

# Planning Committee

Council Chamber, Town Hall  
11 July 2013 at 6.00pm

## **This Committee deals with**

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

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

# Information for Members of the Public

## Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

## Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Attending Meetings and "Have Your Say" at [www.colchester.gov.uk](http://www.colchester.gov.uk)

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## Access

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## Material Planning Considerations

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

The following approach should be taken:

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

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

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

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

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

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

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

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

### **Human Rights, Community Safety and Equality and Diversity Implications**

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

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

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

## Using Planning Conditions and Considering Reasons for Refusing Applications

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

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

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

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

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

**COLCHESTER BOROUGH COUNCIL**  
**PLANNING COMMITTEE**  
**11 July 2013 at 6:00pm**

**Members**

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

**Substitute Members**

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

**Agenda - Part A**

(open to the public including the media)

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

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

**Pages**

**1. Welcome and Announcements**

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

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

- action in the event of an emergency;

- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

## **2. Have Your Say!**

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

## **3. Substitutions**

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

## **4. Urgent Items**

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

## **5. Declarations of Interest**

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

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

reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.

- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

## **6. Minutes**

**1 - 10**

To confirm as a correct record the Minutes of the meeting held on 6 June 2013 and 20 June 2013.

## **7. Planning Applications**

In considering the planning applications listed below, the Committee may chose to take an en bloc decision to agree the recommendations made in respect of all applications for which no member of the Committee or member of the public wishes to address the Committee.

1. 130789 - Land Adj to Floral Acres, London Road, Stanway  
(Copford and West Stanway) **11 - 29**

Proposed mixed use development to provide 1,329 Sq m GIA incubator floorspace (limited to use classes B1 - B8); 470 Sq m GIA restaurant (use class A3); and 200 SQ m GIA drive-through coffee shop (use class A1/A3); associated means of access; and other associated works.

2. 130129 - Aim Hire Site, Hawkins Road, Colchester  
(St Andrew's) **30 - 45**

Application for a new planning permission to replace extant planning permission 081852 in order to extend the time limit for implementation for erection of 63 residential units and 823 sqm commercial floorspace with associated car parking and provision of river walkway connecting with Colne Causeway.

3. 130930 - Plot 2, Land to the South West of Nathan Court,  
Blackheath, Colchester **46 - 57**  
(East Donyland)

Construction of detached two bedroom house with parking area.

4. 130672 - Welshwood Manor, 37 Welshwood Park Road, **58 - 72**



Colchester  
(St John's)

Erection of detached Annexe to Residential and Nursing Care Home to provide 10 no. bedrooms and landscaped parking area and closure of residential access following demolition of existing dwelling.

5. 130572 - 44 St Christopher Road, Colchester **73 - 81**  
(St John's)

Application to vary condition 3 (opening times) of Planning Permission 121543 to extend the hours of opening to 10:00 - 22:00 hours 7 days a week.

6. 130661 - 1 Perry Road, Tiptree **82 - 91**  
(Tiptree)

Erection of a detached 3 bedroom dwelling within the garden of 1 Perry Road, Tiptree served by a shared access with the host dwelling (resubmission of application 121427).

7. 130754 - Land Rear of Laurel Cottage, Layer Breton, Birch and Winstree **92 - 99**  
(Birch and Winstree)

New dwelling house and garage.

8. 130794 - The Drury Arms, 1 Layer Road, Colchester **100 - 129**  
(Shrub End)

Erection of a single-storey rear extension, plant and bin store, external alterations (including provision of ATM and new glazed entrance), new vehicular access and associated hard standing for car park, service and delivery area, and a 1.8 metre high boundary wall.

9. 131000 - 34 Ambrose Avenue, Colchester **130 - 134**  
(Prettygate)

Proposed extension and alterations.

10. 131090 - 7 The Rayleighs, Drury Road, Colchester **135 - 141**  
(Christ Church)

Garage conversion to form extended kitchen diner.

11. 131093 - 206 Shrub End Road, Colchester **142 - 147**

(Shrub End)

Single storey rear extension to form enlarged kitchen / dining area.  
Internal alterations to form ground floor w.c.

**8. Amendment Sheet**

**148 - 155**

See attached Amendment Sheet.

**9. Exclusion of the Public**

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

**PLANNING COMMITTEE  
6 JUNE 2013**

*Present :-* Councillor Jon Manning\* (Chairman)  
Councillors Peter Chillingworth\*, Stephen Ford,  
Sonia Lewis\*, Cyril Liddy\*, Jackie Maclean and  
Philip Oxford

*Substitute Members :-* Councillor Barrie Cook for Councillor Helen Chuah\*  
Councillor Peter Higgins for Councillor Theresa Higgins  
Councillor Lesley Scott-Boutell  
for Councillor Laura Sykes\*

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

**12. Chairman**

*RESOLVED* that Councillor Manning be appointed Chairman for the Planning Committee meeting held on 6 June 2013.

**13. Deputy Chairman**

*RESOLVED* that Councillor Liddy be appointed Deputy Chairman for the Planning Committee meeting held on 6 June 2013.

**14. Minutes**

The Minutes of the meeting held on 22 May 2013 were confirmed as a correct record.

**15. 130752 - 58-60 Military Road, Colchester**

The Committee considered an application for the erection of temporary hoarding to the site frontage. The Committee had before it a report in which all the information was set out.

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

**16. 130781 - 3 The Glade, Colchester**

The Committee considered an application for a ground floor front extension to the kitchen, first floor side extension and internal alterations. The Committee had before it a report in which all the information was set out.

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

## **17. 130929 - Land Adjacent (South) to Grange Road, Tiptree**

The Committee considered a detailed application to vary condition 01 of planning permission 121353 to allow for two extra weeks of use in June (for 2013) and condition 8, to change the 'no play' months on the community pitch to June and July and to finish earlier (16:00) for the community pitch on Sundays. The Committee had before it a report and amendment sheet in which all the relevant information was set out.

Mr Mark Russell, Principal Planning Officer, and Mr Andrew Tyrell, Planning Manager, attended to assist the Committee in its deliberations.

Mr Joseph Caffery addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He suggested that as the applicant was aware of the early starting football season in 2013 at the time of the consideration of the previous application, it should have been addressed at that time. He explained that the applicant had stated he no longer required this permission. As such he requested that the Committee confirm their previous decision regarding the conditions of this planning permission and recognise the importance of the local residents' amenity. He also stated that the proposal would be akin to having ten tournaments being held in June.

Councillor Elliott attended and, with the consent of the Chairman, addressed the Committee. He raised the issue of noise levels in the areas surrounding the pitches. This had been likened to the noise level of a television and he suggested that this was unreasonable when considered in the context. He suggested that recording devices be left in the area to measure noise levels. He urged the Committee to consider the amenity of Tiptree residents over the requests of Colchester United Football Club.

In response to a request for clarification, the Principal Planning Officer explained that the applicant had arranged for alternative training accommodation in Ireland for the two weeks in question. It was understood that this was, however, only for a portion of the first team. The remainder of the first team and the youth team would still require the use of the Tiptree grounds.

The perceived "loss" from this application, of an additional two weeks of training in June for 2013, was considered to be outweighed by the perceived "gain" of two hours less use every Sunday, in perpetuity. It was clarified that the use would be only for eight days (not ten, as Wednesdays were excluded) and that these would be short days (09:30 – 15:30). Additionally, the use gained in the application was for training, whereas the use removed was match use, which was generally considered to be more disruptive.

The Committee requested clarification on whether this application would have an effect on any future use of the site. The Planning Officer explained that the extra two weeks of use outlined in this application were in relation 2013 only, but no assurance could be

given regarding the submission of any future applications which would have to be considered on their own merits. He assured the Committee that within any additional application consideration would be given to securing elements of benefit to the community.

A Member of the Committee encouraged residents, if they felt noise levels were excessive, to contact Environmental Health Officers, requesting the measurement of the level of noise being generated.

*RESOLVED* (NINE voted FOR, ONE voted AGAINST) that –

(a) the application be approved, subject to the Legal Agreement relating to planning application no 121353 being altered to make reference to planning application no 130929.

(b) On completion of the Legal Agreement, the Head of Commercial Services be authorised to grant planning permission subject to the conditions set out in the report.

(c) Condition 01 be amended to include “2013” after the phrase “in the last two weeks of June”.

**18. 130481 - Philip Morant School, Rembrandt Way, Colchester and 130480 - Grassed Area North of Norman Way and East of Reynolds Avenue & Landseer Way, Colchester**

**Councillor Manning (in respect of his employment at the nearby St Benedict’s Catholic College), Councillor Ford (in respect of his daughter attending The Philip Morant School) and Councillor Cook (in respect of his grandsons attending The Philip Morant School) declared a non-pecuniary interest in these items pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for new planning permission to replace an extant planning permission 100172 for a new access road to The Philip Morant School and Sixth Form College and internal arrangements for dropping off / collection and additional parking (Renewal of application F/COL/04/2217). An application for a new planning permission to replace extant planning permission 100223 for new access road to service The Philip Morant School was also considered. The Committee had before it two reports in which all the information was set out.

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

Mr David Whybrow, Principal Planning Officer, attended to assist the Committee in its deliberations.

Mr Kennedy, on behalf of Irvine Road residents association, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He stated that the situation had changed since the original permission was

granted. The open space in question was now much more coherent. He stated that the students from the vast number of schools in the area all used the space to walk in a safe environment. He suggested that the Planning Inspectors did not appreciate the devastating effect a road through this land would have on the students and residents close by. He urged the Committee not to renew this application and to encourage students to walk more.

Councillor Hunt attended and, with the consent of the Chairman, addressed the Committee. He suggested that there was no real need for this road, as the school access had been functioning perfectly well for the past 16 years. Several changes had occurred since the original application had been decided. The land had been designated in accordance with the Community Fields in Trust scheme and, as such, it was part of Council policy not to permit development on this land. The National Planning Policy Framework (NPPF) had also recently been altered to include the protection of green spaces that were special to the local community. He suggested that the space was special to the community, as it was one of the only green spaces in the area.

Councillor Lissimore attended and, with the consent of the Chairman, addressed the Committee. She remarked that the space in question was now a lot more open and after a survey that was conducted before the original application was submitted, opinion had been split 50-50 without following a specific area pattern. She suggested that the argument that a new road would improve safety was not persuasive, as the road would expose the public, especially pupils, to a more dangerous environment. She stated that a lot of the reservations surrounding this development may have stemmed from unfounded rumour.

Members of the Committee raised several points, including that, in relation to the Community Fields in Trust, this was one of the first applications being made in relation to a site covered by the Trust and would be a test for the protection that the designation offered. Members also referred to the question of land being considered 'special' under the NPPF and questioned what precisely was meant by this. It was mentioned that it may be possible to argue that as Prettygate had very little open space, one could conclude that any open space in that area was 'special' to that community.

It was suggested that an additional condition requesting the erection of fencing alongside the proposed roads be included, to ensure that safety was maintained for local people. Reference was also made to a suggestion that access to the proposed roads be conditioned so as to restrict access during school opening and closing times however, concern was expressed that this may not be appropriate or possible to implement. It was generally acknowledged by Members that application no 130480 was preferred over application no 130481.

In response to several questions raised, it was explained that advice had been sought from the Monitoring Officer on the subject of the deed of dedication and the Community Fields in Trust scheme, and this covenant was not a planning constraint that would warrant refusal. It was also explained that the additions to the NPPF were very much in line with the Council's existing Policies.

(i) In respect of application no 130481(SEVEN voted FOR, TWO voted AGAINST and ONE ABSTAINED from voting) the application be approved, subject to the conditions set out in the report together with the following additions:

- A condition stating that in the event of Application 130480 being implemented, all works in connection with application no 130481 be removed and the land reinstated to its former condition
- A condition stating that fencing be erected along the roadside
- An informative stating that the Committee's preference was for application no130480 over application no 130481

(ii) In respect of application no 130480 (EIGHT voted FOR, ONE voted AGAINST and ONE ABSTAINED from voting) the application be approved, subject to the conditions set out in the report together with the following additions:

- A condition stating that fencing be erected along the roadside.
- An informative stating that the Committee's preference was for application no 130480 over application no 130481.

**PLANNING COMMITTEE**  
**20 JUNE 2013**

*Present :-* Councillor Theresa Higgins\* (Chairman)  
Councillors Helen Chuah\*, Stephen Ford, Sonia Lewis\*,  
Cyril Liddy\*, Jackie Maclean\*, Jon Manning,  
Philip Oxford and Laura Sykes\*

*Substitute Member :-* Councillor Marcus Harrington  
for Councillor Peter Chillingworth\*

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

**19. Minutes**

The Minutes of the meeting held on 23 May 2013 were confirmed as a correct record.

**20. 130654 & 130655 - Unit 1, Tollgate Centre, Tollgate West, Stanway, Colchester**

**Councillor L. Sykes (in respect of previous mayoral engagements with the applicant) declared a non-pecuniary interest in this item pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for alterations to the front and rear elevations including a new entrance feature and shop fronts and the reconfiguration of car parking and installation of a mezzanine floorspace. An application for the use of Units 1B and 2A, as proposed, to be amalgamated for the sale of an extended range of A1 non food retail goods was also considered. The Committee had before it a report and amendment sheet in which all the relevant information was set out.

*RESOLVED* that -

(i) In respect of application no 130654 (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report and amendment sheet.

(ii) In respect of application no 130655 (UNANIMOUSLY) that –

(a) subject to the completion of the Section 106 Legal Agreement within six months of the date of the Committee meeting to provide to following –

- Travel Plan Provision (£3,500);
- Community Transport Contribution (towards community bus) (£3,000); and
- Walking and Cycling Infrastructure to improve routes from and within the development area (£30,000),

authority be delegated to the Head of Commercial Services to approve the application,



subject to the conditions set out in the report and amendment sheet.

(b) In the event that the Section 106 Legal Agreement is not signed within six months, authority be delegated to the Head of Commercial Services to refuse the application.

## **21. 130578 & 130579 - Town Hall, High Street, Colchester**

The Committee considered an application for the proposed change of use to restaurant, café and function rooms. An application for listed building consent for the proposed change of use was also considered. The Committee had before it a report in which all the relevant information was set out.

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

Although not planning considerations, it was requested that the fixtures and fittings on the site would be retained and that the intellectual property rights in relation to the civic insignia be investigated.

*RESOLVED* that, subject to the additional requests in relation to fixtures and fittings and the civic insignia, -

(i) In respect of application no 130578 (UNANIMOUSLY) that the application be approved, subject to the conditions set out in the report.

(ii) In respect of application no 130579 (UNANIMOUSLY) that the listed building consent be granted, subject to the conditions set out in the report.

## **22. 130794 - 1 Layer Road, Colchester**

**Councillor Harrington (in respect of his past custom at the Drury Arms) declared a non-pecuniary interest in this item pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for the erection of a single-storey rear extension, plant and bin store, external alterations (including provision of ATM and new glazed entrance), new vehicular access and associated hard standing for car park, service and delivery area and a 1.8 metre boundary wall. The Committee had before it a report and amendment sheet in which all the relevant information was set out.

Ms Lucy Mondon, Planning Officer, Mr Lee Smith-Evans, Urban Design Officer, and Mr Simon Cairns, Planning Project Manager, attended to assist the Committee in its deliberations.

Mr Mike Hardy addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He made the general

observation that as the building was included on the Colchester Local List it was historically important, which he did not believe had been addressed fully, as a Heritage Statement had not been included in the report. He also pointed out that the extension proposed was an extension to a part of the building developed in 1995, so was not compatible with original features.

Mr Dave Onions addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He suggested that this application was much altered from the previously refused application, with a 40% reduction in the design. He stated that several benefits would arise from the development for local residents, including a right-hand filter lane, a widened footpath and repaired facades on the building itself. He remarked that the Planning Inspector had found noise levels and car parking arrangements acceptable.

Councillor Pauline Hazell attended and, with the consent of the Chairman, addressed the Committee. She suggested that this proposal would have a detrimental effect on the building and the surrounding area. She compared this application to a previous refusal of a replacement window on a nationally listed building, for the reason that it would be detrimental to the community. She also raised concerns about the future use of the strip of land which had been left undeveloped. Finally, she pointed out an application to permit the retention of the metal shutters on the frontage of the site had been refused, but they had yet to be removed.

Councillor Lyn Barton attended and, with the consent of the Chairman, addressed the Committee. She commented that local residents were unhappy with the prospect of a new convenience store in the area and valued the heritage of this site. Although the right-turn lane and widened footpath were welcomed, there were still many highway issues that needed to be resolved, as the area was well used by residents and school children.

Councillor Nigel Offen attended and, with the consent of the Chairman, addressed the Committee. He suggested that the addition of an ATM within the development was a major alteration and needed further consideration. He believed this addition would have a great impact on the traffic visiting the site, as it would be the closest ATM to the nearby Garrison and associated extensive residential development. He urged a deferral of the application to re-examine the highways matters, with the ATM in mind.

Councillor Nick Cope attended and, with the consent of the Chairman, addressed the Committee. He stated that highway matters were still a concern, with many lorries already having to mount the pavement. The cumulative impact of other developments in the area would be significant. He suggested that protection from competition had previously been a legitimate planning consideration.

Councillor Sue Lissimore attended and, with the consent of the Chairman, addressed the Committee. She referred to a serious road traffic accident earlier in the week, involving a cyclist on the nearby mini-roundabout and suggested that this may have an impact on the views of the Highway Authority on the application. She suggested that the manoeuvring of delivery vehicles on the site would pose a threat to pedestrian and other road users, as she was of the view that vehicles would have to reverse onto a

busy junction. She urged that the highways matters for this application be reviewed.

The Committee discussed several issues including:

- The impact of the buildings inclusion on the Colchester Local List.
- The fact that the disabled car parking provided was not in accordance with parking policy standards.
- The size, accessibility and timing of delivery vehicles.
- The proposed structure of the plant and bin store, its relationship with the original building and the extension and whether this constituted an attachment to the main body of the building.

It was explained by the Planning Officer that the Highways Authority had been aware of the cumulative impact of surrounding developments and the inclusion of the ATM on-site when making their consideration of the application. She reported that Enforcement Officers were aware of the metal shutters on the site. In response to the questions raised regarding the locally listed nature of the building, it was clarified that this category of listing did not provide as a great a protection from development as nationally listed properties. As such, the matter had been considered during the application, but did not preclude any and all development. In this circumstance, the application was regarded by the Urban Design Officer as acceptable.

The Planning Officer referred to tracking diagrams, submitted by the applicant as part of the application, which illustrated that delivery vehicles could navigate the site, although with little room to spare. She also clarified that the proposed plant and bin store was not a roofed structure but a space enclosed by walls.

*RESOLVED* (NINE voted FOR and ONE ABSTAINED) that consideration of the application be deferred and, prior to the resubmission of the application to the Committee, officers be requested to obtain further information in relation to:

- The views of the Highway Authority particularly in relation to the impact of the recent road traffic accident;
- The delivery vehicle access considerations;
- The potential for additional disabled parking provision on the site;
- Design improvements in relation to the plant and bin store.

### **23. 130880 - 103 Old Heath Road, Colchester**

**Councillor T. Higgins (in respect of her acquaintance with the objector) declared a non-pecuniary interest in this item pursuant to the provisions of Meetings General Procedure Rule 7(5).**

The Committee considered an application for a proposed rear extension. The Committee had before it a report and amendment sheet in which all the relevant information was set out.

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

Ms Lucy Mondon, Planning Officer, attended to assist the Committee in its deliberations.

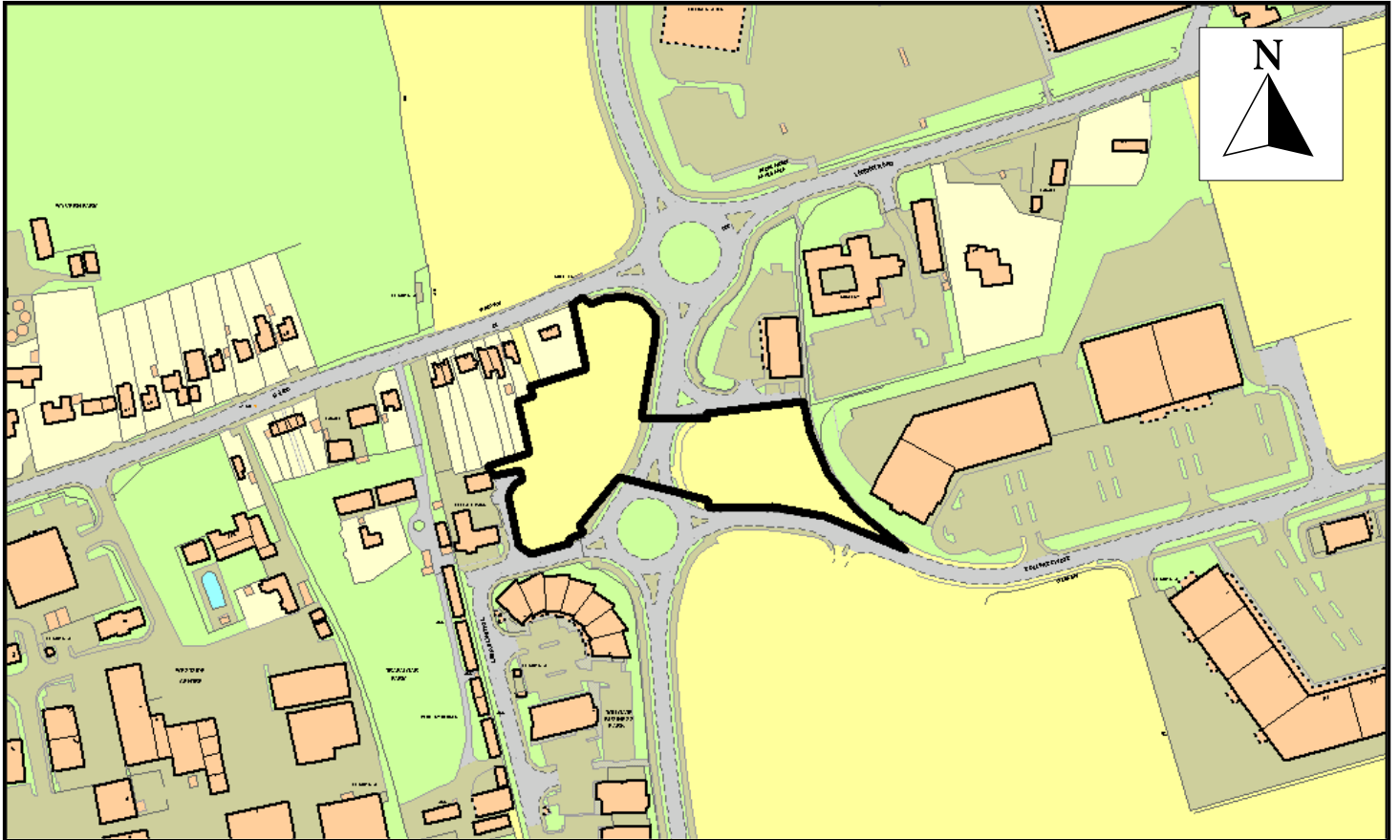
Mr Dominic Collins addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He suggested that, as a direct neighbour, his property would be subject to the overbearing impact of this development. He stated that the development would have a significant detrimental impact as it was over 4 metres in height, directly next to his patio. He also commented that the light to his kitchen would be blocked, as a glass conservatory would be replaced by a brick wall. He was further concerned that if the boundary wall was altered, it would be irrevocably damaged.

Councillor P. Higgins attended and, with the consent of the Chairman, addressed the Committee. He commented that it would be unreasonable to block light coming into the neighbours' kitchen and suggested that the Committee needed to make an on balance decision taking this and the favourable replacement of the existing structure into account.

The Committee discussed the potential benefits of the application for the neighbour, which included increased privacy and, if conditioned, an improvement to the boundary wall. They sympathised with the objector with regard to his concern about the potential loss of light to what was established to be a utility room.

It was explained by the Planning Officer that considerations in relation to loss of light were governed by the '45 degree' rule, which in this case, however, did not apply as a utility room was not considered to be a 'habitable room'. In addition, when considering the extent of development that could be undertaken within permitted development rights, the Planning Officer believed the proposed development to be acceptable.

**RESOLVED (UNANIMOUSLY)** that the application be deferred and delegated to the Head of Professional Services in order to secure by additional condition the rebuilding of a brick boundary wall and, if neighbours agree, the inclusion of a high level glazed window.



**Application No:** 130789

**Location:** Land Adjacent To, Floral Acres, London Road, Stanway, Colchester, CO3 8PB

**Scale (approx):** 1:2500

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**7.1 Case Officer: Mark Russell**

**Due Date: 17/07/2013**

**MAJOR**

**Site:** Floral Acres, London Road, Stanway, Colchester, CO3 8PB

**Application No:** 130789

**Date Received:** 17 April 2013

**Agent:** Mr Peter Twemlow

**Applicant:** Tollgate Partnership Ltd

**Development:** Proposed mixed use development to provide 1,329 Sq m GIA incubator floorspace (limited to use classes B1 – B8); 470 Sq m GIA restaurant (use class A3); and 200 SQ M GIA drive-through coffee shop (use class A1/A3); associated means of access; and other associated works.

**Ward:** Copford & West Stanway

**Summary of Recommendation: Conditional Approval subject to signing of a Section 106 Agreement**

## **1.0 Reason for Referral to the Planning Committee**

- 1.1 This item is referred to the Planning Committee because it is a major application and objections have been received.
- 1.2 The application had also been called-in by Councillor MacLean in the event of a recommendation for refusal, “on the grounds that this application will give sustainable jobs and growth for this area.”

## **2.0 Synopsis**

- 2.1 The key issues explored below are the principle of three proposed uses: Incubator units for B1 – B8 employment, A3 restaurant (for Chiquitos’ Mexican food) and a drive-through coffee shop (for Costa). The changing policy position in the light of the National Planning Policy Framework of 2012 is explored and also in relation to the upcoming Tollgate Vision Statement and the broad principle of the proposal is supported in that context.
- 2.2 Matters of design are covered, and the amendments made are held to be acceptable.
- 2.3 The subject of sustainability is then broached. Whilst the sustainable credentials of a drive through coffee shop are questionable from an environmental perspective, the connectivity for pedestrians and cyclists, together with the economic and social sustainability, mean that, on balance, the scheme is held to be acceptable especially as it would create employment.

2.4 Objections on the basis of residential amenity are then considered, particularly relating to the proposed coffee shop. Whilst your Officers do have some concerns, the proposal is seen as acceptable with conditions to protect residential amenity.

2.5 The report then concludes that the application should be approved, subject to contributions and works towards improved connectivity and sustainable travel.

### **3.0 Site Description and Context**

3.1 The site extends to approximately one hectare and comprises undeveloped land at the northern end of Tollgate between London Road and Tollgate West, straddling the Western Relief road.

3.2 The surroundings are mixed, with employment uses to the south and east, residential to the west and undeveloped land to the north across London Road. The Listed Building 165 London Road bites into the northern part of the site and would share its southern and eastern boundaries with it.

### **4.0 Description of the Proposal**

4.1 The proposal breaks down into three distinct elements, described below.

4.2 The first element is for 1,329 m<sup>2</sup> of incubator space for start up businesses (covering B1, B2 and B8 use – namely office/light industrial, general industrial and storage/warehousing). This is in the south-western corner of the site and consists of a curved building which is shaped around the bend in the road where Tollgate West meets the Western Relief Road. Details of the layout and design of this are given at section 15.

4.3 The second element is a 153-seater restaurant, with Chiquito's as the stated user. This includes a parking area and some outside eating. This is across the Western Relief Road from the proposed incubator units and mirrors that development as it reads the opposite bend of the road. This part of the site is 0.334ha.

4.4 The final element is a drive-through Coffee Shop, with Costa as the stated user. This also has a curved outline relating closely to the rotunda feature of the proposed restaurant and roundabout and measures 200m<sup>2</sup>. Outside seating is also shown on the drawings (indicating about 56 seats).

### **5.0 Land Use Allocation**

5.1 Employment Land

### **6.0 Relevant Planning History**

6.1 110177 (part of site) - Proposed offices including extended service road, car parking and landscaping. Approved 24th November 2011;

- 6.2 122138 - Proposed mixed use development to provide 1,329 Sq m GIA incubator floorspace (to include use classes A1 retail A2 office B1 business D1 non residential institution); 470 Sq m GIA restaurant (use class A); and 200 SQ M GIA drive-through coffee shop (use class A1/A3); associated means of access; and other associated works. Withdrawn 1st March 2013.

## **7.0 Principal Policies**

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

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

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- CE1 - Centres and Employment Classification and Hierarchy
- CE2b - District Centres
- CE3 - Employment Zones
- UR2 - Built Design and Character
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- TA5 - Parking

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

- DP1 Design and Amenity
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP17 Accessibility and Access
- DP18 Transport Infrastructure Proposals
- DP19 Parking Standards

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

- SA CE1 Mixed Use Sites
- SA STA1 Appropriate Uses within the Stanway Growth Area
- SA STA3 Employment and Retail Uses in Stanway Growth Area



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

Vehicle Parking Standards  
Sustainable Construction  
External Materials in New Developments  
Cycling Delivery Strategy  
Stanway Parish Plan and Design Statement

## 8.0 Consultations

### 8.1 Planning Policy:

8.1.1 This application follows on from a previous application (122138) which was withdrawn following concerns raised by the Council on a number of points including retail uses in an Strategic Employment Zone; the sustainability of a drive-through coffee shop; connectivity for pedestrians and cyclists; design issues; and relationship to the developing Masterplan for Tollgate. The current application differs from the previous one in that it no longer includes a retail component in the business units, but the application is otherwise largely similar to the previous one.

8.1.2 The application site lies within the Stanway Strategic Employment Zone (SEZ). Policy CE3 of the Core Strategy provides that SEZs will be a focus for industry and warehousing floor space, as well as incubator units and grow-on space to support the development of small and medium enterprises. Policy CE2b, District Centres does not support the expansion of Urban District Centres. Policy STA3 in the Site Allocations document states that use classes B1b, B1c, B2, B8, car showrooms, indoor sport, exhibition and conferencing centres and business incubation space are all appropriate uses within the Stanway SEZ, in line with the appropriate uses for SEZs listed in Development Policy DP5. STA3 provides that no further office development will be permitted within the Stanway Growth Area beyond the 36,500 identified in the Core Strategy. STA3 also provides that new town centre uses will not be permitted and that a limited amount of retailing will be permitted only where this is ancillary to another main employment use or if it meets identified local needs and doesn't compete with the town centre.

8.1.3 Overall consideration of the uses proposed also needs to have regard to the National Planning Policy Framework (NPPF) and other relevant development plan policies including Core Strategy Policies SD1 (Sustainable Development) and TA1 (Accessibility and Changing Travel Behaviour) which supports development at the most accessible and sustainable locations.

8.1.4 Para 14 of the NPPF establishes the general principle of a presumption in favour of sustainable development. Para 24 of the NPPF requires that local authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. The NPPF also notes that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale. Para 22 states that planning policies should 'avoid the long term protection' of allocated employment sites, in circumstances where there is 'no reasonable prospect' of this use coming forward on such sites.

