

# Planning Committee

Council Chamber, Town Hall  
10 April 2014 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.

## 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 10 April 2014 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 Christopher Arnold, Nick Barlow, Lyn Barton, Kevin Bentley, Mary Blandon, Mark Cable, Nigel Chapman, Barrie Cook, Nick Cope, Beverly Davies, John Elliott, Andrew Ellis, Annie Feltham, Bill Frame, Ray Gamble, 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, Will Quince, Lesley Scott-Boutell, Peter Sheane, Paul Smith, Terry Sutton, Colin Sykes, Anne Turrell, Dennis Willetts and Julie Young.

## 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

1

(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

There are no minutes to be submitted for approval at this meeting

## 7. Planning Applications

In considering the planning applications listed below, the Committee may choose 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. 131103 Stockwell Arms, 18 West Stockwell Street, Colchester (Castle)

**2 - 26**

Variation of conditions 2 & 3 (drawing nos), 4 (materials), 5 (ducting), 9 (frontage treatment), 10 (landscaping), 19 (extraction equipment) and 21 (Escape door screen) of Planning permission 112221 ('Demolition of 19th/20th century extensions/erection of new extension/removal of 19th century staircase/erection of new stair tower')

2. 131105 Stockwell Arms, 18 West Stockwell Street, Colchester (Castle)

Revised Listed Building application (following consent 112222) for alterations to existing Grade 11 listed public house: Including alterations to stair tower and roof of extensions and addition of fire door and escape

Please see report at Agenda item 7.1

3. 140534 Land adj Marks Tey Hotel, London Road, Marks Tey (Marks Tey) **27 - 38**

Variation of condition 2 of 130362 to allow for one year's period of permission commencing from the first car boot sale which operates under the new conditions

4. 142134 25 John Kent Avenue, Colchester (Shrub End) **39 - 44**

Extension to existing dwelling and associated alterations to create an additional attached dwelling. Resubmission of 110346

5. 142131 Haye Yard, Upper Haye Lane, Fingringhoe (Pyefleet) **45 - 56**

Erection of single dwelling in place of mobile home builders yard and scrapyards

6. 140208 82 Belle Vue Road, Wivenhoe (Wivenhoe Quay) **57 - 73**

Proposed demolition of existing two bedroom bungalow and construction of 1 x 2 bedroom and 5 x 3 bedroom detached bungalows and associated garages

7. 142439 Valentinus Crescent, Colchester (Berechurch) **74 - 89**

Change of use to cemetery land together with associated works including boundary fencing, new planting, car parking with access from Colchester Crematorium

- 8. Enforcement Report//Stockwell Arms (Castle) **90 - 92****

Stockwell Arms - Applications 131103 and 131105

**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).



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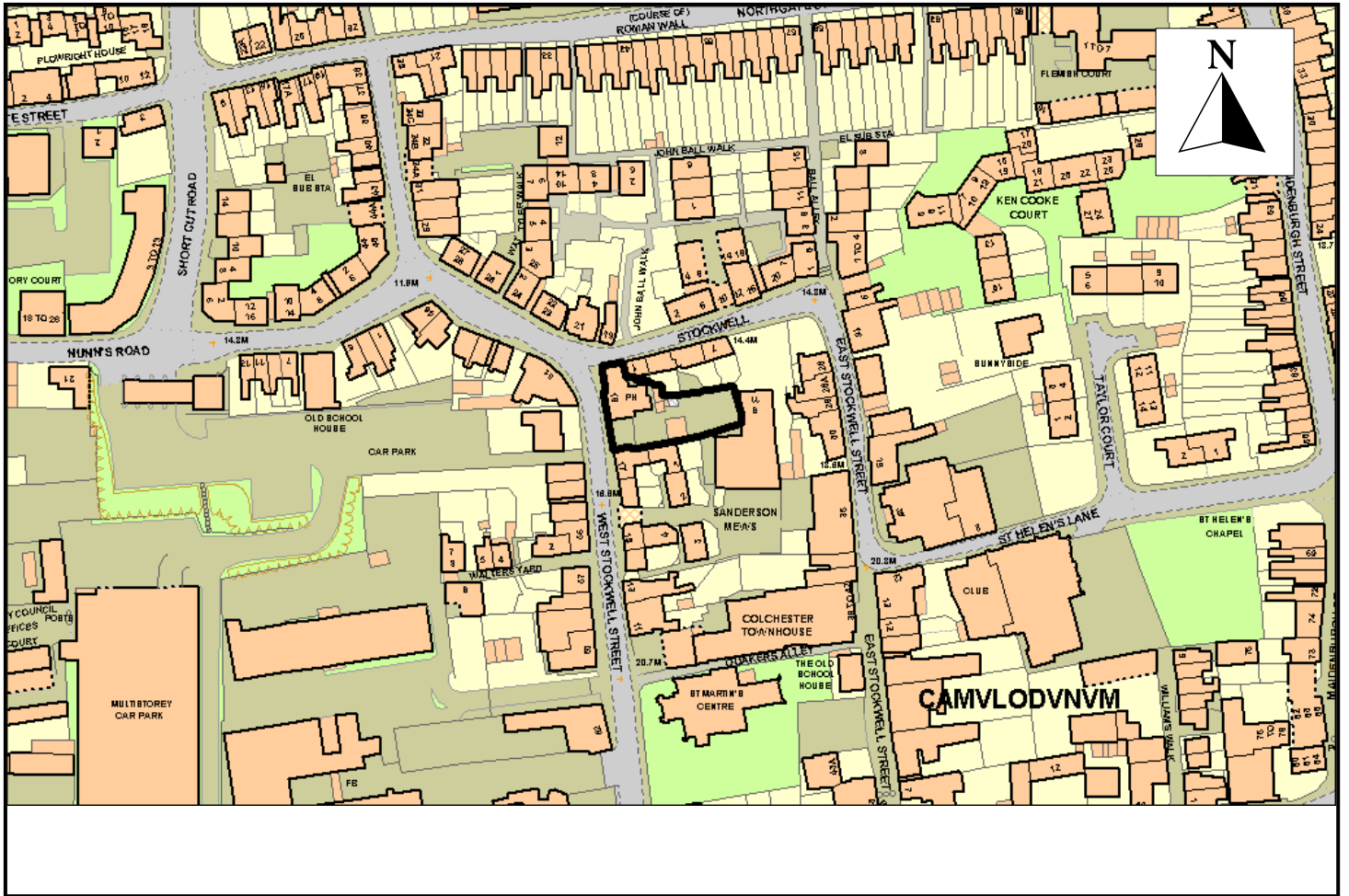
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[www.colchester.gov.uk](http://www.colchester.gov.uk)



**Application No:** 131103 & 131105

**Location:** Stockwell Arms, 18 West Stockwell Street, Colchester, CO1 1HN

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

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## Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **10 April 2014**  
Report of: **Head of Professional/Commercial Services**  
Title: **Planning Applications**

**7.1 Case Officer: Mark Russell**

**MINOR**

**Site:** 18 West Stockwell Street, Colchester, CO1 1HN

**Application No:** 131103

**Date Received:** 5 July 2013

**Agent:** Inkpen Downie

**Applicant:** Hamilton Bailey

**Development:** Variation of conditions 2 & 3 (drawing nos), 4 (materials), 5 (ducting), 9, (frontage treatment), 10 (landscaping), 19 (extraction equipment) and 21 (Escape door screen) of Planning permission 112221 ('Demolition of 19th/20th century extensions/erection of new extension/removal of 19th century staircase/ erection of new stair tower'):

**Ward:** Castle

**Summary of Recommendation:** Conditional Approval

**7.2 Case Officer: Mark Russell**

**MINOR**

**Site:** 18 West Stockwell Street, Colchester, CO1 1HN

**Application No:** 131105

**Date Received:** 5 July 2013

**Agent:** Inkpen Downie

**Applicant:** Hamilton Bailey

**Development:** Revised Listed Building application (following consent 112222) for alterations to existing Grade II listed public house: Including alterations to stair tower and roof of extensions and addition of fire door and escape.

**Ward:** Castle

**Summary of Recommendation:** Conditional Approval

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

1.1 These applications have been referred to the Planning Committee because they have been called in by Councillors Frame and Hayes. Councillor Frame cited the following reasons:

*I wish to call in this application due to the 16 admitted breaches of the planning drawings agreed under 112222. The result of these breaches has caused harm to the quiet enjoyment of their environment to neighbouring properties. Additionally further breaches of conditions have occurred during the time the restaurant has been open which have caused further detriment to the neighbouring properties.*

Councillor Hayes did not cite any reasons.

## **2.0 Synopsis**

2.1 Planning application 131103 covers the substantive matters relating to changes to planning permission 112221. Accompanying this is Listed Building Consent (LBC) application 131105 because, whilst these matters almost all relate to the new fabric, it is still part of the listed building.

2.2 The key issues explored below are a brief recent planning history of The Stockwell and an explanation of the background to the current applications. It is explained that these applications have come about due to a number of breaches of the original permission which have come to light chiefly relating to the built form, extraction plant and landscaping.

2.3 The nature of the breaches is explained to have ramifications for residential amenity, as well as visual amenity for this Listed Building and conservation area. It is also

explained that a drawing which was omitted in the original applications has exacerbated these issues.

- 2.4 The objections (from 13 parties) are then listed and analysed. These cover a range of issues, including alleged loss of amenity (in terms of perceived loss of outlook, privacy and light as well as noise and odour issues due to extraction plant), and visual unacceptability due to the form of the building and the materials used. Objections due to a perceived lack of clarity in the proposals are also listed, as are matters relating to opening hours beyond the current Planning Permission. It is explained that this last point is not a matter for consideration under this application
- 2.5 It is further explained that new, annotated drawings were submitted for greater clarity, although objections were still received that these were not clear enough, and that a third set were then issued which covered most, but not all, points; although all points are considered to be dealt with in the Report.
- 2.6 Further, consultation replies from our Historic Buildings Officer and our Urban Designer, reveal that some points are acceptable, but others are not; chiefly the linked element and the plant, as well as the proposed fire escape route were problems. Some of these issues have been resolved, whilst some are not deemed appropriate to negotiate on and will need to be remedied through further works. Environmental Protection comments also indicate that it is desirable for the plant to be moved due to amenity concerns, and the main plant to the rear must comply with noise and odour mitigation.
- 2.7 It is then concluded that, with the amendments listed above, the proposal is mostly satisfactory and approval is recommended for the majority of the works contained within planning application 131103 and LBC application 131105. Those elements that are not acceptable would be refused by condition, giving a split decision. Therefore, Enforcement Action will need to be taken to remedy the remaining issues that remain unacceptable. Should the Committee not agree with this recommendation then the Enforcement Action would need to reflect any changes to the final decision taken.

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

- 3.1 The Stockwell (formerly the Stockwell Arms) is a Grade II Listed Building which has evolved over the centuries. Its listing description quotes “15<sup>th</sup> century” although some elements might be older. The building has been much altered and restored since that time.
- 3.2 Newly restored following recent permissions, The Stockwell is a rendered building with a linked element to a new extension. The main part of the building is like many in the surrounding Dutch Quarter, being of a yellow render and steep sided tiled roofs. Next to it are the also listed cottages of West Stockwell Street, to the rear are the flats at the formerly Industrial Technique building. To the other side are the flats of Sanderson Mews, erected in the 1980s.
- 3.3 The area is predominantly residential, with St. Martin’s church, the Town House and the BT buildings being other non-residential buildings of note in the vicinity. The NCP

Car Park is further west, whilst at the top end of the Street you have food and drink uses, including Pizza Express and the recently approved change of use in the Old Library.

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

4.1 The proposal, as intimated by the lengthy description, is complex and stems from various breaches of the original Planning Permission and Listed Building Consent. It is not profitable to re-iterate each of the points here, and these are gone into in detail at paragraph 15 and as addressed through the main report.

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

5.1 The extant permission is as a restaurant in an area zoned as “predominantly residential” within Colchester’s Central Area Inset. This is within Colchester Conservation Area 1.

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

6.1 101158 - Listed Building application - The external elevations of the Stockwell Arms to have surface fixed etc. Approved 23/09/2010.

6.2 110917 - Listed Building application: Insertion of 2no.windows in 2no.existing door openings. Approved 06/07/2011.

6.3 111955 - Listed Building application: Alterations to existing Grade 2 listed public house including roof replacement of ground floors, removal of ceilings, reopening of medieval staircase and alterations to chimney stack and windows. Approved – 07/12/2011.

6.4 112221 - Demolition of existing brick 19th/20th century extensions and erection of new extension including removal of existing 19th century staircase and erection of new stair tower. Approved 29/2/2012.

6.5 112222 - Listed Building Demolition of existing brick 19th/20th century extensions and erection of new extension including removal of existing 19th century staircase and erection of new stair tower. Approved 29/2/2012

#### **7.0 Principal Policies**

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government’s planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. Further Guidance is set out nationally in the National Planning Policy Guidance (NPPG), which came into force on 6 March 2014.

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:



- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity  
DP14 Historic Environment Assets
- 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:
- 7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:

n/a

## 8.0 Consultations

### 8.1 Historic Buildings and Areas Officer:

#### Condition 2

The application deviates from the approved drawings in several ways. Apart from the issues discussed below, those of concern include the roof lantern, link to the stair-tower, and additional internal opening up (with the consequence of raising the height of the proposed flat roof).

**Roof Lantern.** Originally designed as a traditionally styled feature the structure was instead built with round, domed, modern style roof lights. These have a cheap appearance that does not enhance the setting of the listed building. The proposal is for the rooflight at the lower level of the flat roof to be shielded using metal. This would add clutter to an already poor design solution and would not improve matters significantly. The question is whether they harm the overall design to such an extent that it would represent an overall derogation in comparison with the previous situation of a collection of run-down poor quality buildings. This seems unlikely and on balance the proposal, even with the metal shield, remains acceptable.

**Link.** The approved design for this constituted a light touch that made the distinction between old and new clear. The link as built is less successful. While the approved link cut neatly below the eaves, as built it sits over them, a rather less satisfactory solution visually. The render finish removes the articulation between stair-tower and link, resulting in a rather flat appearance. This is an unfortunate alteration that does not compare favourably with the approved design. The proposal to alter the design does not comply with NPPF paragraph 131 as it does not sustain or enhance the significance of the heritage asset, being a poorly designed new element, nor does it make a positive contribution to the character of the conservation area in the vicinity.

Internal opening up. This has revealed some historic fabric, and as such is not harmful in itself, and could arguably be considered to reveal significance. It has resulted in a slight increase in height to the flat roofed section of the extension. In terms of the historic building this is not harmful and I have no objection to it.

#### Condition 4

New pitched roof. The approved drawings show pantiles but slate was used in the construction. The roofs of most of the surrounding buildings have clay plain tiles although slate is not alien to the Dutch Quarter and is frequently seen. The slate used is of acceptable quality and is used at the correct pitch, whereas the pitch would have been slightly too slack for traditional use of pantiles. There is no objection to this substitution as it complies with DP14 in causing no harm to the listed building.

New flat roof. High performance felt is specified within the application form. The roof, as built, is covered with 3 layers of felt. While it would usually be expected that a new flat roof attached to a listed building would use a high quality material such as metal (lead or zinc) this would entail a greater build-up of materials and given the internal head-height would be likely to result in increased overall height of the extension. It is understood that the former outbuildings on site also had felt roofs, and the approved drawings indicated use of modern, not traditional, materials. Given the above circumstances, on balance there is no objection to the use of felt on the flat roof. This is an insignificant departure from the approved drawings.

Paintwork. The lime render should have been finished with a breathable paint but instead is clearly finished with a modern non-breathable paint. This defeats the purpose of using lime render and is entirely inappropriate, increasing the likelihood of future decay of the repaired timber frame. It is important that this paint finish should be removed and replaced with an appropriate paint type. Limewash, mineral paint or distemper would all be possible finishes.

#### Condition 5

The condition required all extraction ducting and other plant to be located in the valley between the double pile of the roofs to the rear extension. Instead the chiller unit has been placed in a flat-roofed lead-topped area between crosswings 2 and 3. This has an uncompromisingly modern appearance entirely at odds with the character of the listed building and is visually objectionable when viewed from the rear. It adds to the clutter in the location, which includes pipework, extractor fans and emergency lighting. This can not be supported without justification, which seems to be absent from the application. The alteration does not comply with NPPF under paragraph 134 as it harms the character of the heritage asset by introducing an inappropriately modern, alien, element onto the historic building, without any justification.

#### Conclusions & Recommended Actions

The new design for the link and the chiller unit on the historic building are not acceptable elements of the application. These need to be refused because they fail to preserve the special interest of the historic building. No objection is raised to the other aspects of the application.

The Historic Buildings and Areas Officer was then reconsulted when the applicant proposed to removed the chiller unit back into the roof, and also for clarification as to a compliance period for the render paint. The following response was received:

#### Chiller Unit

I note that this is to be moved further back into the valley of the historic roof. If there is no practical alternative to the unit's location on the historic roof I am willing to accept in principle the proposal to move it back so that it cannot be seen from the ground, it will address the visual incongruity of the unit. However I can not see any assessment of what historic fabric would be affected by this proposal. In my view this needs to be assessed and agreed before work to this element can be undertaken. Given the extensive repairs undertaken to the building I am willing to believe that no loss of historic fabric needs to occur, but the exact consequences of the work need to be understood. Perhaps this could be achieved by a condition?

#### External decoration

The presence of non-breathable paint on the lime render is likely to harm the timber frame in the long-term, but it is unlikely to do so in the next couple of years. I have no objection therefore to the work being delayed until 2015. However it is important that the work be undertaken in time, so I suggest a condition be imposed requiring the work to be completed within a time limit, and for this to be enforced. It would also be appropriate for the method of paint removal to be agreed before works begin and a condition to this effect would be appropriate.

- 8.2 Urban Designer: The amendments to the front elevation are not satisfactory. Originally approved was a recessed glass link between the two storey new staircase range and the host dwelling. This has been implemented as a more integral aspect of the stair tower. The appearance without the significant area of glass and lacking the articulation is of a poor pastiche, giving to much visual emphasis to the new addition. This weaker design is amplified by the fenestration which lacks sympathy in proportion and visual composition.

The colour of the whole building is also unsympathetic and has not been implemented in the approved material or colour, what should have been a breathable finish appears to be a latex based paint finish to the render. These are substantial deviations from the approved works to the listed building and will require equally substantial works to remedy.

To the rear there are more visual reductions in sympathy and quality which are deviations from the approved scheme. The works to the extension may be considered of less concern but the accumulated affect is more detrimental to the listed building than what was approved.

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

- 8.3 Museum Resources: No comments

8.4 Environmental Control: Environmental Protection requested a condition relating to control of fumes and odours and also asked for specific details of the odour control system to include a silencer and secondary odour control. It also asked for no external seating to be allowed as per the current condition, and for conditions relating to site boundary noise levels and light pollution. It also stated that the rating level of noise emitted from the site's plant equipment and machinery should not exceed 0dBA above the background levels, whilst for the extraction equipment, a level of 5dbA can be accepted.

