

Planning Committee

Council Chamber, Town Hall
2 January 2014 at 6.00pm

This Committee deals with

planning applications, planning enforcement, public rights of way and certain highway matters.

If you wish to come to the meeting please arrive in good time. Attendance between 5.30pm and 5.45pm will greatly assist in noting the names of persons intending to speak to enable the meeting to start promptly.

Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates *The Planning and Compulsory Purchase Act 2004*, which requires (in law) that planning applications “*must be determined in accordance with the development plan, unless material considerations indicate otherwise*”.

The following approach should be taken:

- Identify the provisions of the Development Plan which are relevant to the decision and interpret them carefully, looking at their aims and objectives
- Identify and consider relevant material considerations for and against the proposal
- Consider whether or not the proposal accords with the Development Plan and, if not, whether material considerations warrant a departure from the Development Plan.

When applying material considerations the Committee should execute their decision making function accounting for all material matters fairly, reasonably and without bias. In court decisions (such as *R v Westminster CC ex-parte Monahan 1989*) it has been confirmed that material considerations must relate to the development and use of land, be considered against public interest, and be fairly and reasonably related to the application concerned.

Some common material planning considerations which the Planning Committee can (and must) take into consideration in reaching a decision include:-

- Planning policies, including the NPPF and Colchester’s own Local Plan documents
- Government guidance, case law, appeal decisions, planning history, “fallback” positions
- Design, scale, bulk, mass, appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations such as archaeology, listed buildings or a conservation areas
- Environmental issues such as impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism
- Social issues such as affordable housing, accessibility, inclusion, education, recreation
- The ability to use planning conditions or obligations to overcome concerns

The following are among the most common issues that are **not** relevant planning issues and cannot be taken into account in reaching a decision:-

- land ownership issues including private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses
- matters specifically controlled through other legislation
- unless they are “exceptional”, personal circumstances, including hardship

Strong opposition to a particular proposal is a common feature of the planning process. However, in the absence of substantial evidence of harm or support from the Development Plan is unlikely to carry much weight. The same principles apply in reverse where there is strong support for a proposal that is contrary to the Development Plan and there is harm (or lack of substantially evidenced benefit).

Inspectors and Courts (see *North Wiltshire DC V SoS & Clover, 1992*) have established that precedent can be a legitimate consideration, but it is not enough to have a “general anxiety” and there has to be evidence of a real likelihood that similar applications (in all respects) will be submitted.

Human Rights, Community Safety and Equality and Diversity Implications

All applications are considered against the background and implications of the:

- Human Rights Act 1998
- Crime and Disorder Act 1998 (and in particular Section 17)
- Equality Act 2010
- Colchester Borough Council Equality Impact Assessment (EIA) Framework

In order that we provide a flexible service that recognises people's diverse needs and provides for them in a reasonable and proportional way without discrimination.

Using Planning Conditions and Considering Reasons for Refusing Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework reinforces this by stating that “*Planning should operate to encourage and not act as an impediment to sustainable growth*”. Therefore, development should be considered with a positive approach. However, not all development is acceptable and almost every permission will require planning conditions in order to make them acceptable. Some will remain unacceptable and should therefore be refused. Circular 11/95 (The Use of Conditions in Planning Permissions) and Circular 03/2009 (Costs Awards In Appeals And Other Planning Proceedings) set out advice on the government’s policy regarding the appropriate use of planning conditions and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. They derive from an interpretation of court judgments over the years and, although not planning law, are important material considerations. A decision to set them aside would therefore need to be well-reasoned and justified.

In terms of the Planning Committee, Circular 03/2009 makes it clear that “*Planning authorities are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority*”.

The power to impose conditions is an important material consideration in any determination. Circular 03/2009 states that “*Whenever appropriate, planning authorities will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed*”. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. *The Circular adds that “A planning authority refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.”* Advice on the need to consider whether conditions may make a proposal acceptable which would be otherwise unacceptable is also to be found in Circular 11/95.

Any planning condition imposed on a development must be necessary, relevant to planning, relevant to the development to be permitted, reasonable, precise and enforceable. Unless conditions fulfil these criteria, which are set out in Circular 11/95, they are challengeable at appeal as *ultra vires* (i.e. their imposition is beyond the powers of local authorities). If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted.

In considering the reasons for that refusal, Circular 03/2009 makes it clear that planning authorities must “*properly exercise their development control responsibilities, rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason*”. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that public authorities act fairly and reasonably in executing their decision making functions, and that it is evident to all that they so do.

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
2 January 2014 at 6:00pm**

Members

Chairman : Councillor Theresa Higgins.
Deputy Chairman : Councillor Helen Chuah.
Councillors Peter Chillingworth, Stephen Ford, Sonia Lewis, Cyril Liddy, Jackie Maclean, Jon Manning, Philip Oxford and Laura Sykes.

Substitute Members

: All members of the Council who are not members of this Committee or the Local Plan Committee and who have undertaken the required planning skills workshop. The following members meet the criteria:-
Councillors Nick Barlow, Lyn Barton, Kevin Bentley, Mary Blandon, Mark Cable, Nigel Chapman, Barrie Cook, Nick Cope, Beverly Davies, John Elliott, Andrew Ellis, Annie Feltham, Bill Frame, Ray Gamble, Marcus Harrington, Dave Harris, Julia Havis, Jo Hayes, Pauline Hazell, Peter Higgins, Brian Jarvis, Margaret Kimberley, Michael Lilley, Sue Lissimore, Colin Mudie, Nigel Offen, Gerard Oxford, Will Quince, Lesley Scott-Boutell, Peter Sheane, Paul Smith, Terry Sutton, Colin Sykes, Anne Turrell, Dennis Willetts and Julie Young.

Agenda - Part A

(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 6 are normally brief and agenda items may be considered in a different order if appropriate.

An Amendment Sheet is available on the council's website by 4:30pm on the day before the meeting (see Planning and Building, Planning Committee, Planning Committee Latest News). Members of the public should check that there are no amendments which affect the application in which they are interested. Could members of the public please note that any further information which they wish the Committee to consider must be received by 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

Pages

1. Welcome and Announcements

1

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

2. Have Your Say!

The Chairman to invite members of the public to indicate if they wish to speak or present a petition on any of items included on the agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

3. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

4. Urgent Items

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

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

6. Minutes

2 - 4

To confirm as a correct record the Minutes of the meeting held on 12 December 2013.

7. Planning Applications

In considering the planning applications listed below, the Committee may choose 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. | 132270 Cosway Caravan Park, Fen Lane, East Mersea (Pyefleet) | 5 - 15 |
| | Variation of holiday occupancy period from 1st March - 31st December to allow for a 12 month year round holiday season. Resubmission of 131667. | |
| 2. | 132233 Cosway Caravan Park, Fen Lane, East Mersea (Pyefleet) | 16 - 22 |
| | Use of land for the stationing of static holiday caravans and childrens play area. | |
| 3. | 132228 Longview, 216 Turner Road, Colchester (Mile End) | 23 - 38 |
| | Variation of Condition 31 of Planning Permission 131287. | |
| 4. | 121354 Land at Former Cherry Tree Garage, 17 Blackheath, Colchester (Berechurch) | 39 - 50 |
| | Variation / removal of Condition 20 of Planning Permission 081300. | |

5. 132255 Former Gym, Circular Road South, Colchester (Berechurch) **51 - 56**

2.4 metre high timber hoarding to site perimeter with two sets of double gates.

8. **Discharge of Planning Obligation // Application F/COL/07/1046 - 127 Mersea Road, Colchester** **57 - 61**
(Harbour)

See the attached report from the Head of Commercial Services.

9. **Amendment Sheet** **62 - 67**

Please see the amendment sheet (attached).

10. 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).

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 or from Democratic Services. 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.

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 most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Attending Meetings and "Have Your Say" at www.colchester.gov.uk

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Access

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to call
e-mail: democratic.services@colchester.gov.uk
www.colchester.gov.uk

PLANNING COMMITTEE 12 DECEMBER 2013

Present :- Councillor Theresa Higgins* (Chairman)
Councillors Peter Chillingworth*, Helen Chuah*,
Stephen Ford, Cyril Liddy*, Jackie Maclean*,
Jon Manning, Philip Oxford* and Laura Sykes*
Substitute Member :- Councillor Brian Jarvis for Councillor Sonia Lewis

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

93. Minutes

The Minutes of the meeting held on 31 October 2013 were confirmed as a correct record subject to the following amendment:

Minute Reference No. 81

(i) That the resolution be altered to:

“*RESOLVED* that –

(i) The Committee were minded to refuse the applications (THREE voted FOR, SEVEN voted AGAINST a proposal to accept the application) due to the unacceptable impact incurred on a Heritage Asset in a Conservation Area; and

(ii) The Delayed Decision Protocol be invoked (NINE voted FOR, ONE voted AGAINST) and the detailed reasons for refusal of the applications be submitted to a future meeting of the Committee for determination.”

Councillor L. Sykes (in respect of her position as a Colchester Borough Homes board member) declared a non-pecuniary interest in the items at Minute Reference 86, 87, 89, 90 and 91 pursuant to the provisions of Meetings General Procedure Rule 7(5).

The Minutes of the meeting held on 14 November 2013 were confirmed as a correct record subject to the following amendment:

(i) That the sentence “*Committee members who attended the formal site visit.” be removed.

94. 131863 Asda Supermarket, 25 Church Road, Tiptree

The Committee considered an application for the variation of condition 2 of planning permission 121668 to amend the hours of opening of Asda Supermarket, 25 Church Street. The proposed variation in the hours of use was 06:00 to 24:00 (midnight) Mondays to Saturday. It was proposed Sunday trading remained unaltered. The Committee had before it a report and amendment sheet in which all the information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

95. 132157 30-32 Berechurch Road, Colchester

The Committee considered an application for the change of use of 30-32 Berechurch Road from shop store to form an additional house in multiple occupancy (HMO) bedsit. The Committee had before it a report in which all the information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

96. 132144 1 Hawthorns, The Retreat, Glebe Lane, Abberton

The Committee considered an application for a single storey room extension to 1 Hawthorns, The Retreat, Glebe Lane, Abberton. The Committee had before it a report in which all the information was set out.

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

97. 131977 The Gilbert School, Brinkley Lane, Colchester

The Committee considered an application for a proposed new Sports Hall at The Gilbert School with ancillary accommodation including changing and storage. The Committee had before it a report and amendment sheet in which all the information was set out.

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

Ms Lucy Mondon, Planning Officer, presented the report and assisted the Committee in its deliberations.

Councillor G. Oxford attended the meeting and, with the consent of the Chairman, addressed the Committee. If Essex County Council was to propose an increase or alteration to a school, he believed that there should be a Section 106 Legal Agreement to allocate a sum of money to pedestrian safety. If this was not done, problems would arise at a later date and money would have to be provided to fix those problems. He accepted that this was not relevant to the application before the Committee tonight but would be relevant to future applications.

The Committee welcomed the proposal, stating that sports facilities were essential for young people.

It was explained by the Planning Officer that in relation to applications to extend the school, the Highways Authority had made several recommendations. No comment had been made on the application being discussed tonight. It was also explained that conditions were proposed requiring details of external lighting to be submitted to the Council and that all lighting be switched off when not in use.

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

98. 131728 St Helens, Ferry Road, Fingringhoe

The Committee considered an application for the retention of the existing covered storage lean to at St Helens, Ferry Road, a replacement staircase to the existing first floor office, balcony guard rails and balustrade together with the installation of privacy screens with the change of use of the former hay loft to a home office. The Committee had before it a report and amendment sheet in which all the information was set out.

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

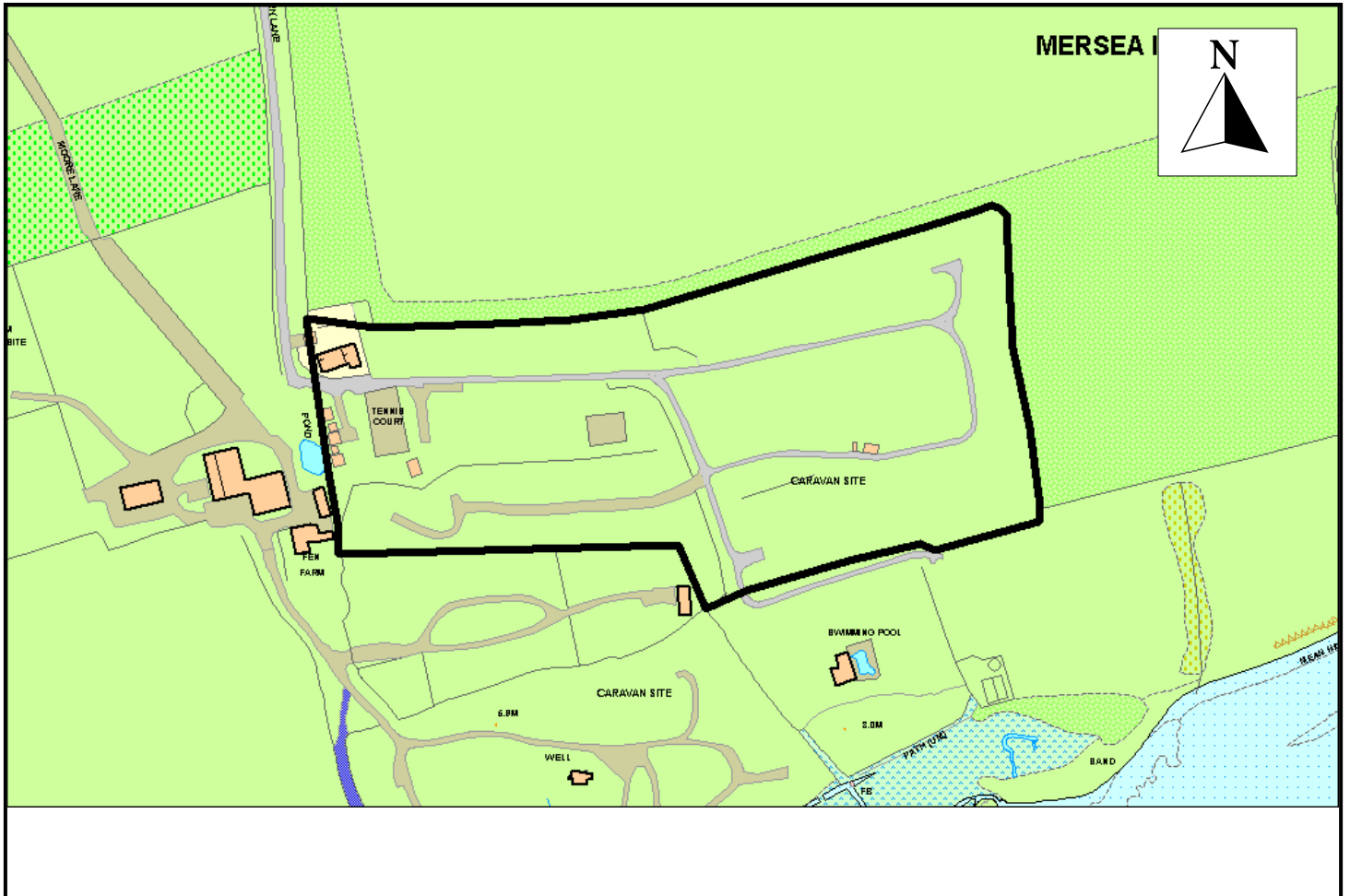
Ms Lucy Mondon, Planning Officer, presented the report and assisted the Committee in its deliberations.

