

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
4 November 2010 at 6:00pm**

SUPPLEMENTARY AGENDA

Part A

(open to the public including the media)

Pages

. Amendment Sheet

19 - 31

See Amendment Sheet attached.

AMENDMENT SHEET

Planning Committee
4 November 2010

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

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

- 7.1 101761 – Land north of Electricity Sub Station, Severalls Lane,
Colchester

The Environment Agency confirm they are able to withdraw their objection to the development provided the following conditions are attached to any consent:-

14. The development should contain 372m³ of attenuation within the site for surface water flows in accordance with the Flood Risk Assessment dated 11 October 2010 prepared by J P Chick Environmental Services.
Reason: To minimise flood risk off site.
15. Discharge off site should be restricted to a maximum of 4 l/s in accordance with the Flood Risk Assessment dated 11 October 2010 prepared by J P Chick Environmental Services.
Reason: To minimise flood risk off site.

Further comments are made in respect of foul water disposal, noting that the applicants have submitted an application to the Agency's National Permitting Service for consent to discharge fully treated sewage effluent to Salary Brook. This is still being processed. No mains foul sewer is available to serve the site.

Condition 17 to be reworded as follows:-

The approved drainage scheme for the site, as illustrated on Drawing No. 1E06/09/100 P1 as produced by J P Chick and Partners Ltd and submitted in support of the application or as may otherwise be agreed by the Environment Agency's National Permitted Service in relation to discharge fully treated sewage effluent to Salary Brook, shall be implemented in its entirety prior to the occupation of the development.

Reason: To ensure adequate drainage and to ensure that flood risk is not increased as a result of the development.

Informative 5 to be reworded in order to make reference to latest comments by Environment Agency.

Additional Informative 6

“Colchester Borough Council are aware that the ownership/control of all of the land required to provide the footpath required by Condition 13 may be in dispute by at least 1 adjoining landowner. Essex County Council is requested that they ensure that they legally control this land prior to implementing this planning permission.”

Additional conditions recommended by Environmental Control Team:-

16. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report is subject to the approval in writing of the local Planning Authority. The report of the findings must include:
- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos
 - (ii) an assessment of the potential risk to:
 - human health
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments.
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency’s ‘Model Procedures for the Management of Land Contamination, CLR11’ and the Essex Contaminated Land Consortium’s ‘Land Affected by Contamination: Technical Guidance for Applicants and Developers.’

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

17. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

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

18. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

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

19. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 16 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 17 which is subject to the approval in writing of the Local Planning Authority.
Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.
20. Prior to occupation of any property hereby permitted and the provision of any services the use hereby permitted commencing, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 17.
Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.
21. A competent person shall ensure that the rating level of noise emitted from the site/plant/equipment/machinery shall not exceed 5DBA above the background prior to the building hereby approved coming into beneficial use. The assessment shall be made in accordance with the current version of British Standard 4142. The noise levels shall be determined at all boundaries near to noise-sensitive premises. All subsequent conditions shall comply with this standard.
Reason: To ensure that the permitted development does not harm the amenities of the area by reason of undue noise emission.

22. Any plant, equipment or machinery on the premises shall be constructed, installed and maintained so as to comply with the initial noise condition. The noise generated by such equipment shall not have any one 1/3 octave band which exceeds the two adjacent bands by more than 5DB as measured at all boundaries near to noise-sensitive premises.
Reason: To ensure that the permitted development does not harm the amenities of the area by reason of undue noise emission.

(A competent person is defined as someone who holds a recognised qualification in acoustics and/or can demonstrate relevant experience.)

Equality and Diversity Issues

There is over 500 years of gypsy and traveller heritage in this country; however, they have been called the most socially excluded ethnic minority in the country and nearly a quarter of Gypsies and Travellers who live in caravans do so in unsuitable locations. Statistics from a bi-annual 'Count of Gypsy and Traveller Caravans' published by Communities and Local Government show that in January 2009, some 79% of the 17,865 gypsy caravan pitches in England were situated on sites with planning permission, showing no change either positively or negatively since the previous count in 2007. That means 21% are unauthorised sites that are unlikely to have satisfactory arrangements in place. It is therefore important that Colchester Borough Council make adequate provision for travellers.

Such provision is the only area of planning control where the need to maintain the life style of a section of the community is an important factor in decision making. The historic reason for this unique policy situation derived from the Cripps Report, which in 1977 indicated that there should be positive discrimination in favour of the requirements of gypsies for caravan sites.

Gypsies and travellers have been defined within Circular 1/06 as:
"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such."

This was a new definition, which now recognises that gypsies may stop travelling either permanently or temporarily for health or education reasons or because of caring responsibilities.

