (FP47). Both the application site (red line) and blue lined land are the subject of current enforcement notices relating to unauthorised uses being carried on on the land and have been referred to as Sites A and B respectively in the Notices. These are as follows:

Notice A (Site A) concerns the change of use of the land from agriculture to a mixed use comprising commercial, industrial and storage uses which include: storage, grading, bagging and distribution of sand, aggregates, hardcore, recycled concrete, road planings, spent mushroom compost and topsoil; storage of building materials, rubble, vehicles, plant, machinery, containers and use as a builders and general reclamation yard and incorporating unlawful siting on the Land of shipping containers, portacabins, hoppers and other plant and open storage structures.

Notice B (Site B) is against the change of use of the land from agriculture to a mixed use comprising commercial, industrial and storage uses which include the storage of recycled aggregates including road planings, crushed concrete and brick rubble, the storage of builders materials and equipment, containers and vehicles together with the carrying out of operational development by spreading rubble and hard core to create hardstanding in connection with the unauthorised change of use.

Notice C covers both sites and is against the same uses as set out in Notice A.



It is the Local Planning Authority's position that both sites have agricultural use rights and that the various commercial activities on the land have been in existence for less than ten years and have therefore not attained lawful status. Appeals have been lodged against the Notices on various grounds including Ground (a) that in respect of the breach of planning control as set out in the Notice planning permission ought to be granted. A public inquiry has been scheduled to consider these appeals on the 12 and 13 December this year. This application has been submitted in an attempt to secure a negotiated conditional permission for some commercial development on the site. This report considers the application and, if approved, it is likely that the appeals against the Notices would be withdrawn. Further clarification on this point is being sought from the applicants.

The planning application is supported by a Planning Statement including a Landscape and Visual Assessment. The application proposes a rationalisation and regularisation of existing uses on Site A only and includes proposals for further screening and visual mitigation measures.

The main features of the proposals for Site A are:

- Entrance gates to site moved 50 metres within site to aid visual containment of site
- Improvements to internal roadway surface
- Fencing along north boundary to be enhanced by additional boundary treatment
- Additional planting along north and west boundaries
- All structures on site associated with use relocated away from nearest residential uses and closer to A12 slip road
- North and south-western parts of site restricted to vehicle turning and storage.

The Proposals also include the restoration of land to the south of the application site (Site B) to agricultural land. The applicants offer to restrict the future use of this land through a unilateral undertaking and including the following works:

- Removal of all structures from the land
- Removal of all road planings and rubble
- Planting and seeding as appropriate with suitable native species
- Future use of land restricted to no purpose other than agriculture

### **Land Use Allocation**

No allocation

### **Relevant Planning History**

ENF3/90 - Enforcement Notice served regarding road way on site dated 25 June 1990

ENF3/90 - appeal lodged 15 September 1990 and withdrawn on 15 October 1990

Re-serving of ENF3/90 as ENF15/91 Enforcement Notice due to service on wrong person 14 June 1991 complied with on 17 November 1993

ENF16/91 - regarding gypsy caravan 14 June 1991 - complied with on 27 July 1991

91/1292 - Retrospective application for construction of concrete access drive- refused 25 November 1991.

ENF25/93 - Enforcement Notice served re dumping of hardcore on 9 December 1993

99/0485 - Application for Certificate of lawfulness for use of land for storage of building materials- refused 17 June 1999

ENF14/99 - Enforcement Notice served re use of land for aggregates and storage of commercial vehicles 22 September 1999 - appeal lodged on 22 October 1999  
 Appeal decision dated 25 May 2000 - Notice quashed as it would give permission to unchallenged use for building material storage

**Principal Policies**

Adopted Review Colchester Borough Local Plan (ARCBLP) Adopted March 2004

DC1 - General Development Control Practice

CO1 - Rural Resources

CO4 - Landscape features

P1 - Pollution (General)

L14 - Public Rights of Way

EMP 4 Employment Uses in the Countryside

Essex and Southend-on-Sea Replacement Structure Plan (ESSRSP) April 2001

CS2 - Protecting the natural and built environment

C5 - Rural Areas not in Green belt

NR1 - Landscape Conservation

BIW3 - Business development-The Sequential Approach

**Human Rights Implications**

In the consideration of this developments impact on Human Rights particularly, but not exclusively, to:

Article 8 - The right to respect for private and family life,

Article 1 of The First Protocol (Protection of Property) - The right to peaceful enjoyment of possessions,

it is considered that:

The proposal would have an impact on an individual's human rights, but having considered the level of impact and in the general interest of the public and in accordance with planning law, the proposal is considered to be reasonable.

**Community Safety Implications**

Help to reduce the fear of crime  
 Help to reduce the occurrence of crime

Positive	Negative	Nil Effect
		3
		3

The development would be expected to achieve 'secured by design' in terms of its layout

Yes	No	Not Applicable
		3

**Consultations**

Highways Agency - no objection as the application will not affect the A12 trunk road at this location.