Ms Karen Walden-Smith addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She owned the property, Fenders, which neighboured the application site. She objected to the guard rails erected around the flat roof. She suggested that the Officer report was incorrect and that the use of the flat roof was not continued, as the roof had previously been dilapidated and without access. She believed that the proposal resulted in significant overlooking to the bottom of her garden, which had previously been a private area. She further suggested that the 'viewing area' served no purpose and that the plant screen proposed was unfeasible.

It was explained by the Planning Officer that there had always been a door leading to the flat roof area and that no planning permission would have been required to repair the roof and use it without the guard rails. The proposed relocation of the guard rails and plant screens lessened the overlooking that would otherwise result.

The Committee felt that the applicant had done all that was reasonable to prevent any overlooking to the neighbouring properties. As the flat roof could be used irrespective of the presence of guard rails, it was considered to be a more agreeable solution than removing the guard rails entirely because less overlooking would occur.

RESOLVED (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report and amendment sheet.



Application No: 132270

Location: Cosway Caravan Park, Fen Lane, East Mersea, Colchester CO5 8UB

Scale (approx): 1:1250

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **2 January 2014**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

7.1 Case Officer: Sue Jackson

Due Date: 13/02/2014

MAJOR

Site: Cosway Caravan Park, Fen Lane, East Mersea, Colchester, CO5 8UB

Application No: 132270

Date Received: 14 November 2013

Agent: Mr Ian Butter Bsc FRICS MRTPI

Applicant: Cosways Holiday Park Ltd

Development: Variation of holiday occupancy period from 1st March - 31st December to allow for a 12 month year round holiday season. Resubmission of 131667.

Ward: Pyefleet

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it has been called in by Councillor Sutton "The application is a resubmission of application number 131667 and would wish to see the same conditions applied. This would be in keeping with other applications on Mersea Island requesting a 12 month holiday season".

2.0 Synopsis

- 2.1 The key issues explored below are whether 12 month occupancy complies with policy and government advice and if it does what conditions should be imposed to prevent the site changing from holiday use to residential use. Members will be aware that applications for 12 month occupancy of Seaview Holiday Park and 11 month occupancy at Cosways Holiday Park were considered and approved for a temporary period of 18 months at the committee meeting on the 31 October 2013.

3.0 Site Description and Context

- 3.1 The holiday caravan park is situated at the eastern end of Mersea Island. It is accessed off the East Mersea Road close to the access to East Mersea Country Park. The site adjoins the Fen Farm Holiday Park. The application site extends to approximately 4.99ha.

4.0 Description of the Proposal

- 4.1 The proposal is for 12 month holiday use for the static caravans. The site currently has a temporary 18 month permission for 11 month occupancy (1st March -31st January) and permanent permission for occupancy from 1st March to 31st December in any year.

4.2 Applicant's background information

"The use of seasonal occupancy conditions on caravan and chalet parks reflected public health considerations concerning the poor overwintering qualities of these types of accommodation. As the quality of caravan and chalets accommodation began to improve, holiday occupancy conditions began to "belt and brace" seasonal occupancy conditions in order to ensure they were not used as permanent accommodation contrary to national policies, particularly with regard to development in the countryside. With economic improvement in the mid to late 1980s providing the means for holiday taking over a longer seasonal period and significant advancements in caravan and chalets construction, there was increasing pressure for longer seasonal use than the traditional March to October period. Encouraged by successive governments seeking to extend the tourist season the holiday parks industry began to request seasonal extensions.

What Distinguishes a Holiday from a Residential Use?

There are a number of potential differentiations between a holiday and residential use of a caravan or chalet, but the principle distinguishing feature is that the holiday accommodation should not be that persons' only or main residence. For example, a persons' residential property will attract Council Tax, whereas a caravan or chalet within a holiday park will attract Uniform Business Rates as part of the commercial enterprise in which the property is situated.

The caravan or chalet should not be a registered postal address and should not be used as an address for registering, claiming or receipt of any state benefit. For those who suggest that they might move out of their caravan or chalet during the closed season to temporary accommodation and then return, this clearly does not satisfy the "only or main residence" test. This would simply be moving from one temporary/holiday accommodation to another of the same kind".

A number of appeal decisions have also been submitted where 12 month occupancy has been allowed subject to conditions set out in government advice.

5.0 Land Use Allocation

5.1 The site is identified as a caravan park.

6.0 Relevant Planning History

6.1 There is extensive planning history relating to an increase in the occupancy period and size of the site.

6.2 Application 132667 Application to extend occupancy period of Cosways Caravan Park from 1st March- 31st December to 1st March - 31st January. temporary 18 month permission .

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

7.2 Department for Communities and Local Government Good Practice Guide on Tourism 2006 Government advice in this document is discussed in the report below.

7.3 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
SD2 - Delivering Facilities and Infrastructure
TA5 - Parking
ENV1 - Environment
ENV2 - Rural Communities

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

DP1 Design and Amenity

DP3 Planning Obligations and the Community Infrastructure

DP10 Tourism, Leisure and Culture

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

DP21 Nature Conservation and Protected Lanes

DP23 Coastal Areas

8.0 Consultations

8.1 Environmental Protection has no comment

8.2 Natural England has been consulted and their comments will be reported on the amendment sheet

9.0 Parish Council Response

9.1 The Parish Council understands that this application has been “called-in” by the Borough Councillor. If this application is granted we would like to request that the same conditions are applied as for the 11 months, particularly emphasising the no subletting clause.

10.0 Representations

10.1 None received

The full text of all of the representations received is available to view on the Council’s website.

11.0 Parking Provision

11.1 The site has ample parking space for the caravan users.

12.0 Open Space Provisions

12.1 There is adequate open space within the site.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

- 14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The development team considered that contributions would only be appropriate if the site were to have planning permission for residential use not holiday use

15.0 Report

A) National and Local Policy

- 15.1 Government advice in paragraph 28 of the NPPF is supportive of sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside
- 15.2 The DCLG Good Practice Guide on Tourism 2006 ANNEX B considers Seasonal and Holiday Occupancy Conditions and states:-

“The nature of holidays in this country has become increasingly diverse, in location, in season and in duration. Many people go away several times a year, often for short breaks and not exclusively in the summer months. Much of this demand is for self-catering accommodation – whether in new or converted buildings or in caravan holiday homes. This spread of demand improves the use that is made of this accommodation and so is advantageous to the businesses which provide it and to those host communities which are supported by the spending that it generates. It can help to reduce the disadvantages of seasonal employment, including the difficulties of retaining trained and experienced staff.

Whilst extension of the season has these advantages, the demand for this accommodation may occur in areas in which the provision of permanent housing would be contrary to national or local policies which seek to restrict development, for example in order to safeguard the countryside. The planning system can reconcile these two objectives through the use of occupancy conditions designed to ensure that holiday accommodation is used for its intended purpose.

One type of condition frequently used for holiday accommodation, particularly in holiday areas, is known generically as a ‘holiday occupancy condition’. The aim of such conditions is generally to ensure that the premises are only used by visitors and do not become part of the local housing stock. There are three principal reasons why a planning authority might seek to do this:

- In order that national or local policies on development of the countryside are not compromised.
- To avoid occupation by permanent households which would in turn put pressure upon local services. Permanent households may place demands for local schools and social and health services that would not normally arise from visitors. Moreover, in remote locations the cost of providing these services is greater. And

To strengthen tourism in a particular area by ensuring that there is a wide range of properties available to encourage visitors to come there on holiday.

Planning authorities will frame these conditions according to local circumstances, and in accordance with general Government advice that conditions should be reasonable and fair. They will also need to frame them so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants.

15.3 The guidance cites the following as an example of appropriate planning conditions

“Controlling use of holiday caravan and other holiday park accommodation
East Riding of Yorkshire Council established a joint working group to establish the best approach to secure holiday use of caravan parks. This group comprised councillors and council officers; representatives from the British Holiday and Homes Parks Association Ltd; the park operators and their agents; and the caravan manufacturers. It concluded that planning conditions needed to be stronger, requiring documentary evidence of occupiers maintaining a primary residency elsewhere to be provided.”

15.4 As a result the planning committee agreed that future planning permissions for holiday caravan parks, holiday log cabins and holiday chalets shall normally be subject to the following conditions:

- (i) the caravans (or cabins/chalets) are occupied for holiday purposes only;
- (ii) the caravans (or cabins/chalets) shall not be occupied as a person’s sole, or main Place of residence;
- (iii) the owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans/log cabins/chalets on the site, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

The reason for these conditions is to ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation. The register required in (iii) above shall normally be collected by the caravan site licence holder or his/her nominated person”.

15.5 CBC Development Policy DP10: Tourism, Leisure and Culture states

“Development for new and extended visitor attractions, leisure and cultural facilities, along with visitor accommodation (including hotels, bed & breakfast accommodation, self-catering accommodation, holiday lodges, static and touring caravans and tenting fields) will be supported in suitable locations. Proposals for tourism, leisure and culture development should promote accessibility by a choice of means of transport and must not cause significant harm to the amenity of people living and working nearby.

In rural areas, locations suitable for tourism, leisure and culture development should help to support existing local community services and facilities. The proposals must be compatible with the rural character of the surrounding area and avoid causing undue harm to the open nature of the countryside or designated sites. It is recognised that not all rural locations are readily accessible by public transport. Where accessibility is poor, proposals should be small scale and/or comprise the conversion of suitable existing rural buildings or limited extension to existing visitor accommodation. In locations where residential uses would be inappropriate, developments of visitor accommodation will be limited to holiday use only and/or certain periods of the year in order to prevent permanent or long-term occupation.

Urban areas of Colchester will be the focus for larger scale tourist, leisure and culture facilities and accommodation in line with the need to concentrate development at the most sustainable and accessible locations. The Council will also support proposals for a youth hostel, the preferred location being within Colchester Town Centre in line with the sequential approach, although proposals elsewhere will also be supported where appropriate”.

- 15.6 Government advice supports the principle of 12 month occupancy and this is not precluded by our development plan policy. Further evidence of the governments support for such proposals is provided in appeal decisions. Tendring District Council lost an appeal in January this year for 12 month holiday occupancy of a caravan site in Clacton-on-Sea.
- 15.7 The Inspector identified one of the main issues was “whether the proposed development would lead to the caravans being occupied as full-time residential accommodation”.
- 15.8 He stated “The Council has misgivings in respect of the efficacy of the condition in addressing the issue of permanent occupancy but no compelling evidence has been put forward to substantiate this fear. From the Guide and other appeal decisions submitted by the appellants it seems to me that use of the condition is not unusual and I have no reason to doubt that it could be effective. I conclude that subject to imposition and execution of the condition the proposed change of use would not lead to the caravans being used as full-time residential accommodation”.
- 15.9 In allowing the appeal the Inspector refers to the 2006 The Guide which records that tourism is increasingly a year-round activity and that such a spread of demand for self catering accommodation is advantageous to local economies but recognises that occupancy conditions are reasonable to preclude permanent residential use.
- 15.10 The appeal was allowed and the following condition imposed “caravans shall be occupied for holiday purposes only and shall not be occupied as a person’s sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority”.
- 15.11 A similarly worded condition has been imposed on other appeals for 12 month occupancy in other parts of the country.

(B) Control over Holiday Use

- 15.12 The principle objection raised is how 12 month holiday occupancy can be prevented from becoming residential use. This concern is shared by your officers. It is clear from the above the Government considers this issue can be dealt with by planning condition and wording of such conditions is set out above.

- 15.13 These model conditions are referred to in the submitted supporting information. The supporting information for application 131667 included a copy of the applicants' licence agreement which states: "On purchasing a holiday caravan proof of main residence is requested and a copy is held on file. All correspondence is sent to the owners' permanent address as provided. No post is sent to or accepted for individual caravan owners on the park."
- 15.14 Clause 4.2 of this agreement requires signatories to acknowledge and agree, "to use the caravan only for holiday and recreational purposes (and not as your only or main permanent residence). You agree to produce to us in response to a written request satisfactory proof that your main residence is at the address registered with us (set out in Part 1 of this Licence Agreement), such as a council tax bill, utility bill or driving licence in your name. You agree to inform us in writing of any change in your permanent address".
- 15.15 "If the occupancy period or mode of occupation is abused by the caravan owner this would constitute a breach of the agreement. The caravan owner would be advised accordingly and, if occupying the van outside of the stated period, asked to leave the park. Equally if no satisfactory proof of a permanent address could be provided (and/or such address could not be satisfactorily verified) the licence agreement would be terminated. The company has introduced an annual check on permanent addresses which takes place in December. Each owner must confirm their address and all contact details. If the address has changed from the address originally registered under the agreement the operator will request sight of one of the documents stated in the licence agreement as proof of residence. The company has also introduced a monthly Council Tax check to ensure that none of the owners on the park have registered with the local council for Council Tax. If owners sublease their holiday home they are required to advise the park and give the name and period of stay. The company owns 10 static caravans on Cosways which are hired out for holidays and short breaks".