The Government's policy is aimed at increasing authorised site provision for Gypsies and Travellers, whilst ensuring that strong enforcement powers are available to tackle unauthorised sites. Since the general election earlier this year the Government has stated that top-down traveller site provision targets have failed to deliver and that a recent Equality and Human Rights Commission report estimated that at current rates of permanent pitch provision it would take 18 years to hit targets set for 2011. This emphasises the importance in delivering adequate provision within the Borough.

The Housing Act 2004 sets out the requirement that local authorities must assess the accommodation needs of gypsies and travellers the same way that they do for housing allocations. They must also provide for the accommodation needs of these sectors of the community through Gypsy and Traveller Accommodation Assessments.

In 2006, Circular 1/06: "Planning for Gypsy and Traveller Caravan Sites" was published and provides guidance on how authorities should identify sufficient land within their area to meet the number of pitches required. Whether or not there is planned provision of sites to meet needs in an area is a material consideration in the determination of applications and appeals. Development Plan Documents are also used to identify the location of appropriate sites. In this instance, the site that is the subject of this application has been considered to be the most appropriate site within the Borough.

The conclusion that this site is the most suitable was subjected to independent examination earlier this year through the LDF Inquiry. The conclusions reached by the Inspector confirmed the Council's own evidence based argument that this site was a suitable gypsy and travellers site. The Inspector did not conclude that the Council is required to undertake additional work before the DPD was adopted, nor did they feel that this allocation should be excluded or changed. Therefore, the evidence basis for allocating this gypsy and traveller site has (as recently as September) been found sound.

Members should be advised that the Planning Act (2004) states that determinations of applications for planning permission must be in accordance with the development plan unless material considerations indicate otherwise. Therefore, a material consideration would have to be found to justify a departure from the Development Plan, and any refusal would need to be insurmountable by condition, unilateral undertaking or legal agreement. Circular 1/06 adds that "Local planning authorities should also have regard to whether the absence of existing provision may prejudice enforcement action, or give rise to grounds for appeal against refusal of an application for a new site".

Para 69 of the same Circular states that “There will be occasions when local planning authorities refuse planning permission for gypsy and traveller sites. A Planning Inspector considering any subsequent appeal will have regard to the development plan so far as is relevant, and will take into account all material considerations, which should already have been addressed at the application stage. These will include the existing and planned provision of, and need for, sites in the area, the accuracy of the data used to assess need, the methodology employed in the assessment and how up-to-date it is, information on pitch availability on public and private sites, personal circumstances and alternative accommodation options”. Based on this, the likelihood of successfully defending a refusal against appeal would be questionable in your Officers opinion.

In addition, section 19a of the Race Relations Act 1976 prohibits racial discrimination by planning authorities in carrying out their planning functions. Romany Gypsies and Irish Travellers have been recognised by the courts as being distinct ethnic groups covered by the Act. Additionally, the Race Relations (Amendment) Act 2000 places a further duty on local authorities to eliminate unlawful discrimination and promote good race relations. Circular 1/06 now includes a section on LPA responsibilities under the Race Relations Act and Paragraph 71 clarifies that this duty does not give gypsies and travellers a right to establish sites in contravention of planning control.

Finally, the Criminal Justice and Public Order Act 1994 (CJPOA) which came into force on November 3, 1994, repealed parts of The Caravan Sites Act 1968. Section 77 of the CJPOA enables local authorities to direct the removal of unauthorised campers on the roadside. Failure to comply with such a direction can be followed up by recourse to a magistrate's court for an order with financial penalties for non-compliance. This power has generally inhibited roadside camping and is considered to have encouraged gypsies to move onto other land through purchase or rent without first obtaining the requisite permission.

