

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
26 May 2011 at 6:00pm**

SUPPLEMENTARY AGENDA

Part A

(open to the public including the media)

Pages

. Amendment Sheet

211 - 235

See Amendment Sheet attached.

AMENDMENT SHEET

Planning Committee
26 May 2010

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

- 7.1 090231 Land and other property north of London Road and west of the A134 including The Chantry, The Chantry Lodge, Hillside and Nursery Site

The following letters of representation have been received after the submission of the Planning report:

Tim Yeo MP

A second letter of objection has been received from Tim Yeo MP. The comments made in this letter can be summarised as follows:

- Confirms his strong objection to this application.
- Believes that the impact this proposal will have on the local area will be adverse and the claimed tourist benefits do not justify its approval. The area, which includes the AONB, already has a strong appeal for tourists and offers many opportunities for them to enjoy the area that does not infringe the enjoyment of local residents. The proposal includes a significant amount of retail and food and drink components the scale of which is at odds with the beauty and tranquillity of the area.
- The development will cause an unacceptable increase in traffic.
- There is danger that the scheme may not be viable in the long term as recognised by the NLP Appraisal which raises concern about the long term viability of the tourism attraction. If the scheme is not economic there may be a request to make it bigger.
- The impact of this development cannot be overestimated nor easily reversed and it is therefore recommended that this application is refused.

National Trust

The National Trust has previously submitted strong objections to these proposals both as an individual and as a member of the Joint Advisory Committee for The Dedham Vale AONB and Stour Valley Project.

Notwithstanding the additional information, the National Trust continues to have the same strong overriding concerns about the promotion of this site for “Constable” related tourism development.

In particular the National Trust is concerned that the development will fly in the face of established Planning and Visitor Management policies for the AONB which aim to manage and control the extreme visitor pressure for Constable related heritage sites thereby ensuring:

- The conservation of the character and setting of the Grade 1 Listed Flatford Mill and Grade 2* Listed Willy Lotts cottage.
- Protection of the visual and environmental qualities of the Dedham Vale (designated as of national importance as an Area of Outstanding Natural Beauty)
- Maintenance of the quality of life for people living in the area who are most affected by traffic and congestion along their rural roads and village streets.

John Constables paintings provide nationally and internationally renowned images which capture the essence of a bygone rural England and attract visitors to Flatford and the Dedham Vale from across the globe. Visitors to the area can experience the ‘spirit’ of place of ‘Constable Country’, captured in the beauty and tranquillity of the rural landscape and the key listed buildings within it associated with Constables paintings. Consequently a key element of visitor management for the area is to retain this ‘spirit of place’ by ‘playing-down’ the promotion of Flatford and its surroundings as a tourist destination.

The inclusion of Constable related “tourism” within the Horkesley Park application proposes a completely conflicting approach which would be likely to promote Constable thereby encouraging large numbers of additional visitors for which the provision of parking and access is inadequate. It thus follows that it will be likely to increase congestion and unauthorised parking along the narrow rural roads and within the small villages and towns of the Dedham Vale to the detriment of the enjoyment of visitors and residents as well as the quality of the AONB landscape.

The remote rural character of the area will in itself lead most people to drive to their destination and it is felt the provision of a hopper bus as a part of the Horkesley Park application will do little to relieve the pressure for visitors to arrive by car.

For these reasons The National Trust does not consider the additional supporting information submitted by the applicant will be sufficient to overcome these concerns and stands by the comments set out in the original letters of objection submitted in 2009.

Suffolk Preservation Society

A further letter of objection (dated 16 May 2011) has been received from the Suffolk Preservation Society with the request that their representations are presented to the Planning Committee at its meeting on 26 May 2011. The objections set out in the letter can be summarised as follows:

- Unjustified development in the countryside of acknowledged national importance
- Harmful to the essential qualities of the Dedham Vale AONB and Stour Valley
- Unsuitable location and harmful to the wider road network
- Significantly harmful to the setting of nationally important listed buildings
- Contrary to relevant adopted local and national planning policies
- Claims unsupported by independent experts analysis commissioned by Colchester Borough Council
- Scheme harmful to environmental quality and fundamentally unsustainable

Nayland With Wissington Parish Council

A further letter of objection has been received from the above Parish Council:

The very detailed and lengthy planning application has been read fully by this Council. This Council does not question the basis of validated data. Rather, it is the selection of data and the judgements made about the overall impact of the development on the AONB that should be questioned. This Council has also been informed by other relevant documents / correspondence relating to this application.

The Parish Council objects to this application on the grounds that it will have a detrimental impact on the AONB.

Only the main buildings and car parking areas lie outside the Dedham Vale & Stour Valley AONB. 75% of the application site lies within the AONB. The proposal aims to develop as a considerable visitor attraction with proposed visitor numbers of 485,000 per annum. As such, its impact on the AONB has to be treated as a whole. The inter-connectivity between its parts leads the Council to object as a whole, by virtue of its overall impact on a protected landscape.