### 8.1.5 Policy Implications

The B use incubator space element of the proposal is in accordance with the area's designation as a Strategic Employment Zone (SEZ). The application does not specify how the incubator units would be delivered and managed. It would be useful to note to the applicants, however, that the Enterprise Officer advises that a reputable provider of incubator units, NWES, might be interested in managing them. The involvement of an experienced manager would increase the certainty of this element of the scheme, which has been presented as requiring cross-subsidy from the restaurant and coffee shop. Given that the incubator units rather than the restaurant/coffee shop are the preferred use for a SEZ, opening of a restaurant/coffee shop should be linked by condition to the completion of the incubator units.

8.1.6 It is not clear that there is no reasonable prospect of the site coming forward for development of uses within the list of preferred uses for SEZs provided in Table CE1b. Restaurants and coffee shops are not on this list, although Policy CE3 provides some allowance for small scale developments providing for the needs of the local workforce. The applicants note that a nearby site built for "B" use has remained unoccupied since 2011, but this is primarily considered to be an effect of the economic recession rather than due to any inadequacies of the new building or well-located site. The key issue, however, is that the NPPF supports a more flexible view of commercial development which means that there is more scope for non-B uses in Strategic Employment Zones.

8.1.7 Since restaurants and coffee shops can be considered to be town centre uses, they need to be considered in terms of the requirements of the NPPF requirements for a sequential test and flexibility on format and scale. The applicants consider that in this instance, the sequential test is satisfied by looking at alternative sites within the adjacent Tollgate Urban District Centre, given that the site is in an edge-of-centre position relative to that centre. Arguably, other Urban District Centres could also be considered along with edge-of-centre sites to the Town Centre. Other edge-of-centre sites, however, would not necessarily share the particular characteristics of this site in an area allocated for employment uses.

8.1.8 The previous comments on application 122138 noted that the particular characteristics of the site justified a more flexible approach on the proposed food and drink uses on the following basis:

- The current proposal includes delivery of employment units as specified in STA3 in addition to the non-conforming restaurant use. The overall package would deliver a range of new employment opportunities and support the provision of employment in the Strategic Employment Zone.
- The presumption in favour of sustainable development in the NPPF points to giving considerable weight to the proposal's location adjacent to an Urban District Centre. This would be sustainable in terms of promoting shared trips, with restaurant/coffee shop uses providing a service to local businesses and residents. While restaurants and coffee shops are town centre use, it could also serve as a local facility for the area and allow users to combine dining out with a trip to retail outlets in the Urban District Centre.

- 8.1.9 It can be argued that the proposal could be disaggregated, given that there is no inherent link between the food facilities and the start-up units. Given the scale of the proposal, however, and its accessibility to the adjacent Urban Centre more detailed evidence on this aspect of the sequential test is not requested. The view of the Planning Statement is accepted that the proposed uses do not compete with the predominant retail offer of the Tollgate Urban District Centre, but rather provide a complimentary service to it.
- 8.1.10 While the economic benefits of the scheme and the requirements of the NPPF point to a positive view of the proposals, concerns on sustainability and design as follows will need to be considered when evaluating the overall acceptability of the scheme.
- 8.1.11 **Sustainability and connectivity** – While the principle of a coffee shop is not contested as noted above, the format of the drive-through facility is questioned for its lack of sustainability. A drive-through facility is by definition car-based, contrary to Core Strategy policy TA1 and the delivery of TA2, and also has the effect of increasing the proportion of the site devoted to the access road needed to take customers around the building. The drive-through proposal does not accordingly contribute to the objective of increasing pedestrian and cycling connectivity and reducing the dominance of the car in the Tollgate area.
- 8.1.12 The Transportation Policy Manager notes that the restaurant cycle parking which appears to be located at the south east end of the car park must be relocated closer to the entrance and be accessible from the existing shared use path on the western bypass (or from and widen path on Tollgate Drive). Positioning the cycle parking in the corner of the car park, making cyclists cycle through the car does not promote cycling in accordance of TA1 and TA2. The footway on the Tollgate Drive should be widened to create a 3m wide shared use route. This accords with work undertaken on the Vision Statement for the Tollgate area and could link with future changes eastwards along Tollgate Drive to increase permeability for cycling through the Tollgate area.
- 8.1.13 The sustainable construction and renewable energy measures noted in the Design and Access statement are welcome and accord with the encouragement given to such measures in ER1 and DP25. The actual delivery of the measures promised should be secured where possible through identification in plans and/or conditions.
- 8.1.14 **Design** -A number of points on the orientation and connectivity of the design on the previous application were raised, and advice will be needed to be sought from the Urban Designer on the extent to which these have been addressed in the current application. Given that the application has been submitted prior to agreement on the Tollgate Vision Statement, it will be important to ensure that the scheme's connections with adjacent sites and the wider area are integrated with the links and design criteria contained in the draft Masterplan.
- 8.1.15 **Recommendation:** On balance, approval is recommended, subject to conditions strengthening the sustainability aspects of the scheme and securing appropriate connections and facilities for pedestrians and cyclists.

## 8.2 Urban Design:

- 8.2.1 The amendments to the designs from the previous application go some way to making the architectural response more acceptable.

8.2.2 In principle, the architectural response is satisfactory. From a broader, urban design perspective the drive through element remains problematic. With land allocations for many hundred homes within the immediate area the drive through element will be a deterrent to pedestrians. The layout of the café is obviously oriented towards vehicle based patronage and this must be questioned from a sustainable point of view. The emerging local population will be encouraged to drive and, if not, possibly discouraged to use this local facility because of the domination of the drive through design. This is not therefore sustainable development.

### 8.3 Environmental Control:

8.3.1 'Having looked at the application, no noise survey has been produced to show the impact of noise from the car park on the nearby residents' (therefore a noise condition is proposed). 'There is also no mention of odour control in the application' (therefore a control of fumes and odours condition is proposed).

8.3.2 A construction method statement is also proposed by condition.

### 8.4 Highway Authority:

8.4.1 The Highway Authority would not wish to raise an objection to the above application subject to the following requirements: Conditions relating to:

- Wheel cleaning;
- Pedestrian/cycle link provision;
- Pedestrian accesses off footpath along the eastern boundary of the proposal site;
- Upgrading of bus stops;
- No buildings within the "yellow land" (planning permission 090692, relating to Sainsburys, refers);

8.4.2 NOTE – The issue of bus-stops will be revisited with the upcoming Tollgate Vision Statement and Master Plan, and has been removed from this application.

8.4.3 The full text of these conditions can be found at the foot of this report.

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

## 9.0 **Parish Council Response**

9.1 'Stanway Parish Council raises NO OBJECTIONS to this proposal, but does have the same general observations as per the original application.' (At the time of application 122138, Stanway Parish Council raised no objection in principle, but voiced concerns over 'Opening hours, noise levels of traffic, volume of traffic and on-site parking and increase in litter.'

## **10.0 Representations**

10.1 Four letters of objection (one just beyond the consultation expiry date) were received from local residents. These covered the following points:

- Impact on view and privacy of residents
- loss of quiet enjoyment of their gardens
- Compromise highway safety
- increase in traffic (noise/fumes)
- Negative impact on listed building
- Reduction of 'green space' (and negative effect on foxes and badgers)
- Threat to stag beetles.
- Existing incubator units remain unoccupied
- Local flooding will worsen
- Enough drive-through and coffee facilities already
- Increased litter
- Increased anti-social behaviour
- Location of bins at drive-through is unacceptable
- Increase in rodents

10.2 Two emails of support were subsequently received from local businesses, including from Nicholas Percival (who had been working with the applicant) on 24th June, some four weeks after the consultation expiry.

10.2.1 These emails supported the creation of employment and claimed that there would be no negative effect on residential amenity.

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

## **11.0 Parking Provision**

11.1 107 spaces are to be provided. Parking standards for the uses applied for are maximum. 21 cycle parking spaces are to be provided.

## **12.0 Open Space Provisions**

12.1 n/a

## **13.0 Air Quality**

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

## 14.0 Development Team and Planning Obligations

14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The Obligations that would be agreed as part of any planning permission would be:

- Travel Plan (by condition) and £3k monitoring fee (secured by S106 or UU)
- Upgrade to the latest Essex County Council specification of the 2 bus stops located in London Road west of it’s junction with the Stanway Western Bypass
- no buildings within the ‘Yellow Land’ shown in Sainsbury’s S106 (S106 for 090692 gives a definition)
- cycle parking
- possible widening of footway ‘Tollgate Drive’

## 15.0 Report

15.1 Principle of Use: The land in question is zoned for employment in Colchester Borough Council’s Local Development Framework. Traditionally this has meant B1, B2 and B8 uses. The Site Allocations document (October 2010) states that this site is a Strategic Employment Zone (SEZ) and that “a wide range of employment opportunities (are) expected to be delivered including Business Incubation Units.” The Core Strategy (December 2008) earmarks 36,500m<sup>2</sup> gross of B1 use, and a combined total (with North Colchester) of 45,100m<sup>2</sup> gross for industry and warehousing in the period 2004-2021.

15.2 Policy STA3 in the Site Allocations states that use classes B1b, B1c (i.e. all B1 uses apart from offices), B2, B8, car showrooms, indoor sport, exhibition and conferencing centres and business incubation space are all appropriate uses within the Stanway SEZ. It is therefore apparent that the adopted set of policies give a clear steer as to the type of uses sought for this site. This was confirmed by Planning application 110177 which was for a B1 use (albeit for offices).

15.3 Whilst the policy documents do allow for other uses in the sense that they would be for the use of workers in nearby business units, it is questionable whether the Chiquito’s restaurant or the drive-through Costa can really be claimed to serve that purpose (although workers would, of course, constitute part of the clientele). The current proposal, therefore, appears to stray from the adopted policy position.

15.4 The main new material consideration, however, is the NPPF. This document is geared towards (although not uniquely) job creation and, as our Planning Policy Manager has advised “NPPF supports a more flexible view of commercial development which means that there is more scope for “non-B” uses in Strategic Employment Zones.” In addition to this, the LDF policies are currently under review. This being the case, holding a firm line with the wording of the policies could be problematic. It must also be noted that there has been a poor take up of the existing business units which have been built in a crescent on a neighbouring plot of land to the south (also in the applicants’ ownership).

- 15.5 In conclusion to this section, the broad principle of the uses sought can be seen as acceptable on balance, provided other matters can be satisfied.
- 15.6 Design and Layout: This complicated site which borders four different roads and two roundabouts is visually challenging in terms of bringing a cohesive scheme to the table which both address the road frontage and provides for sensitive landscaping as well as giving an acceptable level of connectivity for sustainable means of travel and making car parking as discrete as possible.
- 15.7 The previous application (122138) drew the following comments from our Urban Designer:

“All three of these proposed buildings are inappropriately sited.

The drive through café (restaurant) is isolated for pedestrians; cut off by the drive through access road. This road and vehicle domination in general inhibits the opportunity to arrive by sustainable means. The outdoor area is almost wholly surrounded by carriageway with planting intended to contain people rather than create an inviting and positive sense of place. This is a poor arrangement given the recent impetus for a more local centre to be established here.

The incubator building is too close to the street boundary to allow a sufficient depth of landscaping that would be in character with the recently planted schemes in the vicinity. Walking between the drive through café and the business incubator centre would appear to have not been considered; the vehicle layout dominates the space and inhibits pedestrian movement between these two uses despite the mutual benefit of being on the same plot.

The restaurant has a lack of invitation in its street frontage and fenestration is not adequately provided on the public elevations. This building should be either set back to allow sufficient screening of the poor elevations or redesigned as a corner turning building with appropriately detailed elevations to the public realm. The entrance to the restaurant is only accessible from the car park, with no entrance for pedestrians provided from the street elevations this is purely car orientated and cannot be supported as a sustainable development.”

- 15.8 The applicants then amended the scheme, and this drew the following response:

“The increase in peripheral landscape is a welcome addition to this scheme, as shown in the sketch drawing submitted since the meeting on site.

This goes some ways to mitigating my original comments regarding the car orientated layout by allowing the planting to visually hide the dominance of vehicles. The fundamental car orientation of the layout remains and will be prominent in places where waiting spaces have been left on the drive through use.

The setting of the listed building has been given more planting and set back but the issues of noise, lighting and hours of use may still be problematic.”

- 15.9 Notwithstanding the issues over car orientation, the applicants have therefore presented an improved layout which mimics the shape of the roads and roundabouts and offers a landscaping belt. This layout is a good basis from which to consider the design of the building themselves.
- 15.10 Due to the geometry of the roads, the buildings are circular in aspect. In the case of the coffee shop and restaurant buildings, these are perfect spheres in the form of rotundas addressing the London Road and Western Approach roads respectively, the latter building then running parallel with Tollgate West in a straight section, with a smaller tapering section also running north parallel with Western Approach. In the case of the incubator units, the solution chosen is a staggered array of straight walls, with indentations and fins/outshoots, which traces the shape of the bend in the road.
- 15.11 In terms of materials, the business incubator units are to be in render and timber, as is the coffee shop. The latter would have horizontal boarding, the former vertical, to give the buildings contrasting emphases. The restaurant is tabled as having a mix of materials to reflect its multifarious architecture. The rotunda would be part glazed and rendered, with the glazed part facing the roundabout. The main part of the building would have metal roof, metal and boarded fascias would be in place, and the single storey element containing the stores and entrance would be a contrast, having a flat roof and horizontal timber boarded walls.
- 15.12 Scale, Height and Massing: The buildings have been designed so that their scale and height tally with those around them (i.e. one and two storeys). The massing is of a dispersed nature due to the physical features between the three parts of the site, i.e. the roads and roundabouts, but this is in part offset by proposed planting which knits the forms together and avoids gaping, visually unresolved areas.
- 15.13 Impact on the Surrounding Area: This part of Tollgate has long been tabled for commercial development of one sort or another, and is largely surrounded (other than to the west) by other such development. It would, therefore, act to complete the jigsaw and bring to life as yet unused land and would meld with its surroundings physically. It would also see increased traffic movements, but these would be at least in part, tied to the Western Relief road which is nearing completion, possibly by the end of 2013. The impact on the surrounding area from this traffic would be noticeable, and in this vein residential amenity required consideration (further below).
- 15.14 Sustainability: The NPPF advises that there are three elements to sustainability:  
i) Economic,  
ii) Social,  
iii) Environmental.
- In the case of all of the uses applied for, the economic case is clear in that 110 jobs stand to be created. The social sustainability is less clear, although it is accepted that in the case of the restaurant, and to a lesser extent the café, new venues for people to meet up and socialise will be available to Stanway and the west of Colchester. However, with the exception of half a dozen houses on the southern side of London Road, the site is not readily accessible from any residential properties. Therefore, any claims of environmental sustainability are more difficult to support.
- 15.15 The uses are undoubtedly car-dominated, and in the case of the drive through car-dedicated. However, connectivity for cyclists and pedestrians forms part of the offering which helps to offset this concern to a certain degree.



- 15.16 It must also be noted that the decision was made many years ago that a western relief road would be punched through from Warren Lane to London Road (now heading towards its final phases) and a certain amount of traffic would be expected to take this route in any event. The fact that traffic which would not have been passing through will now be attracted to this venue is certain, but the amount is unknown and would be very difficult to gauge.
- 15.17 On balance, whilst the sustainable credentials of the drive through café are questionable, the scheme as a whole is seen as economically and socially sustainable.
- 15.18 Highway Issues: The Highway Authority has raised no objection and has advised of the measures which it would like to see put in place. These are covered by conditions below and will be secured through a section 278 agreement with the Highway Authority.
- 15.19 Residential Amenity: Concerns have been raised from residents at 165, 167a and 169 London Road. These are within the group of five properties which border the site, specifically the proposed drive through coffee shop. These objections have largely centered (although not exclusively) around noise and traffic.
- 15.20 The issue of traffic requires careful consideration, but must be measured against what has already been agreed in previous decisions and site allocations, rather than against the existing scenario in which there is very little activity next to the dwellings in question.
- 15.21 The Western Relief road, or Western Approach, has benefitted from Planning permission for many years and is now nearing completion. This will inevitably be heavily trafficked as vehicles make their way between Warren Lane and London Road. In addition to this, the land is allocated for employment and has an extant permission for offices, with the spare land to the north likely to contain some business use at some point in the future. Therefore the reality is already that traffic would come through and that business uses (including car parking) would have already occurred.
- 15.22 The fact that traffic which would not have been passing through will now be attracted to the drive-through is certain (and this, as well as traffic which was passing through anyway, would have to perform a 'loop' to access the drive-through facility, thus lingering longer and expelling more fumes) but the amount of such extra traffic would be very difficult to gauge, and would be limited in comparison to the increase which will occur due to the new road going through.
- 15.23 The access road to the drive-through is, at its nearest point, approximately eight meters from the boundary with 165 London Road, and approximately seventeen meters from the building itself. Planting (much of which already exists) is shown as being in excess of ten meters deep to the south and east of the house.

- 15.24 A thinner band of planting is also tabled for the boundaries with 167a, 169 and 171 London Road. The boundary of the car park area with number 169 extends along half of its length, reaching 25 meters with a return of seven meters. The proposed access road then skirts the southern border of the property (approximately seven meters) giving a grand total of almost forty meters of boundary on to the development site. 171 and 173 would also border the access road. The planting belt to these properties is not, in your Officer's opinion, sufficient, and the applicants will be asked to agree an amended scheme.
- 15.25 As a further measure, opening hours of the drive-through coffee shop are to be limited to between 7am and 7pm, which are sociable hours that will protect amenity. A further condition restricting hours of delivery to this and all of the other units is also proposed.
- 15.26 With the above, and additional conditions relating to noise and odour control, as well as a restriction on hours of use of the drive-through, the application is, on balance, held to be acceptable in terms of residential amenity.

## **16.0 Conclusion**

- 16.1 The judgement that the proposal is acceptable is finely balanced. In the case of the drive through the sustainability is questionable. However, the scheme in the round is seen as sustainable, offering improved connectivity and creating 110 jobs. Issues of residential amenity have been considered and these have been largely dealt with by condition. Members are therefore requested to approve this application.

## **17.0 Recommendation**

- 17.1 APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

1) £5,000 contribution (towards £40,000 cost of Stanway Community Bus (operated by Colchester CVS);

2) £5,000 Membership of Business Travel Plan Club.

3) The construction and completion of the three elements of the scheme simultaneously.

## **18.0 Recommended Reasons for the Decision**

### **18.1 YOP - \*Reason for Approval (Objection(s) Received - Committee)**

The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because of the creation of jobs. Thus, having had regard to all material planning considerations the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application.

## **19.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - Non-Standard Condition/Reason**

With the exception of the following conditions relating to planting/boundary treatment and car parking, the development hereby approved shall comply in all respects with the submitted drawings 12755:P010, 12755:P03:G, 12755:P04:A, 12755:P05:A, 12755:P065:B, 12760:P07:C, 12761:P08:BC, 12761:P09:A.

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

### **3 - Site Boundary Noise Levels**

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

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

### **4 - Food Premises (Control of Fumes and Odours)**

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

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

#### 5 - Construction Method Statement

Prior to the commencement of development, including any works of demolition, a Construction Method Statement shall have been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for: the parking of vehicles of site operatives and visitors; hours of deliveries and hours of work; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; wheel washing facilities; measures to control the emission of dust and dirt during construction; and a scheme for recycling/disposing of waste resulting from demolition and construction works.

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

#### 6 - Non-Standard Condition/Reason

Prior to commencement of the development details of a wheel cleaning facility within the site and adjacent to the egress onto the highway shall be submitted to and approved in writing by the local planning authority. The wheel cleaning facility shall be provided prior to commencement and during construction of the development.

Reason: To protect highway efficiency of movement and safety.

#### 7 - Non-Standard Condition/Reason

The restaurant hereby approved shall be used for A3 purposes only as defined in the Use Class Order and for no other purpose (including any other purpose in Class A1 or A2 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

Reason: For the avoidance of doubt as to the scope of the permission and to enable to local planning authority to control changes of use to prevent inappropriate uses in this site outside of the Urban District Centre.

#### 8 - Non-Standard Condition/Reason

The drive-through coffee shop hereby approved shall be used as a mixed use A1/A3 drive-through coffee shop only and for no other purpose (including any other purpose in Class A1, A2 or A3 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

Reason: For the avoidance of doubt as to the scope of the permission and to enable to local planning authority to control changes of use to prevent inappropriate uses in this site outside of the Urban District Centre.

#### 9 - Non-Standard Condition/Reason

Prior to the commencement of development, details of tree and/or shrub planting and an implementation timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall include a revision from the submitted documents which would give an improved separation from the residential properties on London Road. Such planting shall be implemented prior to the drive through coffee shop hereby approved coming into beneficial use, and shall be maintained at all times. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

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

#### 10 - External Light Fixtures TBA

No external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To reduce the risks of any undesirable effects of light pollution

#### 11 - Refuse and Recycling Facilities

Prior to the first occupation of the development hereby permitted, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have been previously submitted to and agreed, in writing, by the Local Planning Authority. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.

Reason: The application contains insufficient information to ensure that adequate facilities are provided for refuse and recycling storage and collection.

#### 12 - Litter

Prior to the first occupation of the development hereby permitted, equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development shall be provided in accordance with details that shall have previously been submitted to, and agreed in writing by, the Local Planning Authority. Any such equipment, facilities and arrangements as shall have been agreed shall thereafter be retained and maintained in good order unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: In order to ensure that there is satisfactory provision in place for the storage and collection of litter within the public environment where the application lacks sufficient information.

#### 13 - Non-Standard Condition/Reason

No commencement of the development shall take place until the application drawings have been amended and submitted to and approved in writing by the local planning authority to show provision of the following:

- A minimum 3 metre wide pedestrian/cycle link between the Stanway Western Bypass foot/cycleway and the proposal site immediately north-east of the incubation offices building.
- 2 no. minimum 2 metres wide pedestrian accesses off the footpath which runs along the eastern boundary of the proposal site; one into the south-east corner of the Chiquito's restaurant site and the other into the end of the restaurant site access road.

- The pedestrian/cycle link off London Road and off the Stanway Western Bypass (immediately south of the drive-thru coffee shop waiting bays) a minimum 3 metres wide.  
Reason: To ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM9 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

#### 14 - Non-Standard Condition/Reason

There shall be no buildings within the 'Yellow Land'. Please see the S106 Agreement attached to the nearby Sainsbury's store (planning permission reference 090692) for a definition of the 'Yellow Land'.

Reason: To protect highway efficiency of movement and safety.

#### 15 - Non-Standard Condition/Reason

The coffee shop hereby permitted shall not be open to the public (either for internal or drive-through use) outside of the following hours: 07:00 – 19:00.

Reason: In the interests of residential amenity.

#### 16 - Non-Standard Condition/Reason

No machinery shall be operated, no process shall be carried out and no deliveries taken at, or despatched from the site outside the following times:

Monday to Friday: 07:00 – 18:00

Saturday: 07:00 – 18:00

Sundays or Public Holidays: None

Reason: To safeguard the amenities of nearby residential properties.

#### 17 - Non-Standard Condition/Reason

The incubator units hereby approved shall be limited to use-classes B1 – B8 only, and for no other purpose (including any other permitted changes within the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

Reason: For the avoidance of doubt as to the scope of this permission.

#### 18 - Non-Standard Condition/Reason

The car parking spaces indicated on the plans hereby approved (and as may be amended in order to satisfy the planting/landscaping condition) shall be constructed prior to the occupation of the buildings hereby approved and thereafter shall be retained and used only for car parking in relation to the permitted uses of the buildings.

Reason: To ensure that vehicles visiting the site can park off the highway.

#### 19 - No Open Storage

There shall be no outdoor storage of any materials goods equipment plant machinery or vehicles of any description on any part of the site unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: To ensure a satisfactory appearance of the site and to preserve and enhance the character of the area.

## 20.0 Informatives

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

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

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

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

(4) All highway related details should agreed with the Highway Authority.

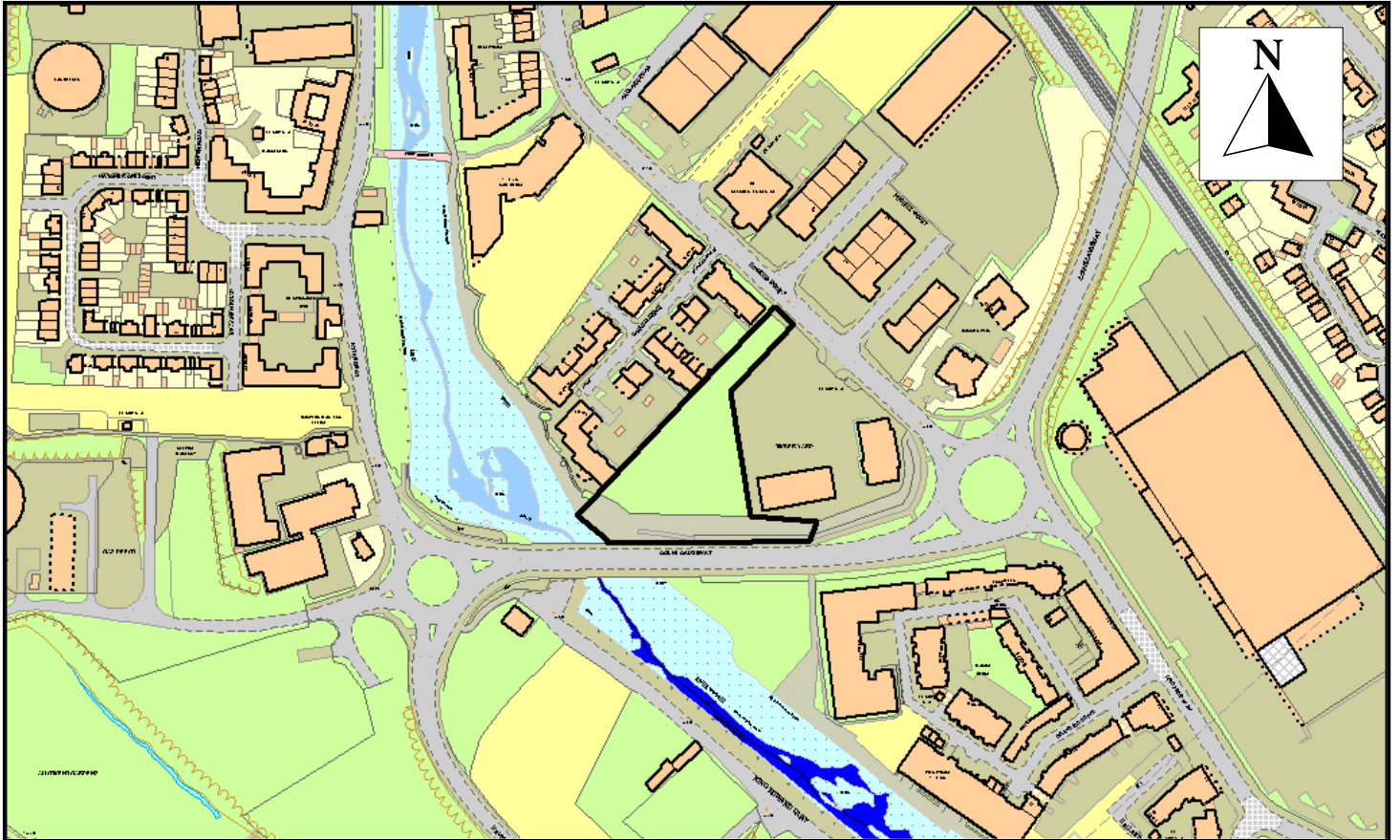
(5) The proposal should accord with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009.

(6) Under Section 23 of the Land Drainage Act 1991, prior written consent from the Lead Local Flood Authority (Essex County Council) is required to construct any culvert (pipe) or structure (such as a dam or weir) to control or alter the flow of water within an ordinary watercourse. Ordinary watercourses include ditches, drains and any other networks of water which are not classed as Main River If the applicant believes they need to apply for consent, they can email any queries to Essex County Council via [watercourse.regulation@essex.gov.uk](mailto:watercourse.regulation@essex.gov.uk)

(7) Planning permission does not negate the requirement for consent and full details of the proposed works will be required at least two months before the intended start date

## 21.0 Positivity Statement

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



**Application No:** 130129

**Location:** Aim Hire Site, Hawkins Road, Colchester

**Scale (approx):** 1:2500

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## 7.2 Case Officer:Bradly Heffer

**MAJOR**

**Site:** Hawkins Road, Colchester

**Application No:** 130129

**Date Received:** 23 January 2013

**Agent:** January's Chartered Surveyors

**Applicant:** Ferry Investments Limited

**Development:** Application for a new planning permission to replace extant planning permission 081852 in order to extend the time limit for implementation for erection of 63 residential units and 823 sq.m. commercial floorspace with associated car parking and provision of river walkway connecting with Colne Causeway.

**Ward:** St Andrews

**Summary of Recommendation: Conditional Approval subject to the signing of a Section 106 Agreement**

### 1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it is a major application and officers seek Members' endorsement of a recommendation of approval, subject to the completion of a s106 agreement. Members are aware that officers do not have delegated powers to commit the Council to be party to a s106 agreement.

### 2.0 Synopsis

2.1 The key issues explored below relate to the proposal for a renewal of a previous planning permission on this site, and the attendant s106 agreement – the details of which are explained below.

### 3.0 Site Description and Context

3.1 The site for this proposal is within the Hythe area of the town, the location of the now defunct historic port. It is an irregularly-shaped piece of land, with an existing vehicular access on to Hawkins Road. This leads to a triangular-shaped, level area of land that has a modest frontage on to the riverside. The southern portion of the site comprises a sloped pedestrian access up to Colne Causeway. The site is mainly laid to concrete with some areas of scrub planting. It is currently occupied by portakabin-type structures that appear to be used for storage. The site does contain some trees and shrubs.

3.2 Immediately to the north-west of the application site is a flatted residential scheme, the second phase of which is currently under construction. Abutting the site to the east is a building materials supplier. The site is bounded to the south by the Colne Causeway distributor road and part of the riverside walk.

#### **4.0 Description of the Proposal**

4.1 The submitted application seeks the Council's approval to renew a previously-approved scheme (under application ref 081852) of mixed use development on the site. This would consist of the erection of a 7-storey building located at the southern end of the site. The building would contain 63 apartments (32 one-bed units and 31 two-bed units) and 823 square metres of commercial space on the ground floor. The commercial floor space would be available for A1, A2, A3 and B1 uses.

4.2 The proposed building would contain a basement area, served by a ramp, which would accommodate some car parking and cycle parking facilities. At external ground floor level the majority of the site area to the rear of the building would be given over to parking spaces. The plans also indicate the provision of a landscaped area and tree planting to the front of the building facing on to the river. This space would also contain seating and cycle parking facilities. A smaller landscaped area would also be provided adjacent to the main ground level parking spaces. The planning statement that accompanies the application includes the following explanatory statement:

'The 7-storey building is of a contemporary design that reflects the large scale residential flat blocks that have been recently constructed to the west. The proposed building comprises a basement car park. Some additional surface level car parking is also provided to the north of the building. A soft landscaped area is located within the centre of the site while a hard paved area is located to the south of the building. This hard paved area extends that which is already provided to the rear of the adjacent residential development providing an area of public realm on the riverside edge...The river frontage has been subject to significant change over recent years. The land immediately to the west has now been redeveloped with a multi-storey flatted residential scheme erected both along its site frontage and back into the site...the development will site below the height of the adjacent development...[and will] respect and enhance the character of the site, its context and its surroundings in terms of its architectural approach, height, size, scale, form, massing, density and proportions...'