16.0 Conclusion

- 16.1 Your officer appreciates and shares the concerns regarding 12 month occupancy and how to prevent residential occupancy. A temporary permission for 18 months is recommended. This will allow the applicant to demonstrate there are robust safeguards in place to prevent residential use and give the local planning authority an opportunity to check and review them.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions

18.0 Positivity Statement

- 18.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

19.0 Conditions

1 - Non-Standard Condition/Reason

The caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans/chalets on the site and of their main home addresses and shall make this information, together with details of drivers licences, Council tax bills and utility bills as appropriate, available at all reasonable times to the local planning authority. The occupants of the caravans and chalets cannot go to work or attend school from the Cosway Holiday Park. All subletting shall be subject to these requirements. (Borough and Parish Councillors to be involved in monitoring the site)

Reason: To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation.

2 - Non-Standard Condition/Reason

The 12 month occupancy hereby permitted shall expire after a period of 18 months from the date of this permission. The occupancy shall then revert to that previously permitted 1st March – 31st December.

Reason: For the avoidance of doubt as to the scope of this permission and to enable the local planning authority to check that the site owner has robust measures in place to prevent permanent residential use.

3 - Non-Standard Condition/Reason

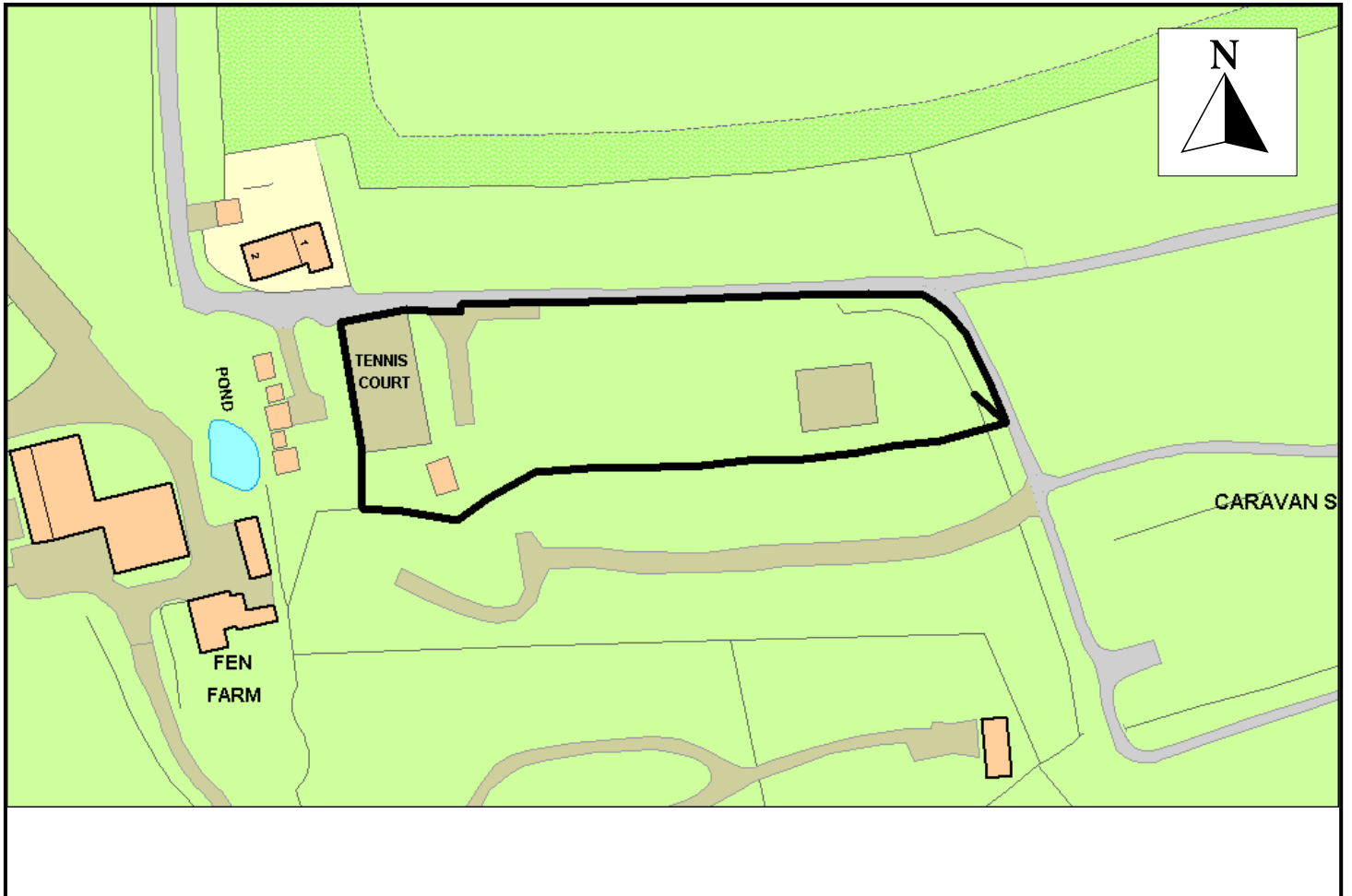
Within 28 days from the date of this decision, details of signs to be displayed within the site making it clear the use of the site is for holiday purposes only shall be submitted to the local planning authority for approval. The details shall include locations, size, height, materials, information and timetable for erection on site. The approved signs once erected shall thereafter remain in place.

Reason : To ensure occupants are aware the authorised use of the site is for holiday purposes only.

4 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted location plan drawing unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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



Application No: 132233

Location: Cosways Holiday Park, Fen Lane, East Mersea, CO5 8UA

Scale (approx): 1:2500

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7.2 Case Officer: Sue Jackson Due Date: 08/01/2014

MINOR

Site: Cosways Holiday Park, Fen Lane, East Mersea, CO5 8UA

Application No: 132233

Date Received: 13 November 2013

Agent: Mr Ian Butter Bsc FRICS MRTPI

Applicant: Cosways Holiday Park

Development: Use of land for the stationing of static holiday caravans and childrens play area

Ward: Pyefleet

Summary of Recommendation: Conditional Approval subject to no objections being raised by Natural England

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it has been called in by Councillor Sutton for the following reason; "In view of the Planning Inspectorate's refusal of permission on application 121550 the increase in units on this site that can now be occupied for 12 months of the year now apply and the application should be refused."

2.0 Synopsis

2.1 The key issues explored below are whether the proposal satisfies national and borough policy and an assessment against the appeal decision 121550

3.0 Site Description and Context

3.1 Cosways Caravan site is located in East Mersea with access off the East Mersea Road. The site has a frontage close to the water and comprises static caravans. There are areas of open space with in the site. The area the subject of this application is close to the site entrance there are caravans on three sides of the site and a site office and shop on the fourth.

4.0 Description of the Proposal

4.1 The application proposes the use of an area of open space within the site for the siting of static caravans an additional 23 caravan bases are indicated. A tennis court will be removed to provide a children's play area.

5.0 Land Use Allocation

5.1 The land is shown as an area of countryside.

6.0 Relevant Planning History

6.1 Application 132270 for 12 month occupancy is also on the agenda for this committee meeting.

6.2 Application 132235 to extend and erect buildings for restaurant, takeaway, business, storage and retail use is outstanding and will be reported to the planning committee in due course.

7.0 Principal Policies

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

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations

SD2 - Delivering Facilities and Infrastructure

SD3 - Community Facilities

UR1 - Regeneration Areas

UR2 - Built Design and Character

ENV1 - Environment

ENV2 - Rural Communities

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

DP1 Design and Amenity

DP3 Planning Obligations and the Community Infrastructure Levy

DP9 Employment Uses in the Countryside

DP10 Tourism, Leisure and Culture

DP19 Parking Standards

DP20 Flood Risk and Management of Surface Water Drainage

DP21 Nature Conservation and Protected Lanes

DP23 Coastal Areas

8.0 Consultations

8.1 The Highway Authority has no objection.

8.2 Environmental Protection has no comment.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

9.1 The Parish Council have stated that the parish council objects to this application and would like to draw attention to the reasoning for the appeal objections to a one 2 bedroom bungalow in Shop Lane (application 121550). If this one is approved it will surely be contradicting policies and we would request continuity from the planners. We also understand that this application has been called in by the Borough Councillor

10.0 Representations

10.1 None

11.0 Parking Provision

11.1 The site contains adequate space for parking of vehicles adjacent to the caravans

12.0 Open Space Provisions

12.1 There is no specific policy relating to open space.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

Policy issues

15.1 The NPPF recognises that planning policies should support economic growth in rural areas this includes support for sustainable rural tourism and leisure developments such support should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations. The Governments Good Practise Guide on Tourism also support for rural tourism.

15.2 Policy DP10: Tourism, Leisure and Culture states

“Development for new and extended visitor attractions, leisure and cultural facilities, along with visitor accommodation (including hotels, bed & breakfast accommodation, self-catering accommodation, holiday lodges, static and touring caravans and tenting fields) will be supported in suitable locations. Proposals for tourism, leisure and culture development should promote accessibility by a choice of means of transport and must not cause significant harm to the amenity of people living and working nearby.

In rural areas, locations suitable for tourism, leisure and culture development should help to support existing local community services and facilities. The proposals must be compatible with the rural character of the surrounding area and avoid causing undue harm to the open nature of the countryside or designated sites. It is recognised that not all rural locations are readily accessible by public transport. Where accessibility is poor, proposals should be small scale and/or comprise the conversion of suitable existing rural buildings or limited extension to existing visitor accommodation. In locations where residential uses would be inappropriate, developments of visitor accommodation will be limited to holiday use only and/or certain periods of the year in order to prevent permanent or long-term occupation. “

15.3 The proposal relates to additional caravans on an area of land within the caravan site not an extension onto a new site. The specific site already has caravans on three sides and the site office and shop on the fourth. The proposed caravans will not therefore extend into open countryside or be visible in the landscape.

15.4 The appeal decision referred to by the Borough Councillor and the Parish Council relates to a single dwelling in East Mersea on land outside the settlement boundary. In dismissing the appeal the Inspector concluded the site was outside the defined settlement it was remote and poorly served by public transport and occupants would rely on the facilities on West Mersea.

15.5 The appeal proposal was for a new dwelling in a rural area outside the settlement boundary whereas the application proposes a small number of additional caravans on an established holiday caravan site on an area already used for holiday purposes. It is considered the two sites are not comparable in policy terms.

16.0 Conclusion

16.1 The proposal is considered acceptable and permission is recommended. If members have approved the previous item relating to 12 month occupancy it is recommended appropriate conditions applied to that permission are also applied to this application.

17.0 Recommendation

17.1 That subject to no objections being raised by Natural England planning permission be granted subject to the following conditions.

18.0 Positivity Statement

18.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

19.0 Conditions

1 - Time Limit for Full Permissions

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

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - Non-Standard Condition/Reason

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers PLAN RUPC.2 and CHP-005 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

3 - Tree or Shrub Planting

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

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

4 - Non-Standard Condition/Reason

Prior to the commencement of the development hereby permitted details, including an implementation timetable, of the proposed play area shall have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full.

Reason: To ensure the play area proposed is implemented.

5 - Non-Standard Condition/Reason

The caravans hereby permitted shall only be occupied during the period of 1st March – 31st December and for a temporary period for 11 months as permitted under application 132667.

Reason: For the avoidance of doubt as to the scope of this permission as this is a holiday caravan site.

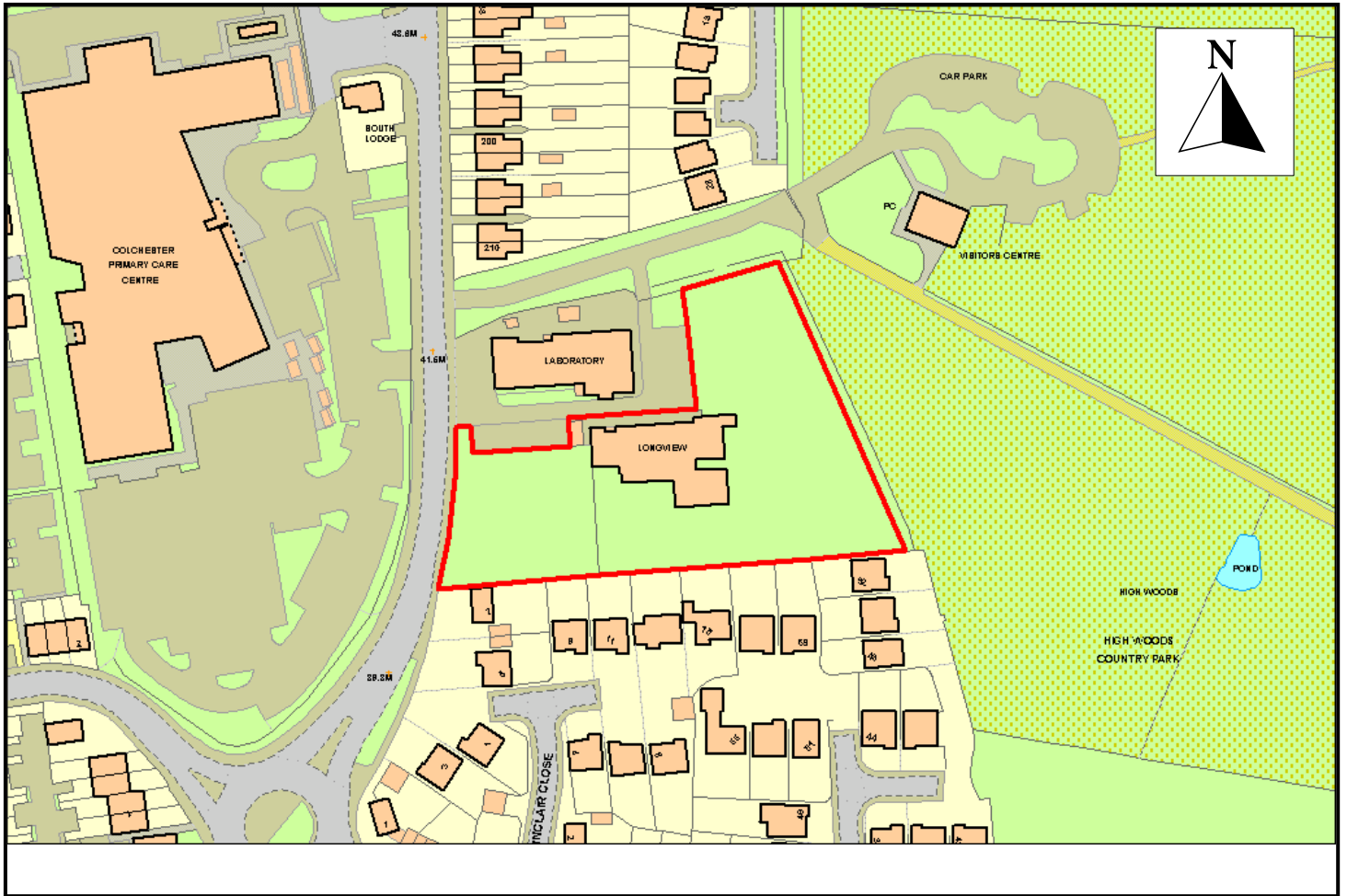
6 - Non-Standard Condition/Reason

Prior to the commencement of development, details of ecological measures, including an implementation timetable, for the site shall have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with such agreed details.