8.5 Landscape Planner:

*Ideally (reference to hard landscaping, confirmation of planting timetable) would be satisfactorily addressed to comply with the Council's generic requirements.*

*However, given the comparatively minor nature of the amendments recommended and the fact that the hard landscape looks to have been laid out to a satisfactory standard, then to move things forward the planning officer may wish to agree to this existing hard landscape layout and condition that all landscape works will be completed within a set timescale, preferably securing photographic record of the hard landscape for future reference.*

OFFICER RESPONSE – The hard landscaping is on separate drawings and, as mentioned elsewhere, has been judged acceptable apart from the blue engineering bricks. In respect of a planting timetable, it will be requested that this is done swiftly, even if this requires container planting.

## 9.0 Parish Council Response

9.1 n/a

## 10.0 Representations

10.1 Letters of objection have been received from thirteen parties in relation to both of the applications, these covered the following points:

- The applications are unclear;
- Amended drawings are still unclear – what are the dimensions of the breach?;
- The drawings are incorrect (Inkster drawing A/1113/PL/45);
- It is unacceptable to place tables and chairs at the front;
- English Heritage has not been consulted;
- The slates are not acceptable;
- The visual impact of the extraction ducts is not acceptable;
- The roof lanterns are not visually acceptable;

- Odours from the extraction ducts are not acceptable;
- Noise from the extraction ducts is not acceptable;
- A micro-brewery should not be consented under any circumstance;
- The fire escape is a cause of concern;
- Some of the claims made are false (e.g. statement about previous air cooling system);
- The fire-door in the stair tower is opposed;
- The fence at the rear is not featured in this application;
- The lack of a north elevation drawing previously made it impossible to comment;
- The height of the rear toilet building is higher than it should be;
- A landscaping scheme should be brought forward;

10.2 Other points raised, which were not pertinent to the applications included:

- The company have not repaired the supporting wall to my fence line;
- The rear garden has been used.
- Opposition to extended Licensing hours;
- The extraction system has been used outside of operating hours;

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

## **11.0 Parking Provision**

11.1 n/a

## **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 Three sets of considerations have come to light during this application:

- i) The Planning merits of the proposal
- ii) Criticisms of the previous application (insufficient material)
- iii) Other, ongoing, issues.

Points ii) and iii) cannot be considered under this planning application, but it must be acknowledged that ii) has led to some of the issues now under consideration. As for iii) these issues are noted, but do not form part of this consideration.

15.2 The merits or non merits of each part of the proposal now require consideration. These will be considered following the numbered items 1 – 18 as annotated on the latest submitted (amended) drawing A/1113/PL/46 revision C. This list covers most of the points, but is not exhaustive and the numbering follows on to incorporate these further elements.

15.3 **Point 1:** “Walls moved in from boundary (permitted position) at this point walls rendered to neighbours’ side.”

The issue of the wall was subject to negotiation earlier in 2013. The original brick wall had initially been very poorly mortared. This gave an unsatisfactory level of craftsmanship on a listed building that needed to be resolved. The solution to this was to render it in order to match the main parts of the building, which has been successfully achieved. This wall is slightly repositioned to give a limited amount of extra room to the neighbouring property 1-3 Stockwell. This is not considered to be an issue and should be allowed to remain within the amended drawings (however the height of the wall requires further discussion, below).

15.4 **Point 2:** “Addition of a 3rd bar area.”

This has no bearing on issues of amenity or historic fabric, has not raised any concerns and simply relates to the internal workings of the establishment. This does not therefore raise any justifiable argument for refusal of the planning application.

15.5 **Point 3:** “Omitted roof lights.”

The omission of rooflights has no bearing on issues of amenity or historic fabric, and has not raised any concerns. See also point 5.

15.6 **Point 4:** “Amended design of roof light reduced size.”

The amended design of the rooflights has no bearing on issues of amenity or historic fabric and has not raised any concerns. The Historic buildings advisor has evaluated the changes and has no objections based on a holistic view and taking into account all of the relevant material considerations. The issue appears to be one of perceived harm to a private viewpoint, but planning does not protect views and this is not a material consideration.

15.7 **Point 5:** “Omitted roof lights.”

The omission of rooflights has no bearing on issues of amenity or historic fabric, and has not raised any concerns. See also point 3. The case officer therefore recommends approval of this issue.

15.8 **Point 6:** “Drawing shows extent of kitchen extract (position permitted at planning).”

Whilst the drawings from the last application do show a “vent extract discharge cone” it is not true to say that they show the “extent of kitchen extract.”

Our Environmental Protection Officer has asked that this equipment produce no more than 5dB(A) above background. This is higher than the 0db which Colchester Borough Council typically currently requests from planning applications, however it is still within a tolerable level that will not cause significant harm. On the basis that conditions are achievable to resolve this issue it would not be justifiable to refuse the application on this basis and it may be hard to sustain an objection at appeal, if members were minded to go against the expertise advice offered to them. It is unfortunate that the applicant installed the equipment prior to discharging the condition that required details of this element to be submitted and agreed. However, at the time of the granting of planning permission 112221, 5dbA was the standard and therefore the level now being set is no different to the levels set previously.

Therefore, this extraction equipment can be accepted in principle, but with the above noise condition, plus an odour condition. If these are not complied with during a set timescale set out in the conditions, the plant will be in breach of condition and will have to be enforced upon. This matter may also be covered on an accompanying enforcement notice that will need to be served due to other breaches that cannot be resolved. The compliance period would need to be consistent with the condition, and the action required to comply with that element of the notice be to meet the required noise and odour levels. Failure to comply with that notice would be a prosecutable offence.

15.9 **Point 7:** “Area of flat roof raised to allow view of historic timber frame internally.”

This increase in height is made in the interests of celebrating historic fabric and features, this is acceptable. The approximate height difference is 300mm at the “raised platform area”, which has minimal impacts over the approved scheme. The internal feature of the medieval arch would be a significant feature that was rightly protected. By protecting the feature the ceiling height needed to clear the arch, and was raised. That in turn increases the height of the external flat roof, and beyond that the fire escape door onto the roof and then roof above that door etc (see Point 22

below). The resultant increases can be justified because the impact on neighbours is not so severe that its harm outweighs the benefits of preserving the internal historic feature.

- 15.10 **Point 8:** “OMIT guard rail and steps revised in order to define escape route and restrict access to roof.”

This is no longer a proposed feature. Through negotiations the residential use is being removed and that in turn removes the need for a separate fire escape route across the flat roof. This reduces the amount of built form on the rear roof as seen from neighbouring properties and is a gain in that respect.

- 15.11 **Point 9:** “OMIT metal light shield at request of planning officer.”

This was looked at as an option, but has since been discarded upon further advice from the Historic Buildings Officer.

- 15.12 **Point 10:** “Position of roof light further south than on approved drawings.”

The repositioning of this rooflight is considered to be a minimal element of the proposal and it raises no significant issues.

- 15.13 **Point 11:** “Dimensions of window reduced from that shown on approved drawings and fenestration altered.”

This now centralises the window within the gabled section and is an improvement on what has actually been installed (which differs from the approved drawings, as explained below). As an improvement, the works should be considered favourably herein.

- 15.14 **Point 12:** “Roof pitch shallower than that shown on approved drawings.”

The tower was not built as per the permission and is slightly wider, which has altered the pitch. However, this is acceptable. The roof is also approximately 300mm higher than on the approved drawings. That relates back to point 7 earlier. However, given the existing mass of buildings this has a negligible effect on residential amenity and is also visually acceptable this does not cause significant concerns to officers. Overshadowing is not significantly worsened by this roof form due to other built forms in the vicinity.

- 15.15 **Point 13:** “Internal timber rail to window removed.”

No issues are raised with regard to fabric or amenity.

- 15.16 **Point 14:** “Design of door amended.”

Again, no issues of fabric, design or amenity are raised by this element.



- 15.17 **Point 15:** “Air cooling cooling plant. This was not shown on approved drawing. Move back into valley by two metres and reposition associated equipment behind chimney stack.”

This is a good solution in response to the issues of residential amenity. The additional requirement that the cooler should measure 0dba above background further confirms that point. The negotiated solution to move this plant further back into the roofscape means that the visual impact on the listed building is resolved, which is also to the advantage of the neighbours private views (albeit that is not a planning consideration). This will require a planning condition and may also be included in the enforcement action requirements.

- 15.18 **Point 16:** “This wall is higher than that shown on approved drawing - it is lower than the out buildings which were removed. See Drawing 44.”

This 9.8 metre long stretch of wall appears to be about 300mm higher than the approved drawings (equivalent to about four bricks). This may be seen as the main element which affects the amenity of 1-3 Stockwell Street.

The applicant’s claim that “it is lower than the outbuildings which were removed.” is partly true, but is challenged by the residents of the neighbouring property. It is true that there were previously outbuildings here, and for the first 8 metres (4 metres of the smaller extension and the first four metres of the extension in question) the current height is no higher than previously. However, the objectors contend that one of these elements had been removed “a while ago”, and that all that was in place was a concrete base. The next 5.7 metres of building are indeed higher than what was there before (although the neighbouring property does have a shed of a similar height for part of the way) and aerial photographs also show there to be an amount of tree cover previously, which must have had some effect on light, albeit that these were largely deciduous and filtered light would have passed through.

Regardless of that, the increased wall height meets the relevant policy requirements in the Essex Design guide for assessing light. Even where there is disagreement on the background points, this assessment is objectively taken and better-placed to look at the planning merits. The substantive proposal has already been approved and what is being asked for now is the extra 300mm in height which still fulfils policy tests. Part of this extra height hides the gutter channel and whilst acknowledging that the extra height will necessarily lead to some degree of loss of light; given the distance to windows and that a roof rises up behind (to the south of) it, it is held that the extra loss will not be so significant as to make the proposal unacceptable when judged against policy.

- 15.19 **Point 17:** “Remove Engineering coping and replace with brick to match red brick wall.” This was at the request of our Listed Buildings Officer and will be conditioned to be implemented. It shall also be specified on the remedial action required to satisfy the enforcement notice.
- 15.20 **Point 18:** “Lantern higher than on approved drawings” this slight amendment has been deemed acceptable by our Listed Buildings Officer and is covered in the amended drawings.

- 15.21 In addition to this, further improvements are also proposed. These are not explicitly mentioned on the drawing which shows the various alterations.
- 15.22 **Point 19:** The removal of the escape door next to 1-3 Stockwell does appear on the proposed elevation drawing A/1113/PL/45 rev A. This is to be replaced by a white painted, timber-framed side hung casement window with obscure glass and opening restricted to 15 degrees angled away from the windows of 1-3 Stockwell. This would be approved by condition.
- 15.23 **Point 20:** Another change, which has not been tabled on the drawings, is that the fire escape door on the stair tower be blocked up in materials to match the rest of the building. This, in common with the above paragraph and “point 8” is possible as the residential element is now to be removed and therefore no secondary fire escape will be required. Again, it would be recommended to approve this work by condition.
- 15.24 **Point 21:** The upper floor is now to be fully used in relation to the running of the restaurant, and will not be lived in. This will involve extra covers at the first floor level and the office at the northern end. The lack of residential use has been cited as a reason for objection. However, given that this will enable the removal of any possibility of overlooking and will also dramatically decrease the use of the building at anti-social hours, this objection cannot be sustained.
- 15.25 It has been further argued by objectors that this is a change of use, and should be covered by a separate planning application. However, in common with most uses of this type (retail, restaurant, pub or other) the residential element is ancillary to the main use of the building and if a restaurant or pub operator were to expand the core use into living quarters, this would not normally be deemed to be a change of use. The “manager’s Flat” was clearly linked to the running of the business and this is not a mixed use scheme of a restaurant and private residential unit.
- 15.26 The claim that the use, by having no residential element, is non-conforming, is also disputed given that other non-residential uses are nearby – for example the Town House and the BT buildings, albeit that their hours of use are generally shorter. Given the gains from the proposed restaurant use, this element is deemed to be acceptable. This premises has been in commercial uses for a great number of years too, and predates some of the housing here. Furthermore, it is a town centre location and the policy designation as a predominantly residential area is not to be confused as an “exclusively residential” area. Each case should be considered on its own merits and in this instance there are beneficial gains to the proposal.
- 15.27 **Point 22:** It has been pointed out that the height of the flat-roofed section of the stair tower is approximately 500mm higher than authorised and that this has not been explicitly flagged up. This requires careful analysis (below):

- 15.28 It is accepted that this element is in the region of 500mm higher than on the approved drawings (about 5.6 metres from the lower door sill, as opposed to the approximately 5.1 metres on the approved drawings) and that, therefore, this is an additional breach, allied to the lantern. It is, therefore, possible that there may be an additional loss of light when compared with the original permission. As point 7 mentions, 300mm of this relates to a medieval arch inside the building that was found during exposing works of the construction process. However, by the time this transcends up through the building it appears to result in a further 200mm increase in ultimate roof height to the stair tower element.
- 15.29 Outlook from the mid-point of windows of habitable rooms at 1-3 Stockwell requires consideration. Given the tight-knit historic nature of the Dutch Quarter generally and the close historic association between 1-3 Stockwell and The Stockwell it may be difficult to achieve the desired amount of outlook, nevertheless this has been assessed.
- 15.30 It is desirable to ensure that a “zone of overshadowing” does not occur – namely that 45 degrees of outlook should not be lost in both plan and elevation. This is featured in our “Extending Your House?” Supplementary Planning Document and is based on guidance in the Essex Design Guide.
- 15.31 As shown on the plans, the mid-point of the window at 1-3 Stockwell does not have 45 degrees of outlook in plan (to either side) and it is probably fair to say that it never has had. In terms of elevation, it appears that the 45 degree is not infringed. The most offending item would appear to be the nearest wall.

Whilst only the occupiers of 1-3 Stockwell will truly know the exact extent of extra loss of light and the subtle changes which may have occurred in their kitchen and dining room because of this; as looked at plainly, even at a height of 500mm above the previously allowed, the guidance would appear to be complied with, even though there must be some further loss of light. That this is higher than approved does not in itself mean that any greater height is unacceptable, and the relevant policy tests should be applied as they would had this been a new proposal. Planning Law requires that each case be taken on its own merits, with regard to the Development Plan and all other material considerations.

As before, this element is looked at in the round and in the context of all other considerations, and it is held that this part of the proposal is acceptable.

- 15.32 **Point 23:** The roof on the main extension had been shown as clay tiles on the original application drawings in 2011. Following an amendment to the design, to hip the end to allow more light to the neighbouring residential properties, the pitch had slightly changed and slate had been put in place. This was covered by a condition requesting amended drawings to show the hipped roof. These amendments showed slate instead of clay tiles and this was approved. However, as this material did not appear on the original drawing which went out to consultation, objectors have cited this as a breach. Whilst technically using a material that was now approved in writing is a breach, the material itself is an acceptable material. Whilst clay tiles are common in the Dutch Quarter, it is also common to have slate on the roofs of single storey additions, despite claims to the contrary. Furthermore, the Councils

materials guidance states that slates are a vernacular material to this region and that they may be acceptable.

15.33 The flat roofed area near to 1-3 Stockwell was described as “high performance felt” at application 112221/2. What has been put in place appears to be just felt. This has been cited as a breach. Given that felt was previously allowed, it would appear to be pushing the point to describe it as breach. Furthermore, it is not known quite what “high performance” felt really means, as it seems a contradictory term. In relative terms felt is not high performance. Consequently, our Historic Buildings Officer has not objected.

15.34 **Point 24:** Separate to the main drawing is the issue of landscaping. A landscaping scheme was scheduled to be submitted and implemented prior to the use of the property coming in to force. However, this did not materialise and therefore the application is to agree a scheme now, and have it implemented as soon as possible. This is desirable both for the user and for neighbouring properties which would benefit from the extra security offered and the knowledge that the temptation by any users to access the garden would be reduced. Planting may have some effect on mitigating any noise spill, although this would be limited.

15.35 A landscaping scheme (actually a planting scheme) has been submitted following site meetings with your Officer. This scheme has been roundly criticised by objectors, some of whom are qualified horticulturalists. The following points were raised:

- The gardener has no professional accreditation;
- The submission fails the British Standards (BS) or ISO in terms of insufficient detail about contours, implementation and maintenance;
- Some of the proposed specimens are wrongly referenced in terms of their potential height – they will grow too high and block out light ;
- The scheme should be subjected to the same rigours of assessment as any larger landscaping scheme;
- The details shown do not cover the hard landscaped area to the front;
- A large Sycamore remains next to the neighbouring wall – this is not on the plans;
- The Stockwell has already been brought into use prior to a scheme being agreed/implemented;

OFFICER COMMENT – This last point is noted, use began before the discharge of the landscaping/planting condition. This is regrettable, but is a fact that we now have to deal with. In terms of the Sycamore, this is not part of the planting/landscaping issue, but is an issue between two different land-owners which requires resolution outside of the planning system.

15.36 In response to the criticisms, your Officer contacted the applicant and pointed out the shortcomings of the proposal and further information has been received.

15.37 Further representations have been received. These covered the following points:

- The proposals are still unclear;
- They still fail to achieve the required standards;
- The proposed trees close to the Technique building will overshadow and cause security issues.

15.38 Whilst the fundamental objectives of the proposed planting are clear – a pleasant garden and security for neighbours – and the basic structure also appears clear, there remain some doubts about the finer points of the proposal. It is therefore proposed that the views of the Council's Landscape Planner be awaited, and pending these, this element of the scheme either be deferred and delegated to Officers, or if Members feel strongly about this, that it be brought back to a future Committee.

15.39 **Point 25:** Although not a complaint received from the public, during the series of site visits Officers have undertaken over the last 12 months it was noticed that the paint used on the render of the building should have been lime based and is not. It has been shown not to be so. The problem with this is that the historic fabric would not be allowed to breathe, with the potential for long-term damage. Therefore the applicant will have to remove the existing paint and make good the external finish as per the previously approved details. This is covered by a separate enforcement report which will request the undertaking of these works. As these works are a clear and non-negotiable breach they do not need to be conditioned herein other than to make clear that they are not acceptable for the avoidance of doubt. This would be the same for the incorrect detailing of the glazed link facing onto West Stockwell Street (see front elevation plan), which is also non-negotiable as an unacceptable breach that harms the quality of the listed building, streetscape and conservation area.

15.40 **Point 26:** As mentioned above, there is a glazed link element that is on the front elevation. This was not built in accordance with plans, a detail that was picked up by Officers during site inspections last year. Although this aspect was not raised through public complaints, it is unacceptable and this is why Officers reported it onwards. This will be subject to the enforcement notice to remedy this breach and conditions should be used to remove this from the approval for the avoidance of doubt.