#### **5.0 Land Use Allocation**

5.1 The site for this proposal is located in a predominantly residential area as allocated in the Local Development Framework Proposals Maps. It also falls within a flood zone and an East Colchester Special Policy Area (no. 4).

#### **6.0 Relevant Planning History**

6.1 Prior to the submission of this current application the Council approved an application for an identical form of development under application reference 081852. This permission was granted via notice dated 3<sup>rd</sup> February 2010 – and expired on 3<sup>rd</sup> February 2013. Members should note that this application for renewal of the planning permission was submitted to the Council prior to the expiry date of the previous permission – on 23<sup>rd</sup> January 2013.

## 7.0 Principal Policies

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

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

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- CE1 - Centres and Employment Classification and Hierarchy
- CE2 - Mixed Use Centres
- CE2a - Town Centre
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- H4 - Affordable Housing
- UR1 - Regeneration Areas
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- TA5 - Parking

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

- DP1 Design and Amenity
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP6 Colchester Town Centre Uses
- DP12 Dwelling Standards
- DP13 Dwelling Alterations, Extensions and Replacement Dwellings
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP17 Accessibility and Access
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage

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

SA CE1 Mixed Use Sites  
SA H1 Housing Allocations  
SA EC1 Residential development in East Colchester  
SA EC2 Development in East Colchester  
SA EC6 Area 4: Hawkins Road

Guidance/Documents:

Vehicle Parking Standards  
The Essex Design Guide  
External Materials in New Developments  
Colne Harbour Masterplan

## **8.0 Consultations**

8.1 The Highway Authority and the Contaminated Land Officer have no objection to the proposal subject to the imposition of conditions on a grant of planning permission.

8.2 Natural England advises that the development is not likely to have an adverse effect on the Upper Colne Marshes SSSI. It is also stated that green infrastructure measures and biodiversity enhancements should be considered as part of a planning approval.

8.3 The Environment Agency has no objection to the proposal subject to the imposition of a condition on a grant of planning permission.

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

## **9.0 Parish Council Response**

9.1 Not applicable in this case – the site is in a town ward.

## **10.0 Representations**

10.1 As a result of local notification, one letter of objection has been received, in which the following comments are made:

- The proposed building would block light to and obscure views from existing flats
- There would be insufficient car parking and open space provision
- The submitted scheme does not provide any community facilities and limited employment opportunities
- No new trees are proposed
- The development contributes nothing to the community

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

## **11.0 Parking Provision**

11.1 The submitted scheme proposes in total of 76 car parking spaces (located at basement and ground floor level). Of these, four are shown as being for use by disabled motorists. The scheme also shows the provision of 120 cycle parking spaces – again at basement and ground floor level.

## **12.0 Open Space Provisions**

12.1 The submitted scheme provides a private balcony space for each of the 63 units, together with a landscaped spaces and a raised terrace area. The application submission advises that the combined area of these facilities equates to approximately 1 495 square metres. In addition, there is approximately 400 square metres of land that would be utilised to extend the existing landscaped riverside walk.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

14.1 This application is classed as a “Major” application and therefore there was a requirement for it to be considered by the Development Team. It was considered that Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990. The Obligations that would be agreed as part of any planning permission, and as endorsed by the Development Team, would be:

- £78 710 contribution for education provision
- £132 116 contribution to public open space and recreation
- £234 805 contribution to off-site affordable housing provision
- £40 000 contribution to community facilities

## **15.0 Report**

15.1 It is important to bear in mind that this current application submission seeks to renew planning permission for a previously approved scheme, for an identical form of development.

15.2 Design and Layout - Members will be aware that the regeneration of the Hythe has been underpinned by the provision of apartment buildings that are of substantial scale. Indeed the site immediately adjacent to the north west of the application site, previously occupied by the Spottiswood Ballantyne print works, contains a series of buildings that are of similar character to the development proposed under this scheme.

15.3 The proposed building is positioned in order to relate spatially to the river frontage, which is a fundamental requirement in terms of layout, as it would reinforce the space between the building and the river and add value to it (the riverside) as a public amenity space. Importantly, the mixed use nature of the scheme means that an ‘active’ commercial frontage would be provided at ground level which would provide interest and interaction for users of the riverside walk. The arrangement of the

development would also mean that the parking and servicing areas to serve the development would be screened from the river frontage, and furthermore the treatment of these areas would include the introduction of landscaping and tree planting (including the creation of 'avenue' planting). Overall this treatment would be a clear enhancement, when considered against the current context.

- 15.4 The design of the building would follow a contemporary architectural approach that matches the general approach that has been taken elsewhere in the locality. Furthermore the provision of features such as balconies adds further visual interest to the building and also picks up on similar features found on other flatted schemes in the regeneration area. In the case of this current scheme it does introduce elements such as gabion walling which is not currently found within the area, but does continue the contemporary approach.
- 15.5 Scale, Height and Massing – The overall size of the building, although substantial, is considered to be appropriate in this context given the scale of buildings on other redeveloped sites – not least the site adjacent to the northwest.
- 15.6 Impact on the Surrounding Area - It is considered that this previously-approved scheme would be in keeping with the overall character and appearance of this part of the East Colchester Regeneration Area. The Colne Harbour Masterplan, adopted by the Council as SPD, requires that buildings that which front the river should have an eaves height no lower than 8 metres. Clearly the submitted application accords with this requirement.
- 15.7 Impacts on Neighbouring Properties - The position of the proposed building is such that it would run in an approximate line with the development located on the adjacent sites to the north-west, and east. Clearly, the building would have some impact on the existing flatted development on the adjacent site, but it is considered that this in itself would not be unreasonable. The residential accommodation is arranged so that the living rooms of the nearest apartments would incorporate screened balconies to off-set the possibility of overlooking. Where windows face directly across to the adjacent site these would be obscure glazed. Generally, accommodation is arranged so that main rooms face across the river or across the rear part of the site. The orientation of the building is such that there is the potential for some overshadowing of the adjacent residential site during the morning. However, this would be relatively limited and would impact on a parking area that currently serves that site. The adjacent site on the eastern boundary is utilised for commercial purposes, so therefore issue of impact on residential amenity are not applicable.
- 15.8 Amenity Provisions – The Planning Statement accompanying the planning application includes the following information regarding the provision of amenity space:

‘...Policy DP16 provides standards for the provision of private amenity space. It states that in the case of flats, a minimum of 25 square metres of amenity space (balconies or communal space) should be provided. While this is a policy that was adopted after the 2008 application was approved, it continues the long established advice that is provided in the Essex Design Guide (which also stated that 25 square metres of amenity space is required for flats). With 63 flats approved, this standard would require 1575 square metres of amenity space to be provided.

The development contains private balconies (each unit contains its own private balcony), landscaped spaces and a raised terrace area (the combined area of which measures 1 495 square metres). In addition there is approximately 400 square metres of land given over to the landscaped river walk area...'

The Essex Design Guide recognises that in urban situations, where higher density development is appropriate, amenity space may be provided through the provision of balconies to serve individual residential units. It is noted that the submitted scheme accords with this aim. This is in addition to the ground floor amenity areas, including the provision of the river walk extension. On this basis it is considered that the proposal accords with the amenity provision that has been established on this and other sites within this part of the overall East Colchester Regeneration Area.

15.9 Highway Issues – The existing access serving this site is deemed to be appropriate to serve the proposed development, notwithstanding that the use of the access would intensify as a result of the works. It is a requirement of that Authority that a traffic order is put in place that would, in effect, stop vehicles from parking within the required site splay. Furthermore the applicant would have to provide a 4 metre wide footpath and cycleway link between the Colne Causeway and the existing riverside facility on the adjacent site. With regard to parking provision it is noted that the scheme proposes a total of 76 spaces to serve the development. This amount exceeded the applicable parking standard at the time of the previous approval (prior to the adoption of the current standards in 2009) in that 1 space was required for each residential unit. Under the current standards the residential parking standard is not met as there would be a requirement for 94 spaces. However, it is noted that the adopted standards do recognise that a lesser provision may be required where ‘...there is development within an urban area (including town centre locations) that has good links to sustainable transport...’ It is your officer’s view that this location falls within the category of location where a lesser standard could reasonably be accepted. This view is given on the basis that the Hythe area does benefit from regular bus services as well as a train station. Furthermore, through ongoing regeneration of the area a network of cycle and pedestrian routes through the area is being created. The site is also well placed to take advantage of nearby retail facilities such as the Hythe Tesco store. It is also material to the consideration of this scheme that the development would include the provision of 120 cycle parking spaces.

15.10 Other Matters – Members are advised that the terms of the s106 agreement that would be attached to the grant of planning permission has been varied from that attached to the previous permission 081852, following consideration by the Development Team. The key change is that the agreement would now include a contribution to Community Facilities – aimed at improvements to the Hythe Community Centre.

## **16.0 Conclusion**

16.1 The ongoing regeneration of the Hythe area of the town remains a key strategic aim for the Council and it is considered that the renewal of this planning permission would enable a key site within this area to be redeveloped. This would make a tangible contribution towards this aim.

## 17.0 Recommendation

APPROVE subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Environmental and Protective Services to refuse the application, or otherwise to be authorised to complete the agreement to provide the following:

- £78 710 contribution for education provision
- £132 116 contribution to public open space and recreation
- £234 805 contribution to off-site affordable housing provision
- £40 000 contribution to community facilities

On completion of the legal agreement, the Head of Environmental and Protective Services be authorised to grant planning permission subject to the following conditions:

## 18.0 Recommended Reasons for the Decision

18.1 The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above).

## 19.0 Conditions

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

Reason: In order to comply with Section 91(1) and (2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in accordance with the drawings submitted as part of the previous planning permission (ref 081852) namely:

C525/134 Rev A

C525/135 Rev D

C525/138 Rev B

C525/139 Rev C

C525/141 Rev F

C525/142 Rev D

C525/143 Rev D

C525/144 Rev D

C525/145 Rev C

C525/146 Rev C

C525/147 Rev C

C525/150 Rev A

Reason: For the avoidance of doubt as to the scope of the permission hereby granted.



3. Before the development hereby permitted commences, the external materials and finishes to be used, shall be agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with agreed details.

Reason: The application has insufficient detail for approval to be given to the external materials; and to ensure that the development does not prejudice the appearance of the locality.

4. Prior to the commencement of the development hereby permitted details of all materials to be used for hard surfaced areas within the site including roads/driveways/car parking areas/courtyards/etc shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: The application has insufficient detail for approval to be given to the external materials and to ensure that the development has a satisfactory appearance in order to protect and enhance the visual amenity of the area.

5. No external lighting fixtures for any purpose shall be constructed or installed until details of all external lighting proposals have been submitted to and approved by the Local Planning Authority; and no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To protect the amenity of adjoining residents and in the interests of highway safety.

6. Any lighting of the development shall be located, designed and directed [or screened] so that it does not cause avoidable intrusion to adjacent residential properties/ constitute a traffic hazard/cause unnecessary light pollution outside the site boundary. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers.

Reason: To protect the amenity of adjoining residents and in the interests of highway safety.

7. Prior to the commencement of any work on site, a scheme of surface water and foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out prior to the occupation of the building/s hereby permitted.

Reason: To ensure satisfactory arrangements are made for the disposal of foul and surface water drainage.

8. The ground floor commercial premises shall be used for A1, A2, A3 & B1 purposes only as defined in the Use Class Order and for no other purpose of the Schedule to the Town and Country Planning (Use Classes) (Amendment) Order 2005, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

Reason: For the avoidance of doubt as to the scope of the permission and to protect the amenities of the surrounding area.

9. Prior to the building as shown on the approved plan being brought into use for the purposes hereby approved, bicycle parking facilities shall be provided. The approved facilities shall thereafter be retained in perpetuity.

Reason: To ensure that adequate provision including parking is made for cyclists taking account of highway safety requirements and national and local policy for cyclists.

10. Prior to the development hereby approved being brought into use, refuse storage facilities shall be provided in a visually satisfactory manner and in accordance with a scheme which shall have previously been submitted to and approved in writing by the Local Planning Authority. Such facilities shall thereafter be retained to serve the development.

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

11. In accordance with the Council's policies relating to the encouragement of arts and culture in the Borough, as set out in the Adopted Local Plan, a scheme indicating the provision of public art shall be submitted to and approved in writing by the Local Planning Authority. This scheme shall be carried out within six months of the completion of the development and thereafter be retained to the Local Planning Authority's satisfaction.

Reason: To ensure that this development scheme makes a contribution to the Borough in the field of arts and culture in accordance with the Local Planning Authority's policies contained in the Adopted Local Plan and to enhance the appearance of the development and visual amenity.

12. No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority (see BS 1192: part 4). These details shall include, as appropriate:-

- Existing and proposed finished contours and levels.
- Means of enclosure.
- Car parking layout.
- Other vehicle and pedestrian access and circulation areas.
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signage, lighting).
- Proposed and existing functional services above and below ground (e.g. drainage, power, communication cables, pipelines, etc. indicating lines, manholes, supports etc.).
- Retained historic landscape features and proposals for restoration.

Soft landscape details shall include:

- Planting plans.
- Written specifications (including cultivation and other operations associated with plant and grass establishment).
- Schedules of plants, noting species, plant size and proposed numbers/densities.
- Planting area protection or decompaction proposals.
- Implementation timetables.

Reason: To safeguard the provision of amenity afforded by appropriate landscape design.

13. The height of the surface water outfalls shall accommodate the possibility of a retained high water level in the River Colne and be in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority before the development commences.

Reason: To ensure that the development does not prejudice regeneration proposals to construct a barrage across the downstream of the application site.

14. Prior to any commercial unit(s) being occupied for A3 purposes, full details of equipment to be installed for the extraction and control of fumes and odours together with a Code of Practice for the future operation of that equipment shall have been submitted to and approved in writing by the Local Planning Authority (in consultation with the Director of Environmental Services). The use hereby permitted shall not take place other than in accordance with the approved details.

Reason: To ensure that the permitted development does not prejudice the local environment and/or the amenities of the area by reason of noise, fumes or odours.

15. Prior to any commercial unit(s) being occupied for A3 purposes the unit(s) shall have been modified to provide sound insulation against internally generated noise in accordance with a scheme previously agreed in writing by the Local Planning Authority. The building shall be maintained in accordance with the approved scheme thereafter.

Reason: To ensure that the permitted development does not harm the amenities of the of the area by reason of undue noise emission.

16. The car parking spaces indicated on the plans hereby approved shall be constructed prior to the occupation of the building hereby approved and thereafter shall be retained and used only for car parking in relation to the permitted uses of the building.

Reason: To ensure appropriate parking is provided in accordance with Essex Local Transport Plan 2006 / 2011. Appendix G: Development Control Policies and Processes Policy 7 Vehicle Parking Standards

17. Prior to the occupation of the building a car park management strategy for the site shall be submitted to and agreed in writing by the Local Planning Authority. This shall specify the level of car parking, how it will be allocated and controlled and shall include measures to prevent indiscriminate parking and encourage alternative modes of travel to the private car.

Reason: To ensure that vehicles can park off the highway and to promote the most sustainable approach towards travel.

18. All car parking and servicing areas shall be designed and screened in such a manner as to prevent nearby residential premises being affected by vehicle exhaust fumes. Any scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any works on this development.

Reason: To protect the environment of residential properties.

19. No commencement of the development shall take place until the following has been provided or completed:

- A Traffic Regulation Order to provide waiting restrictions in Hawkins Road required to maintain at the proposal site access a 90 x 2.4 x 90 metre visibility splay clear to the ground at all times

Reason: To protect highway efficiency of movement and safety in accordance with policy DM1 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

20. No occupation of the development shall take place until the following have been provided or completed:

- Implementation of the above Traffic Regulation Order and all associated works
- Improvements to the proposal site access, which shall include but may not be limited to a 90 x 2.4 x 90 metre visibility splay maintained clear to the ground at all times
- A minimum 4 metre wide foot/cyclepath between the Colne Causeway toucan crossing and the riverside foot/cyclepath provided as part of the adjacent Ballantyne Centre redevelopment. Works shall include but may not be limited to removal of the existing ramp between Colne Causeway and the proposal site
- For the residential element of the proposal, Residential Travel Information Packs

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM1, DM9 and DM10 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

21. Measures shall be provided to ensure no mud and/or debris is deposited on the public highway by any vehicle associated with the construction of this proposal. Details of the proposed measures shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development and shall be carried out to the satisfaction of that Authority.

Reason: In the interests of highway safety.

## 22. Contaminated Land Part 1 of 4 (Site Characterisation)

Prior to the commencement of development, 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 of the findings must be produced. The 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 risks 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, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

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

### 23. Contaminated Land Part 2 of 4 (Submission of Remediation Scheme)

Prior to the commencement of development, 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 historical 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

### 24. Contaminated Land Pt. 3 of 4 (Implementation of Approved Remediation)

Prior to the commencement of development other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved, 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/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.

## 25. Food Premises (Control of Fumes and Odours)

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

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

26. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA), undertaken by Bidwells, dated March 2013, and the following mitigation measures detailed within the FRA:

1. Finished ground floor levels are set no lower than 5.3m above Ordnance Datum (AOD).

Reason 1. To reduce the risk of flooding to the proposed development and future users.

2. Pedestrian walkway/ link to Colne Causeway shall be set no lower than 4.9m above Ordnance Datum (AOD).

Reason 2. To reduce the risk of flooding to the proposed development and future users.

3. Surface water drainage scheme designed in accordance with the Foul and Surface Water Drainage Statement, dated November 2012.

Reason 3. To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site

## 27. Residential Code for Sustainable Homes (Part 1 of 2)

Prior to the commencement of development, evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 3 or higher for all dwellings shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the development is designed to be sustainable and will make efficient use of energy, water and materials.

## 28. Residential Code for Sustainable Homes (Part 2 of 2)

Within 3 months of the first occupation of any dwelling hereby approved, a post-construction Final Code Certificate issued by an accreditation body confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code Level 3 or higher shall have been submitted to and agreed, in writing, by the Local Planning Authority.

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

## 29. Non-Residential BREEAM (Part 1 of 2)

Prior to the commencement of development, evidence that the development is registered with a BREEAM certification body and a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the development can achieve a final BREEAM rating level of at least Very Good.

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

### 30. Non-Residential BREEAM (Part 2 of 2)

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

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

## 20.0 Informatives

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

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

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**  
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) The conditions requested for inclusion by the Highway Authority are required to ensure the proposal complies with the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

(5) The proposed 'space for public art/entrance feature(s)' should remain clear of any existing or proposed highway

(6) The proposed foot/cyclepath may require the construction of a retaining wall. Depending on the height this may require an 'Approval in Principle' from the Highway Authority

(7) The Highway Authority has assumed any refuse vehicle would enter the proposal site however if this is not the intention, the bin store should be located adjacent to the proposal site access off Hawkins Road

## 21.0 Positivity Statement

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



**Application No:** 130930

**Location:** Plot 2, Land to South West of, Nathan Court, Blackheath, Colchester,

**Scale (approx):** 1:1250

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**7.3 Case Officer: Lucy Mondon**

**Due Date: 12/07/2013**

**MINOR**

**Site: Land to South West of, Nathan Court, Blackheath, Colchester**

**Application No: 130930**

**Date Received: 17 May 2013**

**Applicant: Gordon Parker**

**Development: Construction of detached two bedroom house with parking area.**

**Ward: East Donyland**

**Summary of Recommendation: Conditional Approval**

### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee at the request of Councillor Colin Mudie for the following reasons:

‘The NPPF requires that developments are visually attractive with good design and appropriate landscaping. The development in question is of poor design and fails on most counts to improve the character and quality of the surrounding area. Due to the prominent position of the proposal, a situation of over development arises in which the open aspect leading into Nathan Court will be put at risk. The site is little more than a small grass verge and therefore totally unsuitable and unsustainable for residential development.’

### **2.0 Synopsis**

2.1 The application seeks planning permission for the erection of a two bedroom two-storey detached house with associated garden and parking area.

2.2 The following report considers the matters raised by the Local Ward Member, as well as other material planning matters. The report describes the site and its setting, the proposal itself, and the consultation responses received.

2.3 The planning merits of the case will be assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.

### **3.0 Site Description and Context**

3.1 The application site is a vacant piece of land located at the junction of Nathan Court and Cabbage Hall Lane and sited to the rear of The Cherry Tree Public House, Blackheath. The site is currently overgrown and enclosed by heras fencing. There is a large grass verge and footpath that runs along the front (south-east) of the site (Footpath No. 3).

- 3.2 Nathan Court is a backland development of two-storey terraced, semi-detached, and cluster houses. The properties are either buff or red brick, beneath hipped or gabled concrete interlocking roofs. The Cherry Tree Public House is a rendered building with a slate roof.
- 3.3 To the north of the site is a similar plot that has now been developed with one detached house.

#### **4.0 Description of the Proposal**

- 4.1 The proposal is for the erection of a detached two bedroom two-storey house with associated garden and car parking. The property would face onto Cabbage Hall Lane to the south-east of the site. The frontage of the property would measure 8 metres and the depth of the side of the property would measure 4.5 metres. The property would be 6.25 metres high.
- 4.2 The property would have two bedrooms and a bathroom at first floor, with a lounge, dining room, kitchen and WC at ground floor.
- 4.3 The design of the property is such that it would lean out to the front at first-floor level. The materials used would be buff brick and white cement boarding for the external walls and slate for the roof.
- 4.4 There would be a 1.8 metre high wall to part of the north-eastern boundary facing Nathan Court and a 0.9 metre high wall along the frontage of the property facing Cabbage Hall Lane, with a small element of 1.8 metre high wall between the side of the property and the boundary with The Cherry Tree Public House.
- 4.5 To the rear of the property would be a garden and parking area for two cars.

#### **5.0 Land Use Allocation**

- 5.1 Predominantly residential

#### **6.0 Relevant Planning History**

- 6.1 Planning permission for a two-bedroom detached house on this site was refused last year (reference 121805). The proposal was refused by reason of the overdevelopment of the site, resulting in the erosion of the open character of Nathan Court's entrance, and poor design. Particular points of concern were as follows:

- The cramped nature of the site, leading to the conclusion that the site does not lend itself to residential development;
- The poor relationship between the proposal and the adjacent pub car park;
- Limited fenestration
- Visually bland and lacking in detail;
- A close boarded fence along the north-eastern boundary (Nathan Court) would be unattractive and dominant in the street scene;
- The site would be parking dominated, with over 15 metres of the of the site being given over to hard surfacing;

- Poor living conditions as the main ground floor habitable rooms would only look out onto the existing footway along Nathan Court, giving limited privacy;
- There would be poor levels of outlook from other windows which would look into a small yard enclosed by 1.8 metre fencing;
- The usable private amenity space would be in close proximity to the pub car park and the associated noise and disturbance the car park would generate;
- The lack of storage space for bicycles, garden tools, refuse and recycling would result in the private amenity space being used for the storage of these items, leaving very limited usable amenity space.

6.2 Prior to this refusal, planning permission was granted for a two bedroom detached house on the adjacent site to the north (ref: 112079). This property has now been constructed and is currently for sale.

## 7.0 Principal Policies

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

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

SD1 - Sustainable Development Locations  
 H1 - Housing Delivery  
 H2 - Housing Density  
 H3 - Housing Diversity  
 UR2 - Built Design and Character  
 TA5 - Parking  
 ER1 - Energy, Resources, Waste, Water and Recycling

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

DP1 Design and Amenity  
 DP12 Dwelling Standards  
 DP16 Private Amenity Space and Open Space Provision for New Residential Development  
 DP17 Accessibility and Access  
 DP19 Parking Standards  
 DP20 Flood Risk and Management of Surface Water Drainage  
 DP21 Nature Conservation and Protected Lanes

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

Backland and Infill  
Community Facilities  
Vehicle Parking Standards  
Sustainable Construction  
Open Space, Sport and Recreation  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

- 8.1 Urban design: Comments that there were concerns regarding the design of the previous scheme (121805) as, whilst the design may have been appropriate to its immediate context (Nathan Court), it can be viewed from many aspects. A property on this site needs to provide visual interest. Discussion with the agent has led to a satisfactory design that has both contextual sympathy whilst appearing individual and suited to the location and its demands.
- 8.2 Highway Authority: 'Having regard to the fact that the Design and Access Statement submitted as part of this application states that parking provision is in accordance with current standards, the Highway Authority would not wish to make further comment to the formal recommendation dated 19 October 2012.' [Response: further clarification was sought as to whether the Highway Authority had any concerns regarding the size of the parking spaces, as they meet the minimum standard required. The Highway Authority confirmed by email dated 25th June 2013 that there are no objections to the parking spaces being the minimum size due to the quiet nature of the road]. The Highway Authority comments from 19th October 2013 were as follows:

'Whilst it is noted that the parking facilities proposed do not access the highway within 10 degrees of a right angle as suggested by the Essex Design Guide, on site observations of the road geometry and the existing traffic speeds and volumes do not raise concerns with regard to highway safety. Vehicles approaching the site from the north are travelling slowly due to the length of the road and parked vehicles, and due to the road geometry, would have a good view of vehicles pulling into or out of the site. Vehicles approaching from the south will potentially be travelling even more slowly due to the 90 degree approach bend. In addition to this, having regard to the planning history of the neighbouring site, the Highway Authority would not wish to raise an objection to the above subject to [conditions].'

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

## **9.0 Parish Council Response**

- 9.1 No comments received

## **10.0 Representations**

10.1 No comments received.

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

## **11.0 Parking Provision**

11.1 The Vehicle Parking Standards SPD requires that a minimum of two car parking spaces is provided for two bedroom houses, as well as the provision of secure cycle parking for at least on bicycle. The SPD states that the preferred car parking space is 5.5 metres x 2.9 metres (6 metres parallel bay length), with a minimum size being 5.0 metres x 2.5 metres.

11.2 The proposal provides two on site car parking spaces at the minimum parking space size. The garden is large enough (approximately 55.9 sq m) to provide cycle storage.

## **12.0 Open Space Provisions**

12.1 Development Policy DP16 states that all new residential development will be expected to provide new public areas of accessible strategic or local open space. This would normally be expected to be provided on site. However, a commuted sum in lieu of open space is acceptable for small scale developments of less than 0.5ha. Due to the small scale of the proposal, there is no requirement for public open space to be provided on site. The Applicant has submitted a Unilateral Undertaking that provides contributions towards open space and community facilities.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

15.1 The main planning consideration is whether the proposal addresses the previous reason for refusal (summarised in paragraph 6.1 above). The refusal centred on the inappropriate layout and design of the proposal and its negative impact on the street scene and character of the area, as well as the living conditions of future occupants of the property.

- 15.2 The National Planning Policy Framework (NPPF) states that the Government attaches great importance to the design of the built environment, going on to state that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. This objective is reflected in the Colchester Borough Council Local Development Framework, through Policy UR2 of the Core Strategy (December 2008) and Policy DP1 both of which require a high standard of design, an appropriate architectural approach and an enhancement in the character of an area.
- 15.3 In terms of layout, the previous proposal orientated the property so that it faced north onto Nathan Court, with the car parking spaces running alongside the remainder of the Nathan Court boundary. This had the result of the whole of the Nathan Court frontage being over 7 metres of built form (the front of the house) and over 15 metres of hardstanding for parking. This was considered to be a cramped form of development that would appear overly dominant within the street scene, to the detriment of its character. The layout would also have resulted in there being a close boarded fence running along the south-east boundary facing Cabbage Hall Lane to enclose the rear garden. This would have presented a 'dead' frontage onto Cabbage Hall Lane and the entrance to Nathan Court, which again was considered to be inappropriate and unacceptable in terms of the character of the area.
- 15.4 The current proposal orientates the property so that it faces onto Cabbage Hall Lane, with a rear garden and car parking spaces than run along Nathan Court. The revised layout has several advantages over the previous proposal:
- The front of the property facing Cabbage Hall Lane provides an active frontage to the entrance to Nathan Court. This helps to create a 'sense of place' rather than Cabbage Hall Lane merely serving as an access road into Nathan Court;
  - The frontage onto Cabbage Hall Lane maintains the openness of the junction with Nathan Court: the grass verge to the front of the site would remain open and there would not be a high boundary fence as previously proposed;
  - The garden would be larger and a much more usable space, with space set aside for bin and cycle storage. The garden size meets the requirements of Development Policy DP16 for one or two bedroom houses to have a minimum garden space of 50 sq metres;
  - The rear of the property and private amenity space would no longer be orientated towards the pub car park, thereby improving the relationship between the two sites;
  - The 1.8 metre high brick wall along the boundary with Nathan Court would provide a more solid boundary feature that would be far less dominant and oppressive than the 8 metre high house previously proposed to run along this boundary;
  - The car parking spaces have been reduced in length so that the amount of hardstanding would be less dominant than previously proposed.
- 15.5 The cramped nature of the previous proposal contributed to the previous refusal questioning whether the site was capable of residential development. However, the revised layout is not considered to appear cramped and would provide a much more meaningful entrance to the Nathan Court development by being sited so that it fronts the Cabbage Hall Lane entrance to the court.

- 15.6 The design of the property is also considered to have been improved from the previous scheme. The previous proposal sought to replicate the form, design and materials of the existing properties in Nathan Court and the design of the then recently approved scheme on the adjacent site to the north of the application site. However, the application site is in a prominent location at the entrance to Nathan Court and, due to its position in relation to Nathan Court, Cabbage Hall Lane, and Mersea Road, would be seen from several public vantage points. The previous proposal was considered to be bland and uninspiring, with very little fenestration leaving large amounts of stark brickwork that would not appear attractive in the street scene, especially as the property would be seen from several vantage points. In contrast, the current proposal is of a more individual design, having a front wall that slopes forward and using a mix of materials (brick, boarding, and slate). The height of the property has also been reduced from 8 metres to 6.25 metres, meaning that the property would appear far less dominant in the street scene than the previous proposal, and greater interest has been added to the external elevations by the inclusion of additional fenestration.
- 15.7 The individual design is considered to be appropriate in this location as it would provide visual interest to the entrance to Nathan Court, rather than simply replicate existing development, and the mix of materials helps the property to relate to its context by using materials from both Nathan Court and The Cherry Tree Public House, whilst still maintaining some individuality in the use of boarding. The Council's Urban Designer has confirmed that they consider this to be a suitable design solution for the site.
- 15.8 The proposal is, therefore, considered to satisfactorily address the previous reasons for refusal in terms of its layout and design. The proposal would not appear cramped within the site or overly dominant in the street scene, the living conditions of the future occupants would be acceptable as they would have sufficient usable garden space and more pleasant outlook than the previous proposal allowed, and the design of the property has been improved so that it would provide greater interest to the street scene whilst still respecting the context of the site.
- 15.9 The previous refusal also referred to possible noise and disturbance to the private amenity areas of the property from the adjacent pub car park. The layout of the previous proposal meant that the rear of the property, including the rear garden, would face the pub car park. The revised layout has re-orientated the property so that the rear of the property and rear garden face to the north of the site away from the pub car park which would relieve some of the impact from the noise of moving cars etc. The rear garden would, however remain alongside the boundary with the pub car park. The proposal shows that the existing timber fencing along this boundary would be retained. This fencing is not in good condition and it is considered that acoustic fencing should be put up in its place to mitigate against noise from the pub car park, as well as improve the current boundary treatment.