This Council acknowledges that the Vale's 'Natural Beauty' has been physically shaped and altered by man - farming; building, roads and land management. This AONB landscape has not been preserved in aspic. It has been in the interests of its medium and long term future and in order to strike a balance between legislation that encourages economic growth or diversification and legislation that conserves this nationally important landscape. In this application, the balance between access, a major attraction for tourists, conservation, interpretation & 're-creation' is a crucial consideration. Despite the application's aim of providing conservation and preservation initiatives, the overall impact of the proposed Heritage Centre's 're-creation', interpretation facilities will further harm the balance of conservation and contradict the very statutes of the AONB. It is true that nationally, larger designated AONBs have their own Interpretation Centres (many of them not commercially driven) but not on this scale and not with such large integral retail and hospitality areas providing a major attraction and being crucial to making the visitor attraction viable.

In its objection to this application, the Parish Council believes that the application, as presented, fails to fulfil the following National Planning Policies affecting AONBs (National Planning Policy Statement 7. 22-23). Whilst the application may aim to fulfil some of the permitted development criteria, and provide detailed evidence for such fulfilment, the overall impact, created by the scale of the whole application, is in conflict with the reason for the establishment of the AONB.

The Council believe that the proposal is contrary to Dedham Vale & Stour Valley Management Strategy Policy SP 4 (*promote the development of small-scale businesses*), Policy SP 5 (*Ensure that any business related development brings economic benefits to the local area and does not adversely affect the high environmental value of the area*), Policy EA 2 (*Pursue opportunities to increase quiet informal public access to enjoy the area, in keeping with maintaining the tranquillity of the valley*) Policy EA 4 (*Maintain the tranquillity of the area*), Policy EA 5 (*tourism to become more sustainable*).

The Parish Council believes that the application and its appendices also fail to make a convincing case set against the Colchester County Borough Development Policy Regulation Policy DP20: Dedham Vale Area of Outstanding Natural Beauty. This application is not one for 'informal' recreation and tourism and its scale and impact is inappropriate for this nationally distinctive landscape. CBLP 02 and CBLP 03 are also relevant.

The prospective Colchester Local Development Framework contains Preferred Policy DP8 which states *"In rural areas, suitable locations for tourism development include those where the development can 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."*

This application, as a visitor attraction and as a whole, is incompatible with the rural character of the surrounding countryside and will cause harm to its open nature. The prospective Colchester Local Development Framework contains this view: *"It is essential that AONBs are conserved and enhanced. However it is acknowledged that the Dedham Vale is a 'living' landscape which needs to be able to adapt, change and respond positively to changing social, economic and environmental issues (climate change, declining agricultural sector, recreational pressures) to meet the needs of the local community. In exceptional cases development proposals that help maintain the economic and social wellbeing of the AONB will be supported where these do not detract from the special character/quality of the AONB."*

A selling point for this proposed development appears to be the 'unspoilt countryside'. In itself, this development will affect this. Tourists currently using facilities in Nayland with Wissington (e.g. Gladwins Farm) report that they find the area attractive because of its 'unspoilt beauty'. A local B & B owner has informed this Council that on balance, the impact on the AONB of the proposed development would not enhance his business.

This development would detract from the special character/quality of the AONB and the Parish Council objects to the application. It is important that the quality of this nationally important Vale is not compromised by meeting other needs.

Objection to the application on grounds of detrimental traffic impact within the AONB

The minutes of the Parish Council & correspondence with Suffolk County Council over the last 10 years, provide evidence of the problems of parking, traffic congestion and road safety issues.

The application contains evidence that is used supporting the view that maximum traffic flow generated by the proposed Centre would be at off peak times, i.e. when traffic through the AONB is 'off-peak'. The increase in traffic flow (at the rate quoted within this proposal) at weekends etc. however, would be detrimental to the AONB which remains at its tranquil best during the weekend and in school holidays. The creation of heavier traffic densities through the AONB, even by the projected increase, impinges detrimentally on the very reasons for the AONB's creation as a statutorily protected area.

The application fails to appreciate the congested nature of the roads within the centre of Nayland. These roads are quieter at the weekends in the winter but the Parish Council believes that 'knock on' tourist traffic generation will occur, despite the applicant's travel plans. There is no legislation binding an adherence to well meant Traffic Plans. The application site is near to land owned by the applicant company at Nayland. The Anchor Inn and the Anchor Heritage Farming Project are operated by the applicant company. Whilst links between infra-structure don't feature in this application, planning regulations don't prevent the promotion of Nayland, its Constable Painting, its inn and Heritage Farm Project in order to lure tourists from the focal attraction-Horkesley Park. The scale of the 'honeypot' centre, attracting 485,000 tourists each year, and being the launching point for cycling routes and permissive paths will change the nature of the Vale. The poorly maintained and narrow by roads are part of the character of the AONB but not suitable for promotion as routes around/through Nayland or Wissington.