## 16.0 Conclusion

16.1 This application, together with 131105 (Listed Building) has covered many points. It is accepted that some of these matters have taken a long time to resolve. However, with the exception of a more detailed planting/landscaping scheme, it is held that these points have now been assessed and are deemed to be, in the large part, acceptable. The application is, therefore, recommended for approval.

## 17.0 Recommendation

17.1 APPROVAL of all elements other than the external paint and the glazed link on the front elevation (refused), with the approved elements being subject to the following conditions in Section 19.

## 18.0 Positivity Statement

18.1 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.

## 19.0 Conditions

### 131103

#### 1) Non Standard Condition

With the exception of any conditions or enforcement action which stipulates or requires further amendments, the development shall accord in all respects with the following plans hereby approved: A/1113/PL/40 B, A/1113/PL/41 A, A/1113/PL/43 A, A/1113/PL/44 B, A/1113/PL/45 A, A/1113/PL/46 C.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of residential and visual amenity in this conservation area setting.

#### (2) Non Standard Condition

Within 56 days of the permission hereby granted and notwithstanding the details of the drawings hereby approved, the doorway on the stair tower (previously to be used as a fire escape door at the rear) shall be permanently closed up, blocked off and constructed with a finish and materials that match the immediate adjacent surfaces on the existing building. Such works shall be retained at all times thereafter.

Reason: In order to ensure that the fire escape that is no longer required is closed off and made good in a satisfactory manner in the interests of residential and visual amenity on this listed building, within a predominantly residential part of a conservation area.

#### (3) Non Standard Condition

Within 84 days of the date of the permission hereby granted, the “glazed link” element fronting West Stockwell Street and located between the main building and the extended section shall be altered and completed as per the approved drawings A/1113/PL/46 rev C and A/1113/PL/44 B. This shall be finished with matching materials and finishes to the immediately adjacent surfaces of the existing building (with the exception of the incorrect paint used on the existing building). The works shall be retained as such (with the later addition of the correct paint) at all times thereafter.

Reason: The glazed link that has been constructed does not accord with the previous permission and is not considered to be of an acceptable visual appearance within the elevation of this listed building, and in the interests of the historic character in this conservation area as the stair tower as built is visually unacceptable.

(4) Non Standard Condition

Within 28 days of the date of this permission a suitable replacement coping shall have been proposed on the front wall and a sample shall have been provided to the Local Planning Authority. Within 28 days of written approval being given for the use of this coping by the Local Planning Authority, the existing blue engineering bricks shall be removed and replaced with the approved replacement coping materials and any other necessary remedial works shall have been completed, including re-installation of the existing railings. The works shall be retained as such thereafter.

Reason: The use of blue engineering bricks is unacceptable and this needs to be satisfactorily remedied, in the interests of visual amenity on this listed building in this conservation area setting.

(5) Non Standard Condition

Within 56 days of the date of this permission the applicants shall have replaced the rear escape window/door on the rear elevation with the proposed window. The proposed new rear window shall, as far as possible, match the structural frame details of existing windows on the existing building but this window shall be obscured to level 4 on the Pilkington scale and shall be on limited opening of no more than 15 degrees and directed with such an opening to face southwards away from the nearby properties at 1-3 Stockwell only. The window shall be retained as such thereafter.

Reason: This escape route is no longer necessary and therefore the window can be changed in order to protect the amenities of neighbouring properties.

(6) Non Standard Condition

Within 56 days of the date of this permission the applicants shall provide a full set of drawings, including sections and elevations, for the proposed relocated chiller unit show this relocated westwards from the rear eaves of the building. Within 56 days of the Local Planning Authority written agreement to the proposed position, the existing plant equipment shall have been removed, the roof made good and the works completed so that the chiller unit's plant equipment shall have been re-installed in the agreed position. These works shall be retained at all times thereafter in that position, with the former chiller being removed from its current location and the building made good with matching materials.

Reason: The existing plant equipment is not visual acceptable and needs to be moved to a less prominent position, in the interests of residential amenity and visual amenity on this listed building in this conservation area location.

(7) Non Standard Condition

Prior to the installation of the chiller unit, a competent person shall have ensured that the rating level of noise emitted from it does not exceed 0dB(A) above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall be made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall be submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to at all times 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.

(8) ZGG - Site Boundary Noise Levels

Within 56 days of the permission hereby granted, a competent person shall ensure that the rating level of noise emitted from the *kitchen extraction unit* does not exceed 5dB(A) above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall be made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall be submitted to, and agreed in writing by, the Local Planning Authority. If such levels cannot be complied with, the applicant shall take such measures as to ensure that they are complied with and shall submit information to this effect within 56 days of being requested to do so, with such levels being complied with at all times 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.

(9) Non Standard Condition

Within 28 days of the permission hereby granted, the applicants shall provide details of measures to mitigate against odours from the kitchen extraction unit that shall be submitted to and agreed, in writing, by the Local Planning Authority. Such measures shall remain in place at all times 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

(10) Non Standard Condition

The rating level of noise emitted from all other plant equipment and machinery shall not exceed 0dB(A) 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.

(11) Non Standard Condition

No residential use whatsoever, whether ancillary or not, shall take place at any time within The Stockwell.

Reason: This is the basis on which permission has been granted and such use would require fire escapes and associated structures which may be visually unacceptable.

(12) Non Standard Condition

With the exception of the required alterations to the front wall, hard landscaping shall comply with the submitted drawings.

Reason: In the interest of the visual amenity in this conservation area.

(13) Non Standard Condition

Planting/landscaping shall be in line with the submitted scheme, with the exception that the proposed trees close to residential premises shall be excluded.

Reason: In the interests of residential amenity.



(14) Non Standard Condition

The agreed planting shall be put in place within 56 days of the permission hereby granted and shall be retained at all times thereafter.

Reason: To discourage any use of the garden in the interests of residential amenity.

(15) Non Standard Condition

Planting and maintenance shall follow the lines of the information submitted and shall comply with the following standards:

- BS 4428:1989 guide of practice for general landscape operations (excluding hard surfaces)
- BS3936-1:1992 Nursery stock Specification for trees and shrubs.
- BS53936-10:1190 Nursery stock Specification for ground cover plants.

Reason: To ensure an adequate level of care in the implementation and maintenance of the planting.

(16) Non Standard Condition

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 during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority. The planting shall be retained at all times.

Reason: It is vital that the planting be retained for good, as opposed to the usual five year period, as it is important to separate the commercial and residential uses in the interests of residential amenity.

(17) Non Standard Condition

All refuse storage and disposal shall be enclosed and as agreed under planning application 112221 unless otherwise agreed with the Local Planning Authority and the agreed details shall be adhered to at all times.

Reason: For the avoidance of doubt as to the scope of this permission and in the interests of visual and residential amenity.

(18) Non Standard Condition

Bottle storage and disposal shall be as agreed under Planning permission 112221 unless otherwise agreed with the Local Planning Authority. Such details shall be agreed in writing by the Local Planning Authority and the scheme shall be brought into use on the first day of the Stockwell coming back into use and shall remain as such at all times thereafter.

Reason: Bottle storage and disposal is likely to be the chief source of noise nuisance in this predominantly residential area and a sensitive scheme is required in the interests of residential amenity.

(19) Non Standard Condition

Notwithstanding the details of any submitted drawing, or the provisions of the Town and Country Planning Use Classes Order or Permitted Development Order, no micro-brewery nor any form of brewing shall take place on the premises without the permission of the Local Planning Authority.

Reason: For avoidance of doubt as to the scope of this permission as this permission is for a restaurant use and the issue of a micro-brewery would need to be carefully considered on its own merits.

(20) Non Standard Condition

No tables or chairs/benches or any other means to facilitate formal, prolonged use of the front or rear garden shall be placed in either of these gardens at any time.

Reason: Colchester Borough Council has granted permission for this extension for, amongst other things, betterment of an undesirable situation (namely an extant use for a public house in a residential area, with unlimited hours of use and unfettered use of the garden). As such it would not be desirable to encourage the any formal use of the garden area.

(21) Non Standard condition

The use of the premises (with the exception of the office element) shall not be outside of the following hours:

11:00 - 23:30 (Monday to Saturday)

11:00 - 23:00 (Sunday/Bank Holidays). T

The only exception to this shall be Christmas Eve and New Year's Eve (11:00 - 01:30).

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

(22) Non Standard Condition

Alcohol shall not be served outside of the following times:

11:00 - 23:00 (Monday to Saturday) and 11:00 - 22:30 (Sundays).

The only exception to this shall be Christmas Eve and New Year's Eve (11:00 - 01:00).

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

(23) Non Standard Condition

No amplified music shall be played in the building at any time until a scheme of noise insulation/attenuation has been agreed with the Local Planning Authority.

Reason: In the interests of residential amenity as permission has been granted for this extension on the basis of the main use being as a restaurant and noise from music would be unacceptable unless adequately attenuated.

(24) Non Standard Condition

Deliveries shall not be outside of the hours of 07:00 - 23:00 Monday to Friday, 08:00 - 23:00 Saturdays, and at no time on Sundays/Bank holidays.

Reason: In the interests of residential amenity.

(25) Non Standard Condition

No external lighting being permitted without the prior written consent of the Local Planning Authority.

Reason: In the interests of residential and visual amenity and to avoid unnecessary light spillage.

## 131105

### (1) Non Standard Condition

With the exception of any conditions or enforcement action which require further amendments, the development shall accord in all respects with the following plans hereby approved: A/1113/PL/40 B, A/1113/PL/41 A, A/1113/PL/43 A, A/1113/PL/44 B, A/1113/PL/45 A, A/1113/PL/46 C.

Reason: For the avoidance of doubt as to the scope of this permission and to preserve the special interest of this listed building.

### (2) Non Standard Condition

At a date no later than 1 August 2015, the current unauthorised render paint shall be removed in its entirety, and replaced with a limewash, mineral paint or distemper.

Reason: The current non-breathable paint is not acceptable on this listed building and if not replaced will cause harm to its fabric.

### (3) Non Standard Condition

Prior to removal of the existing paint the applicants shall have submitted to, and had agreed in writing by, the Local Planning Authority, details of the method of paint removal including which products are to be used in the process. Such methods and products as are agreed shall then be employed in the paint removal.

Reason: In order to ensure that the correct methods are employed to avoid harm to the building.

### (4) Non Standard Condition

Prior to the use of any new limewash, mineral paint or distemper being used on the building, the applicants shall have submitted to and had agreed, in writing, by the Local Planning Authority, details of the proposed new wash or paint, including colour and mix. The scheme shall thereafter be undertaken in accordance with the agreed details.

Reason: To protect the special interest of this listed building.

### (5) Non Standard Condition

When works are completed the Listed Building shall be made good in a manner which is acceptable to the Local Planning Authority.

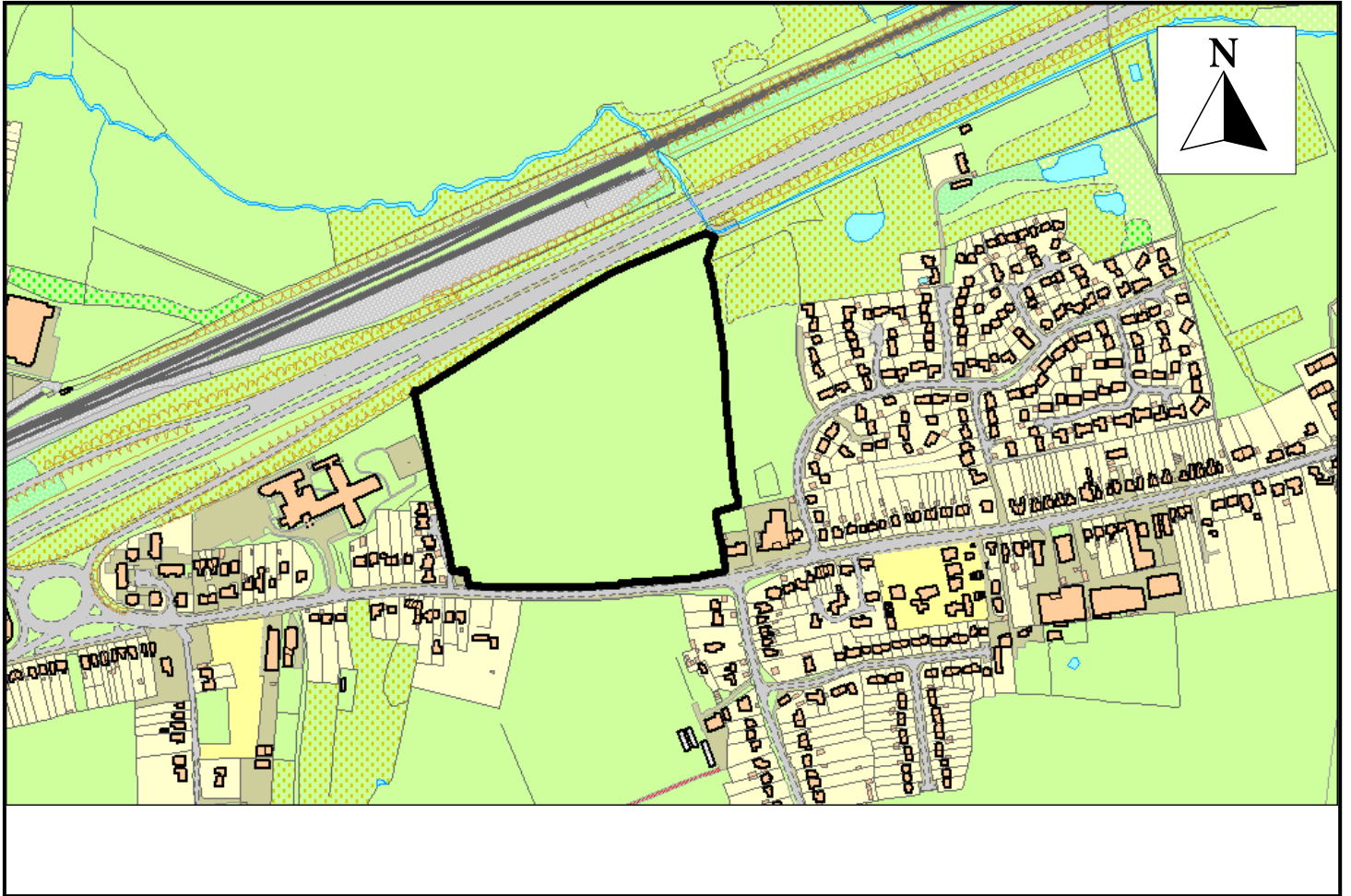
Reason: To protect the special interest of this listed building.

## 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.





**Application No:** 140534

**Location:** Land Adj. Marks Tey Hotel, London Road, Colchester, Essex, CO6 1DU

**Scale (approx):** NOT TO SCALE

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7.3 Case Officer: Mark Russell Due Date: 07/05/2014

**MAJOR**

**Site:** Land Adj. Marks Tey Hotel, London Road, Colchester, Essex, CO6 1DU

**Application No:** 140534

**Date Received:** 5 February 2014

**Agent:** Mr Chris Harrington

**Applicant:** R Melrose & Sons

**Development:** Variation of condition 2 of 130362 to allow for one year's period of permission commencing from the first car boot sale which operates under the new conditions.

**Ward:** Marks Tey

**Summary of Application:** Conditional Approval

## 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 that has received objections.

## 2.0 Synopsis

2.1 This proposal follows application 130362 which was granted permission by Planning Committee in April 2013. That application was for "continued use of land for Car Boot Sales operating between 06:00 - 16:00hrs for Sellers and 07:00 - 16:00hrs for Buyers together with the formation of a new access."

2.2 The proposal at hand is to vary condition 2 of that permission, which currently states, amongst other things "*The period of this permission shall expire one year from the date of this permission....*" to "*...one year's period of permission commencing from the first car boot sale which operates under the new conditions...*"

2.3 The applicants state that this requirement has come about because "The condition was introduced to allow for a trial period of one year for the new hours of operation and the new access but these have not yet begun to operate."

2.4 As this is a section 73 (Variation of Condition) application, all of the conditions of Planning permission 130362 need to be re-issued and re-stated as relevant.

2.5 The scheme is, therefore, effectively a full application for a car boot sale use. The substantive issues have already been agreed by the previous permission and it would appear unreasonable to do anything other than agree them again.

- 2.6 For further information, the site has been used for car boot sales for many years under a number of planning consents. Application 130362 proposed a new access and an earlier start time of 6am for the setting up of traders only. The opening time to the buying public was granted to stay at 7am.
- 2.7 The earlier start time was to allow traders on site to set up prior to the buying public arriving and to help ease the traffic congestion that causes significant local problems with cars sounding their horns. The new access was to pull turning traffic away from the dwellings in Francis Court. Therefore that scheme was considered to be acceptable on a 1 year temporary basis, subject to a number of conditions.
- 2.8 Now, as then, the proposal is considered to be acceptable, with the difference being that the beginning of the trial period will be deemed to be when the development comes into use, as opposed to when permission is granted.
- 2.9 The following report is largely taken from 130362, and where additions have been made, these are in **bold**.

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

- 3.1 This application relates to an area of land within Marks Tey; to the east of the Marks Tey Hotel and to the south of the A12 trunk road. To the south of the Marks Tey Hotel are residential properties. To the east of the site is an area of public open space and beyond this is the Queensbury Road residential area with woodland to the north of that. Commercial properties border the site at its south eastern corner.
- 3.2 There are currently 2 accesses at the western end of the London Road frontage, known as Gate 1 and Gate 2. East of Gate 2, a hedge runs along the London Road frontage.
- 3.3 The site has been used for car boot sales for many years (permitted since 2005).

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

- 4.1 **This application is to vary condition 2 (as explained above) of Planning permission 130362**, in relation to the continued use of land for Car Boot Sales operating between 06:00 - 16:00hrs for Sellers and 07:00 - 16:00hrs for Buyers together with the formation of a new access.

### **5.0 Land Use Allocation**

- 5.1 The land is white on the Council's Proposals Maps document, meaning it is not allocated for any specific use, and it sits outside of the development boundary.

### **6.0 Relevant Planning History**

- 6.1 Use of the site for car boot sales was permitted in 2005 (ref: C/COL/05/0308) for a temporary period of two years. Further planning permission was granted in 2007 (ref: F/COL/07/0199) for a temporary period of five years. The temporary period was removed from the decision in 2012 under a removal/variation of condition (ref: 120008).