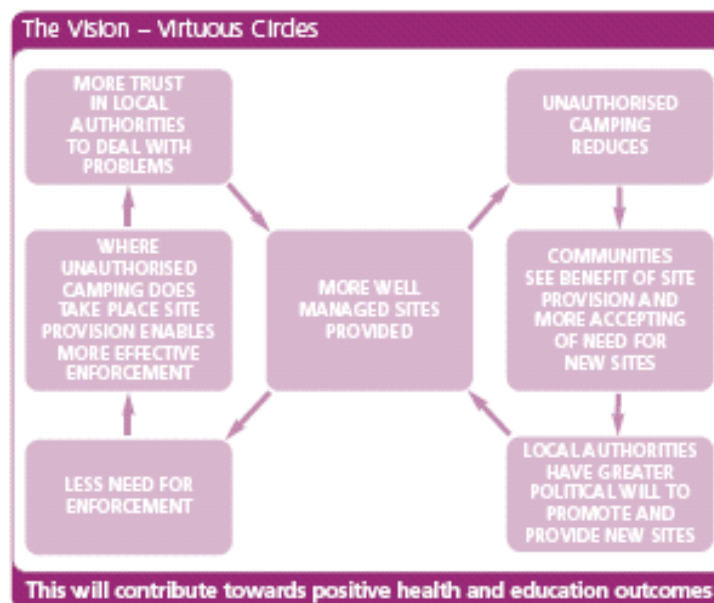
Human Rights Implications

Legal issues arising from gypsy site control have stemmed largely from European Human Rights legislation which was incorporated into UK law when the Human Rights Act 1998 came into force on 2nd October 2000. Circular 1/06 “Planning for Gypsy and Traveller Caravan Sites” also includes a section on Human Rights, which states that local planning authorities should consider Human Rights provisions as a material consideration and weigh the rights of gypsies, travellers and local residents in their decision making, i.e. planning applications relating to gypsy sites should not be determined solely in relation to land use matters.

At the heart of Human Rights issue is the stance that everyone should have access to a home. For gypsies and travellers this means allocating authorised sites that they can use. By providing authorised sites in the Borough there is no justification for creating unauthorised pitches elsewhere, removing the need for us to intervene through enforcement action. The reduction in enforcement issues is part of a wider need to break down the prejudicial stigmatisms people associate with gypsies.

Any decisions taken by a local authority must follow proper consideration of the needs of Gypsies and Travellers balanced with the needs of the settled community. We must be prepared to lead some challenging debates and take difficult decisions, as we have a duty to represent the interests of resident Gypsies and Travellers as well as the settled community. The intentions of Circular 1/06 are to secure the inclusion of gypsies within the community and their access to services, to reduce unauthorised camping through the provision of sites with planning permission. Finally, LPA's are urged to avoid action against unauthorised sites where there is no alternative to move to.

Circular 1/06 sets out a clear process for planning for gypsy and traveller accommodation needs, with a clear evidence base. In Colchester, this process was followed and it was concluded that the site at Severalls Lane was the most suitable site. In concluding this, the Council demonstrated consideration of a wide range of sources of information, many of which are itemised at para.44 of Circular 1/06.



These would need to be considered again before making any decision to refuse a planning application for a gypsy and traveller site.

By allocating a site we have taken the first step in providing an authorised site. If this were now renewed the planning permission that was previously approved at this site in 2007 the Council would have gone some way to providing a stable base for gypsies and travellers, reducing the risk of unauthorised sites and standing us in good stead when we did need to take enforcement action on unauthorised sites. This was demonstrated in a leading human rights case (*Buckley v UK*, 1996) where the European Court of Human Rights found that the taking of enforcement action to obtain the removal of gypsy caravans would interfere with a gypsy's rights under Article 8 of the Human Rights Act (the loss of a persons home) but that there was no violation if the Gypsy or Traveller had been offered a pitch on a local authority-owned gypsy site. Thus it may be argued from a legal perspective that where permission is refused for a gypsy site or enforcement action instigated, it is incumbent upon a local authority to have proper regard to the requirements of Article 8 in order to ensure that rights are firstly not violated and secondly, that the interference serves a legitimate aim.

As regards the Human Rights of the settled community and nearby residents, the consideration of this application has had regard chiefly, but not exclusively to:

Article 8 – The right to respect for private and family life,
Article 1 of the 1st Protocol (Protection of Property) - the right to peaceful enjoyment of possessions.

The proposal will have an impact on an individual's rights but having considered the level of impact on local amenity, in the general public interest and in accordance with planning law and established planning policy, the proposal is considered reasonable.

Other Issues

A. Site licensing

Site licences under the Caravan Sites and Control of Development Act 1960 are required for gypsy sites but normal Model Standards are not applied. Exemption from licensing is given for local authority gypsy sites.

B Conditions

Conditions or planning obligations are recommended where appropriate to allow development to proceed which would otherwise need to be refused. In Circular 1/06, "Annex F Planning Conditions and Planning Obligations" makes particular reference to their use to secure adequate landscaping and play areas, limit the site area which may be used for business operations, limit the frequency of visitor caravans, and to specify the length of a transit stay.

C Sewerage

Designing Gypsy and Traveller Sites: Good Practice Guide from 2008 states that wherever possible, each pitch should be connected to a public sewer when it is economic to do so. Where this is not possible provision must be made for discharge to a properly constructed sealed septic tank. All sanitation provision must be in accordance with current legislation, regulations and British Standards. Consideration should also be given to additional waste disposal connection points as an outfall from resident trailers to avoid any problems over unauthorised connections.

D The Site Allocation Process (2004)

In a number of representations it has been suggested that the original site identification process is “flawed” and out of date given that considerable new residential development has taken place in the locality. The following chronology may be helpful to Members.