Reason: To allow proper consideration of the impact of the development on the contribution of nature conservation interests to the amenity of the area.

20.0 Informatives

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.



Application No: 132228

Location: Longview, 216 Turner Road, Colchester, CO4 5JR

Scale (approx): 1:1250

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7.3 Case Officer: Peter Hill

Due Date: 06/02/2014

MAJOR

Site: Longview, 216 Turner Road, Colchester, CO4 5JR

Application No: 132228

Date Received: 7 November 2013

Agent: AKA Planning

Applicant: MedicX

Development: Variation of condition 31 of planning permission 131287.

Ward: Mile End

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it is a major application and objections have been received.

2.0 Synopsis

2.1 Planning permission was granted for a 60 bed care home at the site on 7/10/13. Condition 31 of that permission sought to restrict the nature of occupancy of the care home so as to minimise parking and private open space requirements and negate material impact on public open space and community facilities. This application seeks to vary that condition to give a little more flexibility to the operators whilst still avoiding the harm that condition 31 sought to prevent. The key issue for Members to consider is whether the replacement condition 31 adequately achieves similar objectives to its predecessor. Officers conclude that it does and consequently recommend approval on that basis.

3.0 Site Description and Context

3.1 Longview is a single-storey building on the east side of Turner Road. Currently vacant, the site was last used as a care home. The existing building is well set back from the road and the rest of this large site is laid to grass. The site slopes in a southerly direction.

3.2 To the north is an NHS laboratory – a single-storey flat roofed building. The application site continues in an ‘L’ shape behind this site. North of that is the public footpath and main entrance to High Woods Country Park. The trees of High Woods mark the western boundary of the site. To the south are the back gardens of two-storey houses of Sinclair Close and Thornton Drive. Across Turner Road (west) is the car park of the North Colchester Healthcare Centre – a three-storey, flat-roofed building set back from the road. Generally the area has a mixed character with residential properties and healthcare related development centring on the hospital itself.

4.0 Description of the Proposal

4.1 Variation of condition 31 to planning permission to allow greater flexibility in the persons that may occupy the care home under Section 73 of The Act.

4.2 It should be noted that the effect of approving a variation of condition application is to produce a fresh and complete alternative permission to the original planning permission. Consequently, all conditions imposed with respect to the original planning permission (131287) would need to be re-imposed in this decision (even if they are not for consideration as part of this application) and these therefore appear in the recommendation to this report.

5.0 Land Use Allocation

5.1 The site is within the defined settlement limits and is unallocated.

6.0 Relevant Planning History

6.1 Original planning permission 131287 approved this 60-bed care home. This application was approved by Planning Committee.

7.0 Principal Policies

7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- SD3 - Community Facilities
- UR2 - Built Design and Character
- PR1 - Open Space
- TA1 - Accessibility and Changing Travel Behaviour
- ENV1 - Environment
- ER1 - Energy, Resources, Waste, Water and Recycling

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

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP17 Accessibility and Access
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes
- DP25 Renewable Energy

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

- Community Facilities
- Vehicle Parking Standards
- Sustainable Construction
- Open Space, Sport and Recreation
- Cycling Delivery Strategy

8.0 Consultations

8.1 Environmental Protection – no objection, no conditions

8.2 Highway Authority – no objection, no conditions

9.0 Parish Council Response

9.1 Myland Community Council comment “no objection”

10.0 Representations

10.1 Two comments have been received. The content is reproduced as follows;

Councillor Goss:

Although I have every sympathy for the care operator to want their business to expand its possible client base, this building has not even commenced build yet and the ink is hardly dry on the approval.

No factually and data driven evidence other than a few paragraphs have been provided wishing to remove condition 31.

Therefore, I object to the condition being removed. Conditions are there is planning law for a reason, not to be tampered with and removed at every opportunity .

More hard evidence needs to be submitted.

Occupier of 29 Peto Avenue

I believe the proposal to remove the last sentence from Condition 31 significantly alters the purpose for which approval was previously given and removes any constraint on future use of the premises. However the wish not to be constrained from helping people purely through an age restriction is understandable and I suggest amending the last sentence rather than removing it

I propose it should be amended to say: 'It shall only be occupied by persons over the age of 21 in need of managed care, who are not able to live independently.'

This should remove the concerns that future residents will be using local facilities and requiring parking etc.

11.0 Parking Provision

11.1 26 parking spaces were conditioned to be provided in the approved scheme. This is not proposed to change.

12.0 Open Space Provisions

12.1 No public open space or other contributions were required by the approved planning permission. This is not proposed to change.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 Whilst this application is classed as a “Major” application, it has not been reconsidered by Development Team. The original application was considered by Development Team and it was determined that Planning Obligations would not be sought.

15.0 Report

15.1 Condition 31 of approved planning permission read as follows;

The premises shall be used for care home purposes only as defined in the Use Class Order and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005. It shall only be occupied by persons over the age of 55, in need of managed care, who are not able to live independently.

Reason: This is the basis on which the application has been considered. An alternative care home use would need to be considered on its own merits. More active residents would place a demand on local sports, leisure and community facilities that has not been addressed by this application. Such use would also place increased demand for parking and garden areas than is proposed as part of this application.

15.2 To expand a little on the stated reasons for the condition, it was considered that the parking provision, and the garden areas were appropriate for a care home serving residents who would, in the main, not be physically active or capable of driving and keeping cars. However, such facilities may not be adequate or appropriate for some other types of care home. For example, adults with learning disabilities may be very physically active and require a very different type of amenity space arrangement. Similarly, such a care home could place an increased burden on the borough's public open space and community facilities – a burden not placed by persons largely confined to the care home and a burden not addressed by any Unilateral Undertaking offering financial contributions towards the Council's provision of such facilities.

15.3 The applicant is requesting to vary the condition to allow the operator 'Barchester Healthcare' to provide care to adults with early onset dementia or significant brain injuries who are under the age of 55 as well as those over that age.

15.4 Were such residents to occupy the care home, it is not envisaged that this would materially generate the harm that the condition seeks to avoid. In Officers' opinion, the matter for consideration is not therefore one of principle as to what the applicant seeks, it is a matter of how and whether an alternative condition can be constructed that accommodates this understandable request in such a way that meets the tests set out in the conditions circular.

15.5 After some discussion with the applicant, it is concluded that the following condition would best achieve this objective;

The site shall only be used as a residential and nursing care home as defined in the Use Class Order and for no other purpose (including any other purpose in Class C2 or C2A of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, as amended. It shall only be occupied in such a manner and by such persons as described in the letter from AKA Planning of 11th December 2013.

Reason: This is the basis on which the application has been considered. An alternative care home use would need to be considered on its own merits. More active residents would place a demand on local sports, leisure and community

facilities that has not been addressed by this application. Such use would also place increased demand for parking and garden areas than is proposed as part of this application.

15.6 The relevant sections in the letter referred to in the condition reads as follows;

By means of background, Barchester operate over 200 care homes nationwide that cater for the elderly and which provide residential, nursing and dementia care. The average age of residents is generally 85 to 90 years old.

Whilst dementia is a condition that primarily affects the elderly, “early on-set” dementia is becoming increasingly common and in some cases affects those under the age of 55. This is a user-group to whom Barchester offer services within the large majority of their care homes across the UK, but which would be precluded at Longview under condition 31 as currently worded. On occasions there will also be a local need to provide care for adults with other complex care needs such as acquired brain injury.

In summary, any residents under the age of 55 would receive care under one of the following headings:

- Residential care*
- Nursing care*
- Dementia,*
- Acquired brain injury.*

It is the flexibility to provide care and rehabilitation services to prospective local residents with these conditions, regardless of age, that forms the basis of the current application. There is a lack of specialist facilities elsewhere within the local area and there is an inherent logic in utilizing the level of specialist care and nursing services that would be provided at Longview to meet these specific needs.

Until the new facility at Longview is opened the exact split of residents will not be known. However, assuming full occupancy, and based on Barchester’s experience from its existing care homes, it is not envisaged that any more than 5% of the rooms would be occupied by residents aged under 55 years (within this 60 bedroom care home, this equates to 3 bedrooms).

Due to the specialist care requirements of prospective residents, car ownership even among those aged under 55 is less than 1% and it is rare that any residents would be allowed to leave the care home unsupervised. For these reasons the new care facility would not be occupied by what the planning condition refers to as ‘active residents’.

For clarity, adults under 55 with learning difficulties who are physically active and who might be able to leave the care home unsupervised will not be permitted occupancy.

I trust that the above points of clarification provide the necessary assurances that the proposed occupancy of the care home will place no undue burdens on local services or create additional demands on car parking and amenity space above those facilities already provided.

- 15.7 This condition is similar to one imposed for similar reasons on a decision relating to a care home at Ypres Road (Ref: 111314), although that condition did not have the reference to a letter and so did not provide as much clarification.
- 15.8 The proposed condition is not perfect, but neither is the existing condition. In both scenarios it is perfectly conceivable there may be individuals accommodated at the care home who are more physically active than others. For example, the existing condition refers to the over 55s, but clearly persons of that age may be potentially quite active. What both conditions do achieve equally effectively is preventing the care home from becoming one of an entirely different nature to a nursing home that would be predominately occupied by more physically active persons.
- 15.9 It should be noted that the fact that the original permission is recent, is not grounds for refusal. Neither is there any presumption against an application to vary conditions – provisions are made within the Planning Act for the express reason of allowing conditions to be varied and it is this correct process that is being followed. Objectors comment that more evidence should be received. It is unclear precisely what evidence should or could be provided, but it is concluded the objectives of the applicant are entirely reasonable and do not require further substantiation.

16.0 Conclusion

- 16.1 The proposed condition would be as effective as the previously imposed condition in ensuring that parking and amenity space is adequate for residents and that significant increased burden is not placed on the borough's public open space and community facilities. It has the added advantage of more effectively relating to the intended nature of the operation. The application is therefore recommended for approval.

17.0 Recommendation

- 17.1 APPROVAL, subject to the conditions set out in section 19.

18.0 Positivity Statement

- 18.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

19.0 Conditions

1 - Time Limit for Full Permissions

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

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted drawings numbers PL.01 A, PL.02, PL.05 A, PL.06 A, PL.07 C, PL.08, PL.10 A and PL.11, except where differing details are approved through a submission of matters reserved by other conditions in this permission and specifically relating to the requirements of those conditions.

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

3 - Non-Standard Condition/Reason

No development shall be commenced until such times as a full drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include evidence that the development will result in no increase in surface water run-off leaving the site and include timing / triggers for the implementation of the provisions proposed. The approved provisions shall be implemented in precise accordance with the approved scheme and in accordance with the timing / triggers outlined therein. The approved provisions shall be retained and maintained in working order thereafter.

Reason: To ensure that no additional surface water is discharged into public sewers as a result of this development

4 - Non-Standard Condition/Reason

Prior to the commencement of any works at the site, a survey accurately identifying any Cotoneaster plants on the site, together with a scheme for their removal and disposal shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full, prior to the commencement of development, including any demolition works.

Reason: To ensure that the development does not contribute towards the spread of such plants that are an invasive species.

5 - Non-Standard Condition/Reason

Development shall only be undertaken in such a way that accords with the recommendations set out within the Ecological Assessment by Medicx Special Development Ltd dated April 2013.

Reason: To ensure that protected species that may be using the site at the time or during development are afforded appropriate protection, and to minimise impact on wildlife in the adjacent High Woods Country Park.

6 - Non-Standard Condition/Reason

The recommendations for improving habitat potential within the site set out within the Ecological Assessment by Medicx Special Development Ltd dated April 2013 shall be implemented in full prior to the first occupation of the building.

Reason: To ensure that improvements to the biodiversity potential of the developed site in mitigation for the lost biodiversity potential of the undeveloped site and any impact on biodiversity within the near edge of High Woods Country Park

7 - Non-Residential BREEAM (Part 1 of 2)

No works shall take place until evidence that the development is registered with a BREEAM certification body and a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the development can achieve a final BREEAM rating level of at least Very Good.

Reason: To ensure that the completed development is sustainable and makes efficient use of energy, water and materials.

