

Planning Committee

Thursday, 17 August 2023

- Attendees:** Councillor Lyn Barton, Councillor Robert Davidson, Councillor Mike Hogg, Councillor Jackie Maclean, Councillor Sam McCarthy, Councillor Sam McLean, Councillor Martyn Warnes
- Apologies:** Councillor Michael Lilley, Councillor Roger Mannion, Councillor Leigh Tate
- Substitutes:** Councillor Tim Young (for Councillor Michael Lilley), Councillor Paul Dundas (for Councillor Roger Mannion), Councillor Sue Lissimore (for Councillor Leigh Tate)

1010 Site Visits

A site visit was conducted on the 17 August 2023 attended by Councillors Barton, Davidson, Hogg, Lissimore, Warnes and T. Young. The Member visited the following site:

- 231273 Oak House, 1 West Lodge Bungalows, Bounstead Road, Colchester CO2 0DE

1011 Minutes of Previous Meeting

The minutes of the meeting held on the 27 July 2023 were confirmed as a true record.

1012 220526 Land Adjacent to 67, Braiswick, Colchester, CO4 5BQ

The Committee considered an application for the approval of reserved matters following outline approval 191522 – erection of 27 dwellings and associated development. The application was referred to the Planning Committee as it had been called in by Councillor Naylor for the following reason:

- I doubt that high quality design can be delivered as required with a density of 27 houses.

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

John Miles, Senior Planning Officer, presented the application to the Committee and assisted the Committee in its deliberations. The Committee heard that the application had previously been before the Committee on the 15 June 2023 where it had been deferred for the following reasons:

“That the application be deferred to allow the Development Manager to seek amendments to the design and layout of the site and to consider the danger of the location of the children’s play area location, public open space, and connectivity within the site, lack of community space and that a reduction in dwellings would enhance the design.”

The Senior Planning Officer detailed that the applicant had responded to the points for deferral, and these were referenced in the report between 16.59- 16.75 but was noted that no changes had been made to the design since the application had previously been before the Committee. The Committee heard that the site was north of Braiswick Road and was currently rough grassland that exhibited a large decline in topography towards the A12. The site was noted as being part of a wider allocation in the Local Plan for up to 70 dwellings and confirmed that the proposal before the Committee was for 27 dwellings. Further detail was given that this application was following the conditions as set out in the Appeal from the Planning Inspectorate as well as the vehicle access which would serve the entirety of the Local Plan allocation. The Committee heard that there would be a Local Equipped Area for Play (LEAP) and that a refuse plan had been submitted as well as hard landscaping and it was noted that there had been changes made to the proposal since its original submission but not since the deferral. The Senior Planning Officer concluded by showing photographs of the site and detailing that the Officer recommendation was for approval as detailed in the Committee Report.

David Meighan addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that they and other Members of the community had returned as they had put their trust and support in the Committee noting that the applicant’s duty with relation to the proposal ended on completion of the development which would set the tone for the area, hence why enhancements for the designs were being pursued. The speaker outlined that it was regrettable that the applicant had not changed the proposal noting that the Committee had previously undertaken a site visit to further understand the site and surrounding area as detailed in the Neighbourhood Plan. Members were asked to note that the proposal was causing ever increasing concern every day and outlined that the Committee’s authority was being challenged. The speaker concluded by detailing that the design of the proposal should be of the highest quality and that this was a high bar and commented on the response from the Urban Design Officer in the report.

Jack Baron (Applicant) addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in support to the application. The Committee heard that they were the project architect and outlined that they had listened to the comments that had been raised at the meeting in relation to the open space on site and the topography and confirmed that their reasons on these issues had been addressed in a written response to the Council. The Committee heard that they continued to support the development and the Reserved Matters submission in its current form which accorded with the Local Plan and policies DM15 and DM18 whilst meeting the design requirements. It was noted that there had been extensive

discussions on the open space and layout of the site and did agree that the proposal was not level in terms of topography. The speaker concluded by detailing that the allocation for the area was for 70 dwellings, that pre-application engagement had been sought, and asked that the Committee approve the proposal.

Councillor Naylor addressed the Committee as Ward Member for Lexden and Braiswick. The Committee heard that the proposal before them was a complex planning application and not straightforward for the Committee to make a decision on. The Ward Member outlined that more could be done on the proposal and for those who occupy the homes in the future so that there were no nasty surprises and drew Members attention to the letter sent by the applicant which needed to be addressed. Members heard that the letter from the applicant was incorrect in its view that the deferral of the application before was unlawful and detailed that the role of the Committee was to interrogate fact and detailed that the comments from the Urban design Officer indicated that they did not have confidence in the scheme detailing that the proposal failed to achieve a high level of visual interest. The Committee heard that some of the site was unwalkable and that and concluded by asking that the Committee refuse or defer the application to look at the points raised by the Urban design officer whilst ensuring that if approved the applicant does not row back on previous promises.