The impact of the proposed development in relationship to other developments that are in the pipeline in Colchester and Suffolk need to be adequately assessed by Colchester Borough as part of its judgement about the added impact on the AONB of this application.

Brown tourist directional signs should be limited to protect the AONB. Whilst they are directional indicators for tourists, their construction can merely be for promotional purposes.

In raising these objections to the generation of traffic impact created by this application, the Parish Council is mindful of the Dedham Vale & Stour Valley Management Strategy Policy TT3 (Involve local interests and take account of the special qualities of the valley in traffic management) Policy TT7 (Sustainable transport solutions are required to minimise the dangers of traffic on local populations in traffic hotspots and visitor areas), Policy TT8 (Give serious consideration to the transport implications of development proposals in the valley) and Colchester Borough Local Plan Policies DC1. The amount of traffic also relates detrimentally to those policies listed above that aim to preserve the tranquillity of the AONB. PPG13 also applies.

On the basis described in this application, the traffic, generated through rural by-roads to other 'honey-pot' centres such as Flatford and Dedham is unacceptable to this Council. The promotion of rural routes on such a scale, again attacks the tranquillity of the AONB rather than enhancing it.

There is inadequate information concerning the generation of delivery/servicing vehicle journeys to and from the site.

The generation of traffic owing to delivery of ordered retail items by post, telephone or internet through courier service collection etc. is inadequately addressed.

The operation of any Travel Plan is not a mandatory part of planning regulations, conditions or employment law.

The proposed enhancement of public transport to Great Horkesley and Nayland is visionary but vague.

The generation of traffic for evening events will also detrimentally affect the AONB as a step too far.

The PC raise an objection to the application on grounds of the detrimental impact of the centre as a visitor/tourist attraction

Nayland's Conservation Area, with its 110 listed properties; its AONB location, its layout, its absence of any parcels of land for further development, and limited infra-structure, are all ill-suited to growth in the quantity of focused tourism, generated by the scope & vision of this application. The Church's alter-piece by John Constable, the Anchor Inn and associated Heritage Farm, would provide focus for the proposed ancillary customer Hopper Bus, which is indicated as being able to negotiate our village road network but evidence on the ground indicates otherwise. The evidence to support the application fails to convince that the economic gains outweigh the costs and losses to the AONB and Nayland Conservation Area.

The evidence, selected & provided in this Application by consultants, ultimately fails to convince, that the proposed Heritage Centre, by virtue of its honeypot attraction of tourists and visitors and scale of operation will not have a detrimental impact on the current Dedham Vale & AONB Landscape. It aims to interpret a landscape for tourists and visitors that its very scale threatens.

Other planning considerations

The idea of the Chantry as an 'art outstation' as a centre for the further interpretation of the Suffolk landscape is laudable in itself, but there is no detail about the actual arrangements that would secure such art work. The lack of information concerning a business, curatorial and interpretation plan for this outstation weakens the applicants' case.

Aspects of the mixed restaurant operation of 787 covers needs further clarity. The Parish Council believes that there is also a lack of clarity concerning the amount and operation of evening functions.

The inclusion of the Secretary of State Inspector's 2001 decision on the application for a commercial and retail operation at Trentham Gardens, Staffordshire is not strictly relevant to the consideration of retail operations within a statutory AONB.

The height of the hedges bordering Rights of Way could be lower, allowing less restricted views whilst controlling access.

If the Council is minded to grant consent, it is essential that any planning permission be linked to strict conditions that ensure that possible detrimental effects on AONB are mitigated. These should include clear conditions concerning the:

1. nature and limitations of the retail and hospitality operation avoiding any prospect of future open access to retail areas
2. non re-imburement of entry fees as part of any retail operation.

Conclusion

This Council believes that the different elements of this scheme are interwoven to make a whole. Its scale and activities begs the crucial question of the purpose of a statutory Area of Outstanding Natural Beauty. It is a question of national significance. "What makes an AONB nationally special?" This visitor centre and associated commercial activities compromise the governing tenets of the AONB.

It is not easy for this Council alone, to make judgements on how members of the public and visitors to East Anglia can be enabled, to appreciate the unspoilt countryside without spoiling it. Local Plan or Development Frameworks reflect that smaller scale development can let infra-structure develop in a more gradual and sustainable way. All planning authorities will need to judge the limits. However, there has to be curtailment if our area is to remain distinctive-different from the countryside elsewhere. The current pressures and conflicts presented in other applications placed before this Council, confirm that a balance is difficult to reach and when compromises are made, often other

problems and pressures ensue from those successful applications, that in turn, need further planning control to deal with. It will be impossible to turn the clock back for the Vale if this particular development presented is approved.

This Council always presumes that a Planning Application should be approved unless there are factors and implications that should prevent it going through. This is how the Council approached this application before ultimately deciding that, as a whole, it poses a serious threat to the AONB. As such, the Council objects.