8 - Non-Residential BREEAM (Part 2 of 2)

Within 3 months of the occupation of the development, a final Certificate shall have been submitted to the Local Planning Authority certifying that BREEAM rating Very Good has been achieved for this development.

Reason: To ensure that the completed development is sustainable and makes efficient use of energy, water and materials.

9 - Non-Standard Condition/Reason

Prior to the first occupation of the care home, the cycle and refuse facilities shown on drawing PL.08 shall be implemented in precise accordance with that drawing. The facilities shall be retained thereafter in their approved form, for their approved purpose.

Reason: To ensure that adequate facilities existing to contain refuse in a tidy manner, in the interests of visual amenity and to provide for cycle parking, in the interests of reducing demand for private car use.

10 - Non-Standard Condition/Reason

Prior to the first occupation of the development, the new vehicular access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 90 metres to the north and 2.4 metres by 70 metres to the south, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the access and those in the existing public highway in the interest of highway safety.

11 - Non-Standard Condition/Reason

Prior to the first occupation of the development, 1.5 metre x 1.5 metre pedestrian visibility splays, as measured from and along the highway boundary, shall be provided on both sides of the new vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety.

12 - Non-Standard Condition/Reason

There shall be no occupation of the development until such times as the vehicular access and turning facilities shown on drawing PL.07 C have been completed in precise accordance with the details shown on that drawing. Those vehicular access and turning facilities shall thereafter be retained in their approved form for their approved purpose, free of any obstruction.

Reason: To ensure that vehicles can safely enter and leave the highway in a forward gear in the interest of highway safety.

13 - Non-Standard Condition/Reason

Prior to the commencement of development, a revised parking plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted plan shall show 26 parking spaces of dimensions that comply with the Council's adopted parking standards. A minimum of 2 of these spaces shall be parking for people with disabilities. The approved parking scheme shall be implemented prior to the first occupation of the development and shall be retained thereafter in its approved form, available for its approved purpose.

Reason: To ensure that there is adequate parking for the development without there being a significant surplus that would work against the interests of sustainability and would result in a less attractive appearance to the landscaping.

14 - Non-Standard Condition/Reason

The access drive connecting the staff car parking area and service yard in the north of the site and running along the south side of the existing laboratory building before connecting with Turner Road, shall be retained at all times, free of obstruction as vehicular access to the afore-mentioned staff car parking area and service yard. Within 1 week of the cessation in availability of any part of this access drive, the use of the car parking and service yard shall cease and revised site plans shall be submitted to and approved in writing by the Local Planning Authority showing a revised layout of the site (including car parking, access, maneuvering, and landscaping), together with floor plans showing a reduction in resident numbers proportionate to the reduction in car parking spaces and timings for that reduction in resident numbers. All provisions within the revised site plan and floor plans shall be implemented in full within 2 months of the approval of the revised details and shall be retained thereafter in their approved form. The agreed reduction in resident numbers shall be implemented in accordance with the agreed time frame and no new residents shall occupy the care home until such times as it is achieved. It shall thereafter be occupied with no more than the agreed number of residents.

Reason: The northern access is essential to provide access to the northern parking area and service yard, but appears to be only a right of access, not in the exclusive control of the applicant. Were parts of this access to cease to be available for care home use, the result may be vehicles cutting through onto the public footpath to the north which would be detrimental to highway safety. Alternatively, it may be that this area ceases to be usable as car parking / servicing and this in turn will have impacts for the overall site layout and its potential to make adequate provision for the needs of a 60-bed care home.

15 - Construction Method Statement

No works shall take place until including any works of demolition, a Construction Method Statement shall have been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

- the parking of vehicles of site operatives and visitors;
- hours of deliveries and hours of work;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- measures to control the emission of dust and dirt during construction; and
- a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

16 - Site Boundary Noise Levels

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

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.

17 - Non-Standard Condition/Reason

All residential units shall be designed, constructed and be maintained in accordance with the noise mitigation measures specified in the Noise Assessment by Hawkins Environmental dated 7 June 2013.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the future residents by reason of undue external noise.

18 - Food Premises (Control of Fumes and Odours)

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

Reason: To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

19 - *Light Pollution for Minor Development

Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the CBC External Artificial Lighting Planning Guidance Note for zone EZ2 RURAL, SMALL VILLAGE OR DARK URBAN AREAS.

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

20 - Non-Standard Condition/Reason

No external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. The submitted scheme shall detail provisions for minimising light pollution to residential properties and to High Woods Country Park. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To reduce the risks of any undesirable effects of light pollution on neighbouring residential properties and to minimise the impacts of light pollution on the dark character and habitat of High Woods Country Park.

21 - Grease Traps Required

Prior to the first use of the development hereby permitted, any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

22 - Materials to be Agreed

Prior to the commencement of development, precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction shall have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

23 - Non-Standard Condition/Reason

Prior to the commencement of development, there shall have been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works, which shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, as well as details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission.

Reason: In order to ensure an attractive setting to the site, both from the public domain and for residents and visitors using the site and to assimilate the development as much as possible into its adjacent wooded environment.

24 - Simple Landscaping Scheme Part 2 of 2

All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

Reason: In order to ensure that there is a sufficient landscaping scheme for the development where there is insufficient detail within the submitted application.

25 - Non-Standard Condition/Reason

No development shall take place until such times as a scheme of protective fencing sufficient to protect trees north and east of the site has been submitted to and approved in writing by the Local Planning Authority. No demolition or construction works shall be commenced until such times as the approved scheme of fencing has been put in place in precise accordance with the approved details. All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works, or placement of materials or soil shall take place within the protected areas without prior written consent from the Local Planning Authority.

Reason: To ensure that trees bounding the site are not harmed during the course of development, in the interests of visual amenity and the habitat potential that they provide.

26 - Non-Standard Condition/Reason

No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by condition 25 has been submitted to and approved in writing by the Local Planning Authority. This scheme will be appropriate to the scale and duration of the works and will include details of:

- a. Induction and personnel awareness of arboricultural matters
- b. Identification of individual responsibilities and key personnel
- c. Statement of delegated powers
- d. Timing and methods of site visiting and record keeping, including updates
- e. Procedures for dealing with variations and incidents.
- f. The scheme of supervision shall be carried out as agreed.
- g. The scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved by the Local Planning Authority.

The provisions of this scheme of supervision shall be implemented in precise accordance with the approved details.

Reason: Trees protected by Tree Preservation Orders bound the site and expert supervision is essential to ensure that they are not harmed during the development process.

27 - Tree and Natural Feature Protection: Entire Site

No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land (see BS 5837).

Reason: To protect the health of trees, shrubs and other natural features to be retained in the interest of amenity.

28 - Non-Standard Condition/Reason

Prior to the commencement of development, a scheme of boundary treatment shall be submitted to and approved in writing by the local Planning Authority. The submitted scheme shall identify in plan form all existing boundary treatment to be retained as well as the positions of new boundary treatment. It shall include sample elevations and precise details of materials and colours to be used in new boundary treatment as well as for the 'double gates' and 'manual closing double gates' annotated on drawing PL.07 C. The submitted scheme shall be implemented in full prior to the first occupation of the development and shall be retained thereafter in its approved form.

Reason: To ensure an attractive and appropriate finish to the scheme, in the interests of visual amenity.

29 - Non-Standard Condition/Reason

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of enclosure, other than any shown on the approved drawings or approved in relation to the requirements of another condition to this permission, shall be erected.

Reason: To ensure that unattractive boundary treatment does not harm the visual appearance of the site or the vitality of trees bounding the site, in view of the site's sensitive location adjacent to the Country Park.

30 - Non-Standard Condition/Reason

Prior to the first occupation of the development, a travel plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted travel plan shall set targets for the reduction of single-occupancy car use by staff. It shall precisely detail the measures to be taken in order to achieve these reductions, together with timings / triggers for the implementation of such measures and provisions for the measuring of the success or otherwise of such measures. It shall include details by which the travel plan will be reviewed and the corrective measures will be employed in the event that the identified targets are not met. It shall include provisions for the appointment of a Travel Plan Co-ordinator. The provisions of the approved travel plan shall be implemented in accordance with the approved timings / triggers.

Reason: To reduce the number of car journeys associated with the development, in the interests of sustainability.

31 - Non-Standard Condition/Reason

The site shall only be used as a residential and nursing care home as defined in the Use Class Order and for no other purpose (including any other purpose in Class C2 or C2A of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, as amended. It shall only be occupied in such a manner and by such persons as described in the letter from AKA Planning of 11th December 2013.

Reason: This is the basis on which the application has been considered. An alternative care home use would need to be considered on its own merits. More active residents would place a demand on local sports, leisure and community facilities that has not been addressed by this application. Such use would also place increased demand for parking and garden areas than is proposed as part of this application.

32 - Non-Standard Condition/Reason

All windows on the south elevation serving the area defined on drawing PL.03 A as being 'Safe Resident Circulation' shall be constructed as obscure-glazed and fixed shut at all points above ground floor level and shall be retained as such thereafter. Reason – To prevent overlooking of residential properties to the south, in the interests of the amenities of the occupiers of those properties.

20.0 Informatives

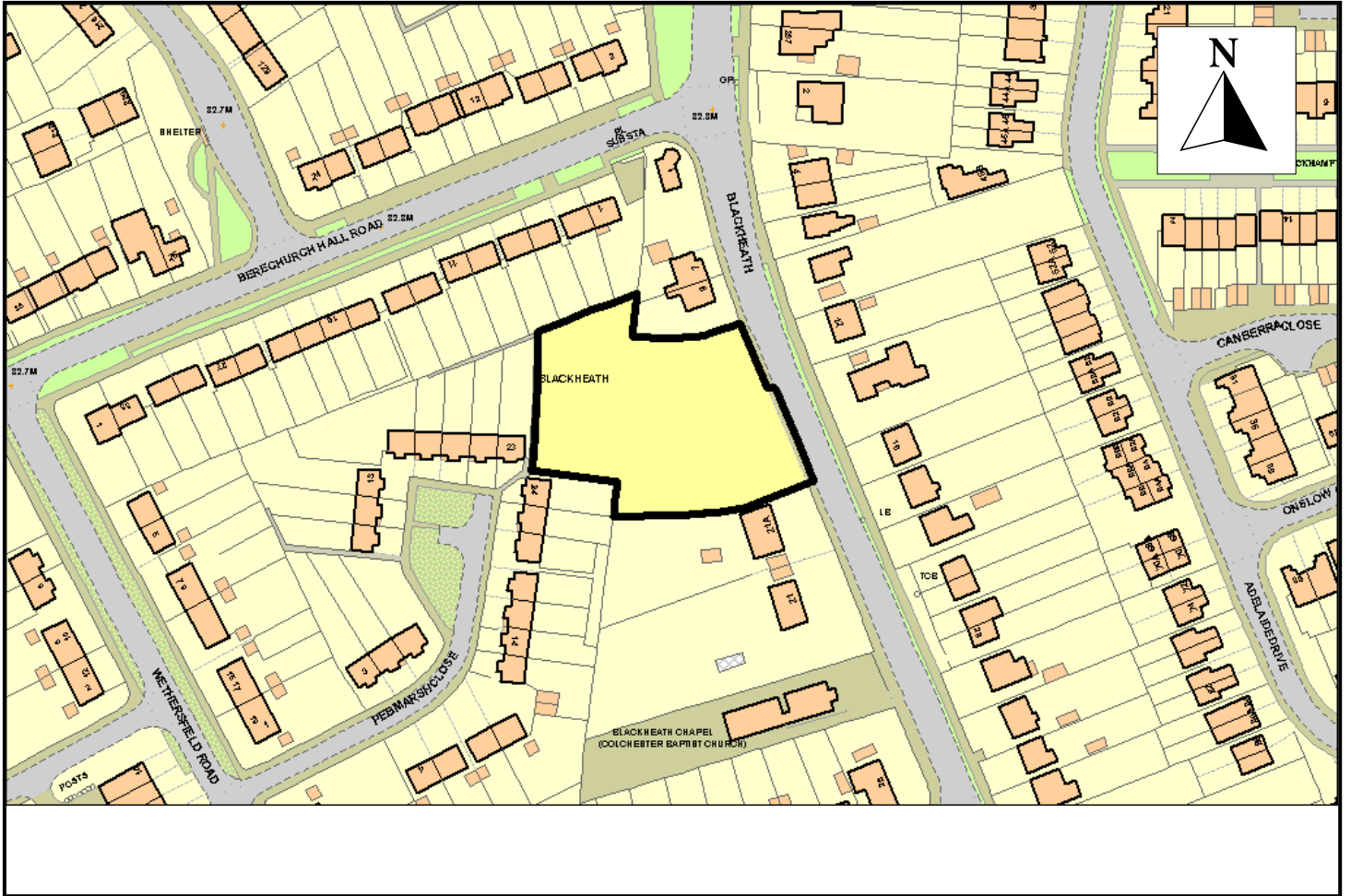
(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) Please note that the submitted Type 2 Asbestos Survey, dated October 2008 is not a suitable survey for demolition purposes and that further reporting will be required prior to any demolition works (including in those areas not previously accessible). Since this survey has identified some asbestos-containing materials, it will be necessary for an appropriate method statement to be produced to ensure safe removal and disposal of all relevant material.



Application No: 121354

Location: Land At Former Cherry Tree Garage, 17 Blackheath, Colchester, CO2 0AE

Scale (approx): 1:1250

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7.4 Case Officer: Bradly Heffer

MAJOR

Site: 17 Blackheath, Colchester, CO2 0AE

Application No: 121354

Date Received: 20 July 2012

Agent: Mr Paul Manning

Applicant: Tesco Stores Ltd

Development: Variation/removal of condition 20 of planning permission 081300.

Ward: Berechurch

Summary of Recommendation: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because Councillor Harris has asked for the proposal to be considered by Members. He is concerned that the removal of the identified condition will result in the creation of a hazard within the stretch of highway to the front of the application site.