The Democratic Services Officer read out the statement as follows from Councillor Barber, Ward Member for Lexden and Braiswick:

“Dear Committee

Thank you for your deferral at the previous committee meeting to ensure outstanding reserved matter concerns can be considered further and resolved. I ask you to further defer or refuse this application for the following reason. Colchester Council has adopted the Myland and Braiswick Neighbourhood Plan as planning policy of the Council. There are two policies I wish to draw to your attention on design, which are cited in the report:

HOU1: Developers should achieve the highest quality of design commensurate with current national and local design guidance.’; and

DPR1: ‘Developments will aim to attain the highest quality and design standards and where appropriate encourage the use of relevant national standards by developers in order to achieve the highest possible levels of overall sustainability in the design and layout of new developments.’

The Council’s Urban Design Officer has stated that the current proposals “fail to achieve a high degree of visual interest or distinctive character and identity across the wider scheme.” The Officer concludes that there is an “adequate” sense of place.

Therefore, on this matter, the current application has not reached the standard the Council has adopted as policy.

I therefore do not consider that the application is at a stage that can be passed. I urge the committee to request that the application is reviewed further before it can be passed.”

At the request of the Chair the Senior Planning Officer and Development Manager responded to questions that were raised by the Committee following the Have Your Say speakers. The Committee heard that the scheme before the Committee had to be assessed on its own merits and to consider the design quality as detailed in the report. The Committee heard that the proposal was acceptable in planning terms and that it was a matter of planning judgement by the Committee to determine if it was appropriate. The Senior Planning Officer detailed that the scheme did have positive points of public open space and visitor parking provisions and commented that in terms of inflation and the possible watering down of the proposal the Committee were assured that this could be secured in an approval. Members heard that the Biodiversity implications and Tree canopy cover on the site would be secured through policies adopted in the Local Plan.

The Committee queried their options for the application as it had been deferred once with no change to proposal.

The Development Manager responded to the proposal and detailed that the Committee could choose to defer the application again but reminded the Committee that there was a clear statement from the applicant which could mean that a deferral would not achieve a positive outcome. The Development Manager further advised the Committee that they would be better to make a substantive decision.

Members debated the proposal on issues including: the history of the site and the comments from the Urban Design Officer on how the proposal was striving for mediocrity with the Public Open Space being stuffed in one corner. Some Members voiced their preference that the Public Open Space would be better placed in a central location on site. Members of the Committee discussed the appeal and the commented that the Planning Inspector did foresee that there would be some issues by allowing up to 27 dwellings with the proposal before the Committee matching that. Members commented that they did not find the letter from the applicant a helpful addition to the application as they had not engaged with the Committee’s deferral resolution and had put forward a take it or leave it response. Some Members voiced concerns regarding the applicant’s response letter and discussed constructive ways forward including the possibility of refusing the application.

The debate between Members continued with discussions surrounding improvements to design being raised as well as the quality of the proposal.

A proposal was made and seconded to defer the application for the following reasons:

That the application is deferred, and that delegated authority is given to the Development Manager to seek amendments to the urban design in consultation with the urban design officer as detailed in 8.15 of the report to improve the design on issues of layout and disjointed layout of the public open space being pepper-potted across the site, and consolidation of the open space on site. The Committee further resolved that the application is returned to the planning committee.

The Senior Planning Officer responded to questions from the Committee and detailed some of the response from the Planning Inspectorate regarding the local context of the development as well as the design of the proposal. The Officer added that there had been lengthy negotiations and alterations to the proposal since it had been received.

Members continued to debate the proposal on issues including: the tree cover on the site, the level access to the playground, the affordable housing provision, the response from the Urban Design Officer with some Members detailing that although it was not a ringing endorsement it was no objection to the proposal and that density could not be an issue on the site as it had received outline planning permission for up to 27 dwellings. At the request of the Chair the Senior Planning Officer showed the Committee the elevations of the Affordable Housing which had been shown in the original presentation. Members discussed the accessibility to the LEAP through the topography of the site and that there would not be stairs stopping access.