L Watson Little Horkesley

The value of tourism to Colchester is the number of genuinely extra visitors it brings to an area. The economic figures are only as good as the underlying assumptions. The developer claims that 75% of visitors to Horkesley Park will be extra visitors. On their assumption none would have visited the Colchester area. If this assumption is not accepted then you have to question the figures for net jobs.

Stour Valley Action Group

We note that on 6th May and again on 10th May 2011, Gittins Planning Consultants drew your attention to the Ministerial Statement Planning for Growth prepared by the new Minister for Decentralisation. We have studied this statement and also taken advice on it from Tim Yeo MP.

He concurs with us in our understanding that the wording of the statement makes it entirely clear that this go-ahead to developments that provide economic growth is dependent upon the proven sustainability of the development, not just in the environmental sense but also in the economic one.

We believe that the simple lack of environmental sustainability caused by the location of the development and thus its heavy reliance on visitors using private cars for transport, in addition to the Buntings' failure to convince expert opinion of the economic viability of the project, mean that this policy has no application in the case of Horkesley Park.

Natural England

Natural England have discussed the applicant's "Response and Answer document" (submitted 24 May 2011) with officers. Natural England note that this document repeatedly states that '*Natural England has indicated that with a package of mitigation measures it would be satisfied the Proposals would not have a detrimental impact on the Dedham Vale AONB.*'

Natural England wish to confirm that that they have only ever said it may be possible to mitigate and avoid impacts to the AONB. They have also clearly stressed that the proposals as they stand are not sufficient to satisfy them that the proposed development will not adversely impact upon the AONB.

In their response in January 2011 they stated (underlining for emphasis):

‘Natural England believes that there is potential for a package of mitigation measures to be assembled that would sufficiently satisfy us the proposed development would not have a detrimental impact on the Dedham Vale AONB, however until these are comprehensively formalised and secured, a precautionary approach needs to be taken.....

Following receipt of further information Natural England believes that it may be possible to design appropriate mitigation into the proposal to sufficiently ensure that there would be no adverse effects on the features of interest for which the Dedham Vale AONB is designated. However until it can be demonstrated that the proposed mitigation measures can be formalised and secured as planning conditions we sustain our objection of the 22nd April 2009.’

Nowhere in Natural England’s responses (both of 2011 and 2009) did they state it would be possible to secure appropriate mitigation for this sensitive location; it is indicated it might be. Furthermore Natural England clearly state that they have still has serious concerns about the enforceability of some of the proposed mitigation measures, particularly those associated with the protection of the nature and tranquillity of the AONB in light of the anticipated number of visitors.

Natural England note that (on page 125) the report states ‘A fully comprehensive Mitigation and Management Plan has now been completed in respect of Natural England’s requests and recommendations. A response to this is expected from Natural England within a few weeks.’ Natural England wish to confirm that they have not been consulted on this document. Natural England also recommend that any mitigation plan produced goes into the public domain for comment by all stakeholders (including bodies such as the Dedham Vale AONB JAC and Parish Councils) and not just Natural England.

Additional Document submitted by the applicant

A 141 page 'Response and Answer Document' was submitted by the applicant on 24 May 2011 at 1542. It is stated that this document is intended to provide responses and answers to the comments, matters and issues received by CBC from Statutory Consultees, other bodies and the general public from 18 February 2009 to 17 May 2011. This document essentially reiterates information and other documents previously submitted by the applicant. The contents of the document does not include any response / answers to matters of planning policy as these are covered by other submissions.

Two further additional documents were submitted by the applicant at 16.31 on 25 May 2011. These are:

1. Commentary on Officer Report to Committee incorporating Counsel's Opinion – Edward Gittins & Associates on behalf of Bunting & Sons 25.05.2011
2. Annex 1 (to the above) – Counsel's Opinion ref. CLM-119776 – sent to Edward Gittins 24.05.2011.

Officer's Report

Paragraph 4.13: The diameter of the rotunda is 32m not 50m.

Paragraph 3.8 should read "Vehicular access into the site (excluding several existing field entrances) is currently provided from three access points on London Road; two accessing the Nursery and one to Hillside and The Chantry, the latter some 15m from the A134 junction.

For clarification:

The current *Dedham Vale AONB Management Plan* covers the period 2010-2015; this document supersedes the 2004-2009 Management Plan which was in effect during the earlier period of consideration of this proposal. The main policy aims and objectives of the updated management plan are consistent with the policies contained within the previous management plan.

The key policies of the 2010-15 Management Plan are:

Theme: Landscape, Farming and Biodiversity

- LFB2- Encourage changes in land-use to reflect local character assessments
- LFB4 – Seek to protect the tranquillity of the area including its setting.

Theme: Settlement & People

- SP2 - ensure that business development brings economic benefits to the local area and does not adversely affect the qualities including the setting of the AONB.
- SP5 - reduce or mitigate any negative impacts of tourism.