2.0 Synopsis

2.1 The report will set out the background to the submission of the current application and also the views expressed by relevant consultees and respondents to notification. The report will conclude with a recommendation to Members that the application to remove the identified condition be approved.

3.0 Site Description and Context

3.1 The site for the proposal is an irregularly-shaped area of land that is located in the Blackheath area of the town. It was formerly occupied by a filling station, garage and car sales business. The business has ceased and the site has been cleared of buildings. The frontage of the site with the main road is enclosed by a 2 metre high timber hoarding. Although clearance works have taken place it is evident that the site has lain unused for a significant period of time, as it is overgrown and generally unkempt. The surrounding form of development is established residential.

4.0 Description of the Proposal

4.1 This planning application seeks permission to remove a condition imposed by the Inspector when the redevelopment of the site for a supermarket and residential development was approved at appeal.

4.2 Specifically the relevant condition no.20 states:

‘No development shall take place until details of a scheme to prevent parking on the grass verge on the eastern side of Blackheath Road in the vicinity of the site have been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented before the A1 use hereby permitted is brought into use.’

4.3 The following information has been submitted in support of the proposal by the applicant company’s agent:

‘...Following the grant of planning permission 081300 discussions took place between the applicant and Essex County Council Highways Department with regard to the ... planning condition and its relevance and need associated with the approved planning application. Essex County Council highways have advised in mid 2010 through to early 2011 that they now do not believe that condition is relevant and should there be verge parking this can be dealt with by targeted enforcement action to resolve this...’

5.0 Land Use Allocation

5.1 The site for this proposal is located in an established residential area as allocated in the adopted Local Development Framework.

6.0 Relevant Planning History

6.1 Under planning application ref 081300, permission was sought for the following development on this site:

‘Redevelopment of site to provide A1 convenience retail foodstore (407 sq m) and 13no. residential units with associated cycle and car parking.’

This application was subsequently refused by the Council via decision notice dated 7th October 2008. However, an appeal against the Council’s refusal was successful. Furthermore, various works and discharge of conditions that have taken place on site following the appeal permission being granted have kept the appeal permission ‘live’ and implementable.

7.0 Principal Policies

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

7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
PR2 - People-friendly Streets
TA4 - Roads and Traffic
TA5 - Parking

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

DP1 Design and Amenity
DP18 Transport Infrastructure Proposals
DP19 Parking Standards

7.4 Further to the above, the adopted Site Allocations (2010) policies set out below should also be taken into account in the decision making process:

None applicable in this case.

7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:
Vehicle Parking Standards

8.0 Consultations

8.1 The following comment has been made by the Highway Authority in relation to this application:

'It has been noted that the existing double yellow lines in Blackheath are covered by a traffic regulation order which enforces the parking restrictions for the full width of the highway; not just on the carriageway. Where inappropriate parking occurs, either on the carriageway or the footway/verges, the traffic regulation order can be enforced by the parking enforcement team.

In this regard the scheme noted in the condition is no longer required and the Highway Authority raises no objection'

8.2 Environmental Control and Planning Policy have no comments with regard to this proposal.

8.3 The following comment has been made by a Member of the Council's Parking Enforcement Team:

'It may be that our officers can ticket vehicles parking on the on the verge if it is covered by the yellow line (ECC will be able to confirm this) however it is unlikely that our officers will be able to carry out enforcement as readily as expected and verge damage is still likely to occur.

We would suggest that a physical deterrent is installed to deter the practice and to protect the verge.'

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

9.1 Not applicable as the application site is within a Town Ward.

10.0 Representations

10.1 As a result of local notification two objections have been received. The following are summarised points:

- Parking on the verge in Blackheath should not be allowed
- Parking within the highway in this area should not be permitted.

One of the objections also stated that the permission for the development itself should be revisited.

Officer comment: the application seeks to vary a condition attached to an extant permission and , on this basis, the terms of the original permission albeit granted at appeal are not an issue for consideration as part of this application.

One letter was received expressing support for the supermarket.

10.2 The following comment is made by Councillor Harris:

'It appears the concept is rather than submit plans to make it illegal to park on grass verges in the vicinity of the proposed Tesco store, the applicant wants to water down the original condition.

Instead, it seems from correspondence, that the applicant wishes to rely on hard pressed parking enforcement officers to prevent or deter this practice.

I do not believe that this will be effective, bearing in mind Colchester Parking enforcement officers can be released to attend as regularly as needed.

This leaves the residents to endure parking across drive ways and on the grass verge, meaning our pleasant verges will be ruined by car and larger vehicle tyres - and ruin our environment.

The only way is to revert to the original condition, making it impossible to park on the verge therefore I object to the removal of this condition

- a) to defend the verges
- b) to protect Blackheath residents rights of access'

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

11.1 The terms of the application are such that the on-site parking provision associated with the approved development are unaffected.

12.0 Open Space Provisions

12.1 The application submission does not raise issues with regard to open space provision.

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

14.1 This application is classed as a "Major" application. However, as it seeks to vary a condition as described there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

15.1 As stated previously in this report the redevelopment of the identified site was approved at appeal, following a refusal of the scheme by the Council. In allowing the development the Inspector saw fit to impose a series of conditions, one of which is the subject of this application. In effect the condition requires that a scheme is put in place to prevent parking on the verge outside the application site, before the approved supermarket use is commenced. There is no specific reason attached to the condition (nor any other condition imposed by the inspector). However, in the decision letter issued the following comment is included:

'Local residents, and the highway authority, are concerned that as the parking spaces for the store would not be readily visible from the road customers would park on the double yellow lines outside the shop. The store would serve local people and most customers would, in my view, quickly become familiar with the layout and not hesitate to enter the parking area. I do not consider that the vast majority of customers would risk parking on double yellow lines when free parking exists. In any event, whilst I appreciate that there is a limit to policing, the parking restrictions could be enforced by the Council reinforcing the reason for customers to use the parking provided.'

15.2 It appears from the comment above that the Inspector, while acknowledging the concerns relating to parking outside the store in the street, appeared to be content that the existing double yellow lines in the highway would act as a deterrent to ad-hoc parking in this location. However, notwithstanding the comment above a specific condition (the subject of this application) was imposed.

- 15.3 In considering the request to remove the condition ongoing liaison has been conducted with the highway authority, not least as at the time of the appeal it appeared from the Inspector's comments that the authority did have concerns about the possibility of parking taking place in the highway. It is the case that following on from the appeal decision the Highway Authority has reconsidered its position in relation to the relevant condition, finding it now to be un-necessary. The additional comment below has been received from the Highway Authority in order to clarify its current position.

'This site in Blackheath is not unique; there are numerous trip attractors along this road which could lead to this sort of informal short term parking.

Were this Authority to object to the TESCO proposal on these grounds I would have to provide evidence to the effect that this was a) definitely going to be a problem, b) going to cause a safety problem, and c) that it was going to be a worse problem to the other trip attractors in the area.

The accident data as shown on the ECC TraffWebb site does not show a problem on this road and as such I would not be able to prove there was an issue.'

- 15.4 Members are also advised that if there does infact prove to be a parking problem in this location the Highway Authority has confirmed that Essex County Council can itself provide suitable means of discouraging parking on the verge.
- 15.5 As a planning judgement it is the case that the imposition of a condition attached to a grant of planning permission must meet the 'tests' as identified in the relevant circular. In this case, it appears that the condition is un-necessary, as the existing restrictions in the road outside of the application site i.e. the double yellow lines are held to be a sufficient deterrent to parking in the highway at this point, as determined by the authority with direct responsibility for highway safety. The terms of the condition are therefore unreasonable in planning terms and subsequently it is appropriate for it to be rescinded.

16.0 Conclusion

- 16.1 It is considered that the requirements of the identified condition are unreasonable and fail to meet the relevant circular tests. On this basis the recommendation to Members is one of approval.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions:

18.0 Recommended Reasons for the Decision

- 18.1 The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because it is the case that the imposition of a condition attached to a grant of planning permission must meet the 'tests' as identified in the relevant circular. In this case, it appears that the condition is un-necessary; as the existing restrictions in the road outside of the application site i.e. the double yellow lines are held to be a sufficient deterrent to parking in the highway at

this point, as determined by the authority with direct responsibility for highway safety. The terms of the condition are therefore unreasonable in planning terms and subsequently it is appropriate for it to be rescinded.

Thus, having had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the objections received from the Ward Councillor and local residents.

19.0 Conditions

1 - Non-Standard Condition/Reason

No development shall take place until details of the external materials and finishes to be used in the construction of the development hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: To ensure a satisfactory appearance in the interests of visual amenity.

2 - Non-Standard Condition/Reason

No development shall take place until full details of both hard and soft landscape proposals have been submitted to, and approved in writing by, the Local Planning Authority. These details shall include: Means of enclosure including walls/fences/railings/planting of hedges etc and other structures on or adjacent to the boundary of the site and the highway/means of access; Hard surfacing materials; Minor artifacts and structures (e.g. signage and lighting); Planting plans; Written specifications (including cultivation and other operations associated with plant and grass establishment); Schedules of plants, noting species, plant size and proposed numbers/densities; and an implementation and monitoring programme.

Reason: To ensure there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development with its surrounding context in the interests of visual amenity.

3 - Non-Standard Condition/Reason

Boundary treatments approved in accordance with condition 2 shall be implemented prior to the occupation of any of the buildings hereby permitted. All approved hard and soft landscape works shall be carried out in accordance with the approved Implementation and monitoring programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written approval to any variation.

Reason: To ensure a satisfactory form of development.

4 - Non-Standard Condition/Reason

No deliveries shall be made to, or despatched from, the site outside of the hours of 0700 to 1900 hours.

Reason: In order to protect the amenity of local residents from unacceptable levels of noise nuisance.

5 - Non-Standard Condition/Reason

The A1 retail use hereby permitted shall not be open to customers outside of the hours 0700 to 2300 hours Monday to Saturday and 0700 to 2200 hours on Sundays and Bank Holidays. Reason: In order to protect the amenity of local residents from unacceptable levels of noise nuisance.

6 - Non-Standard Condition/Reason

Prior to occupation of the development visibility splays with dimensions of 2.4m x 45m, as measured from along the nearside edge of the carriageway, shall be provided on both sides of the access junction. The area within each splay shall be kept clear of any obstruction at all times.

Reason: In the interest of highway safety.

7 - Non-Standard Condition/Reason

Prior to occupation of the A1 store hereby permitted the servicing area for the store shown on the approved drawings shall be constructed, surfaced and made available for use.

Reason: In the interest of highway safety.

8 - Non-Standard Condition/Reason

No vehicles larger than a 10.35m rigid vehicle shall be used for servicing the A1 retail use hereby permitted.

Reason: In the interests of highway safety.

9 - Non-Standard Condition/Reason

The development shall not be occupied until the car parking area indicated on the approved plans, including any parking spaces for the mobility impaired, has been surfaced and marked out in parking bays. The car parking area shall be retained in this form at all times.

Reason: To ensure the provision of on site parking to serve the development.

10 - Non-Standard Condition/Reason

Prior to occupation of the development hereby permitted the principal access shall be constructed with no unbound material in the surface finish within 6 metres of the highway boundary of the site. The existing crossovers shall be removed, the kerb reinstated, the footway across the entire site frontage widened to 2 metres and the footway resurfaced all in accordance with details previously submitted to, and approved in writing by, the Local Planning Authority.

Reason: In the interests of highway safety.

11 - Non-Standard Condition/Reason

No development shall take place until details of cycle storage/stands have been submitted to, and approved in writing by, the Local Planning Authority. The approved stands shall be provided in the locations shown on drawing 510D prior to occupation of the buildings hereby permitted and thereafter retained.

Reason: To ensure the provision of on site cycle parking to serve the development.

12 - Non-Standard Condition/Reason

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no enlargement of the dwelling houses as permitted by Class A of Part 1 of the Schedule of that Order, including additions or alterations to the roof(s) as permitted by Class A, B and C of part 1 of the Schedule of that Order, nor the provision of any building or enclosure within the curtilage of the dwelling house as permitted by Class A or Class E of Part 1 of the Schedule of that Order shall be erected without the prior approval in writing of the Local Planning Authority.

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

13 - Non-Standard Condition/Reason

A person holding a recognised qualification in acoustics and/or who can demonstrate relevant experience shall ensure that the rating level of noise emitted from plant, equipment or machinery on the site shall not exceed 3 dBA above the background noise level prior to the buildings hereby approved coming into beneficial use. The assessment shall be made in accordance with the current version of British Standard 4142. The noise levels shall be determined by measurement or calculation at the nearest existing noise sensitive residential premises. Confirmation of the findings of the assessment shall be provided in writing to the Local Planning Authority prior to the buildings hereby permitted coming into beneficial use.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance as there is insufficient information within the submitted application.

14 - Non-Standard Condition/Reason

Any plant, equipment or machinery on the premises shall be constructed, installed and maintained so as to comply with condition 13 above. The noise generated by such equipment shall not have any one 1/3 octave band which exceeds the two adjacent bands by more than 5 dB as determined by measurement or calculation at the nearest existing noise sensitive residential premises.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance as there is insufficient information within the submitted application.

15 - Non-Standard Condition/Reason

The use hereby approved shall not commence until the buildings have been constructed to provide sound insulation against internally generated noise in accordance with a scheme submitted to, and approved in writing by, the Local Planning Authority.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance as there is insufficient information within the submitted application.

16 - Non-Standard Condition/Reason

The scheme shall be devised by a person holding a recognised qualification in acoustics and/or who can demonstrate relevant experience.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance as there is insufficient information within the submitted application.

17 - Non-Standard Condition/Reason

Any lighting of the development shall comply with the figures specified in the current 'Institution of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light'. This shall include sky glow, light trespass into windows of any property, source intensity and building luminance. Upon completion of the development, and prior to its occupation, a validation report undertaken by competent persons that demonstrates compliance with the above shall be submitted to the Local Planning Authority for approval. Following approval of the validation report the installation shall thereafter be retained.