The Development Manager detailed that the design of the proposal was subjective and asked the Committee to look at the first principles including whether the proposal responded to the local character with a key view being taken from the main street and the retention of the tree buffer between the road and the development. The Committee heard that the proposal was a good example of where a development in its context was acceptable and contextually appropriate. The Committee heard that the proposal had responded positively to the landscape and that there was a common sense of local character along the frontage opposite and adjacent to the site with green space being incorporated. The Development Manager concluded that it could be argued whether the proposal achieved a high-quality design.

The Committee continued to debate the application on issues including: the rural nature of the site and the subjective basis of being compliant in terms of design and making them beautiful, the rationale behind the placement of the LEAP and safety of it being self-managed surveillance from dwellings. Members raised further concerns regarding the viability of the site and the proximity of the LEAP to the A12 and the noise in that area. Members discussed the importance of the tree belt as well as the natural cover that this would create as well as the pathway on the access to the site.

At the request of the Chair the Senior Planning Officer responded to points that had been raised by the Committee including: that tree planting would be secured via condition, that the proposal would not look out of context in the area. It was noted that the play area's location had been driven by the levels of the site, that drainage had been secured via the outline planning permission, and that improvements to pathways and the installation of bus stops outside of the site had been secured.

RESOLVED (SIX votes FOR and FOUR votes AGAINST)

That the application is deferred, and that delegated authority is given to the Development Manager to seek amendments to the urban design in consultation with the urban design officer as detailed in 8.15 of the report to improve the design on issues of layout and disjointed layout of the public open space being pepper-potted across the site, and consolidation of the open space on site. The Committee further resolved that the application is returned to the planning committee.

A short break was taken between 7:20-7:30 after the completion of application 220526 but before the commencement of 230031.

1013 230031 Land between, 7 & 15 Marlowe Way, Colchester, CO3 4JP

The Committee considered an application for variation of condition 2 following grant of planning permission of application 212888 (Daylight and Sunlight report received) Reduced Ridge height of plot 1 including introduction of two chimneys. The application was referred to the Planning Committee as it had been called in by Councillor Buston for the following reasons:

1. Over development
2. Ignoring the Planning Conditions imposed in 212888 approved 21 Apr 21
3. Development over a former publicly accessible Open Green Space
4. The Previous Application for development on this site (21 0304) was dismissed on 10 Sep 21, citing, as reason for dismissal (inter alia): "1. The proposed three dwellings, by reason of their detailed design, form and scale (including being higher than the adjacent properties) would be out of keeping with and harmful to the character of the established street scene and surroundings." Thus that the current building have been erected on site without reference to the plans Approved in 21 2888, in particular the height of these buildings. Policies UR 2 and DP1, and the (Borough) Council's adopted "Backland & Infill Development" SPD, in particular infringed.

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

Chris Harden, Senior Planning Officer, presented the application to the Committee and assisted the Committee in its deliberations. The Committee heard that further revised plans had been submitted to reduce the ridge height on plots 2 and 3 (in addition to plot 1 as previously proposed) It was detailed that the revised scheme sought approval for a reduction in ridge heights for all three dwellings as requested by the Committee. The revised plans show the following:

- That plot 1 would be reduced from 0.715m above the height of N.o7 to 0.300m.
- That plot 2 would be reduced by 0.374m (to 7.420m)
- That plot 3 would be reduced by 0.309m (to 7.470m) but that the gable end would not be amended and would be retained as built.

The Committee were asked to note the additional points as raised at previous meetings that the distance between plot 1 and N.o 7 Marlowe Way was 0.5m closer than approved and that the kitchens had been built 0.6-0.7m higher than approved and that it was recommended that these be retained as built. Members of the Committee were shown photos of the dwellings in their current built form as well the kitchens and the views from a neighbouring property. The Senior Planning Officer presented the elevations of the proposal as amended and their relationship with the existing properties. It was noted that an issue had arisen where letters of re-consultation had not been received and as such the consultation would not end until the 22 August 2023 and as such the application would not be determined until that date and receipt of no further representations raising materially new planning considerations, and that if these are received then then the matter would be referred back to the Committee for further consideration. The Senior Planning Officer detailed that it was considered that the application would be acceptable and there would be limited impact on neighbourhood amenity with no loss of light from the kitchens being built higher than approved. Furthermore, it was noted that there would not be any loss of outlook from the kitchens that were deemed to be visually acceptable. The Senior Planning Officer concluded by detailing that the officer recommendation was for approval as detailed in the report and amendment sheet with the added point that the if further representations raising materially new planning considerations were received before the 22 August 2023, then the matter would be referred back to the Committee for further consideration.