Theme: Enjoying the area

- EtA2 – Where new visitor facilities are provided within or affecting the area they are of appropriate scale and nature to the AONB and Stour Valley and will not adversely affect the integrity of any European site.
- EtA5 – Identify opportunities to increase quiet informal recreation and public access that not compromise the tranquillity and natural beauty of the area

Theme: Traffic & Transport

- TaT2 – reduce the negative impact of visitor and tourist transport
- TaT5 – ensure that the transport implications of any development in or near the area, in particular the AONB take account of its special qualities

Paragraph 4.13: The diameter of the rotunda is 32m not 50m

Paragraph 3.8 should read “Vehicular access into the site (excluding several existing field entrances) is currently provided from three access points on London Road; two accessing the Nursery and one to Hillside and The Chantry, the latter some 15m from the A134 junction”.

Application 090231 - Horkesley Park Heritage and Conservation Centre

Commentary on Officer Report to Committee incorporating Counsel's Opinion

Edward Gittins & Associates on behalf of Bunting & Sons

Introduction

We set out below our comments on the Officer Report (OR) relating to planning policy which identify various policy matters we consider are prejudicial to a fair consideration of the Planning Application.

Planning policy is central to the determination of whether the scheme is in accordance with or constitutes a departure to the Development Plan. The correct approach is to consider the Development Plan as a whole but particularly in relation to the most apt policies. Conflict with one part of the Development Plan does not mean that a proposal should be considered as a departure to the Development Plan as a whole.

Any review of policies must take account of all parts of the Development Plan which in this case comprises the East of England Regional Plan (RSS) and the Colchester Local Development Framework (LDF). We advised the Applicants that we have concerns about the handling of policy aspects in the OR and, consequently, the Applicants have sought legal advice on the correct approach to policy in this case from Mr. Christopher Lockhart Mummery QC. Counsels' Opinion on this matter is therefore attached as Annex 1. This Opinion, inter alia, states:-

“7. *Nowhere in the report is there any attempt to balance those respects in which it is contended that the development breaches countryside and other policies, with those respects in which the development complies with, for example, tourism and economic policies, and reach a conclusion in relation to the development plan as a whole. Accordingly, the report does not present to members the correct process for determining this application.*”

Main Submissions

In determining any Planning Application, it is first necessary to establish whether the proposal is in line with the Development Plan or whether it represents a departure to adopted policy. This is a most important matter of process as clearly a 'departure' must demonstrate that its non-compliance with planning policy is justified having regard to all other material considerations.

In this regard, the Applicant has consistently presented the Horkesley Park Application as one that can be considered in line with the Development Plan which currently comprises the East of England Regional Plan (RSS) and the Colchester Local Development Framework (LDF). This is because RSS Policy C2 provides that:-

“Exceptionally the specific attributes of a rural site may make it appropriate for a regionally strategic proposal.”

The primary relevance of Policy C2 is acknowledged in paragraph 8.83 of the OR where it states that: *“Policy C2 has served as the key policy guiding views on the proposal because its scope dovetails with the nature and scale of the proposal.”* However, this acknowledgement fails to be reflected in the evaluation of policy in determining whether the proposals constitute a departure to the Development Plan. Indeed, the OR repeatedly and incorrectly misrepresents the Application as a departure to the Development Plan and other non-statutory guidance as set out below:-

1. Paragraph 4.5 of the OR states that:-

“The Application has been treated as a departure from the adopted Development Plan as it constitutes a major development on white land – i.e. land that is not allocated a land use.”

This reasoning alone does not justify treating the proposal as a departure not least because many types and scales of tourism and recreational development can take place on unallocated land within the countryside in line with current policy.

2. Paragraph 8.58 of the OR states that:-

“The Application is not considered to accord with a number of policies within the LDF, neither has there been any attempt to allocate the site through the plan making process. Therefore in accordance with PPS1 the Applicant would need to demonstrate the material considerations which support granting permission as a departure to the Development Plan.”

Dealing with these two issues in turn, the reference to PPS1 is presumably to paragraph 28 which states that: *“Planning decisions should be taken in accordance with the development plan unless other material considerations indicate otherwise.”* The LDF is, however, only one half of the Development Plan which also includes the RSS. The Officer’s suggestion that the proposal constitutes a departure due to alleged conflict with a number of LDF policies therefore constitutes a fundamental error of process and perpetuates an earlier error by Strategic Policy and Regeneration (SP&R).

In this earlier case, SP&R indicated the proposals constituted a departure because of conflict with a number of policies within the Development Plan, but this has now been narrowed down in the OR to refer to LDF policies only. Nevertheless, in response to that earlier error, the Applicant’s Counsel stated in his Opinion dated 1st October 2009 (submitted as part of the Applicant’s Combined Response to CBC – June 2010) that:-

“This is a clear error of process. Breach of a number of specific policies, especially where those policies are not formulated, nor apt, to deal with a regionally significant proposal, does not mean that the proposals are a departure from ‘the development plan’. The proposal needs to be considered against the development plan as a whole, with the joint recognition of the ‘key’ relevance and status of policy C2.”