15.10 With regards to matters of neighbouring amenity, highway safety, biodiversity, and flood risk, the proposal is considered to be acceptable. Due to its distance and relationship to neighbouring properties, the proposal would not result in any overlooking or overshadowing that would harm neighbouring amenity. The Highway Authority are content with the parking arrangements proposed and do not consider that the proposal would have an adverse impact on highway safety. The site, whilst overgrown, is not considered to be a suitable habitat for protected species, having had regard to Natural England standing advice, and consequently the proposal is not considered to pose a risk to protected species. Finally, as the site is located within a flood zone 1, which is unlikely to be susceptible to flooding and where development is unlikely to cause flooding elsewhere, the proposal is not considered to pose a flood risk.

## **16.0 Conclusion**

16.1 The proposal is considered to satisfactorily address the previous reasons for refusal. The proposal would not appear cramped within the site or overly dominant in the streetscene, the living conditions of the future occupants would be acceptable as they would have sufficient usable garden space and more pleasant outlook than the previous proposal allowed, and the design of the property has been improved so that it would provide greater interest to the streetscene whilst still respecting the context of the site. Further, the proposal would not have an adverse impact on neighbouring amenity, highway safety, biodiversity, or flood risk.

**17.0 Recommendation** - APPROVE subject to the following conditions

## **18.0 Recommended Reasons for the Decision**

The proposal accords with the relevant policies in the Statutory Development Plan (as set out above). Having also had regard to all material planning considerations, including the planning history of the site, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged planning importance.

## **19.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - \*Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers SD100, ST/101/25, GHP20013/1, and GHP202, received on 24th May 2013. unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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



### 3 - Non-Standard Condition/Reason

No development shall commence until evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 3 or higher for all dwellings has been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the development is designed to be sustainable and will make efficient use of energy, water and materials.

### 4 - Residential Code for Sustainable Homes (Part 2 of 2)

Within 3 months of the first occupation of any dwelling hereby approved, a post-construction Final Code Certificate issued by an accreditation body confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code Level 3 or higher shall have been submitted to and agreed, in writing, by the Local Planning Authority.

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

### 5 - Non-Standard Condition/Reason

No development shall commence until precise details of the manufacturer and types and colours of the external facing, roofing and boundary treatment materials to be used in construction shall have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

### 6 - Non-Standard Condition/Reason

Prior to the development being first occupied, an acoustic fence of not less than 2 metres in height shall be installed along the south-west boundary of the site with The Cherry Tree Public House and thereafter retained as such.

Reason: In the interests of residential amenity.

### 7 - Non-Standard Condition/Reason

Prior to occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2 metres by 11 metres to the north and 2 metres by 11 metres to the south, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.

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

### 8 - Non-Standard Condition/Reason

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

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

#### 9 - Non-Standard Condition/Reason

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance.

#### 10 - Non-Standard Condition/Reason

At no point shall gates be provided at the vehicular access. The access shall remain open and free for use in perpetuity.

Reason: To give vehicles using the access free and unhindered access to and from the highway in the interest of highway safety.

#### 11 - Removal of PD for All Residential Extensions & Outbuildings

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

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

## 20.0 Informatives

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

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

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

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

(4) PLEASE NOTE: This application is the subject of a Unilateral Undertaking legal agreement and this decision should only be read in conjunction with this agreement.

(5) PLEASE NOTE: The applicant/developer is advised that the application site is, or appears to be, affected by the existence of a public right of way. It should be noted that:

(i) it is an offence to obstruct or divert a public right of way (or otherwise prevent free passage on it) without the proper authority having been first obtained. In the first instance contact should be made with the Public Rights of Way Office, Highways and Transportation Services, Essex County Council, County Hall, Chelmsford, Essex CM1 1QH. The telephone number is 01245 437563.

(ii) The granting of planning permission does not authorise the undertaking of any work on a public right of way. Where it is necessary for a right of way to be stopped-up or diverted in order that development may take place, no work may take place upon the line of the right of way until an appropriate order has been made and confirmed (see (i) above). The applicant/developer should note that there is a charge for making a change to the rights of way network.

(iii) Where a private means of access coincides with a public right of way, the granting of planning permission cannot authorise the erection of gates across the line or the carrying out of any works on the surface of the right of way and that permission for any changes to the surface must be sought from the highway authority (Essex County Council).

## **21.0 Positivity Statement**

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



**Application No:** 130672

**Location:** Welshwood Manor, 37 Welshwood Park Road, Colchester, CO4 3HZ

**Scale (approx):** 1:2500

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#### **7.4 Case Officer: James Ryan**

**MINOR**

**Site:** Welshwood Manor, 37 Welshwood Park Road, Colchester, CO4 3HZ

**Application No:** 130672

**Date Received:** 8 April 2013

**Agent:** Mr Edward Gittins

**Applicant:** Davard Care Homes

**Development:** Erection of detached Annexe to Residential and Nursing Care Home to provide 10 no. bedrooms and landscaped parking area and closure of residential access following demolition of existing dwelling.

**Ward:** St Johns

**Summary of Recommendation: Conditional Approval**

#### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because it was called in by Ward Member Councillor Ray Gamble on the basis of design, parking, trees and impact on amenity.

#### **2.0 Synopsis**

2.1 The key issues explored below are the impact on the streetscene, character of the area, protected trees and parking/highway issues.

#### **3.0 Site Description and Context**

3.1 The site is located at the end of Welshwood Park Road and is served off of the banjo at the end of the cul-de-sac section of the road. The red line encompasses the existing Welshwood Manor Care Home. The relevant section of the wider site currently houses a residential bungalow. There are a number of good trees in the rear garden. The Welshwood Manor care home is located next door to the east of the existing bungalow. To the west is a residential property.

#### **4.0 Description of the Proposal**

4.1 The proposal is to demolish the existing bungalow and replace with an annex to the care home next door. In effect this proposal is for an extension to the existing care home by way of a new detached block that will house 10 bedrooms and a resident's lounge.

4.2 The applicant's agent has clarified, by email that the proposed use will be an annexe for the existing care and nursing home – therefore same type of care as existing. The care home does not accept dementia patients.

## **5.0 Land Use Allocation**

5.1 The land has no specific allocation on the proposals maps.

## **6.0 Relevant Planning History**

6.1 The planning history that is most relevant to this scheme is the previously withdrawn scheme 121679. This scheme was withdrawn to enable the applicants to submit a revised scheme with an improved design.

6.2 The care home has been extended on a number of occasion occasions previously. The relevant approved applications are as follows:

100097 - Proposed two storey side extension forming a new kitchen with ancillary storage with a single bedroom with en-suite facility over. Existing kitchen converted into a dining area. Existing external food storage shed to be removed.

090254 - Two storey rear extension to existing nursing & residential care home.

F/COL/07/0285 - To vary Condition 2 of previous application approval COL/06/1150 by provision of clear glazing in lieu of obscure glazing.

F/COL/06/1150 - Replacement of window in flank wall in existing first floor lounge.

F/COL/05/1187 - Renewal of planning permission for proposed pitched roof over existing flat roof and first floor extension over existing flat roof to form new single bedroom (variation of time limit condition attached to COL/00/0943).

F/COL/03/1590 - Two bed first floor extension and internal alterations.

F/COL/01/01748 - Proposed bathroom at first floor level over existing bathroom.

F/COL/00/0943 - Proposed pitched roof over existing flat roof and first floor extension over existing flat roof to form new single bedroom.

F/COL/00/0183 - Proposed pitched roof over existing flat roof & first floor extension over existing flat roof to form new single bedroom.

990013 - Conservatory to rear.

940201 - Proposed front extension to accommodate laundry and entrance lobby. Rear conservatory extension.

88/0690 - Single storey rear addition to elderly persons home to provide 4 additional single bedrooms with en-suite facilities.

87/0868 - Rear extension to house. Lift and staircase in connection with use as home for elderly persons.

86/1489 - Alterations and change of use to private residential retirement home

## **7.0 Principal Policies**

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

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

SD1 - Sustainable Development Locations  
H2 - Housing Density  
H3 - Housing Diversity  
UR2 - Built Design and Character  
TA5 - Parking

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

DP1 Design and Amenity  
DP12 Dwelling Standards  
DP19 Parking Standards

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

Backland and Infill  
Vehicle Parking Standards  
Sustainable Construction  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

8.1 Anglian Water: The wastewater and foul sewerage network in the area has the capacity to serve this development. A condition requesting no development within 15m of the pumping station if the development is the type that is particularly noise sensitive (i.e. could generate complaints about the noise from the pumping station) was requested but is not suggested to be imposed. The development proposed is not particularly noise sensitive and the noise from the pumping station will not be materially harmful to future residents of the care home building.

8.2 Environment Agency: No comment received to date.

- 8.3 Essex County Council Highways: No objection to the scheme subject to conditions requiring the parking spaces provided to be of the dimensions set out in the parking standards and prior approval of cycle parking. These will be imposed.
- 8.4 Arboricultural Planning Officer: In general my comments remain similar to the last application, however, I have been asked specifically to comment on additional report provided by DF Clark Bionomique on behalf of local residents.
- 8.4.1 The report provided in some ways refutes the comments made by Landscape Planning Ltd (LPL) relating to Oak T4 by commenting on it in terms of the overall landscape, however, in terms of this planning application this approach is wrong. The tree is assessed as a snap shot in time and we (CBC) are unable to compel the tree owner to undertake any remedial works to the tree; nor should the planning committee or appeal inspector assess the tree in terms of 'precedent' set.
- 8.4.2 When asked to categorise the tree as per BS5837:2012; the consultant from DF Clark Bionomique also categorised this tree as C2 as per the british standard and in agreement with the original LPL report . Typically C category trees have a retention life of 10 years or less and should not constrain the development process.
- 8.4.3 It would be my opinion that the information from DF Bionomique Ltd reinforces the original LPL report.
- 8.5 Landscape Planning Officer: In conclusion, I am satisfied with the landscape content of the proposal.

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

## **9.0 Parish Council Response**

9.1 N/A

## **10.0 Representations**

10.1 32 letters of objection were received. A petition from the Welshwood Park Residents Association containing 61 signatures was also received. These objected to the scheme on the following grounds:

- Insufficient parking has been provided and parking is already a problem.
- The proposal will lead to parking in the highway and on the verges.
- The verges are in a ruinous state.
- The transport statement is flawed.
- The scheme will cause further highway congestion and therefore increase highway safety issues.
- The commercial use is already incompatible with the residential area and this will make it worse.
- The loss of the protected tree is unacceptable.
- The scheme does not respect the character of the area.
- A condition attached to a previous consent (090254) required no further extensions.



- The scheme will be detrimental to neighbouring amenity.
- We have assessed the parking provision at other care homes in the area and this scheme intends to provide less than any of them.
- The staffing levels set out in the DAS are inconsistent in order to provide less parking.

In response: These issues will be addressed in the reports.

- We have experienced screaming coming from the existing building which is distressing.

In response:

- The care home has been extended in the past and should not be allowed to extend any further.

In response: Each case must be assessed on its own merits. The fact the care home has been previously extended does not make this scheme unacceptable.

- There will be road chaos when it is built.

In response: All building work has the potential to cause some highway issues but at the end of a cul-de-sac it is not envisaged that the works would amount to traffic chaos.

- The proposal is basically for a hospital.

In response: Whilst the use is not technically a hospital in planning terms there is clearly an element of care within parts of the building and this implies a different character to a pure residential use. However the site already enjoys the benefit of permission for such a use and unlike a hospital the scale is relatively small. For examples there will be a significantly lower amount of vehicular movements than would be expected with a hospital where one would expect emergency ambulances, accident and emergency departments open throughout the night a significantly higher patient through put.

- The sewage systems will not be able to cope, we are often flooded in times of heavy rain.

In response: Anglia Water has no objection to the scheme and state that they have the capacity to accommodate this development.

- This scheme will cause an increase in noise from the staff, visiting doctors and ambulances.
- The scheme will cause an increase in light pollution.
- The servicing of the care home at all hours is disruptive and this proposal will make it worse.

In response: It is accepted that this scheme will increase the care homes' capacity and will therefore increase the potential for noise, disturbance and light pollution however the increase would not be at materially harmful levels.

- The new plan is an improvement in terms of being more in-keeping with the character of the area, however it still reduces the space between properties and will overlook.

In response: This is addressed in the report.

- The residents do not accept the findings of the tree survey.

In response: This is addressed in the report.

- We accept the care home is well run and makes a good neighbour, however this proposal constitutes overdevelopment.
- This is development by stealth.

In response: It is not considered that this scheme constitutes overdevelopment or development by stealth.

- The withdrawn scheme was single storey, this amended scheme is two storey and it is very likely further applications will come into add additional stories.
- There is significant potential for future development.

In response: If a future application was made it would have to be assessed on its own merits. There is no indication that another floor is intended to be added nor would the design of the proposed building facilitate this.

- As this scheme will rely upon the existing care home the whole site must be considered.

In response: This new building will rely upon the existing care home but as the scheme will not cause cumulative material harm this is acceptable.

- A link will be needed in the future or food will get cold being carried from one building to another.

In response: There is no indication that the two buildings will be linked in the future but if an application was made it would have to be assessed on its own merits.

- Is it needed?

In response: The applicant's are satisfied that there is the need to make the project worthwhile.

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

## **11.0 Parking Provision**

11.1 This will be dealt with in the main body of the report.

## **12.0 Open Space Provisions**

12.1 As an extension to an existing care home for high dependency occupants, this scheme does not require a unilateral undertaking for a contribution towards open space and community facilities as set out in the relevant SPD.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

15.1 Principle of Development: The NPPF seeks to support commercial development such as this and in particular schemes that will generate employment. This scheme will generate 9 full time equivalent jobs.

15.2 Policy HG3 of the Council’ Core Strategy requires housing diversity. It seeks to secure a mix of housing types to suite a range of different households. This mix includes the provision of care homes such as the existing Welshwood Manor. There is no overriding policy objection to the extension of the existing care home.

15.3 Many of the representations received have argued that this is the expansion of a commercial use in a residential area which is unacceptable. Whilst it is accepted that the use is a commercial one, as an extension to an existing care home this is acceptable. Care homes share many of the characteristics of residential development and are uses that are generally accepted in residential areas as this creates the residential environment that the residents require. 1 in 4 of all us will experience mental health issues in our lifetime and fewer families are able to cope with such issues at home. Therefore this scheme will provide an essential facility.

15.4 Representations have stated that conditions on previous consents were imposed to prevent the further expansion of the care home. This condition (number 3 of 090254) restricted the number of bedrooms approved as part of that planning application. It did not seek to prevent the applicants making a further application. A condition of that nature would be completely unreasonable and would not be possible to impose.

- 15.5 Design, Layout, Scale, Height and Massing: The current scheme has come about following extensive consultation with the Council's in-house urban designer. The previous scheme was not considered good enough in architectural terms to recommend approval on and was withdrawn. The amended scheme is an interesting design that will sit comfortably in the varied and Arcadian layout of Welshwood Park Road. It is considered that a dedicated annex building such as that proposed is preferable to a large side extension to the existing building as it is far more in keeping with the character of the road. Therefore the scheme is acceptable in design terms.
- 15.6 Trees: This scheme proposes the removal of a TPO'd Oak tree. The Tree Report that has accompanied the application categorises the tree as a C2 tree in line with the British Standard. Many of the representations did not agree with this classification and the residents have arranged for an independent tree report to be commissioned to look at the Oak that is intended to be removed.
- 15.7 The Council's Arboricultural Planning Officer has confirmed that the Tree Report that has been commissioned by residents adds no further weight to a refusal on the grounds of the loss of the tree. He does not consider that the tree should form an obstruction to the development. The scheme is also acceptable in terms of the other trees that are located on site. Their protection will be secured by condition.
- 15.8 Parking/Highways: The level of on site parking provision is a subject of the majority of the representations received. These set out the parking issues that the scheme currently causes in Welshwood Park Road. The general consensus is that the proposed scheme provide woefully substandard off street parking provision.
- 15.9 The Council's adopted parking standards have maximum standards for care home uses. This means there is no minimum requirement and no additional parking provision would be acceptable in policy terms.
- 15.10 The maximum standards are 1 space per full time equivalent member of staff and 1 visitor space per 3 bedrooms. This scheme proposes 10 extra bedrooms. The scheme will generate the full time equivalent of 9 members of staff but only 2 will be on site at any one time and therefore it is reasonable to allow for 2 staff spaces. This equates to a maximum provision of 5 spaces. 5 spaces have been provided (one of which is a dedicated disabled parking bay).
- 15.11 The new parking provision is therefore more generous than the existing situation which has 6 spaces marked out across the frontage, has 3 spaces in the area accessed off of the shared access and has an informal space the lay-by area at the entrance to the shared area. It is accepted that it would be possible to fit more cars on the existing frontage, but this would require tandem parking. The existing spaces do not conform to the current adopted standards, whereas the proposed parking spaces do.
- 15.12 The parking standards also require the provision of an additional cycle parking space. This will be secured by condition.
- 15.13 The scheme has been accompanied by a Transport Assessment that addressed the issue of parking and the impact the scheme will have on the wider highway network. It concluded that the additional 10 bedrooms will not cause a level of traffic movements that would be materially harmful to the wider traffic network.

- 15.14 This scheme complies with the Council's adopted standards and no objection has been raised by the highway authority. Therefore notwithstanding the sentiments of the local residents a refusal on the basis of impact on the wider highway network, insufficient parking, problems with the verges, the parking provision at other care homes and flaws in the transport statement would not be reasonable.
- 15.15 Impacts on Neighbouring Properties: The scheme had been designed to limit the impact it will have on neighbouring amenity. Although a two storey scheme, the proposal steps down to single storey towards the western side of the plot to ensure that the proposed built form will result in a flank that is not overbearing or oppressive to the neighbour to the west.
- 15.16 In terms of overlooking, there are two first floor windows proposed in the western flank. One serves a communal bathroom and will therefore be obscure glazed. The other is a small window to the side of bedroom 8. As this window sits behind the roof of the first floor element, it is not considered that it will cause materially harmful overlooking to the neighbour to the west.
- 15.17 As a two storey building, this scheme will create some additional overlooking to the private amenity area of the neighbour to the west. The windows in question serve bedroom 9 and 10. The windows to bedrooms in care homes can generate significant overlooking as residents do spend a great deal of time in their rooms. In this instance, bedrooms 9 and 10 are set over to the east of the proposed building. The bedrooms would be afforded views out to the end of the neighbour to the West's garden, but the view would be at some distance (over 15m and nearer to 20m) and they would only be of the end of the neighbour garden. Therefore the possibility of materially harmful overlooking to the neighbour is very low.
- 15.18 It is accepted that screaming emanating from a neighbouring building can cause disturbance and can be distressing. Whilst you may have one occupier of a house with dementia who screams this is a whole complex with the potential to house many such residents. This issue will be on the increase due to the growing phenomenon of increased dementia as life expectancy is extending. As an example, at a site in London in 2010, an Inspector granted permission for an unauthorised care home for six permanent residents with learning difficulties and in need of constant care and supervision at a dwellinghouse. Similar concerns were raised, but the Inspector opined that the alleged bizarre behaviour and noise from screaming residents did not amount to legitimate public fear or risk. The scheme in London involved complaints from a neighbor who shared a party wall with the development. The detached nature of the dwellings in Welshwood Park Road would help with the sound attenuation and it is therefore not considered that this scheme will generate materially harmful levels of noise disturbance.
- 15.19 Environmental Protection: On balance, this issue would not warrant the refusal of this scheme, however a condition will be imposed to require the prior approval of soundproofing measures including the glazing type to help limit the impact disturbance of this type can have.
- 15.20 The scheme is therefore acceptable in terms of its impact on neighbouring amenity.

15.21 Amenity Provisions: This scheme provides over 400 square metres of additional shared amenity space in the rear garden. This is in excess of the additional 250 square metres that would be required by policy DP16 if this scheme was for a building housing 10 flats. Therefore the on site amenity provision is acceptable.

## **16.0 Conclusion**

16.1 This scheme is acceptable in terms of the impact on trees, the parking provision, the impact on amenity and the design/streetscene implications. It will enable the expansion of an existing local business and will create nine full time equivalent jobs. Therefore an approval is warranted.

**17.0 Recommendation** - APPROVE subject to the following conditions:

## **18.0 Recommended Reasons for the Decision**

YOP - \*Reason for Approval (Objection(s) Received - Committee)

The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because it is a well designed scheme that will sit comfortably in the street scene and will also enable the expansion of a local business and the provision of 9 full time equivalent jobs. Thus, having had regard to all material planning considerations the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the particular circumstances and reasons set out below, namely: The impact on protected trees, the impact on neighbouring amenity and the level of parking provision.

## **19.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - \*Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 231/58 Rev, 231/57 Rev and 231/59 and additional Block Plan submitted 20<sup>th</sup> June 2013, unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

### 3 - Materials to be Agreed

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

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

### 4 - Non-Residential BREEAM (Part 1 of 2)

Prior to the commencement of development, evidence that the development is registered with a BREEAM certification body and a pre-assessment report (or design stage certificate with interim rating if available) has been submitted indicating that the development can achieve a final BREEAM rating level of at least Very Good.

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

### 5 - Non-Residential BREEAM (Part 2 of 2)

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

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

### 6 - Simple Landscaping Scheme Part 1 of 2

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

Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development where there are public areas to be laid out but there is insufficient detail within the submitted application.

### 7 - Simple Landscaping Scheme Part 2 of 2

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

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

#### 8 - Tree and Natural Feature Protection: Protected Areas

Prior to the commencement of development, all trees, shrubs and other natural features not scheduled for removal on the approved plans shall have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

Reason: To safeguard existing trees, shrubs and other natural features within and adjoining the site in the interest of amenity.

#### 9 - Tree and Natural Feature Protection: Entire Site

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

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

#### 10 - Tree and Hedgerow Protection: General

All existing trees and hedgerows shall be retained, unless shown to be removed on the approved drawing. All trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site, to the satisfaction of the Local Planning Authority in accordance with its guidance notes and the relevant British Standard. All existing trees shall be monitored and recorded for at least five years following contractual practical completion of the approved development. In the event that any trees and/or hedgerows (or their replacements) die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, by the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

#### 11 - Non-Standard Condition/Reason

No works or development shall be carried out until a site specific Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, by the Local Planning Authority (LPA). Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.

Reason: To adequately safeguard the continuity of amenity afforded by existing trees.



## 12 - Non-Standard Condition/Reason

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

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

Reason: To adequately safeguard the continuity of amenity afforded by existing trees.

## 13 - Parking Space/Hardstanding Sizes (Open)

Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety.

## 14 - Cycle Parking TBA

Prior to the commencement of the development, details of the number, location and design of cycle parking facilities shall be submitted to and approved, in writing, by the Local Planning Authority. The approved facility shall be secure, convenient and covered and shall be provided prior to occupation and retained for that purpose at all times thereafter.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety.

## 15 - Sound Insulation on Any Building

Prior to the first use or occupation of the development as hereby permitted, the building shall have been constructed or modified to provide sound insulation against internally generated noise in accordance with a scheme devised by a competent person and agreed, in writing, by the Local Planning Authority. The insulation shall be maintained as agreed thereafter.

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

## 20.0 Informatives

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

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

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**  
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

(4) PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development.

**\*\*This is of critical importance\*\*.**

If you do not comply with the condition precedent you may invalidate this permission.

**\*\*Please pay particular attention to these requirements\*\*.**

## **21.0 Positivity Statement**

WA2 - Application Approved Following Revisions

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



**Application No:** 130572

**Location:** Celebrations, 44 St. Christopher Road, Colchester, CO4 0NA

**Scale (approx):** 1:1250

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## 7.5 Case Officer: Simon Osborn

**MINOR**

**Site:** 44 St. Christopher Road, Colchester, CO4 0NA

**Application No:** 130572

**Date Received:** 13 May 2013

**Agent:** Mr Eralp Semi

**Applicant:** Mr Orhan Dagdelen

**Development:** Application to vary condition 3 (opening times) of planning permission 121543 to extend the hours of opening to 10:00 - 22:00 hours 7 days a week.

**Ward:** St Johns

**Summary of Recommendation: Approved Conditional**

### 1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because it has been called-in by Cllr Paul Smith for the following reason: "The impact on local residents of the extended opening hours. The fact that the original application was only agreed a couple of months ago and therefore, it would be inappropriate to make a change at this time. Especially bearing in mind the number of visits from Planning Enforcement to the site since opening. Also, the cumulative impact of the additional opening hours on fast food outlets, in the St Christopher's Parade will further aggravate the problems of noise, light pollution, odour and litter in the area."

### 2.0 Synopsis

2.1 The key issues explored below are the impact of the proposed extended hours of opening upon the residential amenity of local residents. The report has regard to the previous planning history for this site and the advice of the specialist consultees and concludes that permission to extend the opening hours from 9.00 pm to 10.00pm is acceptable on Mondays to Saturdays.

### 3.0 Site Description and Context

3.1 The application site lies within a small local shopping parade, with a mix of A1, A2 and A5 uses at ground floor level and residential units at first and second floor above. A Council-owned car park fronts this parade and a service access lies immediately to the rear, with the short back gardens of properties in St Lawrence Road beyond this. The shopping parade is within a predominantly residential area. The application premises currently trade as a fast-food outlet, selling kebabs, burgers, pizzas, etc

#### **4.0 Description of the Proposal**

- 4.1 Planning permission was granted in October 2012 for change of use from A1 shop to A5 hot food takeaway (reference 121543). Condition no. 3 stated the use hereby permitted was not operate outside of the following times: Weekdays: 10.00am to 21.00pm, Saturdays: 10.00am to 21.00pm, Sundays and Public Holidays: 11.00am to 21.00pm. This application seeks to vary the terms of this condition so as to permit the shop hours to be open from 10.00am to 22.00pm on 7 days per week.

#### **5.0 Land Use Allocation**

- 5.1 Neighbourhood Centre

#### **6.0 Relevant Planning History**

- 6.1 C/COL/00/1190 – Change of use of former butchers shop to A3 (food and drink). Refused 20/10/2000 – Dismissed on appeal 30/04/2001.
- 6.2 C/COL/99/1293 – Change of use from butchers shop to Chinese takeaway. Refused 14/12/1999
- 6.3 121543 – Change of use from retail (A1) to hot food takeaway and installation of associated kitchen extract system with flue to terminate at rear. Approved 16/10/2012
- 6.4 122183 – Proposed fascia sign. Application withdrawn 22/01/2013. A sign has since been erected with the benefit of deemed consent.

#### **7.0 Principal Policies**

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Governments primary objective that there be “a presumption in favour of sustainable development”. There are three dimensions to sustainable development, which are an economic role, a social role and environmental role. The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (December 2008) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations  
CE2c - Local Centres

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

DP1 Design and Amenity  
DP7 Local Centres and Individual Shops  
DP17 Accessibility and Access  
DP19 Parking Standards

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

Vehicle Parking Standards

## **8.0 Consultations**

8.1 ECC Highways – no objections

8.2 Environmental Control Team – no objection, but recommend the extension of hours does not apply to Sundays

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

## **9.0 Parish Council Response**

9.1 Not applicable

## **10.0 Representations**

10.1 Objections were received from Ward Councillors Gamble and Smith and from 3 local residents (one in St Bernard Road, one on the opposite side of St Christopher Road, and one from one of the flats in St Lukes Close). These raised the following matters:

1. Present hours of use restricted to 9.00pm, allowing a short time to sit in the garden without noise or smell.
2. Opening hours have been flouted and the signage is too bright. Smells from the kebab shop and the fish and chip shop have been awful.
3. The shop is in a residential area.

10.2 A petition with 294 signatures in support of the extended opening hours was submitted with the planning application.

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

## **11.0 Parking Provision**

11.1 The adopted parking standard required for A5 premises is the same as for A1 (non-food) premises, being 1 space per 20 square metres. There is a Council owned car park for 39 cars at the front of the parade, which serves all the units.

## **12.0 Open Space Provisions**

12.1 No requirement for an A5 use.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

15.1 Planning permission was granted in 2012 for the change of use of these premises from A1 shop to A5 hot food takeaway. The premises lie within a predominantly residential area, but are also part of a designated Neighbourhood Centre, where a variety of Class A uses are typical and are supported by policy DP7 subject to the primary retail role of the centre being maintained. The hours of use proposed by the application documents were from 10.00 am to 9.00 pm (with 11.00 am opening on Sunday) and condition no. 3 of the permission was imposed using these hours. The application looks to extend the opening hours until 10.00 pm and the application documents included a petition to show there is a demand for the extended opening time that would be beneficial for both the business and potential customers.

15.2 The principal issue raised by this proposal is the impact of the additional hours of opening on the amenity of local residents, particularly in terms of noise and odour nuisance. The Local Planning Authority has a duty to consider a wide range of matters and the planning system advocates the use of consultees who are recognised experts in their fields. With regard to noise and odour nuisance, the advice of the Environmental Protection Team has been sought, as they have specialist knowledge of these matters.

15.3 The Environmental Protection Officer has monitored the premises on a number of occasions, both in connection with this application and in response to the concerns that have been raised since the granting of the initial permission for this site. Odour nuisance was not detected from these premises at the boundary with the St Lawrence properties and although there was a very faint odour from the rear external staircase adjacent to ‘The Master Chef’ on one monitoring occasion, the Environmental Protection Officer considered this was because the rear door had been open. The Environmental Protection Officer considers that odour nuisance is not an issue, and will monitor that the rear door is kept closed. Whilst a level of noise was just audible at the boundary of the St Lawrence Road properties it was also considered by the Environmental Protection Officer not to be a nuisance.

- 15.4 The potential hours of use of commercial premises within areas that are close to residential properties is of course a potential concern. And in this regard it is noted that an appeal decision in 2001 in respect of a proposal for a Chinese takeaway at the site, with proposed opening hours for up to 11.30pm Sundays and Thursdays and to midnight on Fridays and Saturdays, was refused. The Inspector considered that trading at times considerably later than other units in the parade and after the usual closing time of the nearby PH were unreasonable. The current proposal will extend the opening hours until 10.00 pm. Other units within the St Christopher parade are open until this time, including the betting agents (open until 10.00 pm), the Fish and Chicken takeaway (until 10.00 pm Mondays to Saturdays), and Tesco's (until 11.00pm). The opening hours of other takeaway establishments within the area, such as along the Harwich Road, also typically extend to 10.00 pm. In general terms, social hours are taken to be 7.00 am through to 10.00 pm or even 11.00 pm, leaving 8 sleeping hours.
- 15.5 The condition has also been slightly amended to allow scope for customers already being served. This is taken from a model condition employed by the Planning Inspectorate in Gloucester in 1990.
- 15.6 The Environmental Protection Team have stated no objection to this application but recommended the extension of hours does not apply to Sundays. The applicant has agreed to this and it is recommended that these hours be permitted.
- 15.7 It is understood that other matters have been raised with both the Planning Enforcement Team and the Environmental Protection Team since the premises opened. These include the premises shutting after 9.00pm after its initial opening, the brightness of the illuminated advertisement at the front of the premises, and the door at the front being left open. These issues have all been tackled and addressed. Additionally, the filters have also been changed and improved by the operators, since opening, in response to the Environmental Protection Officer monitoring the premises in respect of the planning conditions imposed by application 121543. The operator is therefore working with the Council's Environmental Protection Team to ensure smooth running of the premises.