The report was produced by CDN Planning in May 2003 and agreed by Cabinet on 8 September 2004.

Developments such as those at the former Royal London site received outline approval in July 2004 and reserved matters approval in October 2005 and Cuckoo Point was granted full planning permission in September 2006. They were therefore approved in the knowledge of the gypsy site location.

Since these developments were commenced the site has been through the LDF process and is now an allocated Gypsy site. Therefore, the issue of the relevance of the original appraisal is immaterial.

2 further letters of objection received from residents of Colchester and Boxted – no new issues raised.

1 letter of support received from Hadleigh resident expresses view that Gypsy culture must be respected and prejudices put aside. Gypsies seek to settle to provide their children with an education but a house would be a living hell. A caravan is important to them.

NOTE FOR MEMBERS

New Ecology report by EECoS has been submitted. Natural England and Essex Wildlife Trust have been consulted and their comments will be available before the Meeting.

The main findings of this report are:-

- Site contains some suitable terrestrial habitat for great crested newts. Impacts are low and risks can be addressed using avoidance measures.
- Several trees have medium or high potential for nesting bats – not directly affected by works.
- No field signs of badgers.
- Habitat largely unsuitable for water voles and otters although the latter may use stream corridors as a dispersal route.
- Field margins provide suitable reptile habitat and measures are proposed to protect them.
- Site contains a number of trees suitable for nesting birds and the field itself could potentially be used for ground nesting birds. Works should preferably take place outside the breeding season.

The further comments of Natural England are set out below:-

“Thank you for consulting Natural England on the above proposal. Your letter e-mail and attached copy of the consultants ecology report was received by this office on 3 November 2010. We understand that our view is sought as to the adequacy of the report’s findings and recommendations with regard to legally protected species. It is the view of Natural England that the survey was undertaken at a sub optimal time of year to confirm the presence or absence of legally protected species. However, we note previous surveys have identified the habitats within the application site as unsuitable, and note furthermore that the current survey is intended to establish whether or not the habitats within the site have changed sufficiently to merit further surveys. Based on the information provided, Natural England does not believe that there are grounds to object to the proposed development in respect of legally protected species as we are not aware that they are likely to be adversely affected by the proposal due to the unsuitability of habitats within the boundaries of the application site. We are further informed that the boundaries of the application site appear to provide potentially suitable terrestrial habitat for great crested newts and reptiles, and that there is a potential for otters to use the Salary Brook as a dispersal corridor.

We note that mitigation measures are proposed in the report for reptiles and great crested newts and that these measures appear to provide an adequate response to the legislative issues with regard to legally protected species. However we strongly

recommend that in addition to the mitigation proposed in the report, your Council in discussion with the consultant should consider erecting an appropriate and effective barrier/fence in order to separate the brook and site boundaries from the main body of the site identified in the report as providing unsuitable habitat.

Provided therefore, that the mitigation as outlined in the report and the additional measures discussed above are incorporated into a permission or part of a suitably worded agreement or planning condition, if necessary Natural England has no objection to the proposed development in respect of legally protected species.”

Essex Wildlife Trust also comment as follows:-

“I am emailing to confirm that Essex Wildlife Trust has not formally objected to the above application in the past and there are no plans to do so at this present time.

I have been able to speak to the surveyors who not only undertook the original surveys in 2005-2006 but have subsequently undertaken repeat surveys for these species in exactly the way advised. I have also had the opportunity to review the plan of the proposed development and the newly prepared EECOS survey report. It is clear that on this site the Salary Brook is not suitable habitat for a viable water vole colony and neither is it a useful breeding area for otters, although there is potential for its use as a dispersal route for this species. The buffer strip along the brook that is proposed in the development plan appears suitable to ensure no direct impact on otters even if they do use the stream to disperse.

Essex Wildlife Trust is committed to ensuring that the correct steps are taken to mitigate for impacts on biodiversity across the county based on best practice and evidence based survey work. We are happy that the correct surveys have been undertaken in this case and are satisfied that they do not indicate an adverse impact on the species of concern.”

Additional Condition 23:

“The development shall only be carried out in accordance with the scheme of nature conservation and wildlife mitigation measures as detailed in the report by EECOS dated November 2010 and submitted in conjunction with the planning application.

Reason: To ensure that adequate measures are taken to protect the continued wellbeing and scientific value of a site of acknowledged wildlife interest.

Having received these assurances and confirmation that previous objections by the Environment Agency and Wildlife bodies are withdrawn, the recommendation is now – Permission be Granted subject to those conditions set out.

**COLCHESTER BOROUGH COUNCIL
PLANNING COMMITTEE
4 November 2010 at 6:00pm**

SUPPLEMENTARY AGENDA

Part B

(not open to the public or the media)

Pages

There are no Section B Items