This is re-emphasised by Counsel in the latest Opinion in paragraph 4 (Annex 1).

With regard to the second issue raised in paragraph 8.58 of the OR, namely that there has been no attempt to allocate the site through the plan-making process, this intimates some deficiency in the way the scheme has been formulated and promoted. The fact remains, however, that the East of England Plan was adopted in May 2008 whilst the current Application was not submitted until February 2009.

Moreover, it was known with a high degree of certainty long before May 2008 that the Regional Plan, when adopted, would contain a strategic policy which referred to the provision and location of strategic recreational and cultural facilities. It was also known prior to the submission of the current Application that Core Strategy (CS) policies would focus on non-strategic tourism and cultural developments and that such local policies could not place a bar on regional scale facilities as this would conflict with RSS Policy C2 which enabled schemes of regional significance to come forward. There was therefore no requirement or necessity for the Applicants to promote Horkesley Park through the LDF as the principal policy context which would enable it to come forward as a regional scheme had already been adopted.

Notwithstanding the above, it should be noted that the Applicants participated in the formulation of both the CS and Site Allocations DPDs and made representations on recreational and countryside policies as well as in relation to the formulation of the Stour Valley Management Plan. It should also be noted that neither the CS nor the Site Allocations DPD make provision for any tourism land use allocations or notations.

Paragraph 8.61 of the OR states that:-

“The proposal fails to comply with PPS4 because of its countryside location and the scale of the proposed development.”

PPS 4 Policy EC6 is the main general policy for Planning for Economic Development in Rural Areas, with Policy EC7 being more particularly relevant as it deals with Planning for Tourism in Rural Areas whilst seeking, inter alia, to protect the countryside. PPS4 does not bar tourism development in the countryside whilst neither Policy EC6 nor EC7 deal with the issue of scale.

Paragraph 8.84 of the OR confuses a “departure to policy” with an “exception to policy”. The wording of the Policy C2 states that: *“Exceptionally the specific attributes of a rural site may make it appropriate for a regionally strategic proposal”*.

This policy therefore envisages there may be exceptions to the norm to allow regionally significant proposals to be provided in the countryside as well as in built-up areas. The OR concludes, however: *“The policy (C2) clearly indicates that Horkesley Park represents a departure from the general preference for new development to be located in town centres and as such needs to demonstrate that exceptional circumstances warrant its specific location in a nationally designated area.”* This is incorrect as the wording of the policy specifically allows for an exception to be made which is quite different from a departure which would apply if a proposal is contrary to the policy itself. The OR therefore incorrectly advises Members on the status of the scheme in relation to the Development Plan.

The OR then states: *“It is not considered that the applicants have provided evidence to make the case that it is a regionally significant proposal with sufficient justification to warrant a departure from policy.”* It is clear from Counsel’s Opinion of 1st October 2009, Paragraph 4 that it was common ground between the Applicant and the Council that RSS Policy C2 *“encapsulates the key issues needed to judge the scheme”*, and that it sets one of the *“key benchmarks for assessment of the proposal.”*

The Council now casts doubt on whether the scheme is regionally significant such that it can be assessed in the context of RSS Policy C2. A large body of information has been submitted indicating why the scheme constitutes one of regional significance. The OR does not evaluate the arguments put forward in support of the relevance of RSS Policy C2 or its case for stating that it does not so qualify. The final sentence of paragraph 8.84 repeats the error in relation to *“a departure from policy”*.

Paragraph 8.95 of the OR alleges that, in relation to CS Policy CE1 - Centres and Employment Classification and Hierarchy, that: *“The Horkesley Park proposal however is not considered to have low travel needs or low impacts and is therefore considered to be contrary to policy”*. CS Policy CE1 cannot undermine the wording of RSS Policy C2 which envisages tourism and cultural schemes and associated employment being found within rural locations.

Paragraph 8.100 of the OR does not evaluate the proposal against the seven criteria set out in CS Policy ENV1 but nevertheless claims that: *“...the proposal is not considered to be in accord with the requirements of ENV1 for new rural development to demonstrably satisfy seven criteria justifying it as an exceptional case”*. Moreover, where development needs, or is compatible with a rural location, the wording of ENV1 does not regard such development as “exceptional”.

Paragraph 8.107 of the OR interprets Development Policies (DP) Policy DP22: Dedham Vale Area of Outstanding Natural Beauty to exclude Horkesley Park from its interpretation of “public enjoyment” and “informal recreation”. There is no reference to “informal recreation” in the adopted version of the policy and the OR is referring to a now superseded version of the policy. The “free access” point is not accepted.