- 6.2 An application for a variation of conditions 2 and 3 of the planning permission (ref: 120757) to allow for boot sales to be held on Sundays and Bank Holidays was withdrawn.
- 6.3 Application 130362 was effectively to vary condition 4 of permission 120008 to allow for the boot sale to operate between the hours of 6am to 4pm but a full application was made to allow for the provision of a new access point. Condition 4 of permission 120008 stated:

*The setting up and/or commencement of the use hereby permitted shall not take place prior to 0700 hours and the dismantling/cessation of the use shall take place prior to 1700 hours.*

*Reason: In order to protect the amenity of the occupiers of residential property in the vicinity of the application site and to avoid doubt as to the scope of the permission hereby granted.*

## **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:  
ENV1 - Environment  
ENV2 - Rural Communities

- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity

## **8.0 Consultations**

- 8.1 Environmental Protection added no further comments, but at the time of application 130362 stated:

Although we understand that historically traders set up on the site from 06:00, we are aware that the residential properties at Francis Court could potentially be affected by early morning activity if not adequately controlled. We therefore recommend the following controls/conditions:-

The frequency of sales shall remain unchanged.



The earlier start time of 06:00 shall only apply to traders setting up and no selling to the public is permitted before 07:00.

Before 07:00 only the new proposed entrance shall be used.

The entrance closest to Francis Court shall be closed.

Site activity shall cease at 16:00.

Before 08:00 there shall be a buffer of at least 40 metres between any vehicle, site activity and the properties in Francis Court.

Signage shall be erected requesting site users to respect the needs of nearby residents and minimise noise levels early in the morning.

All catering vans shall be located as far as practical from residential properties (we suggest at least 150 metres).

There shall be no amplified music or PA systems.

The type of noise associated with this activity can not be effectively controlled with the nuisance legislation. We therefore recommend a 12-month temporary permission in order to monitor the impact with regard to complaints.

- 8.2 Highway Authority: added no further comments, but at the time of application 130362 stated:

No objection to the scheme subject to the provision of 90m by 2.4m visibility splays and no unbound materials used in the surface of the vehicular access within 10m of the highway boundary.

- 8.3 Highways Agency-

No objections.

- 8.4 Landscape Officer – added no further comments, but at the time of application 130362 stated:

The frontage hedgerow is not protected under the hedgerows Regulations 1997.

It is recommended any formal proposal looks to reinforce the existing frontage hedge by back-planting behind any sight splay requirements that cause the hedge to be reduced in width significantly, remove bramble, coppice elm and plant up any existing and resulting gaps with native hedging and hedgerow trees. It is also recommended that this opportunity be taken to look to improve the wider structure of the field and further enhance the character of local landscape by planting a native hedge and hedgerow trees to the field's A12 boundary in accord with the Colchester Borough Landscape Character Assessment's guidelines.

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 Mark's Tey Parish Council has no objection to the application. At the time of 130362, it confirmed that it had no objection "as long as it is only for car boot sales on a Wednesday."

In response: As before, this will be secured by condition.

## **10.0 Representations**

10.1 Three responses have been received, four were letters of support, one was an objection.

10.2 The letters of support all stated that the application "brings money and trade to our area."

10.3 The letter of objection stated: "the application was given permission in July last year and boot sales were operating on the site up to November. So how can the applicants say that they have yet to operate under the new conditions?.....a new access was to be constructed away from the houses on London Road. This new access has yet to be constructed."

**OFFICER RESPONSE – These observations appear to relate to the ongoing car-boot use which predated permission granted under 130362.**

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

## **11.0 Parking Provision**

11.1 Parking will be dealt with on site as is currently the case.

## **12.0 Open Space Provisions**

12.1 This scheme does not have any open space requirements.

## **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 due to the site area but as it is an application for the continued use of an existing car boot sale site it does not trigger any planning obligations.

## 15.0 Report

15.1 The main issues are:

- *Impacts on Neighbouring Properties*
- *Highway Issues*
- *Landscaping*
- *Biodiversity*
- *Flood Risk*

15.2 Impacts on Neighbouring Properties

The car boot sale site is currently running under application permission 120008. Condition 4 of this consent restricted the hours of use to between 7am to 5pm. The reason for the condition is to protect the amenity of the occupiers of residential property in the vicinity of the application site and to avoid doubt as to the scope of the permission. The main consideration of this application is therefore the impact of an earlier start time for the setting up of traders upon residential amenity. If this scheme is refused by Members the car boot sale will continue running under its existing permanent consent with a start time for traders and the buying public of 7am.

The site lies within Marks Tey village and is therefore in close proximity to a number of residential properties. Both Gate 1 and Gate 2 are adjacent to Francis Court, a residential road serving five properties. Any noise from the site (vehicles arriving and departing, talking, setting up stalls) would have an effect on neighboring amenity due to the close proximity of the site to residential properties.

The applicant submits that the earlier start time (which is to allow traders on to the site to set up but not trade) will prevent the current situation whereby traders either arrive early and set up in breach of condition, or are made to wait in the public highway which causes traffic congestion. In turn this traffic congestion causes waiting traffic to sound their horns, which causes disturbance to the residential neighbours. Waiting traffic has previously blocked other highway users who sound their horns in frustration at not being able to pass freely. Earlier starts would help remove this particular problem.

Officers agree that the earlier start time for traders will help to a certain degree. It is the unfortunate reality that the applicant has to allow traders on site prior to 6am as to prevent access onto the field would simply result in harmful indiscriminate on street parking on a well trafficked main road. Very early starts are part of the culture of car boot sales. If traders know they can arrive a 6am and start setting up, but there will be no trading until 7am, it is envisaged that the number of traders arriving earlier than 6am will decrease. The applicants have confirmed that they will accept these new times as a condition and will enforce the hours themselves.

Moving the access away from the residential properties in Francis Court and permanently blocking up of Gate 1 will also pull any queuing traffic away from the residential neighbours. The old access will be blocked and new planting along this section of frontage will be secured by condition.

The scheme proposes a 40m buffer zone in the south western corner alongside Francis Court. This will be kept clear until 8am which will further help to reduce the impact of the scheme on neighbouring amenity. This is an extra benefit to residential amenity that is not currently provided in relation to the existing permission.

As confirmed by Environmental Protection, the type of noise generated by car boot sales cannot be practically controlled by the statutory nuisance legislation. Therefore the only method of control is through the planning regime. With regards to the conditions they have requested above, officers recommend that they are all imposed.

The final condition Environmental Protection has requested is for a temporary consent of one year to assess the impact the new arrangements have in practice. This will allow the Council to assess the impact the earlier start time has in practice and the manner in which the organisers enforce the start times. The Council will then be able to reassess the scheme in one year. If it transpires that the earlier start time does result in an increase in harm to residential amenity this can be taken into consideration when the expected application to vary the condition to make the scheme permanent is made in a year's time. **As the new permission has not yet been implemented, it has not been possible to gauge the effect. It is therefore logical to let the proposal run for a year to assess this. Logically this must begin at the point of use, rather than an arbitrary date.**

### 15.3 Highways

As the Highway's Agency and the Highway Authority have no objection to the scheme, officers consider that the new access is acceptable in highway safety terms. The pedestrian visibility splays and restrictions on unbound surface materials as requested by Essex County Council will be secured by condition.

### 15.4 Landscaping

The Council's Landscaping Officer recommended additional planting to bolster the sections of frontage hedge that will be faced back to provide the required site splays. It is also suggested that there is opportunity for further planting along the A12 boundary. This will be secured by condition.

### 15.5 Biodiversity

Due regard has been given to the NPPF (2012) and Natural England Standing Advice. The site is an open field in a rural location, but is not considered to encompass suitable habitat for protected species, being kept mown. The new opening in the hedge will result in the loss of a small amount of habitat; however this will be compensated for by the additional planting that will be secured by condition. The proposal is therefore acceptable in regards to biodiversity.

### 15.6 Flood risk

The site lies within a flood zone 1 and consultation took place at the time of application 131362 with the Environment Agency with regards to flood risk from or to the use of the site. The Environment Agency did not have any objections to the development as was at low risk from flooding.

## **16.0 Conclusion**

- 16.1 The new access point and the earlier start time allowing for traders to set up from 6am can facilitate improvements in the impact the existing car boot sale site has on neighbouring amenity. The scheme is acceptable on a one year temporary basis subject to the conditions set out below.
- 16.2 The desire to change the beginning of this one year period to the date when use commences (as opposed to when permission is granted) is understandable and is also held to be acceptable. A further condition is also proposed, requesting that the applicant advise Colchester Borough Council when this use commences so that our assessment may be thorough.

## **17.0 Recommendation**

- 17.1 APPROVE subject to the following conditions:

## **18.0 Positivity Statement**

- 18.1 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.

## **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 period of this permission shall expire one year from the date on which it is first implemented. At the date of expiry, the car boot sale use hereby permitted shall be removed. Within 28 days from the date at which this permission expires any building, material, equipment or hard landscaping resulting from, or used in connection with, the development hereby permitted shall be removed from the site in its entirety and in accordance with a scheme that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority.

Reason: For the avoidance of doubt as to the scope of this permission and because a longer permission would have to be carefully considered by the Local Planning Authority at the time at which any such proposal came forward, as well as to ensure that the site is returned to its previous state so that it does not suffer from any unacceptable longer term impact.

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

The development hereby permitted shall be carried out in accordance with the details shown on Drawing Number MT.3.d as submitted under Planning application 130362 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.

### 4 - Non-Standard Condition/Reason

Prior to commencement of development, details of a gate to be provided at the new access and at the retained 'Gate 2' shall be submitted to and approved in writing by the Local Planning Authority. These gates shall be installed on site prior to the commencement of development and shall be retained thereafter. Alternatively, any such details submitted for discharge under application 130362 and agreed in writing by the Local Planning Authority shall be installed on site prior to the commencement of development and shall be retained thereafter.

Reason: No details of the proposed gates have been supplied and the current situation of blocking the accesses with large obstacles is unattractive in visual amenity terms.

### 5 - Non-Standard Condition/Reason

Prior to commencement of development, the vehicular access closest to Francis Court (marked as Gate 1 on plan MT.3.d of application 130362) shall be permanently closed.

Reason: In the interests of highway safety and neighbouring amenity.

### 6 - Non-Standard Condition/Reason

Prior to commencement of development, the proposed new access as shown on plan MT.3.d of application 130362 shall be constructed in accordance with the plans. Prior to 0700 hours only this new access shall be used. The access at gate 2 shall be closed off until 0700 hours.

Reason: In the interests of highway safety and neighbouring amenity.

### 7 -Non-Standard Condition/Reason

The use hereby permitted shall only be carried out on the application site for a maximum of 34 days per calendar year.

Reason: To ensure that the A12 trunk road continues to serve its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980 Section 10(2) and for the reasonable safety requirements of traffic on that road.

### 8 - Non-Standard Condition/Reason

The use hereby permitted shall be restricted to Wednesdays only and shall not take place on other weekdays, at weekends, public or bank holidays.

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

### 9 - Non-Standard Condition/Reason

The setting up shall not take place prior to 0600 hours for traders and the selling of goods to the buying public shall not take place prior to 0700 hours. The dismantling/cessation of the use shall take place prior to 1600 hours.

Reason: In order to protect the amenity of the occupiers of residential property in the vicinity of the application site and to avoid doubt as to the scope of the permission hereby granted.

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

Prior to 0800 hours, the 40m buffer zone shown on plan MT.3.d of application 130362 shall be left clear of any activity including parking of vehicles and any other associated operations.  
Reason: In order to protect the amenity of the occupiers of residential property, particularly those in Francis Court.

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

Outside of the times of operation hereby permitted under condition 2 of this permission, the site shall be kept clear of all apparatus, signage and items that are required in connection with the authorised use. Furthermore, the site shall be kept free of litter at all times.  
Reason: In the interests of neighbouring amenity.

#### 12 - Non-Standard Condition/Reason

Prior to the commencement of development, the areas for the location of hot food sales, generators and refrigerated vehicles shall be indicated on a scaled plan which shall be submitted to and agreed, in writing, by the Local Planning Authority. The use shall be carried out in accordance with the agreed details. Alternatively, any such plans submitted for discharge under application 130362 and agreed in writing by the Local Planning Authority, shall be duly implemented.  
Reason: In the interests of neighbouring amenity.

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

The permission hereby granted expressly excludes the use of public address systems, tannoy and amplified sound equipment.  
Reason: In the interests of neighbouring amenity.

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

Prior to commencement of development, details of a temporary sign requesting site users to respect the needs of nearby residents, minimise noise levels early in the morning and detailing the new start times including a plan showing its proposed position shall be submitted to the Local Planning Authority. It shall be installed as approved on car boot sale days and then removed after the event and taken from site. Alternatively, any such signs submitted for discharge under application 130362 and agreed in writing by the Local Planning Authority shall be installed on site prior to the commencement of development and shall be retained thereafter.  
Reason: In the interests of neighbouring amenity.

#### 15 - 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 2.4 metres by 90 metres to the east and 2.4 metres by 90 metres to the west, 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 in accordance.

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

No unbound material shall be used in the surface treatment of the vehicular access within 10 metres of the highway boundary.

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

#### 17 - 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 planting shall be maintained for at least five years following contractual practical completion of the approved development. 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 during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority. Alternatively, any such details submitted for discharge under application 130362 and agreed in writing by the Local Planning Authority shall be similarly implemented and maintained.

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

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

The applicant shall give the Local Planning Authority prior warning (not less than 14 days) in writing as to the date of the commencement of development.

Reason: To enable Colchester Borough Council to properly assess the impact of the development.

### 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) 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.





**Application No:** 142134

**Location:** 25 John Kent Avenue, Colchester, CO2 9ES

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

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**7.4 Case Officer: Mark Russell      Due Date: 22/04/2014**

**MINOR**

**Site:**                    **25 John Kent Avenue, Colchester, CO2 9ES**

**Application No:** **142134**

**Date Received:** 25 February 2014

**Agent:**                Mr Peter Tyler

**Applicant:**          Mr R Lewis

**Development:**      Extension to existing dwelling and associated alterations to create an additional attached dwelling. Resubmission of 110346.

**Ward:**                 Shrub End

**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 a former employee of Colchester Borough Council.

## **2.0 Synopsis**

2.1 The key issues explored below are the effect on the built form of Shrub End estate and on neighbouring residential amenity.

2.2 It is held that all matters are satisfied, as they were at the time of Planning application 110346 and approval is recommended.

## **3.0 Site Description and Context**

3.1 The site is in a gap to the left of 25 John Kent Avenue, within an area of same era housing (1950s) on the Shrub End estate.

## **4.0 Description of the Proposal**

4.1 The proposal is for a new dwelling to be attached to an existing one, which will also be extended. This proposal is different to 110646 in that it will have an extra bedroom.

## **5.0 Land Use Allocation**

5.1 Residential

## **6.0 Relevant Planning History**

- 6.1 112010 - Extension to existing dwelling and associated alterations to create an additional attached dwelling. Resubmission of 110346.
- 6.2 110346 - Extension to existing dwelling and associated alterations to create an additional attached dwelling. Approved 14<sup>th</sup> April 2011

## **7.0 Principal Policies**

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 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  
TA5 - Parking
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity  
DP12 Dwelling Standards  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
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:  
  
n/a
- 7.5 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:  
Backland and Infill  
Extending Your House?  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

- 8.1 Environmental Control requested the standard demolition and control advisory informative.

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 None 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 development shows sufficient space for two spaces per dwelling (5.5 metres x 2.9 metres), but this has not been explicitly set out on the submitted plans. This will be secured by condition.

## **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**

### Design and Layout

15.1 The proposal is effectively an amendment to an already approved scheme. The main difference is an extra bedroom, which has little effect on the street- scene, and a proposed bay, which in design terms can be seen as an improvement.

15.2 In all other respects the scheme is as before and is spatially acceptable in terms of amenity space and so on.

### Residential Amenity

15.3 As with the 2011 application, there are no identifiable issues. No issues of loss of light or of 45 degree outlook pertain to the proposal. The proposed Juliet balcony does not cause undue overlooking.

## Parking

- 15.4 As mentioned above, it is possible (just) to accommodate two spaces per dwelling, but this will need to be carefully shown on plan post permission. The arrangement is a little tight, and the new bay will make it tighter. However, this is not reason enough to refuse the application.

## Other Matters

- 15.5 Given that the dwelling is slightly increased in size, and in the interests of residential and visual amenity (for example the possibility of a side dormer), it is now held to be acceptable to remove Permitted Development Rights.

## **16.0 Conclusion**

- 16.1 The proposal, as before, is acceptable and is recommended for approval.

## **17.0 Recommendation**

- 17.1 APPROVE subject to the following conditions

## **18.0 Positivity Statement**

- 18.1 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.

## **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 approved shall comply in all respects with the submitted drawings, un-numbered, received 23rd February 2011.

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

### 3 - Non-Standard Condition/Reason

Prior to the occupation of the dwelling hereby approved the applicants shall submit a scaled plan to the Local Planning Authority showing four individual parking spaces (two for each dwelling). Such drawing shall be agreed in writing by the Local Planning Authority and the spaces shown shall be retained at all times clear of any obstruction.

Reason: To avoid unsatisfactory carriage-way parking in the interests of highway safety.

#### 4 - ZDC - 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.



**Application No:** 142131

**Location:** Haye Yard, Upper Haye Lane, Fingringhoe, Colchester, CO5 7AB

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

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**7.5 Case Officer: Simon Osborn**

**Due Date: 21/04/2014**

**MINOR**

**Site:** Haye Yard, Upper Haye Lane, Fingringhoe, Colchester, CO5 7AB

**Application No:** 142131

**Date Received:** 24 February 2014

**Agent:** Mr Robert Pomery

**Applicant:** Mr Kenneth Papworth

**Development:** Erection of single dwelling in place of Mobile Home Builders Yard and Scrapyard

**Ward:** Pyefleet

**Summary of Application:** Refusal

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

1.1 This application is referred to the Planning Committee by the planning officer in view of the general level of public support toward the removal of the commercial uses on the site and an improvement to the appearance of the site if planning permission were to be granted for the proposed new dwelling. However, whilst there are some potential long-term benefits, the application is recommended for refusal not least because the grant of planning permission for a new dwelling in the countryside would usually be considered as contrary to policy.

## **2.0 Synopsis**

2.1 The application is for a new dwelling to replace existing uses operating on the site. The report considers the proposal in the light of national and local planning policy and in relation to the planning history of the site. The application site has lawful commercial use rights and is of a "messy" appearance. The report acknowledges that clearance of the site and the removal of the commercial uses would be of local benefit. However, on balance, this is not considered to be sufficient to warrant the grant of planning permission for a new dwelling, as an exception to the usual policies of restraint in the countryside.

## **3.0 Site Description and Context**

3.1 The application site is a rectangular parcel of land measuring about 70m (road frontage), with an average depth of 30m. It is positioned on the south side of Upper Haye Lane, a Protected Lane that serves a small scatter of dwellings about a mile to the west of the village centre of Fingringhoe. Much of the site is covered by buildings (including an unauthorised residential caravan), vehicles and materials associated with the applicant's business. There are two points of vehicular access onto the site.