## **16.0 Conclusion**

- 16.1 The application premises are within a Neighbourhood Centre where a range of Class A1 services are supported. The application premises, however, are also in close proximity to residential premises and the Council has a duty to consider the impact of extended opening hours upon the amenity of these nearby residents. In this respect, the Local Planning Authority has sought the advice of the Environmental Protection Team for their specialist knowledge of the issues that have been raised. They do not object to the extended opening hours from Mondays to Saturdays. The extension of opening hours from 9.00pm to 10.00pm on Mondays to Saturdays is considered appropriate and permission for the extended hours limited to these six days of the week is recommended for approval.

## **17.0 Recommendation - APPROVE subject to the following conditions**



## **18.0 Recommended Reasons for the Decision**

The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because the specialist advice received from the Council's Environmental Protection Team does not object to the proposed extension of hours on Mondays to Saturdays. Thus, having had regard to all material planning considerations the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the particular circumstances and reasons set out below, namely: The Local Planning Authority has sought the advice of the Environmental Protection Team for their specialist knowledge of the issues that have been raised. They do not object to the extended opening hours.

## **19.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - Non-Standard Condition/Reason**

The permission hereby granted shall only be exercised between the hours of 10:00 and 22:00 (Monday to Saturday) and 11:00 to 21:00 (Sundays), excepting that customers already being served at 22:00 (Monday to Saturday) and 21:00 (Sundays) may remain on the premises until their orders are fulfilled.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, and for the avoidance of doubt as to the scope of this permission.

### **3 - Non-Standard Condition/Reason**

All doors allowing access and egress to the premises shall be self-closing and shall be maintained as such, and kept free from obstruction, at all times thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, in accordance with the details approved under planning permission 121543.

#### 4 - Non-Standard Condition/Reason

The rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and shall be adhered to thereafter.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, in accordance with the details agreed by planning permission 121543.

#### 5 - Non-Standard Condition/Reason

The sound insulation measures for the building against internally generated noise agreed by planning permission 121543 shall be maintained and retained thereafter in accordance with the previously agreed details.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, in accordance with the details agreed by planning permission 121543.

#### 6 - Non-Standard Condition/Reason

The control measures agreed by planning permission 121543 for the control of fumes, smells and odours shall be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, in accordance with the details agreed by planning permission 121543.

#### 7 -Non-Standard Condition/Reason

Any foul water drains serving the kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

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

#### 8 - Non-Standard Condition/Reason

The equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development previously agreed for planning permission 121543 shall be retained and maintained in good order unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

Reason: In order to ensure that there is satisfactory provision in place for the storage and collection of litter within the public environment, in accordance with the details agreed by planning permission 121543.

## **20.0 Informatives**

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

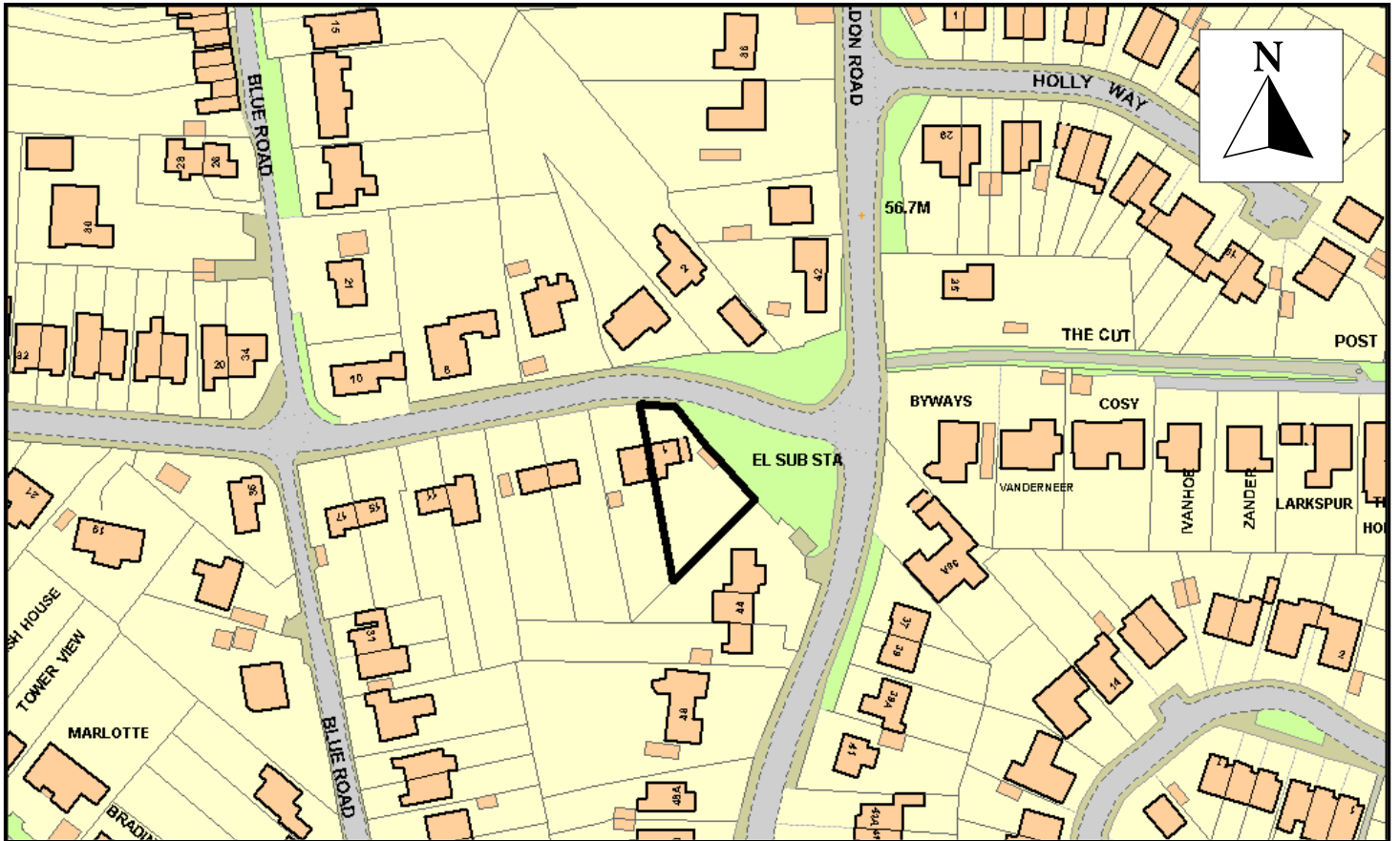
(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

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

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

## **21.0 Positivity Statement**

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



**Application No:** 130661

**Location:** 1 Perry Road, Tiptree, Colchester, Colchester, CO5 0UA

**Scale (approx):** 1:1250

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## 7.6 Case Officer: Peter Hill

**MINOR**

**Site:** 1 Perry Road, Tiptree, Colchester, Colchester, CO5 0UA

**Application No:** 130661

**Date Received:** 1 May 2013

**Agent:** Mr & Mrs Edward Gittins

**Applicant:** Mr James Ross

**Development:** Erection of a detached 3 bedroom dwelling within the garden of 1 Perry Road, Tiptree served by a shared access with the host dwelling (resubmission of application 121427)

**Ward:** Tiptree

**Summary of Recommendation: Refusal**

### 1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee by Councillor Richard Martin for the following reason: "I wish the planning committee to take consideration of this application from its Maldon Road aspect, as part of the street scene of Maldon road instead of its address as Perry Road."

### 2.0 Synopsis

2.1 The key issues explored below are;

- a. Design and character
- b. Trees
- c. Parking and highway safety
- d. Private amenity space
- e. Impact on neighbours' amenities

It is concluded that parking provision, impacts on highway safety, impacts on neighbours' amenities and the amount of private amenity space provided are all within acceptable bounds. However it is also concluded that the development of this garden in the manner proposed would be harmful to the green and open character of the immediate area and that the specific design proposal is of unacceptably poor quality. The application is therefore recommended for refusal.

### **3.0 Site Description and Context**

3.1 Number 1 Perry Road is a semi-detached, two storey house. The side boundary of its garden runs alongside a greensward area on the corner of Perry Road and Maldon Road. Number 44 Maldon Road which is behind the site takes its vehicular access across this area of greensward. Number 44 is a semi-detached house although it has been greatly extended. On the site boundary (in the greensward area) are several trees, most notably, a large oak near the frontage of 1 Perry Road and a mature Ash close to the site of the proposed new dwelling. In addition smaller trees and undergrowth contribute to a soft boundary between the greensward and the site. Number 1 Perry Road takes its vehicular access from Perry Road at the front of the house. A shingled area to the side (under a carport and to the front) provides parking spaces for three cars. A small area of lawn remains between the car parking space and the front boundary.

### **4.0 Description of the Proposal**

4.1 The applicant proposes a detached three-bedroom dwelling house on land currently comprising part of the back garden of 1 Perry Road.

### **5.0 Land Use Allocation**

5.1 The site is within the defined settlement limits but otherwise has no specific allocation.

### **6.0 Relevant Planning History**

6.1 This application is a resubmission of planning application 121427 which was refused under delegated powers on 12/10/12. With the exception of two new windows that have been added to the side elevation, this proposal is identical. The existence of such a recent decision of the Local Planning Authority is a material consideration that must be given considerable weight.

### **7.0 Principal Policies**

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

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

UR2 - Built Design and Character  
PR1 - Open Space  
ENV1 - Environment

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

DP1 Design and Amenity  
DP12 Dwelling Standards  
DP16 Private Amenity Space and Open Space Provision for New Residential Development  
DP17 Accessibility and Access  
DP19 Parking Standards

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

Backland and Infill  
Vehicle Parking Standards  
Open Space, Sport and Recreation  
Extending Your House?  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

8.1 Council's Tree Officer – objects for the following reasons;

The report is significantly out of date and is written using the previous BS5837 (2005 not 2012)

Irrespective of that, the building adjacent to T4 should be moved outside of the Root Protection Area. In its current position it is likely that the future owners will feel that the tree is oppressive and this will create an increased pressure to fell.

Significantly reducing one side of T4 is going to alter the shape and ability of the canopy to handle wind loading.

The 'no-dig' construction adjacent to T1 is unlikely to be possible given the grade into the road level that will be required.

8.2 Council's Urban Designer – objects due to cramped appearance, car dominance and loss of characteristically spacious corner plot and harm to trees on it.

8.3 Essex County Council Highway Authority – no objection subject to conditions relating to

- a. Vehicular visibility splays with dimensions of 2 metres by 43 metres to the east and 2 metres by 14 metres to the west.
- b. Implementation of parking and turning facility shown on plans
- c. No unbound materials within 6 metres of the highway
- d. Provision of a 'travel information marketing scheme' for sustainable transport.

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

## **9.0 Parish Council Response**

- 9.1 Tiptree Parish Council object to this application on the following grounds - overdevelopment of site, loss of amenity to existing residents and insufficient access arrangements.”

## **10.0 Representations**

- 10.1 One letter of objection has been received, from the occupier of No. 42 Maldon Road. Objections raised are summarised as follows;

The proposal is an overdevelopment and out of keeping with local character in terms of spacing, materials (locality is for render, not brick)  
Awkward and inadequate parking and access arrangement would result in vehicles parking on road or greensward.

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

## **11.0 Open Space Provisions**

- 11.1 The application is accompanied by a Unilateral Undertaking and Monitoring fee in respect of Public Open Space, Recreation and Community Facilities. Consequently, the additional demand placed upon such community resources is mitigated against by this development and so the proposal complies with DP16 in this regard.

## **12.0 Air Quality**

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

## **13.0 Development Team and Planning Obligations**

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

## **14.0 Report**

- 14.1 Design and Character

- 14.1.1 When first built, corner plots are frequently left with larger areas of private amenity space than other plots because of the constraints that result from the juxta position of houses on each road. Smaller corner plots may result in an unsatisfactory relationship with neighbouring properties, both visually and in terms of avoiding overlooking, poor outlook and poor light levels. As paragraph 3.7 of adopted Supplementary Planning Document ‘Backland and Infill Development’ states:-



‘Corner plots create particular issues as they often have only limited depth....The development of corner plots can also result in the loss of green space and have an adverse impact on the visual amenity of the locality’.

In developing such a corner plot, this proposal has raised precisely these issues.

- 14.1.2 The appearance of the small but attractive area of greensward is significantly enhanced by the garden area behind it which forms its backdrop. The undeveloped character of this garden, together with the trees and shrubs it contains, contributes to a spacious and green character. This would be harmed by the loss of vegetation and open space and the imposition of two-storey built form very close to the edge of the greensward. The proposed dwelling has no front garden and is just one metre away from the front boundary of the site (if the front is considered to be the north east elevation that faces the public greensward). Typically, nearby dwellings have front ‘gardens’ of 6-15 metres in depth.
- 14.1.3 The absence of a front garden and the forward protrusion of the new dwelling causes it to be unduly prominent, emphasises its poor relationship with neighbouring dwellings, and results in three elevations of the proposed dwelling being publicly visible.
- 14.1.4 The house is generally confused in its articulation, offering no obvious principal elevation. The north-east elevation that is offered as the front elevation contains no door, does not include the vehicular access and includes a Juliette balcony (a feature uncommon to front elevations). These factors combine to make this elevation appear unconvincing as a primary elevation. Although difficult to properly assess from the submitted drawing because the tree is drawn to partially obscure it, the front elevation will appear imbalanced due to the difference in eaves heights on each side of the largest of the two gables that front the greensward. The bulk of this gable end combines with a poor solid to void ratio to leave an unsatisfactory appearance.
- 14.1.5 The position of the vehicular access and the main entrance to the house perhaps give more credence to the north-west elevation being the principal elevation. Such a conclusion would cause the application to be considered as backland development – a type of development that is not part of local character. In any case, the composition of the north-west elevation is lacking in coherence with its jumble of different eaves heights, and fenestration arrangements and its main entrance positioned within the secondary element of the house. The south east elevation will appear particularly prominent and bland with a poor solid to void ratio that has not been resolved by the addition of two further windows since the previous submission.
- 14.1.6 The scheme, furthermore, includes a shared access serving this tandem arrangement of built form that is in itself out of keeping with local character. It necessitates a very large area of hard paving to serve parking and manoeuvring areas. These include parts of the frontage of 1 Perry Road that are currently soft-landscaped. Such large areas of hard paving contribute towards an unattractively stark appearance of the site. The clearance of vegetation on the adjoining greensward, the proposed reduction of the crown spread of the Ash Tree (an attractive existing feature on the site) and the forward protrusion of the dwelling all further contribute towards this stark appearance of the site and surroundings that is harmful to its existing spacious and green setting.

- 14.1.7 In the previous decision notice, concerns were expressed about the amount of light that the ground floor of the property would receive. Officers have reviewed this as part of the submission and consider that on balance daylight received to the property would not be so poor as to justify a refusal on that basis. Concerns remain, however, with respect to the quality of living accommodation created. The kitchen window of the proposed dwelling directly faces the boundary fence with 44 Maldon Road, at a distance of just one metre, resulting in very poor outlook. The dining area window faces directly onto a parking space (and presumably a parked car) at a distance of just 0.5 metres, again resulting in poor outlook. The entirety of the back garden would be directly overlooked by the donor property and by 44 Maldon Road. The proximity of such overlooking windows means that the garden area will not feel private. This is in direct conflict with the requirements of development Policy DP12 that specifies that new residential development should ensure acceptable levels of privacy for sitting-out areas.
- 14.1.8 The donor dwelling of 1 Perry Road would have shared access and turning areas right up to its flank wall – a flank wall that contains two windows. This is an unsatisfactory arrangement that will result in noise and disturbance to the occupiers of 1 Perry Road. Paragraph 6.6 of adopted Supplementary Planning Document ‘Backland and Infill Development’ requires a protection zone of a minimum three metres each side of an access.
- 14.1.9 The dwelling is proposed in brick amongst properties that are all rendered, however it is accepted that alternative materials could be achieved by condition. It has a form and design unlike any surrounding dwelling, however local building designs vary significantly and that fact tempers concerns in this regard.
- 14.1.10 The applicant equates the area of greensward in front of the property to a “village green” and argues that houses fronting onto village greens are a traditional approach. Officers do not agree that this site does have the character of a village green. No other houses front onto the greensward. If they did, (and bearing in mind the small size of the greensward), it would be expected that they would contribute positively towards it through the addition of their own open plan frontages. This proposal does not contribute towards the openness, it takes from it by the loss of the back garden currently forming the backdrop to the greensward.
- 14.1.11 The applicant accepts that the south-east elevation is bland. The addition of two small windows only slightly diminishes this concern. Arguments made by the applicant that this elevation is ‘well screened’ seem to be dependent on existing boundary trees that are scheduled for removal in the submitted Arboricultural Impact Assessment.

## 14.2 Trees

- 14.2.1 The submitted Arboricultural Impact Assessment (AIA) is out of date, being almost two years old, and has been prepared under the now superseded 2005 British Standard. It concludes that the large Oak (T1) adjacent to Perry Road would be unaffected by the development. The Assessment recommends no dig technology to protect the roots from construction traffic. It is unclear how such technology (that involves a raised platform) would resolve the resulting change in levels so as to access the highway, but on balance this concern does not justify a refusal on that basis as other solutions should be achievable.

14.2.2 The tree referred to in the AIA as T4 is a 16 metre high Ash Tree within the Greensward but with its stem less than one metre from the site boundary and less than two metres from the proposed new dwelling. Consequently, the new dwelling makes a significant incursion into its root protection zone (note: the crown spread shown on the proposed site layout plan does not reflect that shown in the tree survey, significantly underestimating it). The AIA proposes significant reduction in the crown spread of the tree “to bring under a new management regime”. It is not clear from the submitted information whether these works are essential for the health of the tree or, as seems more likely, so as to facilitate the development. The Council’s Tree Officer considers that the crown reduction which is proposed to this tree would alter the shape and ability of canopy to handle wind loading. The proximity of the tree to the dwelling would be likely to result in future conflict and pressure for its removal.

14.2.3 In conclusion, the crown reduction of this tree would diminish its amenity value and contribute further to the erosion of the green environment that other aspects of this development also harm. The proximity of the new house to the tree severely weakens its long term viability and its ultimate loss would cause greater harm.

### 14.3 Parking and highway safety

14.3.1 The application makes provision for two parking spaces per dwelling of sizes commensurate with those required by adopted standards. Adopted standards also require 0.25 visitor spaces per dwelling. No visitor parking is proposed for either the new dwelling or the donor property. This was mentioned in the previous reason for refusal. The matter has been reconsidered and is no longer recommended to be incorporated into the reasons for refusal as the impact on local character of low levels and frequency of on-street parking generated by the proposal would, on balance, not be so harmful as to justify refusal on that basis.

14.3.2 The Highway Authority has no objection to the proposal. The proposal uses an existing access and is considered satisfactory in terms of highway safety.

### 14.4 Private amenity space

14.4.1 Amenity space provision meets adopted minimum standards in terms of area. Gardens will be much smaller than the prevailing norm, but there are some houses nearby with small gardens and in this context, the small area of private amenity space proposed does not justify a refusal on that basis.

### 14.5 Impact on neighbours’ amenities

14.5.1 The orientation of the proposed dwelling and positioning of windows is such that there will be no material loss of privacy. The only facing windows on No. 44 Maldon Road, are towards the front of the house where the distance to the proposed dwelling would be some 11 metres. At this distance there will be little loss of light or outlook. The new dwelling does not protrude so far beyond the rear of No. 44 Maldon Road as to materially harm outlook or light to the rear of that property or to its garden.

14.5.2 The new dwelling will overlook the back garden of No. 3 Perry Road, but in view of the distance (some 12 metres) and the angle of overlook that is towards the bottom of the garden, such overlooking is considered to be within acceptable bounds.

## 15.0 Conclusion

15.1 A very similar scheme at this site has recently been refused planning permission by the Council. This is a material consideration that must be given considerable weight. The proposed new dwelling would significantly erode the existing green and open character that is formed by the greensward in conjunction with the existing garden of 1 Perry Road to an extent that is harmful to the appearance of the site and surroundings. In its detail, the scheme relates poorly to neighbouring properties, and is out of keeping with its surroundings. The dwelling itself is poorly designed. The benefits of the scheme in providing an additional housing unit and the economic benefits of development do not outweigh this identified harm.

**16.0 Recommendation - REFUSE** planning permission for the reasons set out below.

## 17.0 Recommended Reasons for the Decision

### 1 - Non-Standard Refusal Reason

The National Planning Policy Framework (NPPF) requires that developments 'establish a strong sense of place...(and) are visually attractive as a result of good architecture and appropriate landscaping'. It goes on to state that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area...'. These objectives are reflected in Colchester Borough Council's Local Development Framework, through Policy UR2 of the Core Strategy (December 2008), Policies DP1 and DP12 of the Development Policies (October 2010) and adopted Supplementary Planning Guidance 'Backland and Infill Development', which together require a high standard of design, construction and layout, an appropriate architectural approach and an enhancement in the character of an area.

### 2 - Non-Standard Refusal Reason

This proposed dwelling is not in keeping with its surroundings. It has no front garden and is just 1 metre away from the front boundary of the site (if the front is considered to be the north east elevation that faces the public greensward). Typically, nearby dwellings have front 'gardens' of 6-15 metres in depth. The result would be a dwelling that is out of keeping with its surroundings, with an undue prominence that emphasises its poor relationship with neighbouring dwellings. The forward protrusion results in three elevations of the proposed dwelling being prominent. The house is generally confused in its articulation, offering no obvious front elevation. Although difficult to properly assess from the submitted drawing because the tree is drawn to partially obscure it, the front elevation will appear imbalanced due to the difference in eaves heights on each side of the largest of the two gables. The bulk of this gable end combines with a poor solid to void ratio to leave an unsatisfactory appearance. The south-east elevation will appear particularly prominent and bland with a poor solid to void ratio and the composition of the north-west elevation is lacking in coherence with a jumble of different eaves heights, and fenestration. The poor outlook received to the kitchen and dining area windows further emphasises the poor design of the dwelling, as does the lack of privacy afforded to the garden area of the new dwelling.

### 3 - Non-Standard Refusal Reason

The scheme furthermore includes a shared access serving this tandem arrangement of built form that is in itself out of keeping with local character. It necessitates a very large area of hard paving to serve parking and maneuvering areas. This includes parts of the frontage of 1 Perry Road that are currently soft-landscaped. Such large areas of hard paving contribute towards an unattractively stark appearance to the site. The clearance of vegetation on the adjoining greensward, the proposed reduction of the crown spread of the Ash Tree (an existing feature contributing very positively to the setting of the site), the reduced future viability of that tree, and the forward protrusion of the dwelling all further contribute towards this hardening in the appearance of the site and surroundings that is harmful to its existing spacious and green setting.

### 4 - Non-Standard Refusal Reason

Paragraph 6.6 of adopted Supplementary Planning Document 'Backland and Infill Development' requires a protection zone of a minimum 3 metres each side of an access. In this case, the donor dwelling of 1 Perry Road would have shared access and turning areas right up to its flank wall – a flank wall that contains two windows. This is an unsatisfactory arrangement that will result in noise and disturbance to the occupiers of 1 Perry Road.

For all of the above reasons, the proposal is poorly designed, harmful to local character and results in poor quality living accommodation. As such, it conflicts with the afore-mentioned policies.

## **19.0 Positivity Statement**

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development through its Preliminary Enquiry service (please refer to the Council's website for details).



**Application No:** 130754

**Location:** Land rear of, Laurel Cottage, Layer Breton, Colchester, CO2 0PP

**Scale (approx):** 1:1250

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## 7.7 Case Officer: Carl Allen

**MINOR**

**Site:** Land rear of, Laurel Cottage, Layer Breton, Colchester, CO2 0PP

**Application No:** 130754

**Date Received:** 29 April 2013

**Applicant:** Miss Yee Cheung

**Development:** New dwelling house and garage.

**Ward:** Birch & Winstree

### **Summary of Recommendation: Refusal**

#### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because a spouse of a member of staff has made comments on the application.

#### **2.0 Synopsis**

2.1 The key issues explored below are design, amenity and the position of part of the dwelling outside the physical limits. It is considered that the proposal would occupy a backland position out of character with the dominant pattern of development, would be an inappropriate infringement into the countryside, would result in a significant loss of amenity to the nearest neighbour (Laurel Cottage), would involve the loss of trees and constitutes poor design. For these reasons refusal is recommended.

#### **3.0 Site Description and Context**

3.1 The site is a plot of land behind the dwellings of Laurel Cottage and Meadowside Cottage. The plot measures approximately 30m by 35m with a track to the south-west that leads to the public highway. The plot is grassed with many trees (both well established and young) on the site and several piles of pallets and other materials. Just under half of the site is outside the Physical Limits of Layer Breton. To the north of the site is a wooden panel fence with the rear gardens of 'Fairhill' and 'Ash Lodge' beyond. To the east is a brick wall. To the south is a building (Coach House) associated with Layer Breton Lodge – which is Grade II Listed Building, whilst to the west is a post and rail fence with the rear gardens of Laurel Cottage and Meadowside Cottage beyond.

#### **4.0 Description of the Proposal**

4.1 The proposal is for a new dwelling approximately 10.8m long, 10m wide and 8m high. A detached double garage 9.8m long, 6.5m wide and 6m high, with a games room on the first floor. A driveway would be formed along the existing track. Some of the trees would be removed and a hedge would be planted along the western boundary.

## **5.0 Land Use Allocation**

5.1 Part outside the physical limits, in the countryside.

## **6.0 Relevant Planning History**

6.1 None.

## **7.0 Principal Policies**

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

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

SD1 - Sustainable Development Locations  
UR2 - Built Design and Character

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

DP1 Design and Amenity  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP14 Historic Environment Assets

7.4 N/A

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

Backland and Infill  
Vehicle Parking Standards  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

8.1 Highways – any comments received will be reported.

8.2 Environmental Protection – if approved should include a condition regarding encountering contamination during construction.



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

## **9.0 Parish Council Response**

9.1 The Parish Council object to the proposal due to:

- 60% of the dwelling would be outside the village envelope
- out of scale with the area as it would dwarf Laurel Cottage
- garage would be bigger than Laurel Cottage
- would be within the curtilage of a Listed Building
- removal of trees would result in a loss of privacy to neighbours
- may have inadequate visibility splays.

## **10.0 Representations**

10.1 Seven objections have been received and comment:

- the access track is unsuitable for builders lorries and will result in highway safety issues, as well as damaging the surface of the highway
- 60% of the dwelling outside the village envelope. This settlement boundary follows a fence line that was in place several years ago and the land inside formed the rear gardens of Laurel and Meadowside Cottages, so it is reasonable to assume that any development should be restricted to these dwellings only
- the site has never been 'developed land' and as such does not comply with Policy H1
- until 1995 the land formed the curtilage of Layer Breton Lodge and is therefore the curtilage of a Listed Building, and Listed Building Consent is required
- should take into account the setting of the Listed Building
- is not sympathetic to the Listed Building in regards to its size, location, design and materials
- would have an adverse impact on the Listed Building and historic walls and outbuildings
- too big for an 'in fill' plot
- height would dwarf both cottages, would loom over the Listed Building and be seen from the highway
- wall along the access track is Listed and would be venerable to damage during construction
- garage is too big for the site and would completely overshadow Laurel Cottage
- garage materials would be alien to the area
- would overlook other dwellings
- the site is not designated for development in the Council's plans and would be contrary to the NPPF
- the loss of significant trees at the site would be a significant amenity loss
- unsustainable development as it is outside the village envelope
- overshadows habitable rooms and gardens – reducing the usable amenity space
- out of character with the locality
- no design input from the local community
- design has little respect for the character, history and distinctiveness of the area and site
- has no frontage
- view from the front would be the cottages with a much larger, incongruous new dwelling behind

- no justification to remove some of the trees – which can be seen outside the site
- retained trees would be threatened due to the access and turning area
- Contrary to DP12 & Backland SPD
- would overshadow buildings and gardens
- a clear visual intrusion and a loss of space between buildings
- a Tree Preservation Order should be served on the tree shown to be removed
- no other backland development in the area
- endangers wildlife at the site

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

## **11.0 Parking Provision**

- 11.1 Three off-street parking spaces would be provided.

## **12.0 Open Space Provisions**

- 12.1 n/a

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

- 15.1 Just over half the site is inside the physical limits of Layer Breton and the proposed dwelling itself would be positioned so that approximately 60% of the dwelling would be outside the physical limits and therefore in the countryside. This position is clearly contrary to the Council's Policies SD1 and DP13 where development in the countryside is not encouraged and new dwellings are directed to sites within settlement boundaries. That the dwelling has been positioned as such on the plot – to achieve distance from existing neighbours - underlines the inappropriateness of the site for residential development. Whilst the existing brick wall on the eastern boundary would screen the ground floor of the proposed dwelling from the immediate countryside, the first floor and the roof would be clearly seen from outside the site to the east and would result in the built form being visible in the countryside. Whilst there are residential curtilages between the site and the open countryside the structures in the curtilages are all relatively low key, whereas the proposed dwelling would be 8m in height and would have a much more visible impact when viewed from the countryside to the east.

- 15.2 The position of the dwelling in relation to existing properties is also out of keeping with existing pattern of development in the immediate area and the proposal would be an undesirable form of backland development, without any frontage to a highway with the access lacking any visual interest in the street scene and enclosed by gardens. As such the proposal would not accord with the guidance in the Council's 'Backland and Infill' Supplementary Planning Document.
- 15.3 The proposed garage would be 2m from the boundary with Laurel Cottage's rear garden, and it is proposed to plant a new hedge along the boundary. The rear garden of Laurel Cottage is approximately 4m wide and the rear elevation of the cottage has kitchen windows on the ground floor and small secondary bedroom windows at the first floor. Whilst it would be unlikely that these windows would be affected by overshadowing from the garage, the garage would appear over-dominating, overbearing and intrusive to Laurel Cottage by virtue of the proposed length, height, position and distance to the neighbour, and is therefore considered to have an unacceptable impact on the amenity of Laurel Cottage. This amenity would be further eroded by the position of the driveway along the side garden of Laurel Cottage and the driveway area to the rear of Laurel Cottage. The use by vehicles on the driveway would result in vehicle noise and vehicle lights causing disturbance to Laurel Cottage which would be seriously detrimental to its amenity, given that in these areas (the side and rear gardens) there is a greater expectation of privacy and lack of disturbance. Again, this underlines the backland qualities of the site and the inappropriateness of the site for residential development.
- 15.4 Regarding overlooking, the proposed dwelling would be at least 15m from most of the boundaries with neighbours gardens – with the actual dwellings a further 10m away. With these considerations it would be unlikely that there would be any significant overlooking to these neighbours as a result. However, with the loss of trees from within the site and on boundaries the neighbours may experience a perceived overlooking from the proposed first floor windows. Turning again to Laurel Cottage, this has a much closer relationship with the proposed dwelling being 10m from the boundary and 15m from dwelling to dwelling. Whilst the height of the proposed garage would stop views from the first floor windows, there would be oblique views possible from the front first floor windows which given the 15m distance would be unacceptable. The proposal is therefore considered to be completely contrary to the amenity requirement of DP1.
- 15.5 The design of the proposed scheme is considered to be poor as the positions and heights of the scheme result in serious amenity issues to neighbours, and that the contrived position of the dwelling to be a distance from neighbours actually brings the majority of the dwelling out of the physical limits – which only re-enforces the unsuitability of the site for residential development. The proposed height and position is out of character with the dwellings in the immediate area. As such the proposal constitutes poor design and does not accord with Policies UR2 and DP1 which requires new development to respect the context and surroundings with regards top height etc.