Reason: To control the effects of light pollution in the interests of amenity.

18 - Non-Standard Condition/Reason

The communal bin stores shown on drawing PSI0D shall be made available for use prior to occupation of that part of the development they would serve, and shall be retained for that use thereafter.

Reason: To ensure that adequate facilities are provided for refuse storage and collection.

19 - Non-Standard Condition/Reason

Prior to occupation of any of the dwellings hereby permitted information packs should be provided to each of the dwellings containing information about walking and cycling routes to the development, details on car sharing, community transport, taxis and school transport plus public transport information including current timetables.

Reason: In order to promote sustainable transportation modes.

20 - Non-Standard Condition/Reason

Prior to the commencement of development (or such other date or stage in the development as may be agreed in writing with the Council), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing by the Local Planning Authority: i) Preliminary risk assessment which has identified all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors and potentially unacceptable risks arising from contamination of the site. ii) A site investigation scheme based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Prior to the first occupation of the development (residential use or food store – whichever comes first), v) Following completion of measures identified in the

approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the approved remediation scheme. The scheme shall be implemented as approved unless otherwise agreed in writing with the Council. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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

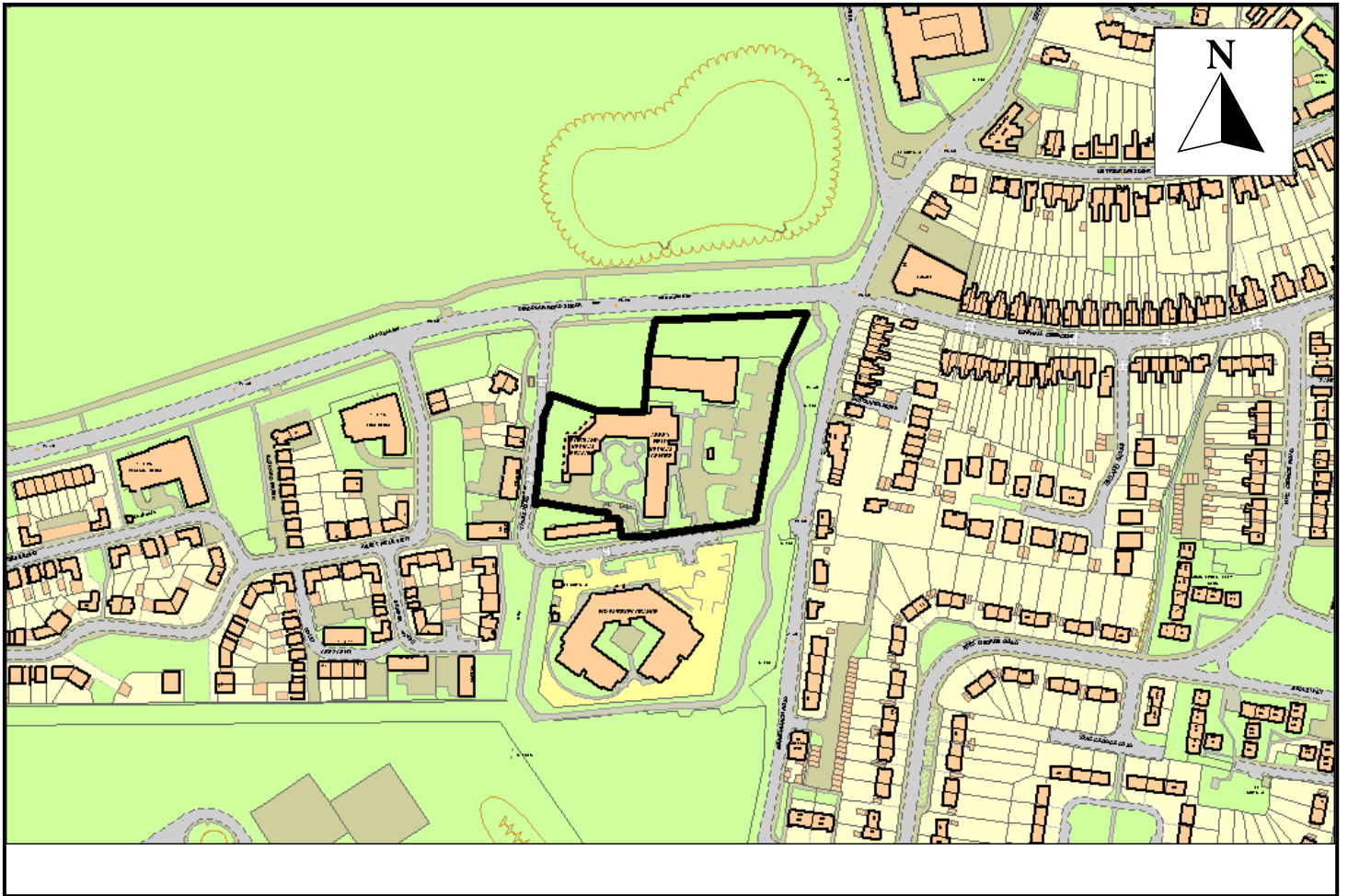
20.0 Informatives

(1) ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(2) Informative on Noise and Sound Insulation Competent Persons

PLEASE NOTE that, with regard to and noise measurement and sound insulation, a competent person is defined as 'someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience'.



Application No: 132255

Location: Former Gym, Circular Road South, Colchester, CO2 7FD

Scale (approx): 1:2500

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7.5 Case Officer: Alistair Day

Due Date: 08/01/2014

OTHER

Site: Former Gym, Circular Road South, Colchester, CO2 7FD

Application No: 132255

Date Received: 13 November 2013

Agent: Nps Property Consultants Limited

Applicant: Mr Lee Spalding

Development: 2.4m high timber hoarding to site perimeter with two sets of double gates

Ward: Berechurch

Summary of Application: Conditional Approval

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because the Council is the applicant.

2.0 Synopsis

2.1 The key issue explored below is the impact that the proposed development would have on the character and appearance of the area, in particular that of the Garrison Conservation Area.

3.0 Site Description and Context

3.1 The application site is broadly rectangular in shape and comprises the former Garrison gymnasium and its immediate apron.

3.2 The former gymnasium is a double height building constructed of red brick with strong rusticated and gauged yellow brick semi-circular arches springing from brick pilasters. The gymnasium has three sets of tall semi-circular headed windows on the north and south elevations and originally had a slate roof with a large square lantern. The roof and windows were severely damaged / destroyed as a result of the recent fire.

3.3 The site is located to the south of Circular Road South and to the east of Berechurch Road. The former garrison swimming pool was located immediately to the east of the site with Ypres Road beyond. A play area is proposed on the former swimming pool site. To the south of the site is the Portland Road Medical Practice and Abbey Field Medical Centre.

4.0 Description of the Proposal

- 4.1 The application related to the erection of a 2.4m timber hoarding to the site perimeter with two sets of double gates.

5.0 Land Use Allocation

- 5.1 Mainly Residential

6.0 Relevant Planning History

- 6.1 O/COL/01/0009 - A new 'Urban Village' comprising residential development (up to approx 2600 dwellings) mixed uses including retail, leisure and employment, public open space, community facilities, landscaping, new highways, transport improvements and associated and ancillary development in accordance with and subject to the provisions of the master plan drawing reference 98.018/42d - Approved

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

UR1 - Regeneration Areas
UR2 - Built Design and Character
ENV1 - Environment

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

DP1 Design and Amenity
DP14 Historic Environment Assets

- 7.4 Further to the above, the adopted Site Allocations (2010) policies set out below should also be taken into account in the decision making process:

SA GAR1 Development in the Garrison Area

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

The Garrison Master Plan
Goojerat and Sobraon Barracks Development Brief

8.0 Consultations

- 8.1 Environmental Protection have stated that they wish to raise no objection to this application.

In addition to the details reported above, the full text of all consultation responses is available to view on the Council's website.

9.0 Parish Council Response

- 9.1 N/a

10.0 Representations

- 10.1 Cllr. Pauline Hazell has made the following comments in respect of this application:

“On the face of it I have no objection to the erection of this perimeter fence. The height of the fence might seem excessive but I think justified to deter anyone attempting to climb the fence to gain access, for whatever purpose. The existing perimeter fence has been breached no doubt more than once. The burning down of the former Military Gymnasium (for which no-one has been apprehended), shows the need for robust security to safeguard the site in order that clearance and re-building can take place”.

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

- 11.1 N/a

12.0 Open Space Provisions

- 12.1 N/a

13.0 Air Quality

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

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

- 15.1 The current application relates to the erection of a 2.4m high hoarding around the perimeter of the site. The hoarding is intended as a temporary measure and will assist with making the site secure whilst the future of the former gymnasium is considered. Planning permission is required for the erection of a fence (not adjacent to the highway) that would exceed two metres in height.
- 15.2 The hoardings are intended to create a secure site and enable works to proceed with the 'clearing out' of fire debris, the undertaking of detailed structural assessment of the buildings and prevent unauthorised entry into the site. The hoardings are intended as a temporary measure and will be removed on the completion of construction works.
- 15.3 The main planning issue raised by this application is the effect that the proposed development would have on the character and appearance of the local environment including that of the Garrison Conservation Area. Core Strategy ENV1 and Development Plan Policy DP1 and DP14 seek to conserve Colchester's Historic Environment, secure a high standard of design and create safe environment. These requirements are reflected in central government guidance set out in the NPPF.
- 15.4 The former gymnasium building is located at a prominent corner position in the Garrison Conservation Area and is identified as a building of local architectural or historic interest. To the south of the site is Abbey Field Medical Centre and associated parking. The Garrison Eastern Green Link is located between the car parking area and Berechurch Road; residential properties front the eastern side of the Berechurch Road. To the west of the application site a Neighbourhood Equipped Area of Play (NEAP) is proposed; beyond Ypres Road is a housing estate that was built as a part of the early phases of the Garrison Urban Village development.
- 15.5 The proposed hoardings to the north gymnasium are set some 25m back from Circular Road South and are separated from the adopted highway by tree planting. The hoardings proposed to the east of former gymnasium will be located some 40m from Berechurch Road and are separated from the road by the medical centre car park and landscaping. The hoardings on the southern boundary are set some 67m from Ypres Road. The existing landscape structure surrounding the application site will help to filter and visually soften views of proposed hoardings from public areas. It is considered that the proposed hoardings will not have a significantly detrimental impact of the character of the area and will not directly impact on the private amenity of residential properties.

16.0 Conclusion

- 16.1 The proposed hoardings as a temporary measure are considered acceptable in terms of their impact on the local environment, including that of the conservation area and will not be materially harmful to neighbouring amenity. It is therefore recommended that this application is approved.

17.0 Recommendation

- 17.1 APPROVE subject to the following conditions:

18.0 Positivity Statement

18.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

19.0 Conditions

1 - Time Limit for Full Permissions

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

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - Non-Standard Condition/Reason

The hoardings hereby permitted shall be removed on or before 8 January 2016 unless otherwise agreed in writing by the Local Planning Authority. Following the removal of the hoardings any material, equipment or hard landscaping resulting from, or used in connection with, the development hereby permitted shall be removed from the site in its entirety and land made good in accordance with a scheme that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of this permission and because a longer permission would have to be carefully considered by the Local Planning Authority at the time at which any such proposal came forward, as well as to ensure that the site is returned to its previous state so that it does not suffer from any unacceptable longer term impact.

20.0 Informatives

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.



Application No: 071046

Location: 127 Mersea Road, Colchester, CO2 8RU

Scale (approx): NOT TO SCALE

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Planning Committee

Item

8

Date 02.01.2104

Report of	Head of Commercial Services	Author	Sue Jackson
			01206 282450
Title	Application 071046 - 127 Mersea Road Colchester		
Wards affected	Harbour		

This report concerns an application to discharge a planning obligation in respect of application 071046

1. Decision(s) Required

- 1.1 Members are required to make a decision on whether or not to discharge the planning obligations relating to outstanding education and community services contributions under application 071046 (if it is agreed the obligations are discharged this will mean they do not have to be paid). The application relates to 127 Mersea Road and the erection of 16 2-bed apartments. Although the legal agreement refers to community services the contribution is required to be used for open space, sport and recreation purposes. The Education Contribution is requested by Essex County Council as education authority.
- 1.2 Members are requested to agree to discharge the outstanding obligation in respect of the community services contribution.

2. Reasons for Decision(s)

- 2.1 An application has been received under s106A of the Town and Country Planning Act 1990 and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 to discharge obligations under a unilateral undertaking dated 19th September 2007 in favour of Essex County Council and Colchester Borough Council. This agreement was varied by deed dated the 25th February 2011.

3. Alternative Options

- 3.1 The alternative option is not to discharge the obligation in respect of the community services contribution.

4. Supporting Information

- 4.1 On 30 October 2007 an appeal was allowed for the erection of 16 2-bed apartments at 127 Mersea Road the application had been refused planning permission due to the design and appearance of the proposed development; a second reason related to the lack of a legal agreement to secure the required community and education contributions. Prior to the appeal hearing a legal agreement was submitted which secured these contributions.

