

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

**SUPPLEMENTARY AGENDA**

**Part A**

(open to the public including the press)

**Pages**

**. Amendment Sheet**

See Final Amendment Sheet.

**No Page  
Numbers**



# **AMENDMENT SHEET**

**Planning Committee  
19 February 2009**

## **AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED**

**LATE AMENDMENTS HAVE BEEN INCORPORATED INTO THIS  
AMENDMENT SHEET AND ARE SHOWN AS EMBOLDENED**

### **7.1 081951 – Former Rowhedge Port, Rowhedge**

#### **1. Add to the end of Reason 2:**

**“Buildings along the west boundary of the development site are proposed too close to preserved trees and would result in the removal of trees or pressure from future residents to remove trees”.**

- 2. The Councils Enterprise Officer has commented that the proposed café restaurant is too small to meet the requirements of the public attractor building envisaged in the development brief. The business space exceeds the 2% requirement of the brief. The development would have a significant employment generating impact on Rowhedge.**

**Following receipt of these comments Members should be aware that the reference to business space on Page 30 Paragraph 9.14 is incorrect as the proposed B1 space does comply with the brief.**

**The wording of Reason 3 therefore requires rewording as follows:**

**“The application fails to make any assessment of or identify community needs or requirements. It also fails to demonstrate that a thorough assessment of waterfront activities and uses has been undertaken. It fails to provide any detailed information regarding the future ownership/management of the waterfront area or any information regarding works to the river wall. The uses and activities proposed are considered to be inadequate to achieve an active public waterfront and the proposal is therefore contrary to policy CE8, L5 and L18 in the Adopted Review Colchester Borough Local Plan and Policy SD1, SD2 and SD3 in the adopted Core Strategy”.**

3. **Natural England has confirmed they have not considered the impact of moorings as this does not form part of the application, if they were proposed their impact would have to be considered in the Environmental Statement.**
4. **Since the report was drafted the architect has submitted a revised layout plan whilst it does not form part of the application it indicates that with further amendment and discussion it is likely we could progress towards a satisfactory layout.**

**7.3 090021 – 48 St Christopher Road, Colchester**

Since the time of writing the report, a response has now been received from ECC Highways Authority. They have no objection to the siting of the machine on the pedestrian footpath.

**7.4 081938 – 3 Priory Street, Colchester**

- **Comments have now been received from Environmental Control, requesting that the outside area be limited to silent Friday prayer, silent funeral prayers and Eid prayers, and also proposing a 1.8 metre high wall along the boundary with number 4 Priory Street, and that the existing 1.8 metre high fence along the boundary with number 3a be maintained as such.**
- **Amended Condition 1. The sentence relating to commencement of use is removed as the application is retrospective, and the condition is reworded thus:**

**“Within 28 days of this permission, details of screen walls/fences/railings/means of enclosure, etc shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the position/height/design and materials to be used. These details shall be agreed in writing by the Local Planning Authority and shall be implemented within 56 days of permission, and shall be retained thereafter.”**

- **Amended Condition 3.**

**“A permanent barrier shall remain in place between the former gardens of 2 and 3 Priory Street at all times, of such a height and position to prevent the passage of motor vehicles.”**

### Further information

At the Committee of 5<sup>th</sup> February, Members asked for further information regarding the following matters:

1. Boundary treatments;
  2. Levels;
  3. Number and frequency of persons using the buildings.
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1. Regarding boundary treatments, this is covered by Condition 1 which asks that such treatment be agreed. Environmental Control has already indicated that this should consist of a 1.8 metre high wall. Details of the planting are to be agreed, but Condition 2 has already stated that this should be to a depth of 1.5 metres. Combined, and taken from a ground level to be agreed by Condition 9, these measures are held to sufficient to deal with that particular issue.
  2. As mentioned in Point 1 these are to be agreed by Condition 9. The applicant has been asked to expose an area for the Members' site visit to clarify the depth of the concrete which has been laid down.
  3. The agent has supplied Colchester Borough Council with the following answers: "Numbers of worshippers 200 to 250. The Eid Festival is twice a year, Friday prayer once a week between 12.30 and 1.30. Funerals once a year difficult to predict 3 in the last 3 years. Children's class Sunday morning for 2 hours between 50 and 60 children attend."