- 15.6 The comment has been made that as the site is in the (former) curtilage of a Listed Building, Listed Building Consent is required. It is noted that Listed Building Consent is only needed where a development would be physically attached to a Listed structure. A free standing structure would not require such consent. However, as the land was in the ownership and curtilage of Layer Breton Lodge when the Lodge was Listed, the impact on the setting of the Listed Building – and its curtilage Listed structures – is a valid consideration for the application. It is considered that given the size of the coach house that is in between the site and the Listed Building of Layer Breton Lodge, the proposed dwelling would be unlikely to be seen in relation to the setting of the Listed Building.
- 15.7 The site has many trees both within it and on its boundaries. These trees range from large, well established specimens to younger trees that have self grown. The proposal would result in the loss of some of these trees and this raises some concern as it would result in the proposal being more visible to the immediate neighbours. The Council's Arboriculturist has visited the site and has indicated verbally that he has concerns about the loss of the trees, although he has yet to make his official comments. When the official comments have been made they will be reported to the Committee.
- 15.8 Regarding the comment that the proposal would endanger wildlife at the site, there are no records of protected species being recorded at the site, and no evidence has been provided as to what wildlife would be endangered. The site would appear to have once been in the curtilages of Layer Breton Lodge, Laurel Cottage and Meadowside Cottage, but now is not associated with any dwelling. Given that the Government have removed gardens from the definition of previously developed land, the status of the land would be undeveloped. The site is not shown for development in the Councils Proposals Maps, but sites for single dwellings would not be shown on such plans given that single dwellings do not have any strategic worth. As a single dwelling, there is no requirement for the applicant to consult the community on the proposed design prior to making an application.

## **16.0 Conclusion**

- 16.1 The proposal is considered to result in an undesirable form of backland development with a poorly designed access, out of keeping with the existing pattern of development and would be seriously detrimental to the amenity of neighbours – especially Laurel Cottage.

**17.0 Recommendation** - REFUSE planning permission for the reasons set out below.

## **18.0 Recommended Reasons for the Decision**

The proposal for a detached dwelling with detached garage on a plot of land to the rear of Laurel Cottage is unacceptable as it would result in an undesirable form of backland development without a frontage onto a highway with an access without any visual interest, would result in overlooking to Laurel Cottage and would be out of keeping with the existing pattern of development in the area. The proposed dwelling would be positioned to be mostly outside the defined physical limits of Layer Breton and would be in the countryside. The infringement into the countryside is considered to be inappropriate and underlines the unsuitability of the site for residential development and the poor design of the scheme.

Additionally the garage would cause significant harm to the amenity of nearby residents – especially Laurel Cottage – by virtue of being intrusive and overbearing in its height and distance from the boundary. Policy DP1 (Design and Amenity) of the Colchester Borough Council’s Local Development Framework Development Policies (adopted October 2010) and Policies SD1 (Sustainable Development Locations) and UR2 (Built Design and Character) of the Council’s Core Strategy (adopted December 2008) support development that is well designed and which avoids unacceptable impacts on amenity. In these regards the proposal is contrary to DP1, SD1 and UR2 in that it fails to meet the policy criteria and the dwelling is positioned mostly outside the physical limits and results in significant harm to amenity of neighbours.

## **19.0 Positivity Statement**

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.



**Application No:** 130794

**Location:** The Drury Arms, 1 Layer Road, Colchester, CO2 7HN

**Scale (approx):** 1:1250

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## 7.8 Case Officer: Lucy Mondon

**MINOR**

**Site:** 1 Layer Road, Colchester, CO2 7HN

**Application No:** 130794

**Date Received:** 24 April 2013

**Agent:** Mr David Pickford

**Applicant:** Portfolio Property Ventures Ltd

**Development:** Erection of a single-storey rear extension, plant and bin store, external alterations (including provision of ATM and new glazed entrance), new vehicular access and associated hard standing for car park, service and delivery area, and a 1.8 metre high boundary wall.

**Ward:** Shrub End

**Summary of Recommendation: Conditional Approval**

### 1.0 Reason for Referral to the Planning Committee

1.1 This application was deferred by the Planning Committee at its meeting on 20<sup>th</sup> June 2013 in order to seek amendment to the design of the extension; increase the number of disabled car parking spaces on site; and seek further information from the Highways Authority regarding traffic and highway safety. The original committee report is set out in Appendix 1.

### 2.0 Synopsis

2.1 The application was considered and discussed by the Planning Committee at its meeting on 20<sup>th</sup> June 2013, where it was resolved to defer the application in order to seek the following:

- Amendments to the design of the extension in order to omit the 'L shape' form;
- Increase the number of disabled car parking spaces on site so that the number of spaces meet the required standards set out the in the Vehicle Parking Standards SPD;
- Further comments from the Highway Authority in respect of:
  - The suitability of site access and maneuverability for service and delivery vehicles
  - Clarification as to whether the ATM would generate increased traffic
  - Confirmation as to whether the recent accident at Butt Road alters the Highway Authority's view of the proposal in highway safety terms

- 2.2 In response to the comments made by the Planning Committee the Applicant has submitted:
- Revised drawings that show the plant and bin store enclosure to be reduced in size: the bin store has been separated from the plant area and is now proposed as a detached enclosure to the north-east corner of the site, with the plant area being attached to the side of the proposed extension only (i.e. not extending from the extension as an 'L shape'). For clarity, the plant area is a brick and mesh enclosure and not a solid building; and
  - Details to show that the number of disabled car parking spaces have increased to 3 spaces.
- 2.3 The Applicant has also submitted a Heritage Statement that builds upon the references made to the locally listed building set out in the Planning Statement originally submitted with the application.
- 2.4 The report considers the revised details submitted, coming to the conclusion that the amendments to the design of the extension and the layout of the car park address the concerns raised at the recent Planning Committee meeting. Following further consultation with the Highway Authority, whereby it was confirmed that there remains no objections in terms of the highway safety implications of the proposal, it is considered that the proposal would not have a significant impact on highway safety and is acceptable in this regard. A conditional approval is, therefore, recommended.

### **3.0 Consultations**

- 3.1 Following further consultation, the Highway Authority has confirmed that, taking into account the additional points raised by Committee Members, and in consideration to the rules, laws, and regulations behind the planning process, they have no grounds for objection and cannot, nor wish to, change their previous recommendation.
- 3.2 The comments made by the Highway Authority in response to the questions raised at the committee meeting on 20<sup>th</sup> June 2013 will be set out in detail in the main body of this report.

### **4.0 Representations**

- 4.1 No further consultation has been carried out. A summary of the representations made in respect of the application can be found in the attached original committee report and all representations can be read in full on the Council website.

### **5.0 Report**

- 5.1 The planning application was deferred by the Planning Committee in order to seek amendments to the design of the extension and the car park layout, as well as seek further information from the Highway Authority with regards to the highway safety implications of the scheme. The main planning considerations are therefore: design, parking provision, and highway safety.



## 5.2 Design

The application was previously dismissed at appeal on the grounds of the design of the extension being an unsympathetic addition to the locally listed building. A summary of the Inspectors comments can be found at paragraphs 6.2 and 15.1-15.3 of the original committee report attached and can be read in full in the attached appeal decision.

5.2.1 The National Planning Policy Framework (NPPF) states that the Government attaches great importance to the design of the built environment, going on to state that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. With reference to the historic environment the NPPF states that the effect of an application on the significance of a non-designated heritage asset (e.g. a locally listed building) should be taken into account in determining planning applications. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

5.2.2 Development Policy DP14 states that development affecting the historic environment should seek to preserve or enhance the heritage asset and any features of specific historic, archaeological, architectural or artistic interest. In all cases there will be an expectation that any new development will enhance the historic environment in the first instance, unless there are no identifiable opportunities available.

5.2.3 The Drury Arms is a locally listed building and is classified as a non-designated heritage asset. The building does have significance, being a prominent building of attractive proportions and detailed design. This is recognised by the Applicant and the heritage value of the building is referred to in the Planning Statement submitted with the application. In consideration of the details submitted with the planning application, as well as several site visits and reference to the local listing description, the Local Planning Authority was able to assess the significance of the building as a non-designated heritage asset and assess the impact of the proposal upon this significance. Following the Planning Committee meeting on 20<sup>th</sup> June 2013, the Applicant has submitted a Heritage Statement that provides greater detail about the proposals in the context of the local listing. Whilst this does provide more detailed information about the revised proposals, it does not provide any information that had not already been considered by the Local Planning Authority in their assessment of the application.

5.2.4 Whilst the proposal would alter the appearance of the building in so far as it adds a rear extension, it would not have an adverse impact on the character of the building: the building would remain a prominent and imposing feature in the street scene; it would still be possible to read the original form of the building as the extension would be articulated from the original building; the extension would read as a subservient addition to the building and would not be a dominant or overly prominent feature that would significantly affect the appearance of the property in the street scene; and detailed design features, such as the pargetting decoration, would remain intact. In consideration of the fact that the proposal would refurbish and secure the long term maintenance of a building that is currently vacant and in a state of poor repair, the proposal would enhance the appearance of a non-designated heritage asset. The proposal is therefore considered to adhere to the requirements of the NPPF and Local Development Framework in terms of its design and impact upon a non-designated heritage asset.

5.2.5 Planning Committee Members were concerned that the proposals had not gone far enough to address the Inspectors objections to an 'L shaped' extension. There was concern that the plant area and bin store walled enclosure still created an 'L shaped extension'. The recent amendments have reduced the size of the enclosure by relocating the bin store to a separate enclosure to the north-east corner of the site. The plant area would be enclosed by a brick and mesh wall that would be subservient to both the original building and the proposed extension, being 1.8 metres high and set against the proposed extension which would be 3.1 metres high. The plant area enclosure would be attached to the side of the proposed extension only and not attached to the existing building, thereby avoiding the 'L shape' referred to by Members.

### 5.3 Parking Provision

The proposal has been amended so that the number of parking spaces accords with the Vehicle Parking Standards SPD. For clarity, the following would be provided: 22 car parking spaces (19 excluding disabled car parking spaces); 4 cycle spaces; 3 motor cycle spaces; and 3 disabled parking spaces. The proposal fully accords with the requirements of Vehicle Parking Standards SPD and the Highway Authority are content with the level and type of parking proposed.

### 5.4 Highway Safety

Following the Planning Committee meeting on 20<sup>th</sup> June 2013, further consultation was undertaken with the Highway Authority in order to seek detailed comments regarding the suitability of site access and maneuverability for service and delivery vehicles; clarification as to whether the ATM would generate increased traffic; and confirmation as to whether the recent accident at Butt Road alters the Highway Authority's view of the proposal in highway safety terms.

5.4.1 In terms of traffic generation, site access and maneuverability, the Highway Authority commented that:

- The site, without recourse to the planning system, could be 'done up' and could generate a regular turnover of traffic due to lunchtime meals, evening meals, staff, events (such as televised football games, or regular live music evenings, for example), deliveries, and so forth; far more traffic than has been seen at this site for a long time.

- In their submitted detail the applicant has quoted figures from the TRICS database, which the Highway Authority accepts, that show that the proposal would not lead to any greater traffic association than could already exist.
- Whilst it is recognised that there are surrounding trip generators, the local highway network has no capacity issues compared to other locations in Colchester; reference the difference between this junction and those at North Station, or Brook Street/Magdalen Street; important roads in the network surrounded by some residential and some commercial trip generators.
- Further;
  - 1) The junction is open and has good visibility from all direction so any traffic turning or manoeuvring into the car parking area (customers, or delivery vehicles) will be seen by, and will be able to see other users of the highway
  - 2) The proposal is providing a similar number of dedicated parking spaces to that existing.
  - 3) A right turn lane is being provided.
  - 4) The access is moving away from the junction

The above numbered points provide a range of benefits to the highway users.

- The pub, when open, would have seen regular visits from brewery delivery vehicles. If delivery vehicles performing turning movements into/out of the site had an inherent level of danger, the accident figures for the site would reflect this. However, the TraffWeb site, which provides information on road traffic collisions, shows that there are no road traffic collisions recorded that involve users of the Drury Arms access.
- Should there be times where delivery vehicles have to reverse into the site from the carriageway, the new 'keep clear' markings will make this more efficient and limit the time for conflict (if the pub were up and running and the car park were full then the dray would have to reverse into the site to unload or go in forwards and reverse out). The Local Planning Authority can also put conditions on the time for deliveries thereby reducing the conflict in peak flow times further.
- The Highway Authority position was reinforced by the appeal inspector following the initial application; it was noted in the appeal decision that there will be no Highway implications for this site.

#### 5.4.2 The impact of the proposed ATM upon traffic generation and highway safety:

- An ATM does not increase traffic volumes accessing a site. Generally users of the ATM are already on the road (passing traffic) or visiting the site in order to use the shop. This traffic has already been accounted for in the TRICS figures submitted.
- There are double yellow lines along this section of Layer Road which can be enforced thereby protecting the access and junction from inappropriate parking.

#### 5.4.3 Finally, the Highway Authority comment that the recent accident did not involve someone using the Drury Arms access and it is not, therefore, relevant to the application proposal.

5.4.4 Matters of highway safety, as well as site accessibility and maneuverability for road users, service vehicles and delivery vehicles, were considered by the Inspector at the time of the appeal. The Inspector was clear in the appeal decision that the proposal is acceptable in terms of highway safety, including the ability for service and delivery vehicle to enter and leave the site in forward gear, traffic generation, and access visibility for road users and pedestrians.

## **6.0 Conclusion**

6.1 It is considered that the proposal is acceptable in terms of its design and impact upon a non-designated heritage asset, parking provision, and highway safety having had regard to national and planning policy and professional advice, as well as other material planning considerations.

## **7.0 Recommendation**

APPROVE subject to the conditions as set out in the original committee report attached, with an amendment to condition 2 and addition of an informative relating to the retention of the pargetting as follows:

### **2. Non-Standard Condition**

Notwithstanding the landscaping of the site, the development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 11.0058.PL01 Rev Q and 11.0058.PL02 Rev P, received on 25<sup>th</sup> June 2013.

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

### **Non-Standard Informative**

The Applicant/Agent/Developer is advised that this planning permission does permit any alteration to the existing pargetting decoration. It is the Council's aspiration that the pargetting decoration should be retained for perpetuity in the interests of the heritage value of the building and visual amenity.

<b>Site:</b>	<b>1 Layer Road, Colchester, CO2 7HN</b>
<b>Application No:</b>	<b>130794</b>
<b>Date Received:</b>	24 April 2013
<b>Agent:</b>	Mr David Pickford
<b>Applicant:</b>	Portfolio Property Ventures Ltd
<b>Development:</b>	Erection of a single-storey rear extension, plant and bin store, external alterations (including provision of ATM and new glazed entrance), new vehicular access and associated hard standing for car park, service and delivery area, and a 1.8 metre high boundary wall.
<b>Ward:</b>	Shrub End
<b>Summary of Recommendation:</b> Conditional Approval	

## **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee at the request of Cllr Hazell for the following reasons:

‘Over development of building and site, revised development is inconsistent with local list protection. I believe the junction is unable to sustain parking, hgv’s and deliveries.’

## **2.0 Synopsis**

- 2.1 The application seeks planning permission for the erection of a single-storey rear extension, plant and bin store, external alterations, new vehicular access and associated hardstanding for car park, service and delivery area, and a 1.8 metre high boundary wall. Following consultation, revised drawings were submitted on 3<sup>rd</sup> June 2013. These drawings have amended the design of the single-storey rear extension and the external alterations to the building, as well as some minor amendments to the layout and landscaping of the car park.
- 2.2 The following report sets out that the main planning consideration in this case is that of the design of the proposed extension. Matters of residential amenity, traffic generation and highway safety, and impact upon existing businesses have already been determined as part of a previous planning application (ref: 112443) and subsequent appeal. The appeal decision is attached as an appendix to this report: noise matters are discussed at paragraphs 13-18; highway matters at paragraphs 22-26; and impact on local shops at paragraphs 19-21.
- 2.3 The planning merits of the case will be assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.

### **3.0 Site Description and Context**

- 3.1 The Drury Arms is a detached building situated within a large plot on a prominent corner at the junction between Layer Road and Drury Road. The site is located within an area identified as predominantly residential within the Colchester Borough Council Local Development Framework (LDF). The property is locally listed and is described as ‘a good example of pub architecture, occupying a prominent corner site; by a well-known local architect [T.H. Baker] for a well-known local brewery [Daniell & Sons] in 1913’. The property is brick at ground floor, with a plastered first floor, beneath a slate roof. The front of the property has two projecting gables with decorative plasterwork. The fenestration is narrow module and constructed in white painted timber.
- 3.2 The building was, very briefly, occupied by a furniture shop and was previously a public house.
- 3.3 There is an existing car park to the south of the property, which provides approximately 20 parking spaces, although these are not marked out on the ground. To the west and north of the property is a grassed area that served as the beer garden to the public house.
- 3.4 Boundary treatment consists of a low brick wall to the south-east boundary, a brick wall and temporary hoarding and conifer trees to the north boundary, and boarded fencing to the west boundary. At the time that the property was operating as a public house, the boundary treatment to the northern boundary was a low wall with picket fencing above.
- 3.5 The surrounding area is predominantly residential in character, with 1930/40s detached and semi-detached housing in the main. Surrounding properties are constructed in brick or render and have either gabled or hipped slate roofs. To the east of the site is some open space, with housing beyond. There is a small group of shops to the north-west of the site, on the corner of Drury Road and St Helena Road.

### **4.0 Description of the Proposal**

- 4.1 The application seeks planning permission for the erection of a single-storey rear extension, plant and bin store, external alterations, new vehicular access and associated hardstanding for car park, service and delivery area, and a 1.8 metre high boundary wall. The first-floor of the building (previously a managers flat) would be used for storage. The proposed site plan submitted with the application shows that the existing car park is to be sub-divided, with an area to the south of the car park to remain undeveloped. It is not clear what this future development may be as no details are provided with the application.
- 4.2 The single-storey rear extension would run along the rear of the property and would project 5.8 metres from the rear wall. The part of the extension closest to the car park would have a hipped roof and would be 3.8 metres high. The remainder of the extension would have a flat roof and would be 3.1 metres high. The extension would be constructed in brick to match the main building, with a tiled and asphalt roof. The extension would facilitate the use of the building as a convenience store. The store would employ the equivalent of 30 staff and would be open 7am – 11pm Monday-Sunday (including Bank Holidays).

- 4.3 The plant area and bin store would be a brick and mesh enclosure attached to the side of the flat roof extension and would measure two metres high.
- 4.4 An ATM is proposed to the car park side of the building and the glazed front entrance would be replaced with a new glazed entrance.
- 4.5 The new vehicular access would be moved further to the south of the site, away from the existing traffic lights. A keep clear box and right hand turn is proposed to aid access and egress (this requires a Section 278 agreement with the Highway Authority).
- 4.6 The proposed hardstanding would create an extended car park, service, and delivery area. In total, the car park would provide: 22 car parking spaces (including 2 disabled spaces), 2 motorcycle bays, and 4 cycle racks.
- 4.7 The boundary wall would run along the Drury Road (northern) side of the site and would be 1.8 metres high. Planting is also proposed within the site.
- 4.8 Following negotiations with the Agent, revised drawings were submitted on 3<sup>rd</sup> June 2013. These drawings amended the design of the single-storey rear extension and the external alterations to the building, as well as some minor amendments to the layout and landscaping of the car park.

## **5.0 Land Use Allocation**

- 5.1 Predominantly residential

## **6.0 Relevant Planning History**

- 6.1 Planning Permission was refused and dismissed at appeal for a similar proposal in 2012 (ref: 112443). The proposal was for the “erection of a single storey extension and external alterations to extend the existing former pub providing back of house storage facilities with a refurbished larger retail sales area. Provision of car parking and servicing and associated works (change of use from public house (A4) to retail (A1) is permitted without needing planning permission).”
- 6.2 The proposal was dismissed at appeal (informal hearing), the Inspector concluding that:

“The proposed extension would harm the character and appearance of the area including the locally listed host building but, subject to conditions, the use of the parking and servicing area and the proposed plant would not harm the living conditions of adjoining residential occupiers at 2 Drury Road. None of the other matters raised add to the harm identified but neither are there any other material considerations of sufficient strength to outweigh that harm or the conflict with the development plan. As such, the proposal is unacceptable and the appeal should not succeed.”
- 6.3 The current application seeks to address the previous reasons for refusal set out in the appeal decision. The appeal decision is attached as an appendix to this report for reference and will be considered within the main body of this report.

#### 6.4 Planning decisions also of relevance are:

A single-storey rear extension was granted planning permission for the Drury Arms in 1995 (ref: 95/0538). This permission relates to the existing flat roof extension; and

Retrospective Planning Permission was refused for the roller shutters to the front of the building in February 2013 (ref: 122165). This matter is being dealt with by the Council's Enforcement Team.

### 7.0 Principal Policies

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

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

CE1 - Centres and Employment Classification and Hierarchy  
UR2 - Built Design and Character

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

DP1 Design and Amenity  
DP7 Local Centres and Individual Shops  
DP14 Historic Environment Assets  
DP17 Accessibility and Access  
DP18 Transport Infrastructure Proposals  
DP19 Parking Standards

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

Vehicle Parking Standards  
Sustainable Construction  
The Essex Design Guide  
External Materials in New Developments



## **8.0 Consultations**

- 8.1 Urban Designer: Comments that the amendments are largely satisfactory. The rear elevations are suitably screened from the public realm. The fencing proposed around the communication systems appears weak and vulnerable to vandalism. A condition is recommended for this to be a more secure brick wall. Conditions are also recommended to retain the heritage elements of the original pub décor which will provide suitable reflection of the heritage of a locally listed building.
- 8.2 Highway Authority: No comments received at the time of writing.
- 8.3 Environmental Protection: No objections subject to conditions relating to hours of work during construction, hours of operation and delivery, noise levels, delivery management plan, lighting, reporting any unexpected contamination, surface water treatment and grease traps.

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

## **9.0 Parish Council Response**

- 9.1 N/A.

## **10.0 Representations**

- 10.1 Twelve letters of objection, one letter of support, and two letters of comment have been received.
- 10.2 The objection comments are summarised as follows:
- Should protect the heritage of the building: the size of the extension would transform the site to the detriment of the building;
  - A 6ft acoustic fence would be inadequate and unsightly and offers little protection against impact. A brick wall would be more aesthetically pleasing and offer better security and protection;
  - There would be increased noise (delivery vehicles and visitors) to the residential properties nearby;
  - The refrigeration plant has no sound proofing;
  - There would be light pollution;
  - The area/community is already well-served by three local shops and does not need another;
  - There are too many shops: existing stores, plus the Tesco on Butt Road;
  - Objection to anything other than a Public House;
  - The identity of the applicant is hidden: likely to be a national chain which will affect smaller stores in the area;
  - The building would be better used as offices, a dentist's, or a physiotherapy clinic;
  - The building would be better used as a restaurant;
  - This is an already busy and congested road junction;
  - Traffic has already increased from the adjacent Garrison site: the retail unit, as well as the proposed Tesco, will increase traffic in the area;

- There would be risks to the safety of children walking to and from Hamilton Primary School: the traffic lights currently do not allow sufficient time to cross the road (eight seconds), cars do not stop at the lights and the crossing patrol has been removed;
- The entrance to the car park would be across an existing pavement;
- Delivery lorries would pose a risk to school children;
- The pathway on the Drury Road side is very narrow and should be widened;
- Disagree with the transport department and believe that the space allowed for delivery/refuse vehicles to safely access the site is inadequate;
- Buses and lorries already have difficulty in negotiating the junction.

10.3 The letter of support is summarised as follows:

- The proposal will increase business in the area;
- Will provide jobs;
- Will generate tax revenue;
- Services local demand (especially to meet increased population in Colchester);
- The Drury Arms is currently an eyesore and needs to be renovated or redeveloped.

10.4 Comments have been received regarding errors and misconceptions in application, summarised as follows:

- The application states that there would be no loss of residential unit, but there is a first-floor flat;
- The trading hours would be longer than those of a public house: a public house would be busy at lunchtimes and at evenings and weekends; a shop would be busier at different times;
- Acoustic report – older photograph used
- There would be a conflict between vehicles and delivery vehicles
- How would the new road infrastructure be of benefit?
- Cannot see ATM on plans
- There would be additional lighting
- The building was not used as a furniture store
- The design and access statement does not mention the existing businesses nearby
- Drivers will ignore the keep clear box
- The tracking would work differently in practice
- Motorists will pull out in front of buses at the bus stop

10.5 A comment has been received from Colchester Cycling Campaign requesting contribution towards local cycling facilities and requesting secure covered cycling parking in accordance with the Essex Design Guide.

10.6 Cllr Pauline Hazell has objected to the application on the following grounds:

- The Drury Arms is an iconic building in the area. The previous application for a convenience store was not granted due to the importance of the building on the local list;
- This application will alter significantly the shape, outline, and architectural design and merit of the building. Such a change will fall foul of the local list. It will alter the ambience of this residential area;

- Noise pollution from delivery lorries will have a serious impact on the well-being of local residents, as will the estimated nearly 400 car movements daily in and out of the site;
- Delivery lorries and customers accessing the site will also exacerbate and disrupt the traffic flow at this 3-way junction, which causes problems and issues of safety for pedestrians, especially schoolchildren on their way to and from local schools.

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

## **11.0 Parking Provision**

- 11.1 The Parking Standards SPD requires A1 food stores to have a maximum of 1 car parking spaces per 14 sqm; a minimum of 2 cycle spaces per 400 sqm, a minimum of 1 motorcycle space plus 1 per 20 car parking spaces, and a minimum of 3 disabled bays. The use of the building as a food store does not require planning permission. However, the increase in size of the building would require the following: a maximum of 26 car parking spaces, a minimum of 2 cycle spaces, a minimum of 3 motorcycle spaces, and a minimum of 3 disabled bays.
- 11.2 The proposal provides: 22 car parking spaces, 8 cycle spaces, 2 motorcycle spaces, and 2 disabled bays. The proposal would, therefore, fail to meet the minimum requirements for motorcycle spaces and disabled bays. However, due to the sustainable location of the building, where visitors are likely to walk to the store as well as travel by car or motorcycle, plus the fact that four times the required amount of cycle parking is provided, the parking arrangements are considered to be acceptable. There is no objection to the proposal on the grounds of parking provision.

## **12.0 Open Space Provisions**

- 12.1 There is no requirement for open space provision.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

- 15.1 The application has been submitted following an appeal decision on an earlier scheme (reference: 112443). An Informal Hearing took place as part of the appeal where the application was discussed at length, local residents and councillors were given the opportunity to express their concerns regarding the proposals, and a site visit was undertaken. Following the Informal Hearing, the appeal was dismissed on the grounds of the extension being an inappropriate addition to the host property as it would not

maintain the integrity of the locally listed building, which would, in turn, be of significant harm to the wider locality. The Inspector considered the objections raised regarding the impact on residential amenity and highway safety, concluding that the proposal would not have a significant impact upon residential amenity or highway safety, subject to conditions. In considering the proposals in the context of the existing shops in the vicinity the Inspector commented that: 'whilst the proximity to the proposed Tescos may seem "incredible" it is not the function of the planning system to determine whether another convenience shop is needed. Furthermore, neither is its purpose to protect individual traders. The [National Planning Policy] Framework does not seek to prevent competition. Local consumer choice is also referred to and in seeking to build a strong economy the Framework does not distinguish between small, locally-run businesses and national companies... The appellant indicates that the extension is required to make a store of this kind viable so the proposal could be viewed as facilitating it. That said, there is no good planning reason to oppose the proposed development because of its consequences for retail provision in the locality.' The full appeal decision is attached as an appendix to this report for reference and consideration. For ease of reference, noise matters are discussed at paragraphs 13-18, highway matters at paragraphs 22-26, and impact on local shops at paragraphs 19-21.

- 15.2 The conditions considered by the Inspector to be necessary to mitigate any impact upon residential amenity and highway safety, are included as part of the recommended conditions in paragraph 19 of this report. These include, inter alia, conditions regarding noise levels and noise mitigation, opening hours and delivery times, and a requirement to widen the footpath adjacent to the site on Drury Road.
- 15.3 As the appeal was dismissed on the grounds of design only, the main planning consideration is, therefore, whether the design of the current proposal is acceptable. The main design issues identified by the Inspector are summarised as follows:
- The proposed 'L' shaped addition would be at odds with the generally regular form of the main building.
  - The 'false' pitch around the extension would be wholly inconsistent with the full pitched roofs that are an intrinsic part of The Drury Arms.
  - The proposal would be subservient in terms of its height but due to a combination of its depth, form and design it would 'swamp' this part of the building and seriously detract from its character. It would be a significant additional built element that would bear little relation to the structure it is attached to.
  - The side extension would obscure the termination of the existing catslide with its bargeboard, which would be seen from public vantage points.
  - From Butt Road the squat and truncated appearance of the side addition would be apparent.
  - There would be views across the proposed car park from Layer Road where the poor relationship between the shallow perimeter 'mansard' and the proposed new gable would be obvious. Users of the proposed car park would also be able to see the unsatisfactory juxtaposition of old and new.
- 15.4 The revised proposals are considered to be acceptable in design terms as the extension would not significantly detract from the original form of the building, projecting from existing extensions only and not wrapping around the building or disrupting the original catslide roof. The hipped roof extension would be articulated

from the main building when viewed from the car park which would make the extension appear more subservient to the main building. Given the height of the proposed boundary wall, as well as the distance between the building and the road, the extensions would not appear overly prominent within the street scene and the public character of the building would be maintained.

- 15.5 The position of the ATM, to the side of the building, is not considered to have a significant impact on the character of the building. The proposal to replace the existing glazed entrance with a new glazed entrance is considered to maintain the character of the building.
- 15.6 It is considered necessary to condition the materials for the extension and brick walls in order to respect the character of the building. It is also considered necessary to make clear by condition that the external features of the building (i.e. the decorative pargetting) should not be removed or painted over (other than redecorated to match the existing).
- 15.7 The proposal is therefore considered to maintain the heritage value of the building, subject to conditions.

## **16.0 Conclusion**

- 16.1 The proposal is considered to satisfactorily address the previous reasons for refusal, as set out in the preceding appeal decision. The scale, form, and design of the extension has been improved so that it would not, subject to conditions, have a significant or harmful impact on the character or appearance of the building when viewed from public vantage points and, as a result, the heritage value of the building, as well as the appearance of the surrounding area, is maintained. Approval is, therefore, recommended.