## **4.0 Description of the Proposal**

- 4.1 The application proposes the removal of the mobile home from the site and all building materials, scrap vehicles and some of the existing buildings and containers. A building used for the keeping of pigeons is to be retained, which lies adjacent to Upper Haye Lane on the site's northern boundary. The application proposes a single dwelling of one storey on the site. This is to be located centrally on the site, with 2 bedrooms, measuring approximately 17m by 8.5m with a ridge height of 5.5m. The design is traditional in appearance, and seeks to resemble a low barn or utilitarian agricultural building. The external materials follow this theme being black feather edged boarding, red brick and clay pantiles. The westernmost of the two access points would be closed off and replaced with a new native hedgerow.

## **5.0 Land Use Allocation**

- 5.1 Countryside outside settlement boundary  
Protected Lane

## **6.0 Relevant Planning History**

- 6.1 87/2188 – outline application for one dwelling, refused 1988
- 6.2 110274 – continued stationing of mobile home for 3 years, refused April 2011
- 6.3 110275 – certificate of lawfulness for existing use of land as builders yard, for storage of reclaimed materials, storage and renovation of vintage tractors and cars and for the housing of pigeons, refused April 2011
- 6.4 121302 – storage of building equipment, storage and/or sale of building materials, storage and/or restoration and/or breaking of tractors and other motor vehicles, storage and/or sale of scrap arising from use, storage and/or restoration of furniture, manufacture of concrete slabs, keeping of pigeons and hens as a hobby, application withdrawn April 2013
- 6.5 An enforcement notice was issued on 17 April 2012 alleging various unlawful commercial uses of the site and the stationing of a mobile home for residential occupation. The Inspector's decision made in October 2012 found that storage, vehicle restoration and breaking and the keeping of pigeons as a hobby were all to be considered lawful uses. The stationing of a mobile home for residential use was not lawful. The Inspector also considered whether or not planning permission should be granted for the residential use under ground (a) of the appeal, but held that this should fail. The Inspector also considered under ground (g) of the appeal that the period of compliance to cease the residential use and removal of the mobile home should be 12 months.

## **7.0 Principal Policies**

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 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  
ENV1 - Environment  
ENV2 - Rural Communities
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity  
DP9 Employment Uses in the Countryside  
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  
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  
Open Space, Sport and Recreation  
The Essex Design Guide

## **8.0 Consultations**

- 8.1 ECC Highways did not raise an objection subject to standard conditions relating to the provision of a pedestrian visibility splay, retention of parking facilities, etc.
- 8.2 Environmental Protection advised that a Phase One contaminated land assessment should be submitted in view of the past use of the site and its proposed use as a single dwelling.

### 8.3 Spatial Policy recommended refusal of the application on the following grounds:

“The Development Plan consists of the Adopted Core Strategy, Site Allocations and Development Policies DPDs. In accordance with policies SD1 (Sustainable Development Locations), H1 (Housing Delivery) and ENV1 (Environment) development within the Borough is directed to sites within existing settlement development boundaries. This is a remote site within the countryside and development would be contrary to the spatial strategy set out in the aforementioned policies. Paragraph 55 of the NPPF states that isolated new dwellings in the countryside should be avoided unless there are special circumstances such as: the essential need for a rural worker to live permanently at or near their place of work in the countryside; or where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or the exceptional quality or innovative nature of the design of the dwelling. Such a design should: be truly outstanding or innovative, helping to raise standards of design more generally in rural areas; reflect the highest standards in architecture; significantly enhance its immediate setting; and be sensitive to the defining characteristics of the local area.

The dwelling is not needed for a rural worker and whilst there is a lawful use on the site there is no demonstrable need for a worker to live on the site. A dwelling on this site would not relate to a heritage asset, nor is the design exceptional or innovative. The Planning Statement explains that the third point is relevant as the proposal would replace the existing uses on the site and thus result in a visual improvement. Whilst an enhancement to the immediate setting of a site could be an exception to the presumption against residential development in the countryside, paragraph 55 of the NPPF uses the word ‘and’, which makes it clear that this exception only applies where the development would also reuse redundant or disused buildings. This is not the case for this proposal and so whilst it is accepted that the proposal would improve the immediate setting this is not sufficient justification to support a proposal that is clearly contrary to the development plan and the NPPF. Furthermore, the Planning Statement explains that the applicant makes his living from the yard and so I am concerned that if this application is approved the existing commercial uses would remain or expand to a nearby site. I note that the Inspector states in paragraph 50 of the appeal decision into the enforcement notice that: “I conclude that the use of the site for the stationing of a mobile home and lorry back occupied as a residential unit has harmful implications for national and local objectives of sustainable development. I therefore find this component of the mixed use to be contrary to CS Policies SD1 and TA1, DP Policy DP1 and the relevant provisions of the NPPF.” Another consideration is the impact on the protected lane. This was referred to in the appeal decision and the Inspector concluded that residential use would materially increase the amount of traffic on the protected lane, contrary to Policy DP21 (Nature Conservation and Protected Lanes). Whilst it is accepted that there is currently a commercial use on this site residential use would lead to numerous trips back and forth throughout the day.”

8.4 Natural England advised that the proposal, if undertaken in strict accordance with the details submitted, is not likely to have a significant effect on the interest features for which the Abberton Reservoir, Colne Estuary and the Essex Estuaries have been classified. Natural England therefore advised that the LPA is not required to undertake an Appropriate Assessment to assess the implications of this proposal on the site's conservation objectives. In addition, Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which the Abberton Reservoir and Colne Estuary SSSIs have been notified. Natural England therefore advises that this SSSI does not represent a constraint in determining this application.

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 agree that providing the existing mobile home and various outbuildings associated with the scrap and builders yard are all removed that the proposed single dwelling will enhance the area. However the proposed dwelling is outside of the village envelope and the Parish Council do not wish to set a precedent by approving development and therefore look to the professional advice of the planning officers whether this development may be permitted.

## **10.0 Representations**

10.1 8 representations of support were received on the grounds that the existing use is an eyesore and proposed dwelling will improve the appearance of the area.

10.2 One representation of objection was received and raised the following issues:

1. Ribbon development along Upper Haye Lane would destroy its character
2. Further development will increase traffic disturbing farm animals and to the detriment of the road surface
3. The site is outside the village envelope and could set an adverse precedent.

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 application makes provision for a minimum of two off-street parking spaces to be provided on site in accordance with the Council's adopted standards.

## **12.0 Open Space Provisions**

12.1 There is no requirement for any public open space to be provided for an application of this size.

### **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. However, the application follows upon enforcement proceedings and the application is recommended for approval only on the basis of betterment that requires a Planning Obligation be sought via Section 106 (S106) of the Town and Country Planning Act 1990. A draft Unilateral Undertaking was put forward (just prior to drafting this report) if planning permission is granted, to include the following:

- Contributions towards Open Space, Sports and Recreation Facilities and Community Facilities (amounts unspecified)
- New Dwelling to be completed within 18 months of commencement
- To remove the mobile home following completion of the new dwelling
- Not to occupy the new dwelling unless and until all building equipment, plant, machinery, materials, tractors and other motor vehicles, scrap, furniture and concrete products have been removed, the western access closed and a planting scheme implemented.

14.2 The draft Unilateral Undertaking as submitted is not acceptable because the contribution amounts are not specified and has not been checked by the Legal Department. Any further progress on this will be reported to the Planning Committee at its meeting.

### **15.0 Report**

#### Policy Principle

15.1 The application site is outside of settlement boundaries as defined on the adopted LDF Proposals Map. Core Strategy Policy ENV1 seeks to protect land outside of settlement boundaries and Policies SD1 and H1 seek to ensure that new housing will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy. Countryside locations such as Haye Yard do not feature on the Settlement Hierarchy. The Spatial Policy Team commented: “This is a remote site within the countryside and development would be contrary to the spatial strategy set out in the aforementioned policies”.

15.2 Paragraph 55 of the NPPF states that isolated new dwellings in the countryside should be avoided unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or,
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or,

- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or,
- the exceptional quality or innovative nature of the design of the dwelling.

15.3 In relation to the first, second and fourth bullet points (above), the applicant is not an agricultural worker, the proposal does not relate to a heritage asset, and the proposed building is not of exceptional quality or an innovative nature. In relation to the third bullet point (above), the proposal does not re-use a redundant or disused building, although it will result in an improvement in the appearance of the countryside within the immediate setting. In strict terms therefore, the proposal for a new dwelling in this location does not satisfy this paragraph in the NPPF nor the aforementioned locally adopted policies.

#### Enforcement Appeal

15.4 As referred to in paragraph 6.5 of the Planning History section of this report, an enforcement appeal in relation to this site was heard in 2012. The Inspector decided that storage, vehicle restoration and breaking and the keeping of pigeons as a hobby were all to be considered lawful uses. In regard to the storage use this was held to include storage of building equipment, plant and machinery, tractors and other motor vehicles and the scrap arising from these. The stationing of a mobile home and its residential use was not considered lawful.

#### Design and Layout

15.5 The proposed new dwelling will be of single storey and seeks to resemble a low barn or utilitarian agricultural building. The external materials proposed include black feather edged boarding, red brick and clay pantiles. The proposed building measures approximately 17m by 8.5m with a ridge height of 5.5m. Internally there are 2 bedrooms. The proposed dwelling will be located centrally on the site.

15.6 The application also proposes that the westernmost of the two access points would be closed and replaced with a new native hedgerow. The application will remove a number of dilapidated buildings from the site in addition to the old vehicle bodies and other scrap material. However, a large pigeon loft is to remain. This is a substantial structure located adjacent to the lane and at the time of the appeal hearing held up to 150 racing pigeons for hobby purposes. There is a hedgerow between the building and the lane, albeit with gaps in, and the structure is not therefore totally hidden from public view particularly during winter months.

#### Traffic Generation

15.7 The appeal Inspector considered whether or not planning permission should be granted for the retention of the mobile home for residential use under ground (a) of the 2012 appeal and held that planning permission should not be granted primarily on the grounds that the travel patterns associated with a residential use in this location are not sustainable and contrary to planning policy. A new dwelling in this location will generate trips (including for purposes related to shopping, employment, education, health and leisure) that would of course materially increase the amount of traffic on the protected lane. The planning agent argues that the commercial uses that currently prevail on the site would normally be refused planning permission, particularly as the site lies on a Protected Lane. This is fair comment; Policy DP21 in

the Development Policies states that Protected Lanes of historic and/or landscape value will be protected from development that would adversely affect their physical appearance or would give rise to a material increase in the amount of traffic using them. The agent also argues that relinquishing the lawful uses permissible on the site, in favour of a modest residential property would secure a permanent reduction of vehicle movements over the Protected Lane. No comparison of the vehicular trip rate between residential use and commercial use has been submitted with the application in evidence of this. However, your planning officer agrees that the lawful commercial use of the site has the *potential* to create a greater number of vehicle movements than those associated with a modest dwelling. Whether or not this will happen (if planning permission is refused) is less clear.

#### Land Contamination and Drainage

- 15.8 The Environmental Protection Team has advised that a Phase One contaminated land assessment should have been submitted in view of the past use of the site and its proposed use as a single dwelling. The NPPF requires that new development should not contribute to, be put at unacceptable risk from, or be adversely affected by, unacceptable levels of pollution and that where appropriate, remediation should be carried out. The effects of pollution on health should be taken into account. The site must be suitable for its new use. The uses that have taken place in the past, including car and tractor breaking, are likely to require remediation works to bring the site into an appropriate condition for future residential occupiers of the site. The Council normally encourage the submission of this initial assessment before planning permission is granted, firstly to ensure that the land can be made safe for future residential occupants and secondly, because it gives applicant the opportunity to consider the costs involved. The Environmental Protection Team has advised that these costs are unknown, but may be substantial.
- 15.9 The new National Planning Policy Guidance advises that applications for development relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment. No such assessment has been provided.

#### Planning Obligations

- 15.10 The planning agent in his original submission acknowledged that the proposal will be qualifying development for contributions to public open space and recreational facilities, but noted that whilst they are likely to be capable of being funded by the applicant they could also challenge viability of the project. As noted in Section 14 of the report, a draft unilateral undertaking has been submitted. However, at the time of the preparation of this report, the amount of contribution proposed is unspecified.

15.11 The draft Unilateral Undertaking also proposes all building equipment, plant, machinery, materials, tractors and other motor vehicles, scrap, furniture and concrete products will be removed prior to the occupation of the new dwelling. If planning permission is granted, it is essential that the clearance of the site is secured together with the complete cessation of the commercial uses. It should be pointed out under the terms of the draft undertaking submitted this would not immediately follow the grant of planning permission, as the applicant would normally be permitted 3 years in which to make a start to the works and the new dwelling may not be ready for occupation until some time after this (up to 18 months later as proposed by the draft undertaking).

#### A Case for Betterment?

15.12 The site as it exists today is without question a local “eyesore” and the commercial uses referred to in paragraph 15.4 above have in effect been authorised by the Inspector on appeal in 2012. This application offers the opportunity to improve the physical appearance of the site and to remove the commercial uses. The majority of the public representations that have been received to this proposal support the application.

15.13 In visual terms it is undeniable that a general clearance of the site will be an improvement. Public views of the site, however, are mainly limited to those from the Protected Lane within the close vicinity of the site. The Protected Lane is of narrow carriage width for most of its length and is likely to be used by walkers as well as motorists. There are also views of the site from Upper Haye Lane to the south-west of the site, although these tend to be more distant glimpses through gaps in the roadside hedgerow. The application does not propose the removal of the large pigeon lofts, which can also be seen through gaps in the hedgerow.

15.14 A purely commercial use of the site, in accordance with the current lawful use, may in the future lead to an increase in the number of vehicles using the Protected Lane. It is accepted that the Local Planning Authority has no control over traffic generation and the intensity of use by future operators of the site who used the site for its authorised commercial purposes.

15.15 If planning permission were to be granted for a new dwelling in this location, it would have to be as an exception to the Council’s adopted policies, which seek to ensure that new residential development is not within relatively remote parts of the countryside. There are of course many commercial sites in countryside locations throughout the Borough. Granting planning permission for this site need not set a precedent for other commercial sites to be converted to residential use as each site and each application falls to be considered on its own merits. If planning permission were granted for residential use on this site it would in part be because of concerns of additional traffic being generated along a Protected Lane if the existing commercial use were to remain. Notwithstanding this, the recommendation of the planning officer is for refusal.



15.16 There is a degree of uncertainty with regard to the viability of the proposal and the benefits that would accrue were planning permission to be granted. The application has been submitted without a contaminated land assessment, nor any justification that discharge of foul drainage to a septic tank is appropriate. There are potential costs involved with bringing the land to a condition suitable for residential occupation. The agent acknowledged that this proposal would normally qualify for contributions toward public open space and community facilities, but added they could challenge the viability of the project. However, at the time of drafting this report the amount of contribution proposed had not yet been specified within a Unilateral Undertaking.

## **16.0 Conclusion**

16.1 This is a remote site within the countryside and the development for a new dwelling would be contrary to the NPPF and adopted planning policy. Additionally, there is some further concern that in the absence of a contaminated land assessment and an estimate of the costs of remediation that the proposal put forward may not be fully viable. The officer recommendation in this case is therefore for refusal. However, the report also recognises that there may be some long-term benefits resulting from the proposal. If Members were minded to grant planning permission, it is recommended that a decision on the application should be deferred so as to allow the applicant to provide the following:

- (a) phase one contaminated land assessment with an estimate of the likely cost implications for remediation;
- (b) clarification of the planning obligations proposed; and
- (c) a viability report to demonstrate the viability of the proposal taking the former provisions into account.

## **17.0 Recommendation**

17.1 REFUSE planning permission for the reasons set out below.

## **18.0 Positivity Statement**

18.1 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.

## **19.0 Reason for Refusal**

### **1 - Non-Standard Refusal Reason**

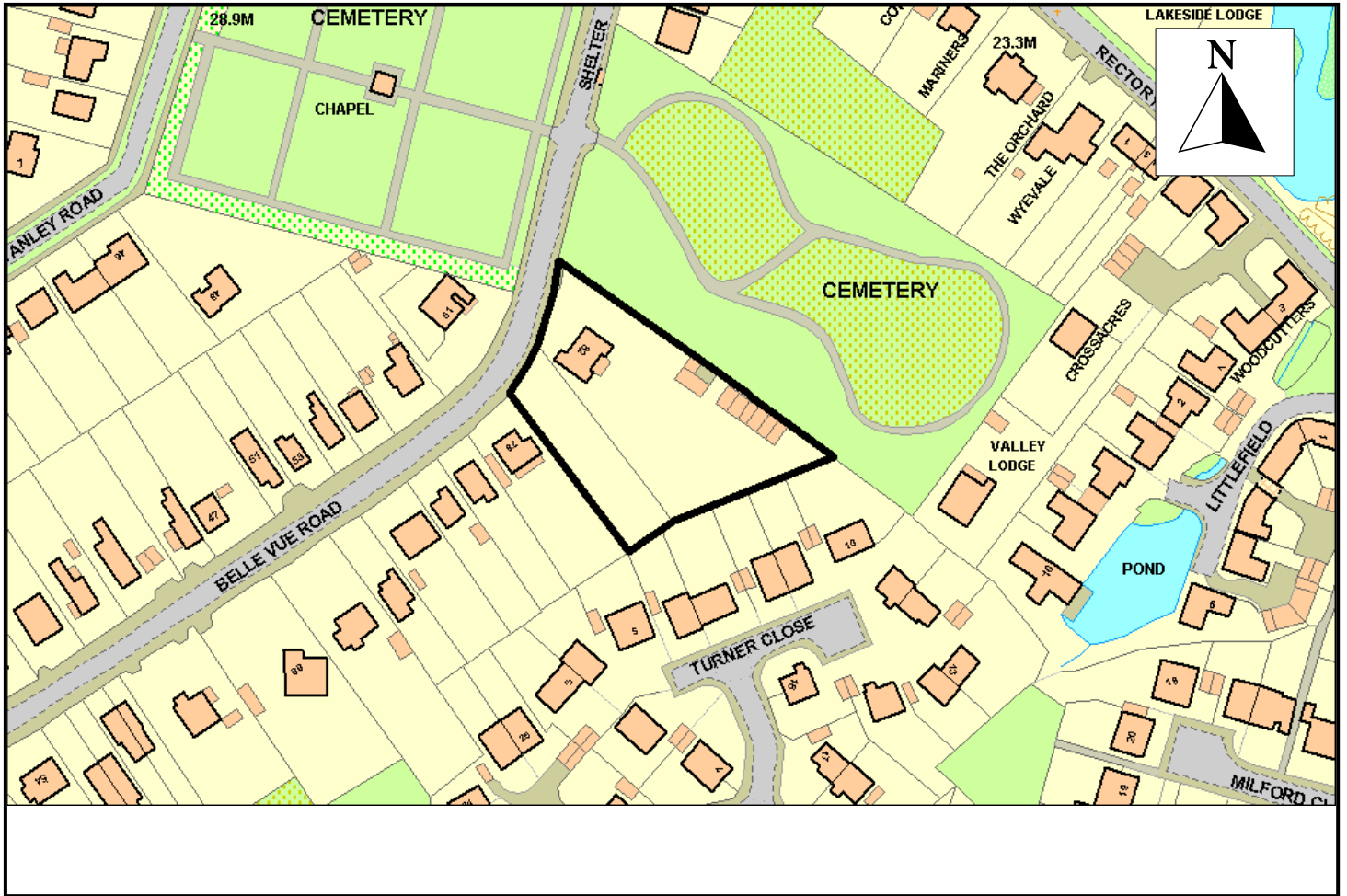
The Development Plan consists of the Adopted Core Strategy, Site Allocations and Development Policies DPDs. In accordance with policies SD1 (Sustainable Development Locations), H1 (Housing Delivery) and ENV1 (Environment), development within the Borough is directed to sites within existing settlement development boundaries. Paragraph 55 of the NPPF also states that isolated new dwellings in the countryside should be avoided unless there are special circumstances, which include where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.