Environment Agency - no objection to the proposed development but makes comments in respect of lack of foul drainage details and on arrangements for storage of oils, fuels and chemicals.

Environmental Control recommend inclusion of conditions covering noise levels associated with use and contaminated land.

Environmental Policy comment as follows:-

“The site is a countryside location, does not fall within any specific area designation (white land) and is situated adjacent to the A12/A120 interchange near the border with Tendering BC. The site has a complex history. An Enforcement Notice was issued by CBC, but dismissed by the Planning Inspectorate. It appears that the original gravel storage and distribution activity may be permissible, however the proposal involves a much larger area of activity than the original operations and a much larger area than would be needed by the new proposal.

Policy DC1 - The proposal may have significant noise, air pollution, traffic and visual impacts on nearby residents/businesses depending on the operational activities, the proximity of neighbours, and the mitigation measures proposed.

The application proposes to landscape the site and consolidate the area of operations to reduce the visual impact of the unlawful development. The landscape measure proposed appeared to be quite minimal and there may still be a significant visual impact.

There is little information about noise, traffic or air pollution impacts and no mitigation measures are proposed. If the operations are limited to the business hours proposed, the impacts may not be significant due to the presence of the A12/A120. Regular truck movements along residential streets may result in unacceptable noise levels.

In the absence of technical reports, complaints and submissions from neighbours would give an indication of the impacts. If residents have made reasonable complaints about noise, pollution or traffic, the application has given no evidence of how these would be mitigated.

Policy CO1 states quite strongly that "development that does not need a countryside location and which could reasonably be located elsewhere in the Borough will be refused." Colchester Borough has an ample supply of employment zone, some of which would be appropriate for the proposed land-use. The application conflicts with this policy.

Policy CO4 - The rehabilitation of the southern site makes a positive step towards compliance with this policy. The landscaping of the northern operational site appears minimal. National and regional policies provide no further insights that are not discussed above.”

### **Parish Council's Views**

Langham PC comment as follows:

'This site has caused great problems for many years and although we would like to see the problems resolved, the Parish Council feels strongly that this is not the best way forward. As the applicant admits the site is in the countryside and has never had planning permission to change it from agricultural use. The Parish Council fully supports the Borough in the actions that it has taken and the Enforcement Orders that it has served. This is not a suitable site for such a business and the number of lorry movements involved and so the Parish Council strongly objects to this application.'

### **Representations**

1 letter of support from resident in Lodge Lane.

### **Report**

This report considers the planning merits of the proposals against the provisions of the development plan. Key considerations are:

- The principle of development on an un-allocated site
- Impacts on the visual amenity of the area
- Impacts on neighbours
- Highway issues
- Other material considerations

The site is located in the countryside although not far from the northern limits of the built up area of Colchester and close to the A12. Policies in the Structure and Local Plan seek to resist development on such sites except for purposes associated with agriculture or forestry or other uses than can demonstrate a need to be in the countryside. The site is un-allocated in the Local Plan and therefore there is a presumption in policy terms against development. The Local Plan does not have any specific policies for the proposed use of the site as an aggregates depot. Regard otherwise must be had to policy EMP4 which sets out an employment hierarchy for development in the countryside. This seeks to focus new employment development within Village Envelopes and Rural Business Sites with development on other sites limited to re-use of existing buildings and appropriate changes of use. In all cases there is a requirement to retain or create local employment opportunities and ensure that the proposed use or development is compatible with the character and scale of the settlement concerned and the surrounding rural areas. The applicants indicate that the aggregates use only provides 3 on site employees, but provides services to other businesses by the supply of sand and aggregates and is appropriately located for such.

In this case the factors to be taken into account are that the aggregate related uses have been on the site for at least 5 years. The applicants claim that the uses have been on the site for over ten years and have therefore attained lawful status. The exact duration and the question of lawfulness is disputed by the LPA and is one of the issues at appeal. The site is close to the A12/A120 interchange and, therefore, has excellent highway access for such uses. It is also the case that such uses do not easily fit into an urban setting by reason of the difficulty of finding suitable sites and they are generally incompatible within urban residential areas. The comments of the Policy Team are noted, however, they have to some extent been superseded by the provision of a noise survey (details to follow) and clarification on operational hours. Moreover, no complaints of noise nuisance have been received from neighbours. With regard to alternative employment sites it is true that no such assessment has been provided and that the applicants rely on the locational advantages of the site in terms of A12 access and on the northern edge of Colchester.