## **17.0 Recommendation**

APPROVE subject to the following conditions

## **18.0 Recommended Reasons for the Decision**

The proposal accords with the relevant policies in the Statutory Development Plan (as set out above) and those of the National Planning Policy Framework. Having also had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged planning importance. In reaching this decision the Council is mindful of the particular circumstances and reasons set out below, namely:

A number of objections have been received with regards to residential amenity, highway safety, and impact upon existing businesses. However, these matters were considered as part of the preceding appeal and it was concluded that the proposal is acceptable in terms of its impact upon residential amenity and highway safety and that the impact upon existing businesses would not justify refusal of planning permission. It is not, therefore, considered that the proposal would have a negative impact on residential amenity, traffic generation or road safety, or the surrounding area so as to justify the refusal of planning permission.

## 19.0 Conditions

### 1 - Non-Standard Condition/Reason

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

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

### 2 - Non-Standard Condition/Reason

Notwithstanding the landscaping of the site, the development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 11.0058.PL01 Rev L and 11.0058.PL02 Rev N, received on 3rd June 2013.

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

### 3 - Non-Standard Condition/Reason

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

Reason: To ensure that the development harmonises with and does not detract from the appearance of the existing building and the character of the area.

### 4 - Non-Standard Condition/Reason

Notwithstanding the submitted details, no development shall commence until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority. The works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall include:

- Existing and proposed finished contours and levels.
- Means of enclosure.
- Car parking layout (including means to prevent indiscriminate parking on the north-east corner of the site).
- Other vehicle and pedestrian access and circulation areas.
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signage, lighting etc).
- Proposed and existing functional services above and below ground (e.g. drainage, power, communication cables, pipelines, etc. indicating lines, manholes, supports etc.).
- Retained historic landscape features and proposals for restoration.
- Planting plans.
- Written specifications (including cultivation and other operations associated with plant and grass establishment).
- Schedules of plants, noting species, plant size and proposed numbers/densities.
- Planting area protection or decompaction proposals.
- Implementation timetables.

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

#### 5 - Non-Standard Condition/Reason

Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

#### 6 - Non-Standard Condition/Reason

The rating level of the noise emitted from the fixed plant shall not exceed the existing background noise climate or 35 dB whichever is the higher at any time. The noise levels shall be determined by measurement or calculation at the nearest noise sensitive premises. The measurements and assessment shall be made according to BS 4142:1997. Any mitigation measures to achieve this condition shall be submitted to and approved, in writing, by the local planning authority and then implemented in accordance with this approval.

Reason: In the interests of neighbouring amenity.

#### 7 -Non-Standard Condition/Reason

No deliveries shall be made to the site outside the hours of: 0800 to 2000 Monday to Saturday 0900 to 1700 on Sundays 0800 to 1700 on Public Holidays

Reason: In the interests of neighbouring amenity.

#### 8 - Non-Standard Condition/Reason

The use of the building shall not be open to customers outside of the following times: 0700 to 2300 Monday to Sunday (including Public Holidays).

Reason: In the interests of residential amenity as the proposal facilitates the use of the building as a convenience and food store that would bring associated noise and activity closer to residential properties than the previous use of the site.

#### 9 - Non-Standard Condition/Reason

Prior to occupation of the development, an acoustic fence of not less than 2.0 metres in height shall be installed along the boundary of the site with No. 2 Drury Road. The fence shall thereafter be retained.

Reason: In the interests of neighbouring amenity.

#### 10 - Non-Standard Condition/Reason

Prior to the commencement of development, a Delivery Management Plan which shall set out procedures for undertaking deliveries with the objective of minimising the generation of noise, shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be operated in accordance with the approved Delivery Management Plan.

Reason: In the interests of neighbouring amenity.

#### 11 - Non-Standard Condition/Reason

Any kitchen and/or cooking area shall not come into beneficial use until there has been submitted to and approved in writing by the Local Planning Authority a scheme for the control of fumes and odours. This shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such fume/odour control measures as shall have been approved shall be installed prior to the kitchen and/or cooking area coming into beneficial use and thereafter be retained and maintained to the agreed specification and working order.

Reason: In the interests of neighbouring amenity.

#### 12 - Non-Standard Condition/Reason

Prior to the first use of the development hereby permitted, any foul water drains serving a kitchen shall be fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions. Reason: To prevent unnecessary pollution of the groundwater environment quality in the area and/or blocking of the drainage system.

#### 13 - Non-Standard Condition/Reason

Notwithstanding the submitted details, no external lighting shall be installed at the site except in accordance with details (to include position, height, aiming points, lighting levels, and a polar luminous diagram) which shall have been previously submitted to and agreed in writing by the Local Planning Authority. The lighting shall then be installed and retained as approved. The approved lighting shall fully comply with the figures specified in the current 'Institution of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light' for zone E3. This shall include sky glow, light trespass into windows of any property, source intensity and building luminance.

Reason: In the interests of neighbouring amenity and to prevent harmful levels of light pollution.

#### 14 - Non-Standard Condition/Reason

Prior to occupation of the development the vehicular parking and turning facilities, as shown on the submitted plans shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

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



#### 15 - Non-Standard Condition/Reason

Prior to occupation of the development the areas within the site identified for the purpose of loading/unloading and manoeuvring shall be provided and retained at all times for that sole purpose as approved in writing by the Local Planning Authority.

Reason: To ensure that appropriate loading / unloading facilities are available in the interest of highway safety.

#### 16 - Non-Standard Condition/Reason

Prior to the commencement of the development the details of the number, location and design of cycle parking facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved facility shall be secure, convenient and covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

#### 17 - Non-Standard Condition/Reason

No development shall commence until details of the widening of the pavement adjacent to the northern boundary of the site have been submitted to and agreed, in writing, by the Local Planning Authority. The agreed details shall then be implemented prior to first occupation or use of the development.

Reason: In the interests of highway safety.

#### 18 - Non-Standard Condition/Reason

Prior to the development being first used, the Keep Clear and Right Hand Turn road markings shall have been completed in their entirety.

Reason: In the interests of highway safety.

#### 19 - Non-Standard Condition/Reason

In the event that contamination is found at any time when carrying out the approved development 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 the Local Planning Authority and, where remediation is necessary, a remediation scheme must be prepared in accordance with the requirements of, and subject to the approval in writing of, the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the approved remediation scheme.

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 - Non-Standard Condition/Reason

Prior to being discharged into any watercourse, surface water sewer or soakaway all surface water drainage shall be passed through an oil interceptor designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor.

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

### 20.0 Informatives

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

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

(3) **ZTA - Informative on Conditions Stating Prior to Commencement/Occupation**  
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either before you commence the development or before you occupy the development. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission. Please pay particular attention to these requirements.

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

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

(6) Having regard to the proximity of this site to the traffic signalised junction of Drury Road and Layer Road and the weight of traffic these roads are subject to, the Highway Authority expects that, at a future time when the plot noted as being for further development on the submitted plans is brought forward, and in the interests of highway safety and efficiency, any scheme proposed will accord with current parking standards and will utilise the access which forms part of this application.

(7) The applicant, agent, or developer is advised that any advertisements or signage may require Advertisement Consent by virtue of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

(8) The applicant, agent, or developer is advised to introduce signage to discourage the use of parking at spaces 17-22 to the rear of the store after 9pm in the interests of residential amenity.

(9) With regards to condition 10 it is expected that the path used for movement of delivery trollies shall be rubberised and any ramps shall be of solid, smooth construction with no ridges or sharp changes in level. All refrigerated vehicles shall turn the refrigeration off whilst on site.

(10) It is advisable that the footpath referred to in condition 16 is widened to 2 metres wide.

## **21.0 Positivity Statement**

### **WA2 - Application Approved Following Revisions**

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



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# Appeal Decision

Hearing held on 26 June 2012

**by David Smith BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 August 2012**

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**Appeal Ref: APP/A1530/A/12/2171827**

**The Drury Arms, 1 Layer Road, Colchester, Essex, CO2 7HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Property Portfolio Ltd against the decision of Colchester Borough Council.
  - The application Ref 112443, dated 21 December 2011, was refused by notice dated 28 February 2012.
  - The development proposed is a single storey extension to extend the existing former pub providing back of house storage facilities with a refurbished larger retail sales area within the existing public house and also provision of car parking and servicing and associated works.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are the effect of the proposal on the character and appearance of the area including the locally listed host building and on the living conditions of adjoining residential occupiers at 2 Drury Road with particular regard to noise and disturbance.

## Reasons

### *Character and appearance*

3. The Drury Arms is now closed but is located in a prominent position at the junction of Layer Road, Drury Road and Butt Road. It is described in the local list as a "good example of pub architecture" from 1913 and is a pleasing, balanced composition with gables at either end of the front elevation. The rear is also attractive with a catslide roof and twin gables divided by a central valley. Materials are a mixture of brick, render and a tiled roof with decorative plasterwork and mouldings. Although altered at the front and at the rear by a flat roof extension these works have not compromised its status as a building of local historic value which is well proportioned and distinctive.
4. According to the National Planning Policy Framework the former public house is a non-designated heritage asset. One of the core principles of the Framework is to conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations. Whilst lower down the hierarchy than designated heritage assets neither this factor nor the existence of about 600 locally listed buildings in the Borough changes its importance to the area.

5. The extension would wrap around almost all of the rear elevation and part of the side elevation to an overall depth of about 5.5m. Using the appellant's figures the footprint of the original building would be virtually doubled on a cumulative basis. More to the point the proposed 'L' shaped addition would be at odds with the generally regular form of the main building. Furthermore, the 'false' pitch around it would be wholly inconsistent with the full pitched roofs that are an intrinsic part of The Drury Arms. Because it is single storey the proposal would be subservient in terms of its height but due to a combination of its depth, form and design it would 'swamp' this part of the building and seriously detract from its character. It would be a significant additional built element that would bear little relation to the structure it is attached to.
6. The proposal would be particularly visible from outside the site from Drury Road and St Helena Road. Notwithstanding the proposed boundary treatment and landscaping strip the impact of the extension would be fully appreciated from this direction at fairly close quarters. The side extension would obscure the termination of the existing catslide with its bargeboard and this detailed drawback would also be seen. From Butt Road the squat and truncated appearance of the side addition would be apparent. There would also be views across the proposed car park from Layer Road where the poor relationship between the shallow perimeter 'mansard' and the proposed new gable would be obvious. Moreover, users of the proposed car park would also be able to see the unsatisfactory juxtaposition of old and new.
7. The extension has been designed so that it is set back and in from the existing front and side facades in order to allow for a better 'join'. The decorative plasterwork has also been avoided. The incorporation of a full or steeper pitch roof would increase the bulk of any addition but no such option has been presented. In any case, the objections to the scheme are not simply limited to this aspect of the design. Overall the extension would not maintain the integrity of the locally listed building as it would not be well integrated with it. There would therefore be significant harm to the qualities of The Drury Arms and, in turn, to the wider locality.
8. The Council also criticised the proposed new entrance doors in terms of positioning and materials. Disabled access is required but there is scope for them to be adjusted in order to maintain the symmetry of the building. A minor modification to this aspect of the scheme could be covered by condition.
9. The Framework indicates that in weighing applications that directly affect non-designated heritage assets, a balanced judgement is required having regard to the scale of any harm and the significance of the heritage asset. The effect of the proposal has been addressed above resulting in a finding that significant harm would arise. However, paragraph 131 indicates other factors that should be taken into account. There are also other material considerations within the Framework. In particular it confirms the commitment to securing economic growth and that significant weight should be placed on the need to support it.
10. The intended use of the building is as a Sainsbury's Local. The Framework indicates that the approach should be to plan positively for local shops and Policy CE1 of the Core Strategy supports small shops providing for the daily needs of a local residential catchment. Its location means that some residents would be able to travel there by means other than the car. The proposed convenience store would put the public house back into a viable use. Economic vitality would also be achieved by re-using the building and jobs would be

created. The proposal would also secure the retention and long-term maintenance of The Drury Arms. The works to the car park, new boundary treatments and landscaping would make a positive contribution to its setting.

11. The proposal is the only one 'on the table' but there is no evidence to indicate that other potential uses (such as a shop, offices, café or restaurant) would not be feasible. Furthermore, there is also nothing to show that it is essential for the building to be extended in the manner proposed in order to ensure that it is occupied. These points reduce the weight to be given to the economic and other factors set out above. So whilst there is no certainty that other users would come forward the adverse impact on the building is too high a price to pay. Indeed, paragraph 131 indicates that heritage assets should be put to viable uses "consistent with their conservation".
12. Therefore the large projection proposed would spoil the character and appearance of The Drury Arms and the surrounding area. Since it would not be respectful in terms of some of the matters in criterion (i) there would be a conflict with Policy DP1 of the Development Policies Development Plan Document (DPD). As a building of particular local importance which it is desirable to keep would not be protected the proposal would also be contrary to Policy DP14. Although there are considerations in favour these do not outweigh the significant harm that would occur if the development went ahead.

### ***Living conditions***

13. In connection with the appeal a further environmental noise assessment was produced. Its findings, assumptions and methodologies are not disputed by the Council. Indeed, subject to conditions regarding the sound attenuation of fixed plant; delivery times; the provision of an acoustic fence along the boundary with 2 Drury Road and a Delivery Management Plan no major objections are now raised on this score. However, local residents still have concerns. As well as mechanical plant potential sources of noise and disturbance are use of the car park by customers and deliveries.
14. The proposed extracts would be on the northern flank elevation facing away from the side of No 2 and separated by the parking and delivery area. Having regard to BS4142:1997 *Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas* a condition could be devised to limit noise to either the existing background noise climate or 35 dB whichever is the higher. At certain times of the day and night the  $L_{A90}$  survey reading is below this level. With this safeguard in place the impact of plant noise on neighbouring properties would be negligible.
15. Although it is planned that the store would be open daily from 0700 to 2300 hours deliveries are proposed to take place only between 0800 to 2000 hours Mondays to Saturdays and 0800 to 1700 hours on Sundays and Public Holidays. Although others take a different view the appellant suggests that typically there would be 5 deliveries a day. Much would depend on how supplies were organised and whether separate or bulk deliveries were made. This aspect cannot be controlled but in the absence of definite evidence about the way that national retailers operate this figure offers a reasonable guide. Based on the Transport Statement it is predicted that 982 car movements would be made each day although this calculation omits trips after 2100 hours.

16. Briefly, the latest assessment establishes that noise emanating from the car park and deliveries would be below relevant World Health Organisation (WHO) guideline values and also below the existing ambient noise climate. However, because of the way the averaging is undertaken this approach tends to 'smooth out' peaks and troughs. Therefore infrequent noises would be audible to those nearby. This includes things like roll cages, voices, reversing beepers, refrigeration units, car radios and doors slamming. However, some of these could be addressed by a Delivery Management Plan and delivery and opening times would be within what is treated as 'daytime' by the WHO guidelines. So whilst there would be a change in the level and nature of activity close to No 2 this would be within acceptable limits.
17. The Council did argue that no deliveries should be allowed on Sundays to provide a respite for those living nearby. However, there is little material difference in the existing ambient noise climate between Saturdays and Sundays. As a result there is no objective technical noise reason to prevent Sunday deliveries. That said, it would be reasonable to expect that adjoining occupiers might wish to enjoy a later start to their day on a Sunday and so the earliest delivery time could be limited to 0900 hours.
18. On that basis the proposal would not harm the living conditions of adjoining residential occupiers at 2 Drury Road. As this is the closest property it is reasonable to assume that the consequences for other nearby residential accommodation, including that above the pub which is to be retained, would be no worse. The house at 3 Layer Road is divided from the proposed car park by a piece of land which is being left for future development. External lighting could also be controlled by condition. As such there would be no conflict with Policy DP1 of the DPD which seeks to protect residential amenity.

### **Other Matters**

19. Irrespective of the nature of the short-lived furniture shop business the use of the existing public house for retail purposes does not require planning permission having regard to the provisions of the General Permitted Development Order. Indeed, its use as a shop is not part of the proposal. In any case, the sales area of 285 sq m is well below the threshold of 2,500 sq m referred to in the Framework. Consequently, in terms of planning policy, the effect of a retail development in this location would be insignificant.
20. This part of Colchester is already served by 3 convenience stores within about 500m of the site. In addition, there is an extant planning permission for a food store and 3 shops on the former PSA site in Butt Road. A further application for a Tesco store of 2,700 sq m, 6 shops and affordable housing units has been deferred. There is no technical evidence about the capacity of the area to accommodate all of these outlets taking into account the additional expenditure arising from new residential developments. Nevertheless, whilst the proximity to the proposed Tescos may seem "incredible" it is not the function of the planning system to determine whether another convenience shop is needed.
21. Furthermore, neither is its purpose to protect individual traders. The Framework does not seek to prevent competition. Local consumer choice is also referred to and in seeking to build a strong economy the Framework does not distinguish between small, locally-run businesses and national companies. The appellant indicates that the extension is required to make a store of this kind viable so the proposal could be viewed as facilitating it. That said, there is

- no good planning reason to oppose the proposed development because of its consequences for retail provision in the locality.
22. There is much local objection to the traffic implications perceived to result from the proposal. The Ward Councillor described this at the hearing as the most important aspect of the development. However, the Highway Authority raises no objections and there is no technical evidence to contradict the findings of the appellant's Transport Statement. It should also be borne in mind that even if the pub was low-key any future commercial use would be bound to generate vehicular movements to and from the site including servicing. Consequently the proposal should be assessed on this basis rather than in a 'vacuum'.
  23. Various matters were raised including difficulties in negotiating the newly signalled junction; the congestion at peak times; the short pedestrian phase; potential hazards to pedestrians including children going to and from Hamilton Primary School; the narrow pavement around the northern side of the site and the use of Hamilton Road, Errington Road and Gladwin Road as 'cut-throughs'. All of this in the context of a general increase in traffic and in developing the nearby Garrison site an acceptance that this junction should be avoided. Of course, all of these concerns would remain whatever the appeal's outcome.
  24. Notwithstanding the comments made at the hearing the track diagrams show that it would be feasible for a 12m rigid vehicle to enter and leave in forward gear provided that staff parking spaces were unoccupied. This could be achieved by management of the site. It would also be in the interests of any operator to ensure that the practicalities of making deliveries worked effectively. Furthermore, as well as moving the existing entrance away from the traffic signals, it is envisaged that a right turn lane and 'Keep Clear' markings would be provided in order to prevent vehicles moving in or out of the site from being obstructed.
  25. It was suggested that customers would prefer to travel to the site by car. Even if that is the case it is also likely that some people would be on the highway network anyway and would stop at the appeal site on their way to or from another destination. In view of this and the fact that any re-use of The Drury Arms would produce traffic the impact of the proposal on this busy junction would not be as great in practice as suggested by the figures in paragraph 15. Indeed, there is no firm evidence to indicate that the extra vehicles would lead to a deterioration in safety or overload the capacity of the local network.
  26. Both customer and delivery vehicles would be likely to be moving in and out of the site at times when children are on the footway either on their way to and from the nearby school. However, everyone needs to take care when crossing the road. Furthermore, the entrance to the proposed store would have no obvious hazards with pedestrians and drivers able to see one another and is typical of such arrangements in urban areas.
  27. Policy DP1 refers to protecting public amenity but the additional traffic that would result is not of such a magnitude that this aim would be prejudiced. The Framework sets out how the Government's planning policies are to be applied. Nowhere does the Framework state that decision-making should be undertaken on the basis that the level of objections is a reason to withhold permission in itself. So although the strength and nature of local opposition has been taken into account this has not been a decisive factor in determining the appeal.



## **Conclusions**

28. The proposed extension would harm the character and appearance of the area including the locally listed host building but, subject to conditions, the use of the parking and servicing area and the proposed plant would not harm the living conditions of adjoining residential occupiers at 2 Drury Road. None of the other matters raised add to the harm identified but neither are there any other material considerations of sufficient strength to outweigh that harm or the conflict with the development plan. As such, the proposal is unacceptable and the appeal should not succeed.

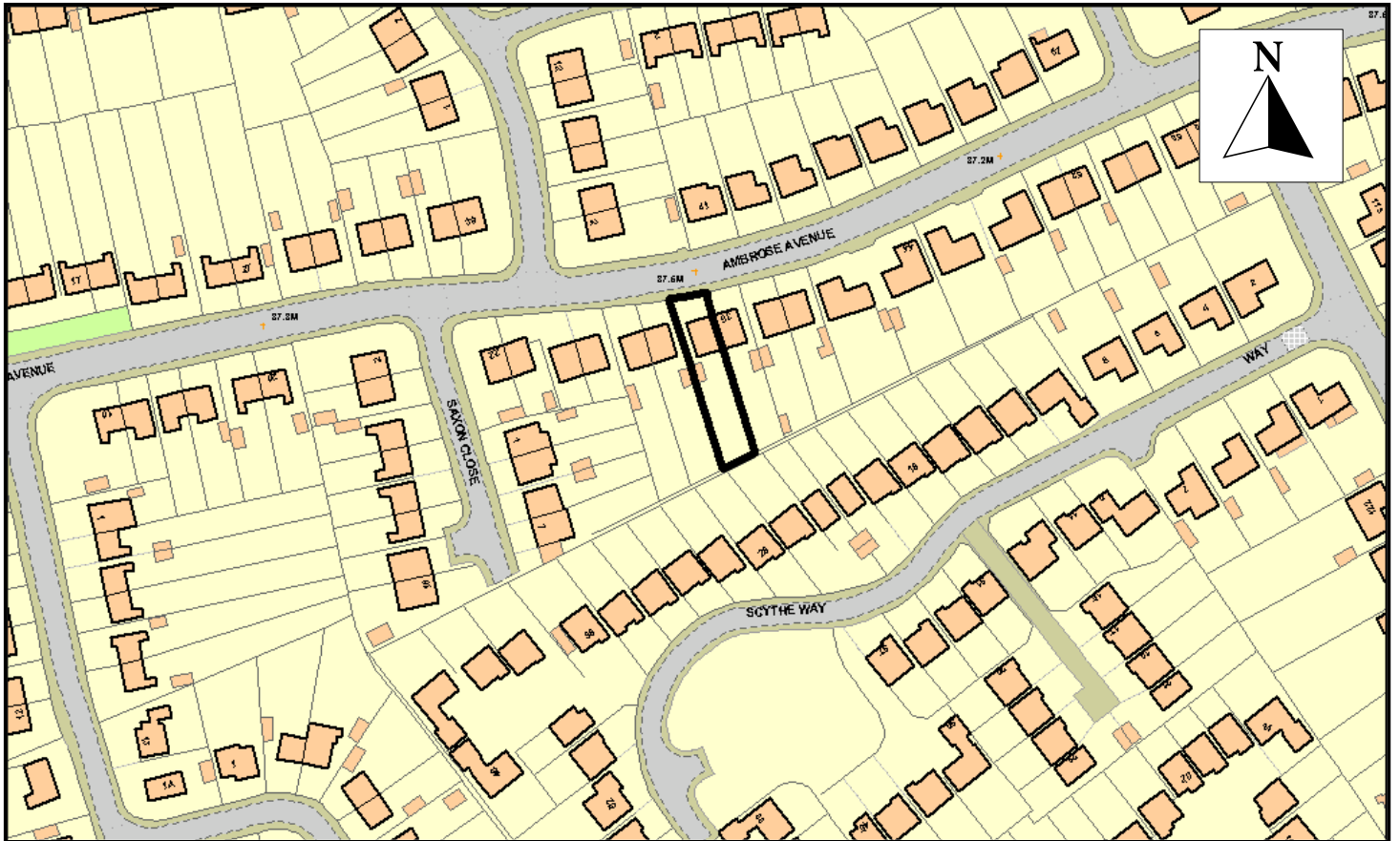
*David Smith*

INSPECTOR



## **DOCUMENTS**

- 1 Plan of Tesco's site, Butt Road
- 2 Written speaking notes of Mr Buston, Mr Martin and Miss Beard



**Application No:** 131000

**Location:** 34 Ambrose Avenue, Colchester, CO3 4LJ

**Scale (approx):** 1:1250

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**7.9 Case Officer: Carl Allen**

**Due Date: 16/07/2013**

**HOUSEHOLDER**

**Site:** 34 Ambrose Avenue, Colchester, CO3 4LJ

**Application No:** 131000

**Date Received:** 21 May 2013

**Agent:** Mr Michael Bowler

**Applicant:** Mr & Mrs W Jackson

**Development:** Proposed extension and alterations.

**Ward:** Prettygate

**Summary of Recommendation: Conditional Approval**

### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because the applicant is a member of staff.

### **2.0 Synopsis**

2.1 The key issues explored below are the impact of the proposal on the amenity of neighbours and the design. In these regards the proposal is found to be acceptable. Finally approval, with conditions, is recommended.

### **3.0 Site Description and Context**

3.1 34 Ambrose Avenue is a semi-detached dwelling with the attached neighbour (number 32) to the east. To the south is the rear garden which has a single flat roofed garage contained within it. To the west is an access to the rear garden with a wooden panel fence forming the boundary with the neighbour at number 36. To the north is the front garden - which has an area for off-road parking – and the highway of Ambrose Avenue beyond.

### **4.0 Description of the Proposal**

4.1 The proposal is twofold: a rear single-storey extension 4.3m long, 3.8m wide and 3.5m high; and a 1.2m wide, 3.8m long and 3.4m high side extension to provide a wet room. The proposed materials are bricks and tiles to match the existing.

### **5.0 Land Use Allocation**

5.1 Residential.

## **6.0 Relevant Planning History**

6.1 N/A.

## **7.0 Principal Policies**

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

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

UR2 - Built Design and Character

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

DP1 Design and Amenity

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

N/A

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

Extending Your House?  
The Essex Design Guide

## **8.0 Consultations**

8.1 N/A.

## **9.0 Parish Council Response**

9.1 N/A

## **10.0 Representations**

10.1 No comments have been received.

## **11.0 Parking Provision**

11.1 No changes proposed.

## **12.0 Open Space Provisions**

12.1 N/A.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

15.1 The rear extension would be roughly in line with the conservatory of the neighbour at No. 32 and would be slightly less than one metre from the conservatory. This factor along with the height, roof design and the orientation would mean that there would be no detrimental overshadowing to either of the neighbours. The same is also true of the side extension. There would be no windows that would overlook any of the neighbours. The side extension would result in vehicles not being able to access the garage in the rear garden, but given that the narrowest point on the approach to the garage is 1.8m, it is doubtful that vehicles currently use this access. Off-road parking is also currently provided at the front of the dwelling and this would remain. The proposal is therefore considered to accord with Policy DP1.

15.2 Both the extensions would read as minor, subservient additions to the original dwelling and would not result in the dwelling appearing cramped on its plot. Materials would also match the existing. Therefore, the design is considered acceptable and complies with UR2 and DP1.

## **16.0 Conclusion**

16.1 The proposal is considered acceptable and complies with Policy.

**17.0 Recommendation** - APPROVE subject to the following conditions

## **18.0 Recommended Reasons for the Decision**

The proposal accords with the relevant policies in the Statutory Development Plan (as set out above). Having also had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged planning importance.

## 19.0 Conditions

### 1 - Time Limit for Full Permissions

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

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

### 2 - \*Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 5362/13/2, Block Plan and Location Plan unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

### 3 - Materials as Stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that materials are of an acceptable quality appropriate to the area

## 20.0 Informatives

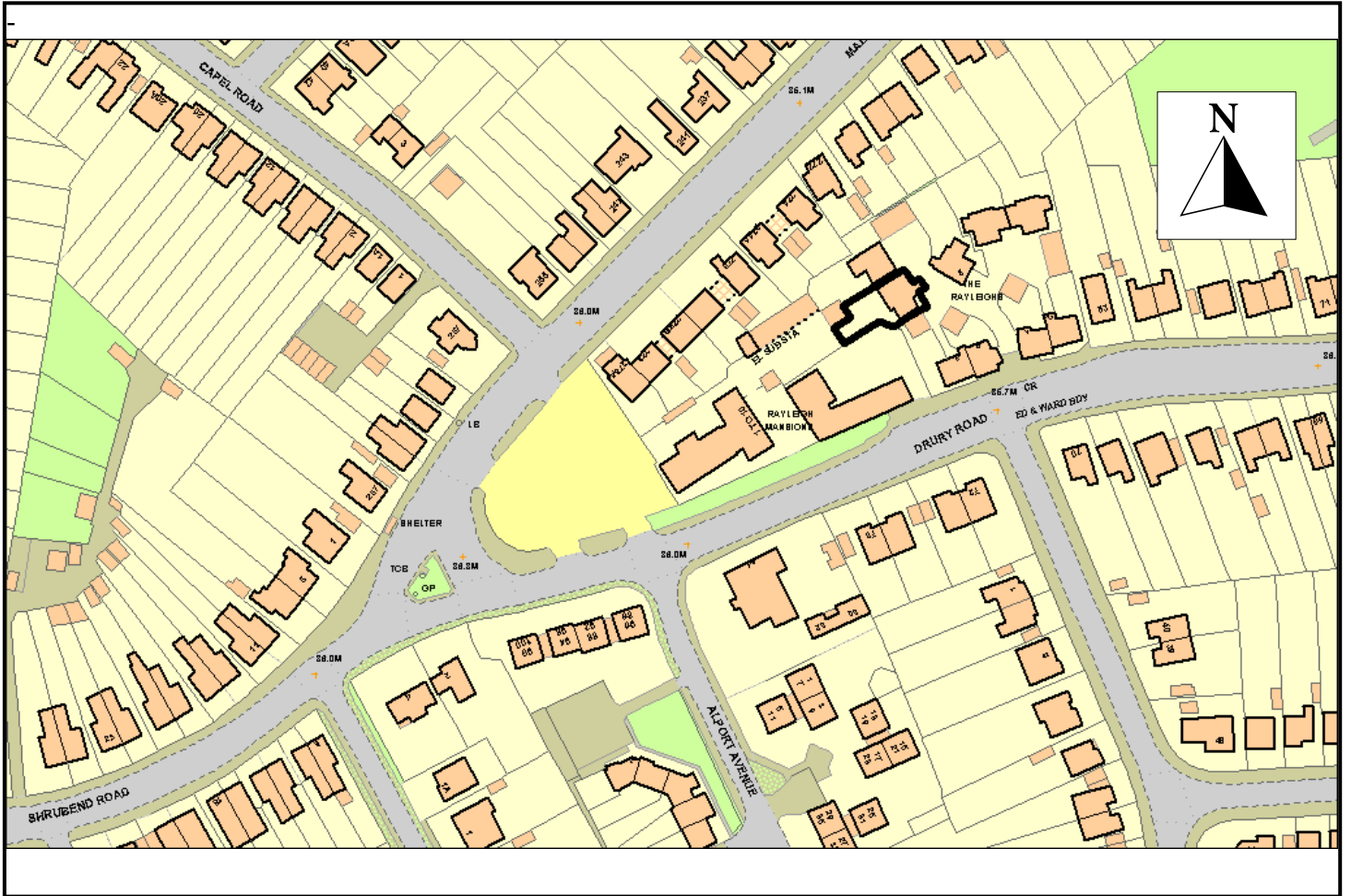
(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require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

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

## 21.0 Positivity Statement

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





**Application No:** 131090

**Location:** 7 The Rayleighs, Drury Road, Colchester, CO2 7BE

**Scale (approx):** 1:1250

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7.10 Case Officer: Lucy Mondon

Due Date: 23/07/2013

**HOUSEHOLDER**

**Site:** 7 The Rayleighs, Drury Road, Colchester, CO2 7BE

**Application No:** 131090

**Date Received:** 28 May 2013

**Agent:** Mr Peter Tyler

**Applicant:** Mr & Mrs Lissimore

**Development:** Garage conversion to form extended kitchen diner

**Ward:** Christ Church

**Summary of Recommendation: Conditional Approval**

### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because the Agent is an employee of the Borough Council.