The figure of 200-250 people is more than had been quoted in the application ("100 – 150 people for funerals") and this does raise some concerns. Your Officers contacted the Fire Safety Officers to see whether a fire certificate had been, or would be, issued for this number of people in these buildings. That organisation has sent us the guide "fire safety and security in places of worship" which states: 'Since the introduction of the Regulatory Reform (Fire Safety) Order 2005 in October 2006, fire certificates are no longer issued. Instead, the onus falls on those termed 'responsible persons' to take appropriate action to prevent fire and protect visitors and staff in the event of a fire.' Therefore, this yardstick no longer exists, and a judgement as to what is or is not acceptable within a single building or pair of buildings is a subjective one.

As earlier mentioned, complaints about noise and activity were received mainly in 2002, and one in 2004. It could therefore be argued that the level of noise and activity are not unacceptable at the moment, and that the main concerns are other than this – being security and privacy. If Members are satisfied that these are adequately dealt with by the proposed conditions, they are advised to approve this application.

## **Agenda Item 8 – Land at Turnpike Close, Old Ipswich Road, Colchester**

**A letter has been received from Solicitors, Holmes and Hills, acting on behalf of the owners of the site. It requests that their representations be put before Committee. The comments in the letter are set out below together with Officers' response in italics.**

**“You have given us just 3 working days to take our client’s instructions, advise accordingly and make representations. This is quite simply unreasonable and prejudices our client’s position. We note that the report to Committee is dated 5<sup>th</sup> February 2009 and therefore the relevant Officer could have informed us of the position prior to 13<sup>th</sup> February 2009. Further, the solicitor dealing with matter is currently away on annual leave.**

**In the circumstances we have been unable to take our client’s detailed instructions. However, we make the following general comments on behalf of our client:**

- 1. The Officer dealing with this matter is aware that Mr Palmer of our client has had a long period of ill health which has prevented him from dealing with this matter.**
- 2. The Council has provided no evidence to demonstrate that any vehicles that may be on the site are in direct breach of Clause 4.10 of the Unilateral Undertaking. Clause 4.10 provides that it shall not apply to vehicles present on the site being used in connection with the carrying out of the Approved Uses.**
- 3. It is clear from the report to Committee that civil action pursuant to S187(B) of the Town & Country Planning Act 1990 is being recommended. In all of the circumstances we do not consider that this matter is of such an urgent nature, or that harm of such a severe nature is being caused, to warrant proceedings for an Injunction and the inevitable costs of such proceedings.**
- 4. We note that the report states that if no action was taken the unauthorised use would become lawful at the end of ten years, after which no enforcement action could be taken. If this is indeed the case, as the Unilateral Undertaking is dated 8<sup>th</sup> November 2006 clearly any alleged breach is not of such an urgent nature to require proceedings for an Injunction as the period of ten years would not expire until 2016.**
- 5. The Council’s Legal Department will no doubt be aware of the overriding objective in Part 1.1 of the Civil Procedure Rules and specifically, Paragraph 4.1 of the Practice Direction – Protocols. In light of this and all that we say above we consider that it would be unreasonable for the Planning Committee to approve the recommendations contained in the report.**
- 6. Due to insufficient time and information that has been provided by the Council our client is not in a position to make full representations to the Planning Committee thus prejudicing our client’s position.”**

***The owners have had ample opportunity to make representations to the Local Planning Authority regarding this breach in response to correspondence from Officers and requests for site inspections. The owners have been unwilling to assist Officers in their enquiries by not allowing access into the enclosed area where the vehicles are stored in spite of advance notice of such visits. This lack of co-operation and the continuance of the breach has led Officers to take this action.***

- 1. The illness of one of the owners is noted, however, no evidence has been provided to demonstrate why this has precluded them from dealing with the breach or seeking any mitigation from legal action.***
- 2. The storage of vehicles and other structures unrelated to the approved use of the site is expressly forbidden in the Legal Agreement. Officers have no doubts that the storage of vehicles on the site is not related to the approved uses and is therefore not lawful. The owners have not provided any evidence to the contrary.***
- 3. This action is being pursued on the advice of the Council's Solicitor, who has seen and agreed the report.***
- 4. There is no justification for delaying legal proceedings given the clear breach of planning control.***
- 5. This issue can be addressed by the Council's Solicitor in implementing the legal action. Should it be necessary to refer the matter back to Committee this will be done.***
- 6. The owners have had considerable time to make representations to the Local Planning Authority in respect of this matter and have not done so. The nature of the breach was brought to their attention together with the possibility of legal action in a letter dated 8<sup>th</sup> October 2008. However, in view of the issue raised concerning notification Members may wish to defer the item till next time to allow representation by or on behalf of the owners.***