In this instance, the proposed new dwelling is situated on a remote site within the countryside and development would be contrary to the spatial strategy set out in the aforementioned policies. It is acknowledged that the proposal for a new dwelling is on an untidy site relating to its lawful use for storage, restoration and breaking of vehicles, and the keeping of pigeons as a hobby, and that the relinquishing of the commercial uses in favour of a new dwelling would lead to an improvement in the appearance of the site. However, whilst there would be an enhancement to the immediate setting of the site, the paragraph 55 exception only applies where the development would also reuse redundant or disused buildings. This is not the case for this proposal and so whilst it is accepted that the proposal would improve the immediate setting this is not sufficient justification to support a proposal that it clearly contrary to the development plan and the NPPF.

It is further acknowledged that relinquishing of the lawful commercial uses would secure a future reduction in the commercial traffic using Upper Haye Lane, which is a Protected Lane. Policy DP21 in the Development Policies states that Protected Lanes of historic and/or landscape value will be protected from development that would adversely affect their physical appearance or would give rise to a material increase in the amount of traffic using them. However, this reduction in commercial traffic would have to be balanced against the number of vehicles using the Lane in connection with the proposed residential use. The travel patterns associated with a residential use in this location are not sustainable and contrary to planning policy.

The NPPF also requires that new development should not be put at an unacceptable risk from, or be adversely affected by unacceptable levels of pollution and that where appropriate, remediation should be carried out. No such assessment has been submitted with the application, or an assessment with regard to the implications to the water environment resulting from connection other than to a public sewage treatment plant. In the absence of such assessments the Local Planning Authority cannot be certain that the proposed residential dwelling would be appropriate and viable. Furthermore, in the absence of a legal mechanism to secure contributions toward the cost of the provision of public open space, sport and recreation and community facilities the proposal is contrary to Adopted Core Strategy Policy SD2 and Development Policy DP3 and Colchester Borough Council Supplementary Planning Document Provision of Community Facilities Adopted 28th September 2009 (and updated July 2013) and Colchester Borough Council Supplementary Planning Document Provision of Open Space, Sport and Recreational Facilities Adopted 24 July 2006.

Accordingly, it is not appropriate to grant a planning permission that would be an exception to the aforementioned planning policies.



**Application No:** 140208

**Location:** 82 Belle Vue Road, Wivenhoe, Colchester, CO7 9LD

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

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**7.6 Case Officer: Simon Osborn****MINOR****Site:** 82 Belle Vue Road, Wivenhoe, Colchester, CO7 9LD**Application No:** 140208**Date Received:** 15 January 2014**Applicant:** Vaughan & Blyth (Builders)Limited**Development:** Proposed demolition of existing two bedroom bungalow and construction of 1 x 2 bedroom and 5 x 3 bedroom detached bungalows and associated garages.**Ward:** Wivenhoe Quay**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 has been called-in by Councillor Liddy in accord with the reason given by Wivenhoe Town Council:

“An overdevelopment of the site and not in keeping with the street scene. Wivenhoe Town Council request that you refer to the inspectorate’s recent documentation regarding the refusal of Innisfree on De Vere Lane, as this is land grabbing, and not in keeping with the large gardens in the surrounding houses. The impact on neighbours is high, as currently bordering on open land, this will present neighbours with a loss of privacy. WTC are highly concerned on the impact of road safety. This as the development is on a bend, and there is a drive opposite. The access road on the development is not wide enough. The proposal has three very close access points, which in itself is dangerous. The proposed development is on land that has a noticeable slope next to the Old Cemetery which now acts as a local nature reserve. The dense development would mean there was no longer a continuous wildlife corridor connecting the Old Cemetery with the series of large gardens behind Belle Vue Road. This land is prone to flooding and believe that the environmental agency report should be noted. This is a loss of permeable land and building here will have a severe impact on the nature reserve as the ground will become waterlogged. There are many concerns regarding the damage that could be caused by the building works on a 200 year old cemetery wall owned by Wivenhoe Town Council, with heavy plant machinery working very close to the wall that will have no sustainable foundations. Wivenhoe Town Council are also concerned that the plans show insufficient visitor spaces and therefore do not comply with minimum parking standards. Although the drawings show bungalows there is clearly enough head room in the loft to allow for conversions at a later state, this could then add to the overall occupancy of the dwellings and give rise to overlooking issues for neighbouring properties. The proposed building development, once again, provides no affordable housing, and no regard whatsoever to the town’s infrastructure.”

## **2.0 Synopsis**

- 2.1 The key issues explored below are the impact of the proposal upon the character of the area, highway safety and local residential amenity, with regard to the Council's adopted planning policies and also to the adopted Backland and Infill SPD. The report considers that the proposal is broadly in compliance with planning policy and recommends approval is granted subject to conditions.

## **3.0 Site Description and Context**

- 3.1 The application site lies immediately to the south of Wivenhoe Cemetery, within a predominantly residential area. Belle Vue Road can be described as a mature residential area, comprising primarily detached houses of various design predominantly from the C20th, with a few older dwellings closer to the town centre. Most properties have generous-sized rear gardens and are well landscaped. The plot subject of this application comprises a bungalow with an extensive garden, now much overgrown, and there are a few old "sheds" on the NE boundary adjacent to the cemetery. The land generally falls away from the road, with a further steep drop to the rear gardens of dwellings in Turner Close. The latter comprises a more close-knit form of development from the late 1970s. The application site is heavily overgrown to the rear; none of the existing planting on the site is of merit in itself, although the hedgerow planting on the rear boundary with the Turner Close properties has some amenity value for these properties.

## **4.0 Description of the Proposal**

- 4.1 The application proposes the demolition of the existing bungalow and other rear buildings on the site, and the construction of six new dwellings and detached garages. These will be set around a new cul-de-sac running at a right angle to Belle Vue Road. A Tree Survey and Arboricultural Impact Assessment, a Phase 1 Desk Study and Risk Assessment relating to land contamination, and a Phase 1 Habitat Survey were submitted to accompany the planning application.

## **5.0 Land Use Allocation**

- 5.1 Predominantly residential

## **6.0 Relevant Planning History**

- 6.1 None

## **7.0 Principal Policies**

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

- 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
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 Design and Amenity  
DP12 Dwelling Standards  
DP13 Dwelling Alterations, Extensions and Replacement Dwellings  
DP16 Private Amenity Space and Open Space Provision for New Residential Development  
DP19 Parking Standards
- 7.4 Regard should also be given to the following adopted Supplementary Planning Guidance/Documents:  
Backland and Infill  
Community Facilities  
Vehicle Parking Standards  
Open Space, Sport and Recreation  
The Essex Design Guide  
Wivenhoe Town Plan and Executive Summary

## **8.0 Consultations**

- 8.1 ECC Highways Authority stated no objection subject to conditions relating to the provision of 2.4m by 70m vehicle visibility splays; 1.5m by 1.5m pedestrian visibility splays; the parking and turning areas shown being provided and retained; no unbound material used for the first 6m of the vehicular access; and the submission of a sustainable transport information package. Two informatives were also recommended relating to obtaining the prior agreement of the Highway Authority for all works affecting the highway, and that the developer take steps to provide sufficient turning and offloading facilities for delivery vehicles within the limits of the site, together with adequate parking for site employees.
- 8.2 Environmental Protection: The Phase 1 Desk Study and Risk Assessment Report identified some potential sources of contamination and recommends intrusive investigation and monitoring of ground gases be undertaken to further characterise the risks. Environmental Protection agree this is appropriate, but consider if these works are undertaken and the findings acted upon, the site could be made suitable for the proposed use. Therefore recommend inclusion of standard contaminated land conditions.
- 8.3 Landscape Officer; Agreement to the landscape aspect of the application subject to condition requiring full details of landscaping proposals (standard condition ZFB) to be submitted and agreed.

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 Wivenhoe Town Council commented:**

“An overdevelopment of the site not in keeping with the street scene. Wivenhoe Town Council request that you refer to the Inspectorate's recent documentation regarding the refusal of Innisfree on De Vere Lane, as land grabbing, and not in keeping with the large gardens in the surrounding houses.

The impact on neighbours is high, as currently bordering on open land, this will present neighbours with a loss of privacy.

WTC are highly concerned on the impact of road safety. This proposal is on a major bus route, which is also a school bus route, on an already congested road. The development is on a bend, and there is a drive opposite. The access road on the development is not wide enough. The proposal has three very close access points, which in itself is dangerous.

The proposed development is on land that has a noticeable slope next to the Old cemetery which now acts as a local nature reserve. The dense development would mean there was no longer a continuous wildlife corridor connecting the Old Cemetery with the series of large gardens behind Belle Vue Road

This land is prone to flooding and WTC believe that the Environment Agency report should be noted. This is a loss of permeable land and building here will have a severe impact on the nature reserve as the ground will become waterlogged.

There are many concerns regarding the damage that could be caused by the building works on a 200 year old cemetery wall owned by Wivenhoe Town Council, with heavy plant machinery working very close to the wall that will have no substantial foundations.

Wivenhoe Town Council are also concerned that the plans show insufficient visitor spaces and therefore do not comply with minimum parking standards.

Although the drawings show bungalows, there is clearly enough head room in the loft to allow for conversions at a later date, this could then add to the overall occupancy of the dwellings and give rise to overlooking issues for neighbouring properties.

The proposed building development once again provides no affordable housing, and no regard whatsoever to the town's infrastructure.

Please see the objections on the attached notes re-habitat and wildlife:-

Chris Gibson has indicated that although there is no badger set on the proposed development, there is evidence of badgers being present and using the land.

Wivenhoe Town Council have asked for this to be called in and have asked a Wivenhoe Borough Councillor.”

## **10.0 Representations**

### **10.1 Seventeen representations have been made against the proposal, with regard to the following:**

1. The proposed high density is at odds with the character of the surrounding area. This sets an adverse precedent.
2. The proposed access is on a dangerous bend in a road that is already well-used by buses, motorists, pedestrians and funeral cars
3. Insufficient parking and visitor spaces

4. Road is not sufficiently wide for 2 cars to pass and there is insufficient turning space
5. Neighbouring cemetery is a nature reserve and this will be compromised
6. Wivenhoe has insufficient community facilities to accommodate more housing and this proposal does not benefit the community
7. Loss of privacy particularly resulting from drop in land levels to Turner Close
8. Is there sufficient drainage to cope with variations in ground levels and lower ground level of Turner Close properties?
9. No trees or evergreen bushes should be removed along the boundary with Turner Close properties and any new planting should be 6 to 8 feet high from outset
10. Disruption and noise associated with construction
11. A condition should be imposed to prevent alteration to the height of the roof of plots 3 and 4

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

### **11.0 Parking Provision**

- 11.1 Policy DP19 requires a minimum of 2 car parking spaces for each dwelling of two or more bedrooms, in addition to 0.25 spaces per dwelling for visitors. A parking space can include a garage, where it has minimum internal dimensions of 7m by 3m. Each of the six dwellings proposed will have a garage of these dimensions, plus at least one other parking space. Plots 1 and 6 on the Belle Vue Road frontage provide at least one additional off-street parking space, as does plot 4 at the rear of the site. Plots 2, 3 and 5 provide the minimum requirement. A single visitor parking space is provided toward the rear of the site to accommodate this minimum requirement.

### **12.0 Open Space Provisions**

- 12.1 There is no requirement for public open space provision for this site. The developer will provide a commuted sum towards public open space provision as part of a Unilateral Undertaking in accordance with the Council's adopted 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

### Principle of Development

15.1 The site lies within the Wivenhoe settlement limits, within a predominantly residential area, also adjacent to a cemetery owned by the Town Council. Policies SD1 and H1 therefore identify this as a suitable location in principle for new development. The Council has adopted the Backland and Infill SPD (revised December 2010), which sets out key principles for considering new backland and infill proposals. This is a key document to the consideration of this proposal, which can be given material weight in addition to the Council's adopted policies. The SPD notes that many past examples of backland development have resulted in unattractive piecemeal development, with multiple driveways serving different properties. The objectives of the guidance are to ensure:

- Development is comprehensively planned
- Backland and infill development respect and reflect the character of the area
- Safe and attractive residential layouts are promoted
- Environmental and neighbour amenity impacts are minimized.

### Comprehensive Development

15.2 The site fronts onto Belle Vue Road, between a cemetery to the north and a line of frontage dwellings to the southwest, and backs onto the rear gardens of other properties in Turner Close. There is an existing bungalow on the site (No. 82) with land in between this bungalow and the nearest neighbour at no. 78. The rear gardens of No. 78 and other adjacent properties are not as deep as the application site and there is no reasonable prospect of further dwellings being granted there. It is fair therefore to regard the application site as a "stand-alone" site and its development would not isolate other potentially developable land parcels. The proposal for six dwellings off a cul-de-sac therefore can be considered comprehensive.

### Design and Layout

15.3 The proposal is for a total of six bungalows, five of 3-bedrooms each and one of 2-bedrooms. Two of these dwellings will front onto Belle Vue Road, each set back a similar distance from the pavement as existing dwellings in the vicinity (allowing for the curvature of the road) and served by driveways to either side. Between these two dwellings a new access is proposed with hedgerows to either side. This will serve four dwellings at the rear of the site, which are grouped around the turning head. Each dwelling will be provided with its own separate garage and additional parking space, and private amenity areas between 100 and 250 square metres in size (although the garden of the 2-bedroom bungalow on plot 5 is closer to 80 square metres).

- 15.4 A number of the representations received against the proposal refer to the density of the proposed development as inappropriate to the character of the area. The pattern of existing development on Belle Vue Road includes dwellings in very substantial plots, but there are also dwellings on far more modest plots. In Turner Close to the rear of the site, the pattern is for much tighter-knit development. One potential indication of overdevelopment relates to garden sizes. Policy DP16 sets out minimum standards for new development, including a minimum of 50 square metres for 2 bedroom dwellings and a minimum of 60 square metres for 3-bedroom dwellings, although the Backland and Infill SPD indicates that new infill dwellings may need to have garden sizes in excess of the minimum standards in order to reflect the size and shape of gardens in the area. The garden sizes of the proposed dwellings are smaller than those of many dwellings in Belle Vue Road, but they are also generally well in excess of the adopted minimum standards.
- 15.5 The comments from the Town Council refer to an appeal decision (reference 130233) where an application for a new dwelling in the rear garden of Innisfree was dismissed. The Inspector was concerned that the new dwelling would be closer to the road than its neighbours, with relatively limited space around it, and that the garden of Innisfree would also be significantly reduced. The Inspector concluded the proposal would appear cramped in relation to the spacious pattern of development in the area. In the instance of the current application, the two plots at the front of the site occupy a frontage onto the Belle Vue Road that is 35m wide. This compares favourably with the plot widths of most existing properties. These dwellings will be positioned a similar distance back from the carriageway of Belle Vue Road as other dwellings in the vicinity and have a good deal of space around them including a driveway to either side. It is considered that neither of these new dwellings will appear cramped or that they will adversely affect the character of the area. The four dwellings to the rear are grouped more tightly around the new access road and, it is accepted that this is not characteristic of the area in general. However, whilst this change is marked on plan, in reality it would really only be evident from an aerial perspective, rather than from a street view at the front of the site. The plots at the rear of the site, whilst being much more tightly grouped to the new access road, do provide amenity space for future occupiers well in excess of minimum standards for three of the plots and a little in excess for the smallest 2-bedroom dwelling.

#### Highway and Parking Issues

- 15.6 A number of the representations received against the proposal refer to highway safety issues and concern that insufficient car parking has been provided. However, the Highway Authority which is responsible for providing expert advice to the Council on highway safety issues does not object to the proposal subject to planning conditions. In relation to off-street parking provision, Policy DP19 requires a minimum of 2 car parking spaces to be provided for each dwelling of two or more bedrooms, in addition to 0.25 spaces per dwelling for visitors. A parking space can include a garage, where it has minimum internal dimensions of 7m by 3m. All of the six new dwellings will meet these adopted minimum standards, as they all have a garage of minimum size (which counts as 1 parking space) plus at least one other parking space. Plots 1 and 6 on the Belle Vue Road frontage and plot 4 at the rear of the site provide more than one additional space and a single visitor space is provided for the other three plots at the rear of the site.

## Impact on Neighbouring Properties

- 15.7 Each of the new dwellings proposed for the site is a single-storey bungalow, which therefore overcomes most of the potential neighbour amenity impacts associated with new 2-storey dwellings, although concerns of privacy have been raised by the occupants of properties in Turner Close. Land levels within the site are uneven, although they tend to drop away from the road and they continue to drop down to the Turner Close dwellings. A mixed species hedgerow currently grows along the intervening boundary and within the application site. In parts, such as behind 8 Turner Close, it includes a mix of laurel and evergreen hedgerow that can be retained as a visual screen. Elsewhere, it is a mix of deciduous and evergreen that either provides an incomplete screen or will be difficult to retain. The developer has therefore proposed an instant hedgerow between 2.5 and 3.0m in height is planted along most of this boundary to help secure the privacy of residents in Turner Close. A number of the representations have requested that a planning condition is imposed to prevent alterations to the roof forms of plots 3 and 4, so as to prevent overlooking from first floor windows. This is reasonable and it is recommended that such a condition be applied to all of the new dwellings.

## Ecology

- 15.8 An Extended Phase 1 Habitat Survey was carried out by an experienced ecologist and submitted with the application. This recommended that the scrub vegetation and scattered trees provide suitable habitat for nesting birds and that vegetation clearance should be undertaken during the period October to February to avoid the bird nesting season (or otherwise prior to commencement a check for nesting birds be undertaken by an experienced ecologist); and, that there is a limited suitable reptile habitat along the northeastern boundary, which should be cleared in a reptile friendly manner. No evidence of bats, badgers, newts or other protected species was found. The Standing Advice issued by Natural England suggests that planning permission can be issued on this basis with an informative on what to do if protected species are found during development.