Simon Sorrell addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in opposition to the application. The Committee heard that the founding principle is that decisions should be taken in the public interest and that there was a clear instruction from the Committee to reduce the height and that it was in the public interest that it was altered as the proposed pitch appears incongruous and alien with the surrounding area. The speaker outlined that the applicant had put forward a partial resolution and outlined that the proposal had been granted on the basis of misleading drawings and which showed the development in

line with the existing dwellings. The speaker detailed that all parties knew what the development statement said and that they continued to build the dwellings and that this was at the developers risk. The speaker concluded by detailing that the Committee were asked to favour the developer and requested that the dwellings be reduced in height.

Robert Pomery (Agent) addressed the Committee pursuant to the provisions of Planning Committee procedure Rule 8 in support to the application. The Committee heard that the proposal was not taller than the original dimensions as approved and detailed that enforcement action would not cause a reduction in height with rear storey projections of the kitchens being taller than approved but confirmed that Officers had found them acceptable. The speaker detailed that the buildings were at the correct height but that the street scene drawings were incorrect. The Committee heard that plans had been provided regarding the reduction of all three dwellings but outlined that the applicant did not think this was possible and asked Members to carefully reconsider the proposal as they had the power to decide over the scheme before them or the others that have been put in front of the Committee previously. The speaker concluded that the preferred option would be to approve the proposal as built.

The Democratic Services Officer read out the statement as follows from Councillor Buston, Ward Member for Prettygate:

“Apology

My apologies to you and to residents for not being able to be with you this evening but I have to attend the funeral of an old Army chum in Salisbury – and as I am also an Executor, will likely be there for some days.

The Application

Both Members and Officers as well as the Residents I am instructed to represent are sadly all too familiar with this case and this site.

I have been asked as Ward Councillor , yet again, by what seems like the residents of the whole area , yet again, over the last 2 – 3 years following serial Applications in both Marlowe Way and Colvin Close involving the former Lexden Manor site - all at essentially the same place, to call in this latest iteration of the speculative and overbearing development of the former Lexden Manor site , and the former green open space land in Marlowe Way , used by the public for over 50 years , they have been deprived of as a result of it.

Bizarre indeed would be an understatement to note that only yesterday an application relating to Green open space such as this plot in Marlowe Way used to be (Application 23 1481) was comprehensively and correctly refused by CCC : this being

the second time an application has been comprehensively refused on this Green open space. About 5 years from this site. I commend both Members of the Committee as well as Officers to study the reasons for this refusal carefully : as they are exactly those MPC as appertain to this site in Marlowe Way as well, and encapsulate the reasons that should have been applied to all the applications on this site to refuse development upon it.

Nonetheless , Officers will say, “we are where we are”. Again I have to I suggest that this is not , and cannot be so.

It is common ground before the Committee I submit :

- 1. The Rooflines of the 3 dwelling houses as have now been built (and from the estate Agents board apparently 2 already sold) without consideration to the detail of the approved plans - being higher than they should be.*
- 2. That at least one of the houses is built closer to the adjoining existing property than it should have been.*
- 3. The rear portions of the 3 dwellings have been built larger than the approved plans permit.*

Whether these discrepancies be by 3 inches or 3 feet , and whether these errors be deliberate or negligent makes no difference in Law. They are wrong. They are not “de minimis”. They are cumulative, at worst, evidence of an “intent” to exceed permission given - or perhaps at best, a singular “negligent” inattention.

I suggest that the Committee now has 4 options :

- 1. The preference of Residents :*

That as a result of the either deliberate , negligent or accidental infringements of the Planning Permission as was originally granted (and whether this was appropriately granted or not) , as have , to this day have deliberately not been addressed by the developer, the direction now be given that site be restored to its former green open space state and condition.

Residents , who have had to put up with all of this nonsense for the last 2-3 years deserve no less from the Council that they have to pay for : this being to apply the Planning Rules both even handedly correctly and appropriately according to both Equity as well as the Law.

2. *The least worst option :*

That the developer

a. be required to reduce the height of all the roofs of all 3 of the dwellings to the height originally laid down in the grant,

and further, in view of the continued inattention on the part of the Developer to the original plans and specifications,

b. the extensions to the rear of the properties now be required to be rebuilt to the dimensions shown on the original plans, and the walls of the dwellings themselves rebuilt to the right place apropos their neighbours.

The wrongful construction of these rear portions of the buildings to a larger size than was authorised by the Permission granted, in passing, has already been recorded formally as being admitted by the Applicants agent.

.....both a. and b. above , it should be pointed out, simply requiring the dwellings to be constructed as was set out and laid down by the Planning Permission originally granted.