Paragraph 8.130 of the OR quotes from the Nathaniel Lichfield and Partners (NLP) Appraisal which states *“There is a policy presumption against large scale development in the countryside”*. This is entirely incorrect.

In dealing with The Policy Context, paragraph 12.49 of the OR states that: *“The submitted application is not considered to accord with land allocations as well as a number of policies within the LDF”*. On this basis the OR advises that: *“...the applicant needs to demonstrate the material considerations which support the granting of permission as a departure from the development plan”*. This approach conflicts with Counsel’s advice set out in Annex 1.

Paragraph 12.52 of the OR states:-

“A development promoted as a regional scheme like any other scheme should be evaluated for its overall compatibility with the strategic spatial policy for the area.”

Whilst we agree with this statement, there then follows a reiterated remark which appears to criticise the failure to promote Horkesley Park as a strategic scheme during the preparation of the CS. This appears to be an attempt to discredit the proposal but is not a material planning consideration.

Paragraph 12.53 of the OR does not fully explain the point made on behalf of the Applicant in relation to certain policies being less apt to deal with large scale schemes. The exact wording (provided in the Applicant’s Supplementary Policy Statement submitted following the revocation of the RSS - July 2010) was as follows:-

“The position is that, in confining their wording to embrace small and medium sized schemes only, Core Strategy Policies are not apt to deal with large scale schemes – a view endorsed by Queen’s Counsel Opinion and Legal Advice.”

Paragraph 12.54 of the OR states:-

“Policy ENV2 of the Core Strategy and Development Plan Policies DP9 and DP10 are not aimed at large scale proposals such as Horkesley Park because they are not considered necessary or appropriate in the countryside.”

This statement ignores RSS Policy C2 and indicates that the Council maintain that their LDF policies alone are sufficient to reject the scheme. For the Council to state that large scale tourism schemes are not considered necessary or appropriate in the countryside flouts the Council’s own Development Plan of which the RSS forms a

part. The wording is also in conflict with Counsel's advice on the application of policy provided at Annex 1.

Paragraph 12.55 of the OR states:-

“The Council does not therefore share the view of the applicant that the adopted local development plan policies are not apt to deal with this application. This is a view shared by the coalition government who have promised to radically reform the planning system”.

The point being made on behalf of the Applicant was that none of the LDF tourism and countryside policies deal with large scale schemes.

The OR goes on to say *“The intended abolition of Regional Spatial Strategies and the proposal for a simple and consolidated national planning policy framework gives communities far more ability to determine the shape of their places using locally adopted planning documents.”* Whilst this may be the position in due course when the Localism Bill is enacted, the manner in which this is introduced into the report fails to reflect the current policy context by wrongly intimating the supremacy of LDF policies over RSS policies.

Paragraph 12.56 et seq. The Nature of the Development

It is unfortunate that this section of the OR, which sets out the nature of the development, does not feature until page 107 of the OR. We consider it should have been included in the descriptive sections of the Report at the front of the document in order for Members to have a full appreciation of the scheme prior to the OR's evaluation.

Paragraph 12.70 of the OR states that:-

“The July 2010 Planning Policy Response submitted by the Applicant addresses (PPS) Policy EC7, but the argument is not considered to provide a justification for additional provision being made in a popular tourist area given its environmental sensitivity.”

The OR does not inform Members what the arguments were.

Paragraph 12.84 et seq.

The OR now distances the Council from acknowledging Horkesley Park as a scheme of regional significance. This matter was common ground at an earlier stage in the

Application process. The current view appears to contradict the statement made in paragraph 8.83 of the OR which acknowledges the relevance of Policy C2.

Paragraph 12.116: We consider the nine aims of Horkesley Park would usefully have been set out earlier at the beginning of the Report rather than on page 126.

Paragraph 12.128 of the OR states:-

“The development plan policies do not indicate a policy need for a development of the scale of Horkesley Park”.

This is misleading as the Development Plan does countenance major schemes and those of regional significance.

Paragraph 12.136 of the OR states:-

“While the EETB support for this proposal is acknowledge(d), it should be noted that this organisation is in the process of winding down as the Localism Agenda replaces the former government’s regional agenda.”

This in no way devalues EETB’s representations.

Paragraph 12.155 of the OR states:-

“The Council’s Spatial Policy Team state the Horkesley Park development is not considered to meet the criteria set out in Development Policy DP10 due to its large scale and the fact that it is not compatible with the rural character of the surrounding area.”

However, the relevant section of the policy states: *“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.”*

The OR makes no reference to specific harm. It should be noted that the Policy requires proposals to be small scale only where accessibility is poor whilst there is no specific bar on larger scale proposals.