## Trees

- 15.9 A Tree Survey and Arboricultural Impact Assessment was submitted with the application. There is a significant amount of vegetation within the site but there are no trees of any public significance. There is a large beech tree that overhangs the site from within the grounds of the adjacent cemetery. This was assessed to be in rapid decline and it was recommended that the tree be felled as restorative surgery is not a realistic proposition. The developer initially offered to remove the tree at their cost. Wivenhoe Town Council subsequently stated they wish the tree to remain in place and they will monitor it and obtain their own tree expert to examine the tree in question. The consultant has reaffirmed that the poor quality of the tree cannot be considered as a constraint upon development, but recommends if it is to be retained that the canopy of the tree be reduced away from the plot 4 dwelling. The Council's Arboricultural Officer has accepted these recommendations.

## Other Matters

15.10 The representations received have also referred to various other matters, including the lack of any affordable housing provision, drainage, potential disruption from construction traffic, an overflow pipe to a septic tank and potential damage to the wall of the cemetery. The site would require a minimum of ten new dwellings to be provided, before there would be a requirement for affordable housing provision, in accordance with the Council's adopted policies. It is accepted that new construction does inevitably result in local disruption, but the effects of this can be mitigated if works are undertaken in accordance with the Council's standard informative. An appropriate means of drainage would normally be considered under the Building Regulations. The location of an overflow pipe from a neighbouring property can be drawn to the attention of the developer, but ultimately is a private matter between the developer and the landowner, as would any damage to the wall of the cemetery.

## **16.0 Conclusion**

16.1 The site is within a predominantly residential area where further residential development is acceptable in principle subject to being in character and not having any significant adverse impacts. The two dwellings proposed on the Belle Vue Road frontage reflect the generally spacious character of the area. The four dwellings at the rear of the site are grouped more tightly together; nonetheless these will be less evident from a public perspective seen from Belle Vue Road and, all four dwellings more than meet adopted minimum standards for the provision of amenity space as well as providing adequate off-street parking. The proposal is for single-storey bungalows that will have no substantial adverse impacts upon neighbouring properties, although conditions will need to be imposed to secure the provision (and where possible retention) of a hedgerow to an appropriate height along the back boundary of the site adjacent to the rear gardens of properties in Turner Close.

## **17.0 Recommendation**

17.1 APPROVE subject to the following conditions

## **18.0 Positivity Statement**

18.1 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.

## 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 578/1B, 2, 3, 4, 5, 6, 7, 9A, the Arboricultural Drawing 3887-D, and the Landscape Plan drawing 01.

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

### 3 - Contaminated Land Part 1 of 4 (Site Characterisation)

No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been 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.

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

No works shall take place until 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 has been prepared and then submitted to and agreed, in writing, by 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.

#### 5 - 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,. 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

#### 6 - 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.

#### 7 -\*Validation Certificate

Prior to the first OCCUPATION/USE of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition INSERT.

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

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

Prior to occupation of the development, the new access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 70 metres to the north and 2.4 metres by 70 metres to the south west, 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.

#### 9 - Pedestrian Visibility Splays

Prior to the first use of the vehicular access to 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 thereafter be retained free of any obstruction at all times and 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.

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

Prior to occupation of the development the vehicular parking and turning facility, as shown on the submitted plan 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.

#### 11 - No Unbound Surface Materials

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

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

#### 12 - Non-Standard Condition/Reason

The vehicular parking spaces and the garages shown on the approved drawing shall be provided prior to the first occupation of each dwelling and thereafter retained solely for parking purposes.

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

#### 13 - Materials to be Agreed

No works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction 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.

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

#### 14 - Residential Code for Sustainable Homes (Part 1 of 2)

No works shall take place 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 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.

#### 15 - 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.

#### 16 - Site Levels Plan

No works shall take place until detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted and agreed, in writing, by the Local Planning Authority. The development shall thereafter be completed in accordance with the agreed scheme before the development is first occupied.

Reason: In order to allow more detailed consideration of any changes in site levels where it is possible that these may be uncertain and open to interpretation at present and where there is scope that any difference in such interpretation could have an adverse impact of the surrounding area.

#### 17 - \*Full Landscape Proposals TBA

No works shall take place until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and 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:

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE;
- CAR PARKING LAYOUTS;
- 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, SIGNS, LIGHTING ETC.);
- PROPOSED AND EXISTING FUNCTIONAL SERVICES ABOVE AND BELOW GROUND (E.G. DRAINAGE POWER, COMMUNICATIONS CABLES, PIPELINES ETC. INDICATING LINES, MANHOLES, SUPPORTS ETC.);
- RETAINED HISTORIC LANDSCAPE FEATURES;
- PROPOSALS FOR RESTORATION;
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND



PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND  
• IMPLEMENTATION TIMETABLES AND MONITORING PROGRAMS.

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.

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

No work shall commence on site until all trees, shrubs and other natural features not scheduled for removal on the approved plans, are safeguarded behind protective fencing to a standard to be agreed by the Local Planning Authority (see BS 5837). Notwithstanding any indication to the contrary on drawing no. 578/1B and the Landscape Plan drawing 01, the hedge identified as A001 and the trees identified as T003, 4, 5 and 8 (in the Tree Survey submitted with the application) on the southern boundary of the site shall also be protected in this way before works commence and for the duration of the construction period, unless otherwise agreed in writing by the Local Planning Authority. All agreed protective fencing shall be maintained during the course of all works on site. 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: In the interests of local residential amenity and to secure the privacy of adjoining occupiers.

#### 19 - Non-Standard Condition/Reason

The replacement instant laurel hedge shown in principle on the Landscape Plan drawing 01 shall be provided along the southern boundary of the application site within the first planting season following substantial completion of either the plot 3 or the plot 4 dwelling (whichever is completed soonest) and as soon as practicable after the removal of the existing hedge, unless otherwise agreed in writing by the Local Planning Authority. The hedge shall thereafter be permanently retained and maintained at a height not less than 2.5 metres above ground level. In the event that any part of the hedgerow (or its replacements) die, are removed, destroyed, fail to thrive or are otherwise defective, they shall be replaced during the first planting season thereafter to specifications to be agreed in writing by the Local Planning Authority. Any works agreed shall be carried out in accordance with BS3998.

Reason: In the interests of local residential amenity and to secure the privacy of adjoining occupiers.

#### 20 – 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.

## 21 – 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.

## 22 - Non-Standard Condition/Reason

The site shall be cleared in accordance with the recommendations of the Extended Phase 1 Habitat Survey, submitted with the planning application.

Reason: In the interests of ecology.

## 23 - Non-Standard Condition/Reason

Notwithstanding the provisions of Classes B and C 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), the dwellings as hereby permitted shall be single-storey and no first-floor windows or rooflights shall be installed to give light to the roof void of the dwelling, nor shall any first floor habitable accommodation be provided, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: To protect the privacy of adjacent dwellings.

## 24 - Non-Standard Condition/Reason

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 between the dwellings on plots 3 and 4 and the hedgerow along the southern boundary of the site, unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: To ensure that the boundary hedge is not adversely affected and to protect the privacy of adjacent dwellings.

## 25 - Non-Standard Condition/Reason

Notwithstanding the provisions of Article 3, Schedule 2, Part 1 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 additional windows or other openings shall be inserted in the rear elevations of the dwelling on plot 3, except in accordance with details which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: To avoid the overlooking of neighbouring properties in the interests of the amenities of the occupants of those properties.

## 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.

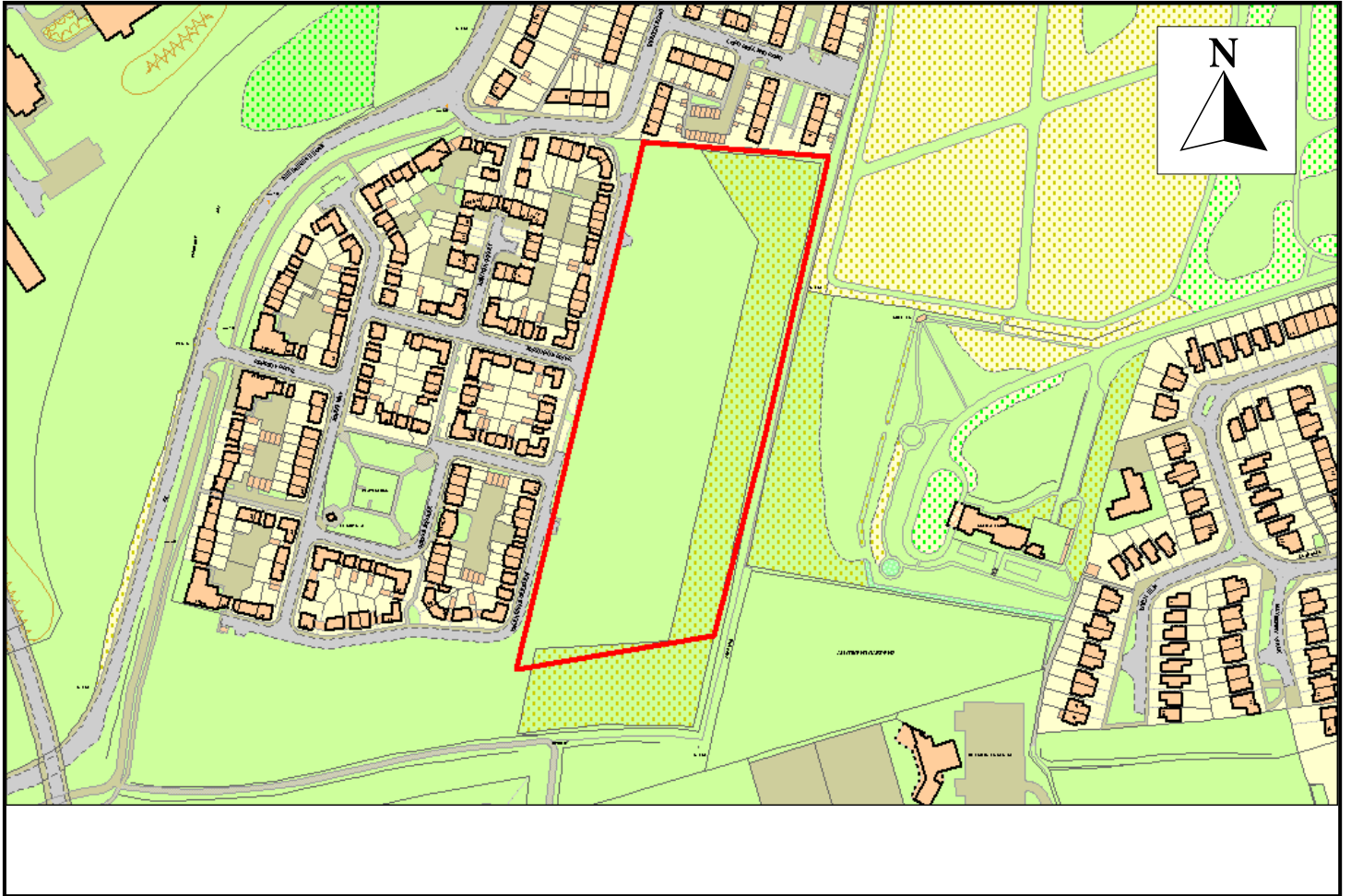
(2) All works affecting the highway should be carried out by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority and application for the necessary works should be made by initially telephoning 08456 037631.

### **(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) Steps should be taken to ensure that the Developer provides sufficient turning and off loading facilities for delivery vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

(5) If protected species are found during development the developer should seek the immediate advice of an experienced ecologist.



**Application No:** 142439

**Location:** Valentinus Crescent, Colchester

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

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**7.7 Case Officer: Alistair Day**

**Due Date: 23/04/2014**

**OTHER**

**Site:** Valentinus Crescent, Colchester

**Application No:** 142439

**Date Received:** 26 February 2014

**Agent:** Nps Property Consultants Limited

**Applicant:** Colchester Borough Council

**Development:** Change of use to cemetery land together with associated works including boundary fencing, new planting, car parking with access from Colchester Crematorium.

**Ward:** Berechurch

**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 Colchester Borough Council.

### **2.0 Synopsis**

2.1 The key issues explored below are whether the land use is appropriate; the effect that the proposed development would have on the character and appearance of the area; its impact on residential amenity and whether the proposal would present an unacceptable risk in terms of contamination.

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

3.1 The application site is a rectangular shaped piece of land that extends to some 2.49 hectares. The land is relatively flat and is now mostly rough grassland with trees and vegetation along the north-eastern and eastern boundaries.

3.2 The site is located to the east of Valentuis Crescent, which forms part of the housing development built under the Garrison Urban Village planning approval. To the north of the site is an established residential housing estate. A public footpath bounds the eastern boundary of the site beyond which is Colchester Cemetery and Willow Allotment gardens. To the south of the site is an area of woodland, which forms part of the Garrison Eastern Green Link.

3.3 The site is owed by the Ministry of Defence and it is understood that it is currently leased to a farmer. The site does not however appear to have been actively used in the recent past other than for informal recreation by local residents.

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

4.1 The application seeks permission for the change of use of the field to cemetery use, the creation of a vehicular access link from the existing cemetery to the application site, the formation of a car park for 20 vehicles and associated landscaping and boundary treatments.

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

5.1 Cemetery Land, Green Link and Garrison Regeneration Area

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

6.1 None directly relating to this proposal however the context of the site is informed by the Garrison Outline planning permission ref: O/COL/01/0009

#### **7.0 Principal Policies**

7.1 Planning law requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies that are to be applied. The NPPF makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.

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
- 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
- TA5 - Parking
- ENV1 - Environment

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

- DP1 Design and Amenity
- DP15 Retention of Open Space and Indoor Sports Facilities
- DP16 Private Amenity Space and Open Space Provision for New Residential Development
- DP19 Parking Standards
- DP20 Flood Risk and Management of Surface Water Drainage
- DP21 Nature Conservation and Protected Lanes

- 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 GAR1 Development in the Garrison Area

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

Colchester Garrison Urban Village Master Plan (2002)  
Colchester Garrison Development Brief (2002)

## 8.0 Consultations

### 8.1 Environmental Control

Should planning permission be granted Environmental Protection recommends that the following condition is attached:

#### **ZGM - Car Parking and Service Areas (Outline Planning Permission only)**

Prior to their first use, any car parking and service areas shall be screened to minimise any noise impact on nearby residential premises and in such a manner so as to prevent nearby residential premises being affected by vehicle exhaust fumes in accordance with a scheme that shall previously have been submitted to, and agreed in writing by, the Local Planning Authority.

Reason: To ensure that there is adequate screening in place to limit any unnecessary fumes, noise and disturbance to the surrounding areas and/or residents from vehicles using these areas.

With regard to contamination Environmental Control note that this site is recorded as being on former army land. Consequently, should permission be granted for this application, it is recommended that the condition for reporting unexpected contamination is attached.

### 8.2 Landscape Officer

Comments from the Landscape Officer are awaited; any comments will be reported to the Planning Committee together with any recommendations for landscape planning conditions. The Landscape Officer has verbally confirmed that he does not have an objection in principle to the development proposal.

### 8.3 Tree Officer

The Tree Officer has verbally confirmed that he has no objection to this proposal. Any formal comments received will be reported to the Planning Committee.

### 8.4 Highway Authority

At the time of writing this report comments from the Highway Authority have not been received.

## 8.5 The Ramblers Association

The comments from the Ramblers Association can be summarised as follows:

It is good to see that footpath 170 is recognised: shown on the map and the proposed crossover for the car parking to be kept safe. The path needs to be kept open at all times.

The path between the crematorium and the allotments is not shown but should not be affected.

The Design and Access Statement is focused on the extension of the cemetery for Woodland Burials which isn't immediately clear from the application submission. Neither is it clear how open for access the extension will be during evenings and weekends. If Green Links to and through the cemetery are to be pursued, facilities for crossing of Mersea Road from the lower gate (near the toilets) to the Bourne Valley Open Space are needed.

## 8.6 Natural England

The comments from Natural England can be summarised as follows:

This application is in close proximity to the Roman River Site of Special Scientific Interest (SSSI). The proposed development (if carried out in accordance with submitted details) will not damage or destroy the interest features for which the site has been notified. We therefore advise your authority that this SSSI does not represent a constraint in determining this application

Natural England state that they have not assessed the application for impacts on protected species.

Natural England also note that the application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. Natural England recommends that this Council should consider securing measures to enhance the biodiversity of the site, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the National Planning Policy Framework.

## 8.7 Environment Agency

The Environment Agency (EA) has issued a holding objection on the grounds that a basic Tier 1, risk screening assessment has not been undertaken. The EA has made the following detailed comments:

### **Groundwater and Pollution Prevention**

We have not previously been consulted on the proposed cemetery extension and we have not been provided with any information regarding the suitability of the site for burial or estimated numbers of burials per year etc. Although this is an extension to an existing cemetery, which has not caused any known pollution, this is not in itself adequate evidence to rule out the extension causing pollution.



## **Overcoming our Objection**

For cemetery extensions the EA require a basic Tier 1, risk screening assessment. Details can be found in our guidance book 'Assessing the Groundwater Pollution of Cemetery Developments'. The Tier 1 assessment is primarily a desk study and should include amongst other things, published information regarding the geology and hydrogeology (groundwater levels across the site including seasonality). An assessment of the hazard(s) should be made, potential pathways and receptors should be identified and reviewed, and a qualitative assessment undertaken of the significance of the risks posed, for example, high, intermediate or low.

Generally the EA require the following basic controls:

- 250m minimum distance from potable groundwater supply source;
- 30m minimum distance from watercourse or spring;
- 10m minimum distance from field drains;
- no burials into standing water, with a minimum of 1m unsaturated ground below the base of the coffin (including seasonal fluctuation).

The EA has also confirmed that a Flood Risk Assessment will not be required on the grounds that only a small area of the land will be hard surfaced.

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 Parished

## **10.0 Representations**

10.1 At the time of writing the report four letters of representation have been received in respect of this development proposal and are summarised as follows:

- The proposal to fence the field off is unnecessary
- There is concern about the size and distance of the proposed fence to residential properties
- The fence will have a negative effect on house prices and will spoil the view from nearby properties
- There is a need for a car park extension to the cemetery
- The planning application affects Secundus Drive more than Valentinus Crescent

10.2 Cllr Dave Harris (Ward Councillor)

Cllr Harris has made the following comments in respect of this application:

- The description is a little misleading as it's an extension to the cemetery. I know that Residents Association and I were briefed many years ago that this was in the Local Strategic Plan for when the cemetery became full. So it was expected at some stage.