### **2.0 Synopsis**

2.1 The application seeks planning permission for the conversion of an existing garage to additional domestic accommodation. Planning permission is required as the original planning permission for the property included a condition that requires car parking to be retained, as well as a condition that removed permitted development rights for external alterations. As the proposal would involve the conversion of car parking to accommodation and external alterations (the garage door being replaced by a window) planning permission is required.

2.2 The following report considers material planning matters, with specific reference to highway safety, together with matters raised in consultation responses and representations.

2.3 The planning merits of the case will be assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.

### **3.0 Site Description and Context**

3.1 No. 7 The Rayleighs is a detached house located in a predominantly residential area in the Christ Church ward of the Borough. The property is part of a backland development accessed from Drury Road. The property currently has three parking spaces: one garage space, and two car parking spaces to the front of the property.

3.2 The site is identified as being within an area of archaeological importance.

#### **4.0 Description of the Proposal**

- 4.1 The application seeks planning permission for the conversion of an existing garage to additional domestic accommodation. The proposed ground floor plan shows that the conversion would expand the existing kitchen. The proposal would include external alterations to the front of the house: the garage door would be replaced with a window, with brick infill beneath.

#### **5.0 Land Use Allocation**

- 5.1 Predominantly residential.

#### **6.0 Relevant Planning History**

- 6.1 The property is part of a larger development approved in 1999 for the erection of 28 houses and flats (reference: 99/0304). As part of this permission it was conditioned that the car parking spaces be retained as approved and that permitted development rights are removed for extensions and alterations (including extensions and alterations to the roof), porches, and outbuildings, swimming pools, and containers (for the storage of oil or petrol). The relevant conditions are set out in full below:

09 Prior to the commencement of any development on site, additional plans/elevations of all proposed detached garages and car ports shall be submitted to and agreed in writing with the Local Planning Authority. The garage/car port buildings shall be constructed and other parking facilities shall be provided in accordance with the approved plans before each respective unit is occupied and shall thereafter be retained for the purposes of car parking in association with the approved development.

Reason: In the interest of visual amenity and road safety, insufficient detail has been submitted in respect of these structures.

12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A to E of Part 1 of Schedule 2 of the Order (i.e. any extension, outbuilding, garage or enclosure) shall take place without the prior written permission of the Local Planning Authority.

Reason: To safeguard the visual amenity of the area, to protect the amenity of adjoining residents and to prevent overdevelopment of the site by controlling future extensions, alterations and associated development.

#### **7.0 Principal Policies**

- 7.1 The National Planning Policy Framework (2012) sets out the national planning principles that guide the decision taking process and how these are expected to be applied in practice. The NPPF makes it clear that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF also sets out the Government's primary objective that there be "a presumption in favour of sustainable development". There are three dimensions to sustainable development, which are an economic role, a social role and environmental role.

The NPPF clarifies that these roles should not be undertaken in isolation, because they are mutually dependent.

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

UR2 - Built Design and Character

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

DP1 Design and Amenity  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP19 Parking Standards

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

Vehicle Parking Standards  
Extending Your House?  
The Essex Design Guide

## **8.0 Consultations**

- 8.1 Archaeology: No objections
- 8.2 Highway Authority: No objection. The garage, being small is part of the reasoning behind the new standards adopted a few years ago (i.e. the small garages were never used as car parking facilities) and therefore the proposal to convert it to living space won't 'remove' a parking space.

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

## **9.0 Parish Council Response**

- 9.1 No comments received.

## **10.0 Representations**

- 10.1 No letters of support or objection have been received.

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

## **11.0 Parking Provision**

- 11.1 The Vehicle Parking Standards Supplementary Planning Document states that a property of two or more bedrooms should provide a minimum of two car parking spaces. Garage spaces should measure 3.0m x 7.0 m (internally) and car parking spaces should measure as a minimum 2.5m x 5.0m (with a preference for car parking spaces to measure 2.9m x 5.5m).
- 11.2 The existing garage measures 2.6m x 4.9m internally and the car parking spaces measure approximately 2.0m x 4.0m. None of the car parking spaces meet the current parking standards. Matters of parking and highway safety are discussed in more detail in the main body of the report.

## **12.0 Open Space Provisions**

- 12.1 N/A

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

- 15.1 The main planning considerations in this case are: design and impact on the character of the host dwelling and the surrounding area; impact on neighbouring amenity; and impact on highway safety.
- 15.2 The proposal would involve some external alterations: the replacement of the garage door with a window. The window would be of the same design and proportions as existing windows to the property and, as such, the alteration is not considered to have an adverse impact on the character of the property or the surrounding area.
- 15.3 The conversion of the garage would not have an adverse impact on neighbouring amenity. The existing garage is sited alongside neighbouring garages and, therefore, any alterations to the garage are unlikely to have an impact on neighbouring amenity. There are no windows proposed that would result in overlooking or loss of privacy.

- 15.4 The proposal would result in the loss of one of the car parking spaces on site. However, two parking spaces would remain which meets the required number of parking spaces set out in the Vehicle Parking Standards SPD. The remaining parking spaces would be smaller than the minimum size set out in the SPD, but they are existing parking spaces and, in consideration of the fact that the garage is unlikely to be used for parking due to its small size, the parking arrangements on site would not change (i.e. there would be no net loss in parking). The Highway Authority does not object to the proposal on these grounds.
- 15.5 In all other respects (e.g. archaeology, flood risk, and biodiversity) the proposal is considered to be acceptable: no additional building works are proposed that may affect archaeological remain or increase surface water run off, and the proposal is not considered likely to impact upon protected species.

## **16.0 Conclusion**

- 16.1 The proposal is considered to be acceptable as it would have a minimal impact on the character and appearance of the host dwelling and the surrounding area and would be acceptable in terms of highway safety by not have a significant impact on the amount of parking available to the property

## **17.0 Recommendation - APPROVE** subject to the following conditions

### **18.0 Recommended Reasons for the Decision**

The proposal accords with the relevant policies in the Statutory Development Plan (as set out above). Having also had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any significant harm to interests of acknowledged planning importance.

### **19.0 Conditions**

#### **1 - Time Limit for Full Permissions**

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

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

#### **2 - Non-Standard Condition/Reason**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Number 1, received on 3rd June 2013 and Drawing Numbers 3A and 4A, received on 27th June 2013.

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

#### **3 - Non-Standard Condition/Reason**

The brick, brick bond, and mortar to be used in the infill of the garage door shall precisely match (in terms of type, size, texture, colour, and finish) those used in the existing building.

Reason: In the interests of visual amenity.

#### 4 - Non-Standard Condition/Reason

The window and door to be inserted shall be white painted timber.

Reason: In order to match the existing fenestration of the building in the interests of visual amenity.

### 20.0 Informatives

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

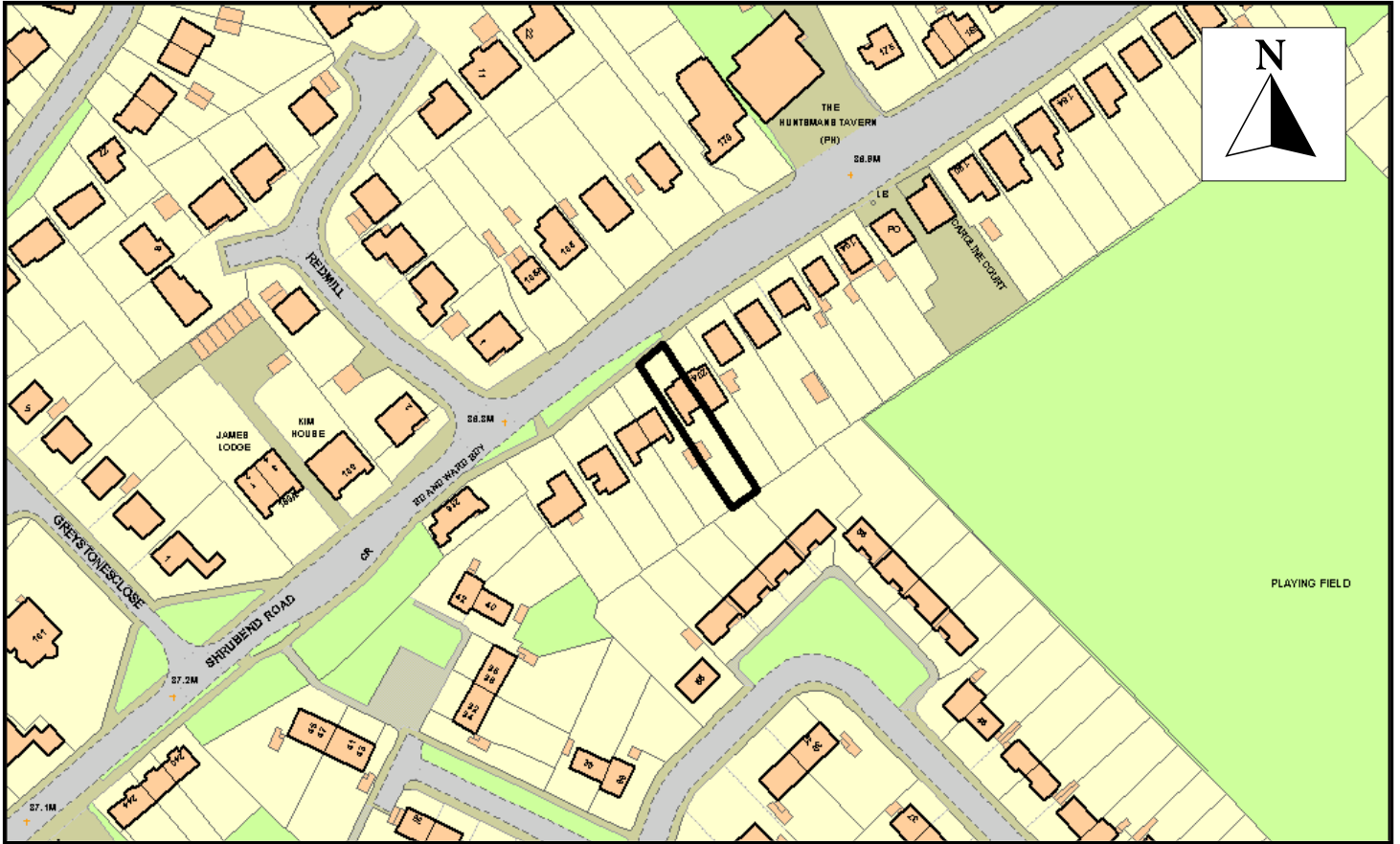
(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

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

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

### 21.0 Positivity Statement

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



**Application No:** 131093

**Location:** 206 Shrub End Road, Colchester, CO3 4RZ

**Scale (approx):** 1:1250

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**7.11 Case Officer: Carl Allen**

**Due Date: 29/07/2013**

**HOUSEHOLDER**

**Site: 206 Shrub End Road, Colchester, CO3 4RZ**

**Application No: 131093**

**Date Received: 3 June 2013**

**Agent: Mr R Harvey**

**Applicant: Mr L Underhill**

**Development: Single storey rear extension to form enlarged kitchen/dining area.  
Internal alterations to form ground floor w.c.**

**Ward: Shrub End**

**Summary of Recommendation: Approved Conditional**

### **1.0 Reason for Referral to the Planning Committee**

1.1 This application is referred to the Planning Committee because the applicant is related to a member of staff.

### **2.0 Synopsis**

2.1 The key issues explored below concern design and amenity. It is considered that the proposal would not result in any design or amenity issues and accords with policy. Therefore the recommendation is for approval with conditions.

### **3.0 Site Description and Context**

3.1 No. 206 Shrub End Road is a semi-detached dwelling that has a lean-to conservatory on the rear (south) elevation that adjoins the neighbours (No. 204) extension and a flat roofed extension of the main dwelling. To the north is the front garden and Shrub End Road beyond; to the east is the attached neighbour of No. 204. To the south is the rear garden whilst to the west is the boundary with the neighbour at No. 208.

### **4.0 Description of the Proposal**

4.1 To demolish the existing single storey extension and the conservatory and to replace with a single storey extension approximately 4m wide, 5.8m long and a maximum height of 3.7m reducing to 2.5m. Materials would be plain tiles and cream PVCu shiplap cladding.

### **5.0 Land Use Allocation**

5.1 Residential.

## **6.0 Relevant Planning History**

6.1 N/A.

## **7.0 Principal Policies**

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

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

UR2 - Built Design and Character

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

DP1 Design and Amenity  
DP13 Dwelling Alterations, Extensions etc.

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

Extending Your House?

## **8.0 Consultations**

8.1 N/A.

## **9.0 Parish Council Response**

9.1 N/A.

## **10.0 Representations**

10.1 One comment that the PVCu cladding is unsuitable for the dwelling and that the roof tiles are incorrect for the roof pitch.

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

## **11.0 Parking Provision**

11.1 No change.

## **12.0 Open Space Provisions**

12.1 N/A.

## **13.0 Air Quality**

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

## **14.0 Development Team and Planning Obligations**

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

## **15.0 Report**

15.1 Given the orientation to the attached neighbour and that the proposed extension would not go beyond the line of the neighbour's extension, then the proposal would not result in any overshadowing to the neighbour at No. 204. Turning to the neighbour to the west (No. 208), which is 4m from the proposed extension, there would be no shadow cast to any part of the dwelling. There would be no new windows proposed that would have any opportunity to overlook neighbours. With these considerations the proposal accords with the amenity element of DP1.

15.2 Turning to the issues of design the proposal would replace a rather unattractive element that has a fairly basic construction which adds no value to the overall design of the dwelling. Whilst the proposed extension would be larger than the existing, it would remain subservient to the main dwelling and would not detract from it. The position at the rear of the dwelling means that there would be no views possible from the street, and only one neighbour (No. 208) would have any real view of it. Comment has been made that the materials, in particular the PVCu cladding, is inappropriate for the dwelling. However, the building is not Listed, it is not close to a Listed Building and it is not in a Conservation Area, and as such the cladding is acceptable in such areas where it would not be highly visible.

The comment has been made that the tiles are not suitable for the pitch of the roof, although the agent rejects this claim and has stated that the roof pitch is 20.5 degrees and the roof tiles intended to use are interlocking and are specified for roofs from 15 degrees to 22.5 degrees so there should be no necessity to increase the pitch. With this information the proposal is considered acceptable and the design and materials complies with DP1 and UR2.

## **16.0 Conclusion**

16.1 The design is acceptable and there would be no detrimental impacts to the neighbour's amenity.

**17.0 Recommendation** - APPROVE subject to the following conditions

## **18.0 Recommended Reasons for the Decision**

### **YOP - \*Reason for Approval (Objection(s) Received - Committee)**

The Planning Committee having considered the recommendation contained in the officer's report was of the opinion that the proposal does comply with the relevant policies in the Statutory Development Plan (as set out above). In particular Members were of the opinion that the proposal warranted approval because the design was acceptable and there was no detrimental impact on residential amenity. Thus, having had regard to all material planning considerations, the Council is of the opinion that the proposal will not cause any harm to interests of acknowledged importance that would warrant the refusal of this application. In reaching this decision the Council is mindful of the particular circumstances and reasons set out below, namely:

The materials being suitable for the building and concluded that the materials were acceptable.

## **19.0 Conditions**

### **1 - Time Limit for Full Permissions**

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

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

### **2 - \*Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 1 of 3, 2 of 3 and 3 of 3 unless otherwise subsequently agreed, in writing, by the Local Planning Authority.

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

### **3 - Materials as Stated in Application**

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that materials are of an acceptable quality appropriate to the area

## **20.0 Informatives**

(1) **ZT0 – Advisory Note on Construction & Demolition** The developer is referred to the attached advisory note Advisory Notes for the Control of Pollution during Construction & Demolition Works for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works. (2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

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

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

**21.0 Positivity Statement**

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

# AMENDMENT SHEET

Planning Committee  
11 July 2013

## AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.1 130789 – Land adj. to Floral Acres, London Road, Stanway

### **Additional Condition 20:**

#### **ZFN - \*1.8m Screen to be Erected\***

Prior to the first occupation of the development hereby approved, a 1.8 metre high screen boundary treatment that shall have previously have been approved, in writing, by the Local Planning Authority, shall be erected along the boundaries with neighbouring residential properties. The screen boundary treatment shall thereafter be retained as approved.

Reason: To protect the amenities and privacy of occupiers of the adjoining property.

### **Corrections:**

- i) Paragraph 8.1.12 mentions “Tollgate Drive” this should read “Tollgate West.”
- ii) Condition 2, drawing 12755:P065:B should read 12755:P06:B.
- iii) Condition 16 re-worded thus:

No deliveries shall be taken at, or despatched from the coffee shop hereby approved outside of the following times:

Monday to Friday: 07:00 – 18:00

Saturday: 07:00 – 18:00

Sundays or Public Holidays: None

Reason: To safeguard the amenities of nearby residential properties.

### **Representations:**

Two extra representations have been received. One was a letter of support from a local resident and businessman, the other was a letter of objection due to the effect on residential amenity and the setting of the Listed Building. The letter also mentioned that letters of support had been solely from local businesses rather than residents.

7.2 130129 – Aim Hire Site, Hawkins Road, Colchester

Members are advised that several conditions that were attached to the original planning permission (ref 081852) have subsequently been formally discharged by the Council. Therefore the wording of conditions no.s 2, 3, 6, 11, 12, 17 and 20 that would be attached to a grant of planning permission for this current application would be suitably amended to link the details to those previously agreed under application 081852’.

7.4 130672 – Welshwood Manor, 37 Welshwood Park Road, Colchester

- i) The following comments have been received from Environmental Control:

**Should permission be granted for development, Environmental Protection recommends inclusion of the following advisory note:**

**NOTE: Demolition and Construction**

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

**Should planning permission be granted Environmental Protection wish to make the following comments:-**

**ZGS - External Light Fixtures TBA**

No external lighting fixtures shall be constructed, installed or illuminated until details of all external lighting proposals have been submitted to and approved, in writing, by the Local Planning Authority. Thereafter, no lighting shall be constructed or installed other than in accordance with those approved details.

Reason: To reduce the risks of any undesirable effects of light pollution.

**4. Reporting of Unexpected Contamination**

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 1 “Site Characterisation”, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2 “Submission of Remediation

Scheme”, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3 “Implementation of Approved Remediation Scheme”.

*OFFICER’S NOTE – Lighting and contamination conditions to be added as conditions 16 and 17. Demolition and Construction advisory note has already been included.*

- ii) An additional representation has been received from the Welshwood Park Residents’ Association. This relates to a covenant which forbids the conversion of a private dwellinghouse to a nursing home.

*OFFICER’S NOTE – These comments are noted. However, Members will be aware that covenants are separate to Planning considerations. A dispute over a covenant is a private matter between the interested parties.*

#### 7.7 130754 – Land erar of Laurel Cottage, Llayer Breton

The Council’s Arboriculturist has commented that ‘the information provided does not adequately demonstrate that trees have been considered during the design stage. There are numerous items of vegetation that should be retained that are shown for removal. These trees have public amenity value and inform the wider street scene. It would appear that there is adequate space that the significant trees on the site could be retained if suitable protection was provided. In order to justify the development an arboricultural implication assessment should be provided. This will likely generate the requirement of an arboricultural method statement showing how the property will be built with trees being retained. The information should be in accordance with BS5837: 2012’. With this consideration the proposed scheme is poorly designed and would result in the loss of trees with public amenity value which are important to the street scene.

Add to refusal reason reason at the end of the last sentence at p.98 (after...the poor design of the scheme.) The scheme would result in the loss of trees that have a public amenity value and are important to the street scene.



7.8 130794 – The Drury Arms, 1 Layer Road, Colchester

**A further letter of objection has been received from Layer Road Florists and General Store as follows:**

“Having now read the details of the report prepared for the Planning Committee, I would like to strongly reiterate my objections to this proposal. Having read the pronouncement from Highways, made since the last deferment that “ no further consultations have been carried out and we have no objections and no wish or desire to , change our original decision of ‘no problem””, I would like to raise some questions I find very hard to understand. Time and again through their report, Highways seem to be basing their strategy on this : The Drury Arms was as busy as this ‘Open all Hours’ Supermarket proposal is going to be and if it worked for the Pub, it will be OK for a Supermarket. My questions are as follows :

1. Where do the comparison figures of access and egress movements for this proposal that Highways have based their position on (5.4.1.Para5) come from?
2. Why is it necessary now, to have a right turn lane on this congested junction, when according to Highways, this proposal will generate no significant increase in the original use and was patently not necessary before?
3. We were all informed by Council employees at the last meeting, that this whole concept is “tight, but will just about work”. Convince us all that this proposal has had the serious and careful consideration it certainly merits.
4. Highways arguments rely on the TRICS database. What is it in this database that says, by extending this site and re-opening it as another Chain supermarket, with all its own customer traffic, its ATM traffic and its deliveries every single day, all routed through this junction, this proposal “SHOWS NO GREATER TRAFFIC INCREASE THAN WOULD EXIST COMPARED TO THE ORIGINAL USE OF THE BUILDING AS A PUBLIC HOUSE”
5. I do not drive an HGV. However, logic tells me and the tracking diagrams confirm this, that reversing manouvers on and off this site (and finally admitted as a very common occurrence likely to happen) are going to effectively close Layer Road and this junction to through traffic whilst these take place. Again, the argument is made and backed up by Highways of ‘previous’ usage and deliveries. I have lived in this community for over 35 years and ask the Highways to tell me where in Colchester, on a busy traffic light controlled junction, delivery vehicles have to reverse across traffic flows and a busy pavement, to access a site for deliveries ?

6. Hamilton Road is a very busy Primary School. Are we all to assume, as Highways would have us believe, that all the children on their way to school will stop and read the KEEP CLEAR signs on the pavement and not just walk or run along as children do, WITHOUT A CARE IN THE WORLD ?
7. Highways talk of TRIP GENERATION here and the similarity of this junction to that of Brooke Street and Magdalen Street. I have to ask Highways, who would want to live in that logistical nightmare on a daily basis . Is this what they envisage for Layer Road and Butt Road ? The only similarity I can see is that yet another Tesco, in our lovely 'Tesco Town', has been approved to open less than 100 yards from that junction also!
8. Where are all the traffic lights on the Tracking Diagrams and the real life queues of traffic documented and photographed at this junction already ?
9. ATM machines, according to Highways, "do not increase traffic volumes entering a site", although the very nature of the beast is for 24 hour operation. Highways tell us that 'people' only use their cars to drive or shop. In their world, there are no people who simply need access to money and therefore would not count in their calculations. They tell us yellow lines will force further access to the site, but apparently, that doesn't count either.
10. Traffic surveys carried out and accepted by Highways, on non school days, to back up this proposal.?
11. My final comment to Highways is to express my astonishment at their sheer arrogance when saying that the recent serious accident involving a cyclist, that closed the junction for several hours, had no relevance because the unfortunate victim did not use the proposed Drury site entrance! Only interested in making their point!!

Finally, regarding the Heritage Statement. Sounds good, but nothing new there. It is also very reasonable to assume that any new owner or tenant would also refurbish and secure the long term future of this important landmark and therefore cannot be used as an argument for this proposal, as is the case here. In reality, what we will see, is a locally listed building, adulterated by a large modern shopfront, totally out of character with the building, despite the 'throw away' of keeping the Pargetting. I wonder what we will all notice first!

I would like to ask the elected Councillors and County Councillors and their departments, mainly Highways, who appear to repeatedly turn their backs to the serious views and concerns of the residents in this area (about to be doubly blighted) to think again. As I have said before, we all have to live with the consequences of your decision. Be absolutely certain it is the right one for your constituents."

**Two further representations have been received from S&K Premier as follows:**

- 1) “We still, very strongly, object to the application No. 130794 – The Drury Arms, Layer Road, Colchester. As far as we are concerned, nothing has changed in our views or comments from our previous objection.

A strong petition has also been registered with the complete backing of many people who are still telling us they feel exactly the same about it. Furthermore, we have had numerous comments and concerns from the locals and the general feeling is of the following - nobody requires it and there is certainly no need for it. We are already served by a number of very well stocked shops in the area - let's also not forget the impending Tesco store, which will be built at Butt Road just a stone throw away.

Locals have expressed their utter concern that the roads simply cannot take anymore and that the danger to the local school children would increase considerably. Both the locals and we agree that life is tough enough as it is and that current traffic congestion and queues are a concern of the area. If this extension goes ahead then it speaks for itself.

Furthermore, the amount of staff that they intend to employ would create an enormous amount of customers. Very few of these customers arrive on foot compared to the amount who will be driving and parking instead. In addition to this staff would be lost at other outlets because of this impact – thus no benefit.

This application implies that it will be mainly pedestrians and cyclists! Well that is certainly not the case. Surely people do not believe that the community is large enough for everybody to walk or cycle between all of these stores to fuel them with enough money to survive? Absolutely not and we most certainly know.

If this extension were to go ahead – it would be for the worse not the better. Where is the due diligence of today? Whatever is allowed now will be the shape of things to come and is this really the right thing to do?

All this extension would achieve is to create an oversized, ugly building not in character. This gross size would be exhausted and exhaust the local area in terms of constant comings and goings of many many vehicles. Very few people walk to a shop because they do not want to carry their heavy shopping back home. Surely we should be protecting the local community and preventing this kind of public nuisance?

There would be a risk with huge lorries and heavy goods vehicles navigating around this extension and through a very busy car park. With the best will in the world to bring a lorry out of the space in forward gear, after this obtrusive extension has been built, it just wouldn't be advisable. It would be so awkward and exhaustive that many drivers will be tempted just to simply reverse out. This would put the local public at considerable risk. How long before someone is reversed on? Once this extension is passed how would you stop these drivers from doing this, because this will be what the extension will create?

In addition to this, this extension will also allow the space to accommodate an ATM or several ATM's. These take up quite a bit of internal floor space and whilst the extension would not directly house them, it would create the extra space to provide for everything else. An ATM or as previously mentioned several ATM's will be applied for - it is the norm. These create further noise and disturbance.

In conclusion, this extension will therefore create danger, disturbance, noise, nuisance, light pollution and a huge detrimental visual impact to the local community. I feel very sorry for the local neighbors in the closer boundary to the Drury Arms, as they will have to put up with the impact more so, especially with the huge lorries maneuvering near this obstruction. This will become far more apparent if the development gets underway.

Please do not allow Colchester to have irreversible decisions made to it that affect our local community. Our community is already very well balanced and these changes will make it suffer for the future to come."

- (2) "We are struggling to understand how the figures taken from the TRICS database are true or acceptable. How it can state that this proposal will not lead to any increase in traffic is beyond us. Surely commonsense can tell us that even though this disused building was once a public house, it did not generate anywhere near the amount of traffic that this proposal would endure to do so, and then if we were to think of it maybe becoming a public house or eating establishment in today's standards, can we not realise that people would stop for much longer to eat and drink? In retail, it is a well-known fact, that in stores 3000 square ft. and under the average shopper is in store for only 1 minute 30 seconds. This is a far greater turnaround than the occupation it currently holds, and therefore a greater amount of customers many of which will be clogging up the road systems. They must be expecting a good turnover otherwise they would not be requiring 20 staff, i.e. more staff - more customers expected, hence why the extension is required which will make this proposal overdeveloped and out of character to the local community.

How can it also be stated that there is good visibility for maneuvering vehicles? This we find very concerning. We should take into account that this extension MUST still be far too overdeveloped for this building if it was stated at the last committee meeting that there was JUST ABOUT enough room for a large delivery lorry to turn around and pull out in forward gear. Is JUST ABOUT good enough, when lorry drivers will find obstacles in their way and will end up reversing out? Whether this is allowed or not, once these plans are passed it will be very tough and continuous to stop this from happening. How long before a child in the car park runs out and gets knocked over? Is this JUST ABOUT enough room when the car park is vacant and the building is empty as it is now, or is this when it is full and brimming with customers when it is open to the public?

Furthermore, it states that the pub would have regular visits from the brewery and that the accident figures would show this if there were a concern. How can they state this when a public house is not open to the public the amount of hours that a shop will be i.e. 7.00am-11.00pm? The brewery lorries would always arrive before a public house would open and furthermore many people would walk for their beverage because of drink driving. Many people drive to a shop because they do not want to carry their heavy shopping home.

Where on earth the figures show that an ATM does not generate extra traffic we do not know. These ATMs do generate extra traffic as people drive to their preferred ones bypassing the ones that you may be charged for. These ATM providers do surveys to see how much extra traffic and footfall they can bring to a site to make it worth their while installing one or not. If it is great success a second one is often installed.

This extension will make the lorry turning too dangerous and difficult, it is just too tight. Should this really be the responsibility of the applicant? Has anyone done any measurements yet or are they still taking the applicant's word for it? Should this not independently be checked out?

If this is to go ahead has anybody found out what will happen to the vacant ground on the Layer roadside of the plot? The feelings of the local neighbourhood are that after a year they will want to enlarge further and have this as additional car parking space.

The surrounding road system, car park etc. will simply not be able to take this huge volume of traffic and is of great concern. People will particularly drive to use their club card here thus creating even more traffic at an already bursting junction, which at certain times of day is infuriating.

We honestly do not think that people realise the great impact that this will have on the local community. So please, for the people of Colchester who will have to live with this for the years to come, please look deeper.”



## **Colchester Borough Council Development Control**

### **Advisory Note on Parking Standards**

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

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

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

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

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



## Colchester Borough Council Environmental Control

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

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

#### Best Practice for Construction Sites

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

#### Noise Control

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

#### Emission Control

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

## **Best Practice for Demolition Sites**

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

### **Noise Control**

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

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

### **Emission Control**

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



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

## **Class A1. Shops**

Use for all or any of the following purposes—

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

## **Class A2. Financial and professional services**

Use for the provision of —

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

## **Class A3. Restaurants and cafes**

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

## **Class A4. Drinking establishments**

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

## **Class A5. Hot food takeaways**

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

## **Class B1. Business**

Use for all or any of the following purposes—

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

## **Class B2. General industrial**

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

## **Class B8. Storage or distribution**

Use for storage or as a distribution centre.

## **Class C1. Hotels**

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

**Class C2. Residential institutions**

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

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

**Class C2A. Secure residential institutions**

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

**Class C3. Dwellinghouses**

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

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

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

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

**Class C4. Houses in multiple occupation**

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

**Class D1. Non-residential institutions**

Any use not including a residential use —

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

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

(c) for the provision of education,

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

(e) as a museum,

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

(g) as a public hall or exhibition hall,

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

**Class D2. Assembly and leisure**

Use as —

(a) a cinema,

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

(d) a dance hall,

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

**Sui Generis Uses**

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

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

**Interpretation of Class C3**

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

**Interpretation of Class C4**

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