Paragraph 12.179 of the OR

The reference to the Ministerial Statement of 23rd March, does not include key

reference to the importance to be attached to jobs and growth, namely:- *“The Secretary of State for Communities and Local Government will take the principles in this Statement into account when determining applications that come before him for decision. In particular he will attach significant weight to the need to secure economic growth and employment.”*

Also: *“The Government’s top priority in reforming the planning system is to promote sustainable economic growth and jobs. The Government’s clear expectation is that the answer to development and growth should wherever possible be ‘yes’, except where this would compromise the key sustainable development principles set out in national planning policy.”*

Counsel’s Opinion in Annex 1 confirms that the OR underplays the significance of the Ministerial Statement.

Section 14.0: Recommendations

Reference to and handling of policy in the Recommendations conflicts with the correct procedure for assessing the Application in relation to the Development Plan as set out in Counsel’s Opinion in Annex 1.

25th May 2011

OPINION

1. I am asked to advise in relation to the process undertaken in the report of the planning officer to the Planning Committee of Colchester Borough Council for its meeting on 26 May 2011. The report relates to the planning application for the proposals at Horkesley Park.

2. It is not my purpose to deal with the merits of the proposals, or the views of the planning officer on them.

3. The first, and more important, matter of process that needs to be considered is the stance taken in the report relating to the compliance or otherwise of the proposals with the development plan. The legal position on this is quite clear, and has been since the decision of the House of Lords in City of Edinburgh Council v. Secretary of State for Scotland [1997] 1 WLR 1447. In any given case, there will be some aspects of the development plan which support the proposal, and some aspects which will point in the opposite direction. The decision maker **“will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it”**. The matter was put in the following way in R (Milne) v. Rochdale Metropolitan Borough Council, 31 July 2000:

“In the light of [the above] decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be “in accordance with the plan”....For the purposes of section 54A it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein”.

4. In my earlier Opinion dated 1st October 2009 I commented on the view expressed by the Spatial Policy and Regeneration Officer of the Council to the following effect:

“...the proposal is not considered to accord with a number of policies within the development plan, so the Applicant needs to demonstrate the material considerations which support granting permission as a departure from the development plan”.

I stated:

“This is a clear error of process. Breach of a number of specific policies, especially where those policies are not formulated, nor apt, to deal with a regionally significant proposal, does not mean that the proposals are a departure from “the development plan”. The proposal needs to be considered against the development plan as a whole, with the joint recognition of the “key” relevance and status of policy C2”.

5. The duty to consider the development plan as a whole, and not specific parts or specific policies of the development plan, as interpreted by the above decisions, is now expressed in section 38(6) of the Planning and Compensation Act 2004.

6. I find it very surprising that this same error is consistently repeated in the current report. There are many such references, but the following will suffice. Paragraph 12.49 states:

“The submitted application is not considered to accord with land allocations as well as a number of policies within the LDF... Therefore, in accordance with the above statutory requirement and PPS1, the Applicant needs to demonstrate the material considerations which support granting permission as a departure from the development plan”.

The error runs through the report, and is repeated in the Conclusions:

“The Horkesley Park development is located on unallocated land and runs contrary to a number of national and local planning policies and guidance”.

Beneficial impacts are considered with a view to seeing whether they justify “not determining this application in accordance with the development plan and its policies”.

7. Nowhere in the report is there any attempt to balance those respects in which it is contended that the development breaches countryside and other policies, with those respects in which the development complies with, for example, tourism and economic policies, and reach a conclusion in relation to the development plan as a whole. Accordingly, the report does not present to members the correct process for determining this application.
8. The second matter of process, which can be more shortly stated, is as follows. On 23 March 2011 the Minister of State for Decentralization published the Government’s important Planning for Growth policy Statement. The key emphasis of this policy Statement is the importance to be attached to jobs and growth. For example:

“The Secretary of State for Communities and Local Government will take the principles in this Statement into account when determining applications that come before him for decision. In particular he will attach significant weight to the need to secure economic growth and employment”.

Also:

“The Government’s top priority in reforming the planning system is to promote sustainable economic growth and jobs. The Government’s clear expectation is that the answer to development and growth should wherever possible “yes”, except where this would compromise the key sustainable development principles set out in national planning policy”.

9. This Statement is clearly intended to be seen as a highly significant change in the Government’s planning policy. The Committee members would certainly not appreciate

this from the current report. Reference to the Statement is made in partial and oblique terms in one paragraph (12.179) of an extremely lengthy report. In my view, members are plainly not being given a fair or proper account of this Statement, and its obvious relevance to the current proposals.

C. LOCKHART-MUMMERY QC

Landmark Chambers
180 Fleet Street
London EC4A 2HG
24th May 2011

IN THE MATTER OF:

BUNTING AND SONS

**RE:HORKESLEY PARK HERITAGE AND CONSERVATION
CENTRE**

O P I N I O N

**Edward Gittins and Associates
Unit 5, Patches Yard
Cavendish Lane
Glemsford
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Suffolk
CO10 7PZ**

Our Ref: CLM-119776

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
26 May 2011 at 6:00pm**

SUPPLEMENTARY AGENDA

Part B

(not open to the public or the media)

Pages

There are no Section B Items