- The area is a 'green belt' and I would request this is retained and that any boundary created at the interface with Valentinus is formed by railings and planting / hedging. This would be then in-keeping with the character of the surrounding area. The residents along Valentinus need to be assured that their outlook is peaceful with green face to their homes. I would ask that local residents views and outlook are jointly considered will the need to ensure the security of cemetery.
- The footpath marked at the eastern side of the 'Marlborough' estate (that is to say the area to the east of Valentinus) will need to be retained as an important footpath link for all residents to use, indeed lots of cyclists use this and this needs to be assured and guaranteed in perpetuity. The footpath boundaries on each side will need managing to ensure footpath users are safe, and that it is well lit, and that greenery is cut at appropriate times.
- The Willows allotment holders have an access gate at the southern end of Valentinus. This will need to be protected and again users assured that the gate will retain free and unfettered access to the allotments.
- The green lung that is the Allotments at the Willows and the green lung footpath create a pleasant walk from one community to another, and the cemetery greenery must all be considered in the design.

*Officer comments: The description of this application has been amended to specifically refer to the proposed change of use to burial / cemetery land. Other issues raised by Cllr Harris are addressed in the main body of the report.*

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

## **11.0 Parking Provision**

11.1 See paragraph 15.25

## **12.0 Open Space Provisions**

12.1 Not applicable

## **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 planning application relates to the change of use of the existing field to cemetery land with associated works including the formation of a vehicle and pedestrian access from the existing cemetery, a car park for vehicles and boundary fencing and landscaping.
- 15.2 The extension to the existing cemetery is required as the Consecrated Church of England burial land is fast running out. The cemetery currently has plenty of the burial land for other denominations. The proposed extension to the cemetery also provides the opportunity to provide for Woodland Burials, which is not currently provided by the existing cemetery.

### Land use

- 15.3 The application site has long been identified as potential land for an extension to Colchester Cemetery.
- 15.4 The land is identified in the Colchester Garrison "Hallfield" Development Brief (adopted in 2002) as the site for a cemetery extension.
- 15.5 The site is also identified on the master plan submitted by Andrew Martin Associates with the outline application Garrison Urban Village Development (Ref: O/COL/01/0009) as cemetery extension land. (While the site was identified as an extension to the cemetery, it did not form part of the application). The Garrison Urban Village Development and associated master plan was approved by this Council in June 2003.
- 15.6 The local plan Proposals Maps (2008) identifies the application site as a cemetery land. The site is also identified as forming part of the Garrison Regeneration Area and creates part of the network of green links.
- 15.7 Policy SA GAR1 of the Site Allocations Plan describes a mix of uses (residential, employment, retail and open space) that are considered acceptable within the Garrison Regeneration Area. A cemetery extension (2.5 hectares) is identified under the Open Space heading. The supporting text to this policy notes that the need for the cemetery extension was originally identified in the 2004 Local Plan and that the Garrison Development Brief sets the boundary for the extension.
- 15.8 The proposal to use the application site as land for a cemetery extension fully accords with the above planning policy context.

### Landscape and Tree Considerations

- 15.9 Core Strategy Policy ENV1 states that the Borough Council will conserve and enhance Colchester's natural and historic environment, countryside and coastline. This policy goes on to state that the network of strategic green links between the rural hinterland, river corridors, and key green spaces and areas of accessible open space that contribute to the green infrastructure across the Borough will be protected and enhanced. The policy also adds support to development at appropriate locations to improve public access, visual amenity and rehabilitate the natural environment. Core

Strategy Policy PR1 states that the Council aims to provide a network of open spaces, sports facilities and recreational opportunities that meet local community needs and facilitate active lifestyles by providing leisure spaces within walking distance of people's homes, school and work. Central Government guidance on conserving the natural environment is set out in section 11 of the NPPF.

- 15.10 The application site is mostly rough grassland with trees along the eastern boundary. The trees make a particular contribution to the verdant character area and help to integrate the site into the surrounding landscape.
- 15.11 It is proposed to use the northern third of the site for burials with the southern third of the site used for woodland burials. The middle third of the site will initially be maintained as an area for nature conservation but will shrink over time as the areas of land used for burials increases. The existing boundary treatments to the north, south and east are to be maintained in their existing form. The application proposes the erection of fencing and planting along west boundary (formed by Valentinus Crescent) but requests that the precise detailing is subject to a planning condition. The primary purpose for erecting screen fencing / planting to this boundary is to provide a sense of enclosure and privacy for the bereaved. The proposed fencing will incorporate two pedestrian gates which will allow the public 24 hour access to the site of the cemetery extension and beyond. (Whilst there is currently no intention to restrict public access to this site, the Cemetery Manager has advised that, if any persistent anti-social behaviour takes place, this situation will be reviewed). It is considered that the proposal to use this land as an extension to Colchester Cemetery will maintain the site's contribution to the Borough's Green link infrastructure and will enhance the site's nature conservation value.
- 15.12 Objection has been raised by a number of local residents to the proposal to erect fencing along the western perimeter of the site. The grounds of objection relate to the adverse impact on their outlook and the fact that it could devalue their properties. The proposed fencing is located some 10m from the building frontages on Valentinus and will be approximately 1.8 in height. It is not considered that the proposed boundary treatment will have an overbearing or adverse impact on the adjacent residential properties. With regard to impact on views Members will be aware the planning system does not, in general, seek to protect such views. It is however recognised that it is importance to secure a boundary treatment that is appropriate to the context of the site. A condition has been attached requiring the submission of the boundary treatment to the site. This condition can also cover the concerns raised by Environmental Control regarding potential for fumes and noise disturbance from the car park.
- 15.13 The application is supported by an Arboricultural Impact Assessment which has been undertaken in accordance with the guidance set out in BS5837. The tree report notes that there are few significant individual amenity value trees on this site and that most of the trees are Category C woodland coppice trees.

- 15.14 The formation of the new car park and access will require the removal of ten Category C individual trees (trees that should not constrain development) and one Category U tree (trees that should be removed regardless of whether the development proceeds for health and safety reasons). Two Category C tree groups and one Category U tree group are also proposed for removal. The retained trees around the edge of the car park are mostly multiple stemmed coppices. The submitted tree report notes that these trees will need to be re-coppiced and/or lifted and crown cleaned so that they do not create a conflict with the proposed car parking.
- 15.15 The tree report recommends tree protection measures, including the use of cellar confinement sub-base system for the construction of the proposed car park and access road and the installation of tree protective fencing. The tree report also recommends that the trees works and works within the root protection areas are monitored by a qualified arboricultural consultant.
- 15.16 The majority of the trees will be retained as a part of this development proposal and will therefore continue to contribute to the landscape character and setting of this site. Of those trees scheduled for removal, most would be removed due to their poor form or condition. Conditions are proposed to ensure that the trees scheduled for retention are adequately protected.
- 15.17 For the reasons set out above, it is considered that the proposed development would not have an adverse impact of the character and appearance of the areas. The proposal is therefore considered to accord with the aforementioned planning policies.

### Ecology

- 15.18 Policy ENV1 states that the Borough Council will conserve and enhance Colchester's natural and historic environment, countryside and coastline. Development Plan Policy DP21 seeks to conserve or enhance biodiversity.
- 15.19 This application site is in close proximity to the Roman River Site of Special Scientific Interest (SSSI). Natural England has advised that the proposed development (if carried out in accordance with submitted details) will not damage or destroy the interest features for which the site has been notified.
- 15.20 Natural England note in their comments that they have not assessed the application for impacts on protected species. It is known that bats currently forge and roost in Colchester Cemetery and it is possible therefore that they also use the site of the proposed cemetery extension. The majority of the trees are to remain and the use of the land for burials is not considered to have adverse impact on bats. It is not unknown however whether the trees proposed for removal have the potential for bat roosts. A full bat survey for roosting bats is not considered necessary at this stage but it is considered prudent to carry one out prior to the commencement of works. Likewise, it is considered prudent to carryout a survey for nesting birds before any trees are removed (if these works occur during the breeding season). An informative is proposed to this effect.

## Highways

- 15.21 Core Strategy Policies TA1 and TA2 seek to improve accessibility and promote walking and cycling. Development Plan Policy DP17 states that all developments should seek to enhance accessibility for sustainable modes of transport by giving priority to pedestrians, cycling and public transport access. Development plan policy DP19 states that the Council will refer developers to the Essex Planning Officers Association (EPOA) Vehicle Parking Standards which was adopted by Colchester Borough Council as a Supplementary Planning Document (SPD) in November 2009.
- 15.22 It is proposed to create a vehicular and pedestrian access between the existing cemetery and the application site. The new access points will be designed with a suitable visibility splay to minimise potential conflicts between those crossing and using the footpath. On the existing cemetery land, these works include the removal of a section of the boundary hedge and the realignment of railings; new 5.5m gates are also proposed. The footpath will be upgraded to accommodate vehicles at the crossover point. Access along the existing public footpath will be maintained and will continue through to the wider external network. Conditions are proposed requiring the formation of the visibility splays prior to the site coming into operation / use. The upgrading of the footpath to accommodate vehicular traffic will be subject to an agreement with the Highway Authority.
- 15.23 At the time of writing this report, comments from the Highway Authority are still to be received. The proposal was however informally discussed with them prior to the submission of the application and they did not have an objection to this proposal in principle.
- 15.24 The Ramblers Association has welcomed the fact the footpath has been acknowledged and that the crossover has been designed with safety in mind. The Ramblers Association also acknowledge that the footpath between the crematorium and the allotments will not be affect by this proposal. The desire of the Ramblers Association for a crossing on Mersea Road is noted however the current application is not considered to justify these works.
- 15.25 The proposed car park will provide 20 spaces and a condition is recommended requiring the parking spaces to be laid out in accordance with the Council's adopted guidance.

## Other issues

- 15.26 The site is identified as having the potential for contamination due to it being owned by the Ministry of Defence. In this instance, based on the available evidence (contamination surveys undertaken as a part of the development of the adjacent residential estate) and the proposed end user, a Phase I Risk Assessment is not considered necessary; it is however considered prudent to attach a condition for the reporting of unexpected contamination.

15.27 The Environment Agency note that this proposal relates to an extension to Colchester Cemetery and that the existing cemetery has not caused any known pollution. The Environment Agency comments that this is not in itself adequate evidence to rule out the extension causing pollution. For cemetery extensions the Environment Agency has advised that a basic Tier 1, risk screening assessment should be submitted. The Tier 1 assessment is primarily a desk study and should include amongst other things, published information regarding the geology and hydrogeology (groundwater levels across the site including seasonality). An assessment of the hazard(s) should be made, potential pathways and receptors should be identified and reviewed, and a qualitative assessment undertaken of the significance of the risks posed, for example, high, intermediate or low. The agent has been advised of this requirement. Following the submission of the requested information, the Environment Agency will be re-consulted. Based on the existing knowledge of the area, it is not anticipated that a Phase 1 Risk Assessment will reveal any issues of fundamental significance. It is recommended that, subject to the Environment Agency withdrawing their objection and the inclusion of any suggested conditions, the Head of Commercial Services is authorised under delegated powers to grant planning permission.

## **16.0 Conclusion**

16.1 The submitted application is considered acceptable in land use terms and the development proposals are not considered to have an adverse effect on the character or appearance of the area. The proposal is considered to provide the opportunity to enhance the site's contribution to the Green Infrastructure of the Borough and its nature conservation value. The application is considered to accord with the relevant development plan policies and the guidance set out in the NPPF. The application is therefore recommended for approval.

## **17.0 Recommendation**

17.1 That subject to no objection(s) being raised by Environment Agency or the Highway Authority the Head of Commercial Services be authorised under delegated powers to grant planning permission subject to the following conditions and any additional comments recommended by the aforementioned organisations.

## **18.0 Positivity Statement**

18.1 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.

## 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 14 1 1155 npsdra 01.

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

In the event that contamination that was not previously identified 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.

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

### 4 – Car Parking and Service Areas

Prior to their first use, any car parking and service areas shall be screened to minimise any noise impact on nearby residential premises and in such a manner so as to prevent nearby residential premises being affected by vehicle exhaust fumes in accordance with a scheme that shall previously have been submitted to, and agreed in writing by, the Local Planning Authority.

Reason: To ensure that there is adequate screening in place to limit any unnecessary fumes, noise and disturbance to the surrounding areas and/or residents from vehicles using these areas.



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

No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans 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.

#### 6 - 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.

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

No works or development shall be carried out until a 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.

#### 8 - Tree Canopy Hand Excavation

During all construction work carried out underneath the canopies of any trees on the site, including the provision of services, any excavation shall only be undertaken by hand. All tree roots exceeding 5 cm in diameter shall be retained and any pipes and cables shall be inserted under the roots.

Reason: To protect trees on the site in the interest of visual amenity.

## 9 – Full Landscape Proposals

No works shall take place until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and 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:

- PROPOSED FINISHED LEVELS OR CONTOURS;
- MEANS OF ENCLOSURE;
- CAR PARKING LAYOUTS;
- 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, SIGNS, LIGHTING ETC.);
- PROPOSED AND EXISTING FUNCTIONAL SERVICES ABOVE AND BELOW GROUND (E.G. DRAINAGE POWER, COMMUNICATIONS CABLES, PIPELINES ETC. INDICATING LINES, MANHOLES, SUPPORTS ETC.);
- RETAINED HISTORIC LANDSCAPE FEATURES;
- PROPOSALS FOR RESTORATION;
- PLANTING PLANS;
- WRITTEN SPECIFICATIONS (INCLUDING CULTIVATION AND OTHER OPERATIONS ASSOCIATED WITH PLANT AND GRASS ESTABLISHMENT);
- SCHEDULES OF PLANTS, NOTING SPECIES, PLANT SIZES AND PROPOSED NUMBERS/DENSITIES WHERE APPROPRIATE; AND
- IMPLEMENTATION TIMETABLES AND MONITORING PROGRAMS.

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.

## 10 - Non-Standard Condition/Reason

Prior to the use coming into operation, the visibility splays to the footpath crossover shall be formed in accordance with the details as shown on the approved drawing unless otherwise agreed in writing by the Local Planning Authority. The visibility splays shall thereafter be retained free of any obstruction in perpetuity.

Reason: To ensure the continued safe passage of the public and the definitive rights of way and accessibility.

## 11 - Non-Standard Condition/Reason

Prior to the use coming into operation, the vehicle parking area indicated on the approved plans, including any parking spaces for the mobility impaired, shall have been hard surfaced, sealed, marked out in parking bays and made available for use. The parking spaces shall have minimum dimensions of 2.9m x 5.5 and the mobility impaired spaces shall have a minimum dimension of 3.9m x 6.5m.

Reason: To ensure an appropriate level of parking is provided.

## 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: 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).

(5) PLEASE NOTE: Protected species may be present on the site and it is the developer's responsibility to ensure the requirements of the Wildlife and Countryside Act 1981 are complied with. Further advice on surveys and compliance with the legislation can be obtained from Natural England.



## Planning Committee

Item

10<sup>th</sup> April 2014

<b>Report of</b>	<b>Head of Professional Services</b>	<b>Author</b>	<b>Mark Russell</b> <b>☎ 01206 506941</b>
<b>Title</b>	<b>131103/5 – The Stockwell, West Stockwell Street, Colchester</b>		
<b>Wards affected</b>	<b>Castle</b>		

### 1.0 Introduction

- 1.1 This report is presented as a companion to the Planning report for Planning application 131103 and Listed Building application 131105.
- 1.2 It comes about following a series of complaints relating to breaches of conditions at The Stockwell. These matters are covered in depth in the full Committee reports.
- 1.3 The report sets out the main options for Planning enforcement which are available to Colchester Borough Council if matters are not resolved under the above application. Equally, it sets out the options even if Planning permission and Listed Building Consent are granted for the applications.
- 1.4 The conclusion reached is that notices be served in order to ensure that works are carried out to protect the special interest of the Listed Building and the wider setting of Colchester Conservation Area 1.
- 1.5 Members are reminded that issues of Enforcement are delegated to the Heads of Service and that this note is for information to explain our strategy on this matter.

### 2.0 Breaches

- 2.1 Members will be aware that the Committee reports conclude that several of the breaches have been deemed to be acceptable and have been regularised by the submission of applications 131103/5. However, several others require compliance within certain time-frames.
- 2.2 Specifically, these are:
  - i) Removal of the fire escape door on the stair tower and making good;
  - ii) Removal of the fire escape window/hatch on the rear elevation and its replacement with a limited opening obscure-glazed window;
  - iii) Relocation of the chiller unit on the rear aspect, and compliance with noise guidelines;
  - iv) Compliance with noise guidelines for the extraction unit to the rear;
  - v) Compliance with noise guidelines for the extraction unit to the rear;

- vi) Implementation of planting/landscaping in the rear garden;
- vii) Removal of blue engineering bricks from the front wall and replacement with matching coping and re-instatement of railings;
- ix) Rebuilding of the glazed link element between the old building and the extension in line with the approved drawings;
- x) Removal of the current unauthorised modern paint and replacement with a more sympathetic material;
- xi) Not covered by the current applications – removal of the wooden sign board.

### **3.0 Options**

3.1 The options are:

- 1) To take no action;
- 2) To serve notice(s): i.e. i) A Planning Enforcement Notice or Breach of Condition Notice (BCN) in respect of the unauthorised development; ii) A Listed Building Enforcement Notice in respect of the unauthorised works to a Listed Building.

3.2 If Colchester Borough Council takes no action, then it will await the allotted time for compliance of conditions of Planning permission 131103, and for works to tally with those approved under Listed Building Consent 131105. If, at the points of proposed compliance, these matters have still not been resolved, then such notices can be served.

3.4 In terms of option 2: A Notice can be served by a Council where:

"There has been a breach of planning control, and

it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations" (Town & Country Planning Act 1990 S.172 (1)).

3.5 In this case, the Breach of Planning control can be described as unauthorised development, or a Breach of condition.

3.6 The option of serving a Notice alleging unauthorised development and Breaches of Conditions is therefore available to Colchester Borough Council.

3.7 The alleged breaches of condition have been several during the build phase and use of The Stockwell. For the most part these relate to the extension (and other additions) being built differently to the approved plans. However, other conditions have also been breached – i.e. no submission of landscaping, insufficient details of extraction plant etc.

3.8 Regarding Listed Building issues, a separate Listed Building Enforcement Notice (LBEN) is required for those works which would require Listed Building Consent – which is most of the above listed breaches (but not issues like sound levels from extraction plant and so on). As many of these works required Planning permission as well as Listed Building Consent then there is a certain amount of “doubling up.” The issue relating to render paint is uniquely Listed Building-related.

#### **4.0 Conclusion**

- 4.1 Your Officers have recommended approval for the Planning and Listed Building applications as detailed in the Committee report for 131103/5. However, they are keen that the required measures be implemented swiftly.
- 4.2 Given all of the above considerations, it is recommended that a Notice be served for all the time limited conditions pertaining to Planning permission 131103, and that a Listed Building Enforcement Notice be served pertaining to issues covered by Listed Building application 131105
- 4.3 The time for compliance for these matters shall equate to the time limits quoted on the proposed conditions in the Planning report.



## **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.*