- 4.2 In 2010 the Council and Essex County Council agreed to vary the legal agreement to allow the community services contribution to be paid prior to occupation instead of prior to commencement and ECC agreed to vary the education contribution so 50% was payable prior to commencement and the remaining 50% to be paid prior to occupation.
- 4.3 The development commenced late 2010; the site was sold to Icen Housing (Colne Housing) in April 2011 prior to completion. The development is now complete and occupied.
- 4.4 The community services and 50% education contributions are outstanding and these obligations have passed to Colne Housing.
- 4.5 The supporting information indicates the original owner Coneco has made an overall loss in excess of £100,000 and the development was unviable.
- 4.6 When Colne Housing Society Ltd bought the site from Coneco Ltd they did so on the basis that they had secured a Government grant under the Affordable Housing Programme 2008-2011 for general needs properties; a letter of confirmation has been submitted by Colne Housing. The information confirms "Colne Housing Society Ltd is a registered social landlord now operate the site in perpetuity as rented accommodation for local people in affordable housing need". A copy of their Allocation Policy has also been submitted.
- 4.7 The information also states if the flats had been sold on the open market they would quite possibly have been occupied by persons with no local connection and in these circumstances appropriate contributions would be valid. However as Colne Housing provide for local people already living in the local area, but in unsatisfactory accommodation, therefore they are already using facilities and school places".
- 4.8 The original application was below the threshold for affordable housing and the provision of 16 affordable housing units where none were previously required is of significant benefit. As the site is now 100% affordable housing and the provision of affordable housing is a key Council priority there is no objection to discharging the outstanding community facilities obligation. Colchester Borough Council considers the community services obligation 'no longer serves a useful purpose' in respect of a site which is 100% affordable housing as this payment by Colne Housing would prejudice the future provision of affordable housing in the Borough by £42,688.
- 4.9 Essex County Council has objected to the discharge of the outstanding education contribution and has set out the following reasons:
1. At Colchester Borough Council's Development Team Meeting of the 10th October 2013 Smart Planning's letter of the 20th September 2013 was discussed. The letter was submitted as an application under s106A of the Town and Country Planning Act 1990 and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 to discharge obligations under a unilateral undertaking dated 19th September 2007 in favour of Essex County Council and Colchester Borough Council. This agreement was varied by deed dated the 25th February 2011.
 2. As stated at the Development Team Meeting, an application can only be made by a person against whom a planning obligation is enforceable. The planning obligation to pay the Education Contribution is enforceable against Colne Housing Society Ltd being the owners of the land at the time of the breach. Coneco acknowledge in Certificate B of Part 2 of their application that the obligation is enforceable against Colne Housing. The agreement date the 19th September 2007 states that 'No person

shall be liable for any breach of this Undertaking when they no longer hold any interest in this Undertaking'. ECC is therefore of the view that Colne Housing is the appropriate person to make an application under s106A.

3. In any event, s106A (6)(b) provides that an authority may determine to discharge an obligation if an obligation 'no longer serves a useful purpose'. Essex County Council can show that the Education Contribution continues to serve a useful purpose, namely the provision of additional school places for children between the ages of 3 to 19 years.
4. The Priority Admissions primary schools are St George's Infant which has a net capacity of 204 pupils and St George's New Town Junior which has a net capacity of 296 pupils. Pupil forecasts at Summer Term 2012/13 show that the infant school was forecast to have 270 pupils on roll in the academic year 2013-14 rising each year to 304 pupils on roll by 2017-18. The junior school was forecast to have 310 pupils on roll in the academic year 2013-14 and again rising each year to 375 pupils on roll by 2017-18. Looking at the wider southeast Colchester forecast planning group of schools the document Commissioning School Places in Essex 2012-17 shows a deficit of 367 permanent places by 2016-17.
5. The Priority Admissions Secondary School is St Helena which has capacity for 1000 pupils. The Summer Term Forecasts 2012-13 show that St Helena will exceed its capacity by 2015-16 with numbers rising to 1176 by 2017-18. Looking at secondary schools across Colchester, forecasts indicate that by 2015 there will be a deficit of 52 places in year 7 with the number increasing year on year. Due to this increase in demand for secondary places there is a planned increase of 30 additional places a year at The Gilbert School from 2015, from 2017 a planned increase of at least 120 places a year at the Alderman Balaxill site and from 2019 an increase of at least 120 pupils a year on the NUGAE site.

4.10 Essex County Council conclude that it is therefore clear that the education contribution would serve the useful purpose of providing additional school places and accordingly Colchester Borough Council does not have the discretion to discharge the obligation under s106A.

5. Strategic Plan References

5.1 The provision of affordable housing is a Council priority.

6. Consultation

6.1 Essex County Council has been consulted.

7. Publicity Considerations

7.1 The application has been publicised in a local newspaper and on site.

8. Financial Implications

8.1 The Borough Council will not receive a contribution of £42,688.

9. Equality, Diversity and Human Rights Implications

9.1 N/A

10. Community Safety Implications

10.1 N/A

11. Health and Safety Implications

11.1 N/A

12. Risk Management Implications

12.1 N/A

Background Papers

None

AMENDMENT SHEET

Planning Committee
2 January 2014

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.1 & 7.2 -132270 and 132233 -Cosway Caravan Park,
Fen Lane, East Mersea

The response from Natural England is included as an appendix to the amendment sheet

Colchester Borough Council is the competent authority in administering the Habitat Regulations and protection of the European site; in this instance the Colne Estuary SPA; and has a duty prior to granting planning permission for a plan that may either on its own or in combination with other projects affect the European site to carry out an appropriate assessment of the implications for the European site. Consultation with Natural England forms part of this assessment. In carrying out this assessment the Council has taken account of the comments of Natural England relating to significant affects and has concluded that whilst the proposed developments are not directly required for the management of the European site they are not likely to have a significant affect on its integrity. The application sites comprise land already forming part of the caravan site and used for holiday purposes. The site has a permanent planning permission for holiday occupation for 10 months each year and the area proposed for the additional caravans is currently used for recreational purposes.

It is recommended that Members accept that the applications including the recommended planning conditions will not affect the integrity of the Colne Estuary SPA, either alone or in combination with other plans or projects and that planning permission be granted.

7.4 121354 – Land at Former Cherry Tree Garage, 17 Blackheath, Colchester

Members are advised that the following additional comment has been made by the Applicant Company's agent:

'GL Hearn fully supports the view of Colchester Borough Council (CBC) and that of Essex County Council (ECC). The applicant and their highways consultant liaised with ECC prior to the submission of this application, and the view of ECC has been that there is no reason why this condition is required due to the existing double yellow lines outside

the site which prevent parking not only on the road but also on the grass verge, and which can be controlled by traffic enforcement. Furthermore, it is highlighted that this site is not unique in Blackheath and there are numerous other trip attractors along the road which could also lead to the suggested informal parking, but which are also covered by double yellow lines where there is no such issue. ECC have quite clearly and correctly stated that were the council to object to these proposals there would need to be evidence that there was going to be a problem and cause a safety problem and that it would be worse than other trip generators in the area; ECC are not able to prove any of these, hence their positive recommendation . As such, in light of the above and the Council Committee Report I would urge the Committee to follow the advice of their officers and those of ECC and approve this application as there are no grounds on which to refuse this.'

7.5 132255 – Former Gym, Circular Road South, Colchester

The hoardings shall painted blue (to match the adjacent hoardings) within one month from the date of their erection. Reason: To secure a satisfactory standard of development and to ensure that the hoardings do not detract from the character and appearance of this part of the Garrison Conservation Area.

Agenda item 8

The planning agent has confirmed that Colne Housing and Coneco are joint respondents for failure to pay the contribution are both legally bound in this matter. A letter from Colne Housing to Coneco is attached as an appendix to the amendment sheet.

Date: 19 December 2013
Our ref: 105176 & 104720
Your ref: 132270 & 132233



Sue Jackson
Principal Planning Officer
Colchester Borough Council

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BY EMAIL ONLY

Dear Sue Jackson

Planning consultations: 132270 Variation of holiday occupancy period from 1st March - 31st December to allow for a 12 month year round holiday season. Resubmission of 131667.
132233 Use of land for the stationing of static holiday caravans and childrens play area.
Location: Cosway Caravan Park, Fen Lane, East Mersea Colchester CO5 8UB

Thank you for your consultations on the above planning applications dated 22 November 2013 which was received by Natural England by email of the same date. Due to the very similar issues arising from these two applications at the same site, we have provided a joint response to both applications. We understand that the extension of the caravan park sought under 132233 will be subject to the same seasonal occupancy arrangements made under 132270. The size of the extended caravan park would not change our position on its seasonality.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

**Conservation of Habitats & Species Regulations 2010 (as amended)
Wildlife & Countryside Act 1981 (as amended)**

Natural England does not object to the proposed development.

Internationally designated sites

The application site is in close proximity to a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). The application site is in close proximity to the Colne Estuary Special Protection Area (SPA) which is a European site. The site is also listed as the Colne Estuary Ramsar site¹ and also notified at a national level as the Colne Estuary Site of Special Scientific Interest (SSSI). Please see the subsequent sections of this letter for our advice relating to SSSI features.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have². The [Conservation objectives](#) for each European site

¹ Listed or proposed Ramsar sites are protected as a matter of Government policy. Paragraph 118 of the National Planning Policy Framework applies the same protection measures as those in place for European sites.

² Requirements are set out within Regulations 61 and 62 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 61 and 62 are commonly referred to as the 'Habitats Regulations Assessment' process.

explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

No objection

The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by your authority, ie the consultation does not include a Habitats Regulations Assessment.

In advising your authority on the requirements relating to Habitats Regulations Assessment, and to assist you in screening for the likelihood of significant effects, based on the information provided, Natural England offers the following advice:

- the proposal is not necessary for the management of the European site
- that the proposal is unlikely to have a significant effect on any European site, and can therefore be screened out from any requirement for further assessment

When recording your HRA we recommend you refer to the following information to justify your conclusions regarding the likelihood of significant effects.

The caravan park at Fen Lane is in proximity to the Colne Estuary, which during the over-wintering period (October – March) supports birds which feed and roost in the estuary and on surrounding land. Extending the opening season of the caravan park increases the number of visitors to the area, and increases the level of recreational activity (walkers, dog-walkers, joggers etc) which has the potential to disturb over-wintering waders and wildfowl.

The Colne Estuary offers extensive mudflats for feeding over a wide area at and around low tide. At high tide, birds are concentrated into high tide roosts, where flocks are unable to feed, and must seek sheltered areas free of disturbance and from prevailing winds / weather, as they wait for the tide to recede. Therefore at high tide, disturbance is much more significant, as birds are concentrated in a smaller area, often some distance from alternative roosts, and cannot feed until the mudflats are exposed (often for several hours). Disturbance at this time, and particularly during the coldest months, can be critical for birds' energy budgets, and may compromise survival. Significant numbers of birds are known to gather in a high tide roost at the Cudmore Grove country park.

Natural England has therefore carefully considered whether, and to what extent, the proposed extension to the occupancy season at the caravan park, may affect the interest features of the Colne Estuary SPA.

It is important to note that the area of the high tide roost is already managed as a country park, as an attraction for visitors, and that in the winter, the wildlife is an important part of that attraction. The park has been therefore been carefully designed to facilitate access to and enjoyment of this area of the coast and its wildlife, and conserve and enhance the over-wintering wildlife interest. This promotes the enjoyment of the wildlife by visitors without disturbing their natural behaviour and movement.

For these reasons, Natural England's opinion is that the proposal is *not likely to have a significant effect* on the interest features of the Colne Estuary SPA. We stress however, that each caravan park proposal for occupancy during the whole, or part, of the over-wintering season must be assessed on a case-by-case basis, as impacts may be significant in other areas of the estuary (or

The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. <http://guidanceanddata.defra.gov.uk/habitats-regulations-assessments/>

other estuaries), and the ecological information required in support of an application, and the conclusions reached may be different for other sites.

Nationally designated sites

This application is in close proximity to the Colne Estuary Site of Special Scientific Interest (SSSI). Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which the site has been notified. We therefore advise your authority that this SSSI does not represent a constraint in determining this application. Should the details of this application change, Natural England draws your attention to Section 28(1) of the *Wildlife and Countryside Act 1981* (as amended), requiring your authority to re-consult Natural England.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact me on 01206 382751. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

Jonathan Bustard
Land Use Operations

Colne Housing Society Ltd

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Our Ref: D/224

Direct Dial No. 01206 244715

E-mail: [REDACTED]

19 December 2013

Mr Jonathan Harris
Coneco Colchester Limited
Elmfield Woodhill Road
Sandon
Chelmsford
Essex
CM2 7SD

WITHOUT PREJUDICE

Dear Jon

Re: 127 Mersea Road

Further to our without prejudice meeting held on Tuesday 17th December 2013, I can confirm on behalf of Colne that all sixteen flats delivered at the above address are being let on an affordable rent tenure with nominations being provided to Colchester Borough Council.

As discussed, Colne also received capital grant from the Homes and Communities Agency who are a Government sponsored organisation who provide capital grant and are also our regulator.

Accordingly, it is Colne's intention to continue to let all the units in line with its core business of letting affordable housing in perpetuity. Colne also intend to continue the nominations procedure to identify tenants for occupation of the property in accordance with their agreement with Colchester Borough Council.

However, Colne also have a significant private loan which has been used to provide the additional capital required to fund the scheme. They have an asset value within the project which is set at market value and is used to provide security against their private loans and sets their asset worth. For these reasons I would not agree to any change planning permission which fettered this asset value.

I trust this letter provides sufficient comfort to Colchester Borough Council to allow you to conclude the section 106 negotiations you are currently pursuing.

Yours sincerely

Steve Heywood
Regional Director (Iceni Homes)



Colchester Borough Council Development Control

Advisory Note on Parking Standards

The following information is intended as guidance for applicants/developers.

A parking space should measure 2.9 metres by 5.5 metres. A smaller size of 2.5 metres by 5 metres is acceptable in special circumstances.

A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.

The residential parking standard for two bedroom flats and houses is two spaces per unit. The residential parking standard for one bedroom units is one space per unit. One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction & Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control

If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.

The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control

All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops

Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office)
- which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments

Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways

Use for the sale of hot food for consumption off the premises.

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for any industrial process,
- being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions

Any use not including a residential use —

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,

(b) as a crèche, day nursery or day centre,

(c) for the provision of education,

(d) for the display of works of art (otherwise than for sale or hire),

(e) as a museum,

(f) as a public library or public reading room,

(g) as a public hall or exhibition hall,

(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

(a) a cinema,

(b) a concert hall, (c) a bingo hall or casino,

(d) a dance hall,

(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

Examples of sui generis uses include (but are not exclusive to):

theatres, amusement arcades or centres, funfairs, launderettes, sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyards or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3

For the purposes of Class C3(a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004.

Interpretation of Class C4

For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.