3. *The second worst option :*

That the developer be allowed only to reduce the height of such of the dwellings as the developer chooses, and in addition the incorrect building of the rear portions of the buildings, and their position be ignored.

4. *The worst option :*

That the developer, as now, simply be allowed to do as it wishes, and the Council continue to take no action.

The officers report to this current scenario has again had to be presented in such a way as to minimise the significance of a situation where developers have paid scant attention to the detail of the permission as was originally granted - irrespective of whether that permission was worthy of being granted in the first place or not, and , significantly , the developer continues to take no action to rectify the errors it alone

has commissioned. Thus the report one might assume favouring option 4 above ?

As I have said to the Committee before , and sadly I have to say again , such path should not be contemplated. Residents have every right to expect this Committee to afford them both recognition as well as ... dare I say it : justice - in an even handed application of the Planning rules .

What is right is right.

What is wrong is wrong.

Planning Law is not a subject where you can either conveniently “ make it up as you go along” , or indeed “ run with the fox and hunt with the hounds” , in order to conjure up compelling arguments adjusted to suit your cause after an event has occurred, in order to attempt to excuse deficiencies as have been identified and committed during it.

Otherwise, gentlemen, ladies , yet again we have to ask ourselves : why we are here ?

Procedure

Finally residents have asked me to bring formally to the Committees attention a disappointing catalogue of procedural and other errors that seem to have occurred in the matter from its outset – such errors they lay firmly at the door of the Planning Department. I will put to one side for a minute residents accusations of a deliberate bias.

As an elected Member , their Councillor, it gives me no pleasure to be asked by them to address any of the above.

The sitting of this Committee has been deferred , we all understand, because , inter alia, the appropriate notices , residents indicate to me, had either not been sent out to them at all , or they indicate to me, when sent, such not in a realistic or timely manner.

Just to cite the most recent instance I have today been asked to address , residents refer to me formal letters from CCC to residents dated 08th August 23 , inviting comment upon the current proposals to be submitted within 14 days. Fine.

Or is it ? 14 days from 08th August 23 is , by my admittedly often disappointing Maths , 22nd August 23 .

Today , the date of the Committee Hearing when judgement will be handed down, is 17th August 23 ?

I am asked how can this Committee properly sit to impose a decision in a matter before the date for the closure of the advertised and declared consultation period has occurred ?

Residents ask me if there is any good reason why they should not commission a Judicial Review of CCCs Planning Department and the Committee ? If there are , perhaps I might be furnished with them , please, so I may respond ?"

At the request of the Chair the Senior Planning Officer responded to questions that were raised by the Committee following the Have Your Say speakers. The Committee heard that the proposed chimneys would be for decorative purposes only and would not be functional.

Members debated the proposal on issues including: the acceptability of the proposal in terms of the height of the dwellings being taller than the existing dwellings with some members expressing the view that the height of the proposal should be in line with the existing dwellings. A proposal was made to refuse the proposal but a seconder was not found.

Members continued to debate the proposal with some members expressing the view that the houses had been built to the correct height in the original plans as previously noted. A proposal was made and seconded that the application be approved as detailed in the officer recommendation and amendment sheet with the additional point as raised by the Senior Planning Officer regarding the receipt of further consultation responses.

Members continued to debate the application on issues including: that the principle of the development had been established, that the fault of this error was not that of existing residents and that any costs would be at the expense of the developer. Some Members expressed significant concern regarding the re-consultation not being received by some Members of the public and that the closing date was after the Planning Committee meeting. Further concern was raised regarding plot 3 and the gable end with some Members detailing that the retention of this was not acceptable and that further improvements were required.

RESOLVED (SIX votes FOR and FOUR votes AGAINST) That the Committee Delegate Authority to the Joint Head of Planning to approve the most recent set of amended drawings showing a reduction in the ridge height of all three units, subject to consideration of any additional consultation responses received following expiration of the consultee response date and receipt of no further representatives raising materially new planning considerations. If these are received, then the matter will be referred back to the planning committee for further consideration.

1014 231273 Oak House, 1 West Lodge Bungalows, Bounstead Road, Colchester, CO2 0DE

The Committee considered an application for an extension of existing garage to facilitate granny annex to rear of garden. The application was referred to the Planning Committee as it had been called in by Councillor Pearson for the following reasons:

- This appears to be an additional residence on a plot which falls within the remit of Policy ENV1.
- Should this application be approved there is a risk of applications being made for neighbouring plots which could be the wedge that undermines ENV1 as it pertains to this rural area of the City.

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

RESOLVED (UNANIMOUSLY) That the application be approved as detailed in the officer recommendation.