With regard to impacts on the landscape and visual character of the countryside, the main views of the application site and Site B are from the A12 slip road leading from the Crown Interchange, from the fields and public footpath on the west side of the site and from residential properties to the north of the site. The land is not protected in the sense of being AONB, Countryside Conservation Area or other landscape or ecological designation. Views into the site are generally well screened by existing trees and hedgerows on the site boundaries. At present, however, there are views into the site from along the A12 of structures on Site B. This would be resolved by the proposed removal of structures and restoration of this land back to its former state. Whilst in the past both sites have to varying degrees been covered by large numbers of containers, storage structures, commercial vehicles and other paraphernalia this application proposes that there would be a minimum of structures on the land which could be controlled by legal agreement/condition in the interests of safeguarding visual amenity. Officers have requested that a site layout plan indicating all the proposed uses and structures on the site and vehicle manoeuvring areas be provided prior to the Committee meeting.

With respect to neighbour amenity issues it should be noted that there are residential occupiers to the north and north-west of the site forming part of a low density neighbourhood based around the line of the Old Ipswich Road. The closest house is approximately 75 metres from the northern boundary. Concerns over impacts on residential amenity relate to operations carried on at the site and associated commercial vehicle movements to and from the site. The applicants have agreed to provide a noise survey associated with the aggregates use and are aware of concerns about dust nuisances. The Environmental Control Team have concerns over noise and contaminated land and recommend conditions. An important factor is the

proposed hours of use and the applicants have agreed that a condition limiting the hours to 8am-5pm Mondays to Fridays and 8am-1pm on Saturdays only would be acceptable. No letters of objection to the application have been received from neighbours.

With regard to highways matters the applicants submissions states that there would be 6 daily car movements in/out of site each day and 4-8 commercial vehicles movements per day. All vehicular traffic would be using the Old Ipswich Road which runs parallel with the A12. The access into the site is at the end of the Old Ipswich Road so there is no passing traffic. Clearly the impact of vehicle movements of this volume and nature needs to be considered in the context of the close proximity of the A12. No objection has been raised by the Highways Agency.

In summary, this report has considered the various issues associated with use of the site as an aggregates depot as proposed in the application and taking into consideration the various controls and limitations than can be imposed either by legal undertaking or condition to regulate the use. The proposal represents a much reduced and controlled use of Site A only by the applicants compared to the position when the notices were served against the uses and large number of associated structures on both sites. Subject to satisfactory resolution of various outstanding matters in respect of the proposed unilateral undertaking and conditions it is recommended on the basis of the foregoing assessment that planning permission be granted.

### **Background Papers**

ADRBLP; SDD; HA; NR; HH; PP; PTC; NLR

## Recommendation

APPROVE subject to the prior completion of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990. The Head of Planning, Protection and Licensing to be authorised to complete the Unilateral Undertaking to include the following matters within the Undertaking or by conditions as appropriate:

- Site A
  - Definition of approved uses on the land
  - Limits on numbers of containers and other fixed structures
  - Limits on heights of structures/ open storage
  - Proposed boundary landscaping and other on-site works
  - Hours of operation of approved uses

### Site B

- Removal of all road planings and rubble from land
- Removal of all structures on the land
- Clean up and re-planting proposals
- Use of land only to be for agricultural purposes

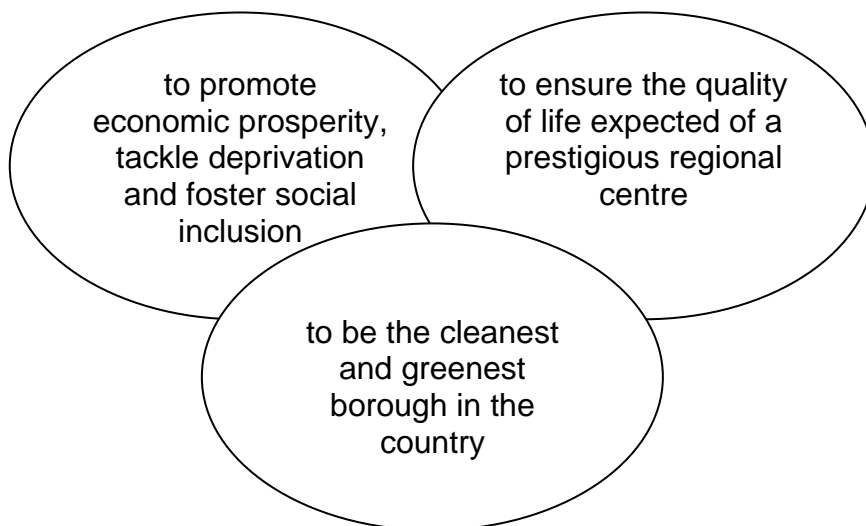
and subject to the following matters to be covered by conditions if not contained in the Unilateral Undertaking:

1. Timetable for implementation of proposals
2. Hours of operation
3. Height limit on structures and open storage
4. Proposed use(s) on site
5. Hard and soft landscaping proposals
6. Noise level controls
7. Foul drainage details
8. Dust suppression measures
9. Structures on site - maximum 7 containers, hopper etc only
10. Contamination

Our vision is for Colchester to develop as a prestigious regional centre

Our goal is to be a high performing Council

Our corporate objectives for 2006-2009 are:



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website: [www.colchester.gov.uk](http://www.colchester.gov.uk)