

# Planning Committee

Town Hall, Colchester  
14 April 2011 at 6.00pm

## **This committee deals with**

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

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

# Information for Members of the Public

## Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services.

## Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at [www.colchester.gov.uk](http://www.colchester.gov.uk)

## Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

## Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

## Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

## Facilities

Toilets with lift access, if required, are located on each floor of the Town Hall. A vending machine selling hot and cold drinks is located on the first floor and ground floor.

## Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Colchester Borough Council, Angel Court, High Street, Colchester  
telephone (01206) 282222 or textphone 18001 followed by the full number you wish  
to call

e-mail: [democratic.services@colchester.gov.uk](mailto:democratic.services@colchester.gov.uk)

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

## **Material Planning Considerations**

The following are among the most common issues which the Planning Committee can take into consideration in reaching a decision:-

- planning policy such as adopted Local Development Framework documents, for example the Core Strategy, Development Plan Documents (DPDs) and the Site Allocations DPD, Government guidance, case law, previous decisions of the Council
- design, appearance and layout
- impact on visual or residential amenity including potential loss of daylight or sunlight or overshadowing, loss of privacy, noise disturbance, smell or nuisance
- impact on trees, listed buildings or a conservation area
- highway safety and traffic
- health and safety
- crime and fear of crime
- economic impact – job creation, employment market and prosperity

The following are among the most common issues that are **not** relevant planning issues and the Planning Committee cannot take these issues into account in reaching a decision:-

- land ownership issues including private property rights, boundary or access disputes
- effects on property values
- restrictive covenants
- loss of a private view
- identity of the applicant, their personality or previous history, or a developer's motives
- competition
- the possibility of a "better" site or "better" use
- anything covered by other legislation

## **Human Rights Implications**

All applications are considered against a background of the Human Rights Act 1998 and in accordance with Article 22(1) of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 there is a requirement to give reasons for the grant of planning permission. Reasons always have to be given where planning permission is refused. These reasons are always set out on the decision notice. Unless any report specifically indicates otherwise all decisions of this Committee will accord with the requirements of the above Act and Order.

## **Community Safety Implications**

All applications are considered against a background of the implications of the Crime and Disorder Act 1998 and in particular Section 17. Where necessary, consultations have taken place with the Crime Prevention Officer and any comments received are referred to in the reports under the heading Consultations.

## **Equality and Diversity Implications**

All applications are considered against a background of the Council's 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 in relation to gender disability, sexual orientation, religion or belief, age, race or ethnicity. The legal context for this framework is for the most part set out in the Race Relations (RRA) and Disability Discrimination (DDA) legislation.

**COLCHESTER BOROUGH COUNCIL  
PLANNING COMMITTEE  
14 April 2011 at 6:00pm**

**Members**

Chairman : Councillor Ray Gamble.  
Deputy Chairman : Councillor Theresa Higgins.  
Councillors Andrew Ellis, Stephen Ford, Philip Oxford,  
Peter Chillingworth, Helen Chuah, John Elliott,  
Jackie Maclean, Jon Manning, Ann Quarrie and Laura Sykes.

**Substitute Members** : All members of the Council who are not members of this Committee or the Local Development Framework Committee. The following members have undertaken planning training which meets the criteria:-  
Councillors Christopher Arnold, Nick Barlow, Lyn Barton, Mary Blandon, John Bouckley, Nigel Chapman, Barrie Cook, Nick Cope, Wyn Foster, Bill Frame, Mike Hardy, Pauline Hazell, Peter Higgins, Martin Hunt, Michael Lilley, Sue Lissimore, Richard Martin, Nigel Offen, Beverley Oxford, Lesley Scott-Boutell, Paul Smith, Terry Sutton, Jill Tod, Anne Turrell 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 circulated at the meeting and members of the public should ask for a copy to check that there are no amendments which affect the applications 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 on the day before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

**Pages**

**1. Welcome and Announcements**

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

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

- action in the event of an emergency;
- mobile phones switched off or to silent;
- 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 personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General

Procedure Rules for further guidance.

## **6. Minutes**

The minutes of the meeting held on 31 March 2011 will be submitted to the next meeting.

## **7. Planning Applications**

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

1. 100304 Land adjacent to Gregory and Card, Wormingford Road, Wormingford, CO6 3NS (Fordham and Stour) **1 - 8**

Application to vary condition 1 of planning permission 090786 (retention of 22 sealed metal containers for storage) in order to extend the temporary time period.

2. 102680 Greyfriars, Hillcrest and All Saints House, High Street, Colchester, CO1 1UG (Castle) **9 - 23**

Change of use of the site and premises from their existing use within Use Class D1 (Greyfriars/Hillcrest) and Class B1 (last known use of All Saints House) to hotel, with bar, restaurant, function room, ancillary offices and staff flat (primarily within Use Class C1). Partial demolition of outbuildings and boundary walls; and internal and external alterations to existing buildings to form the proposed hotel accommodation. Erection of new three-storey height lift enclosure; single storey extensions to form glazed entrance foyer, office and corridor space; and roofed enclosure for external freezer units. External works including hard and soft landscaping.

- 8. Tree Preservation Order Process // with specific reference to recent application 102121 16-23 Darwin Close 24 - 43**

See report by the Head of Environmental and Protective Services.

- 9. Information Item // 110445 and 110447 Faraday House, Circular Road North, Colchester, 44 - 66**

See report by the Head of Environmental and Protective Services.

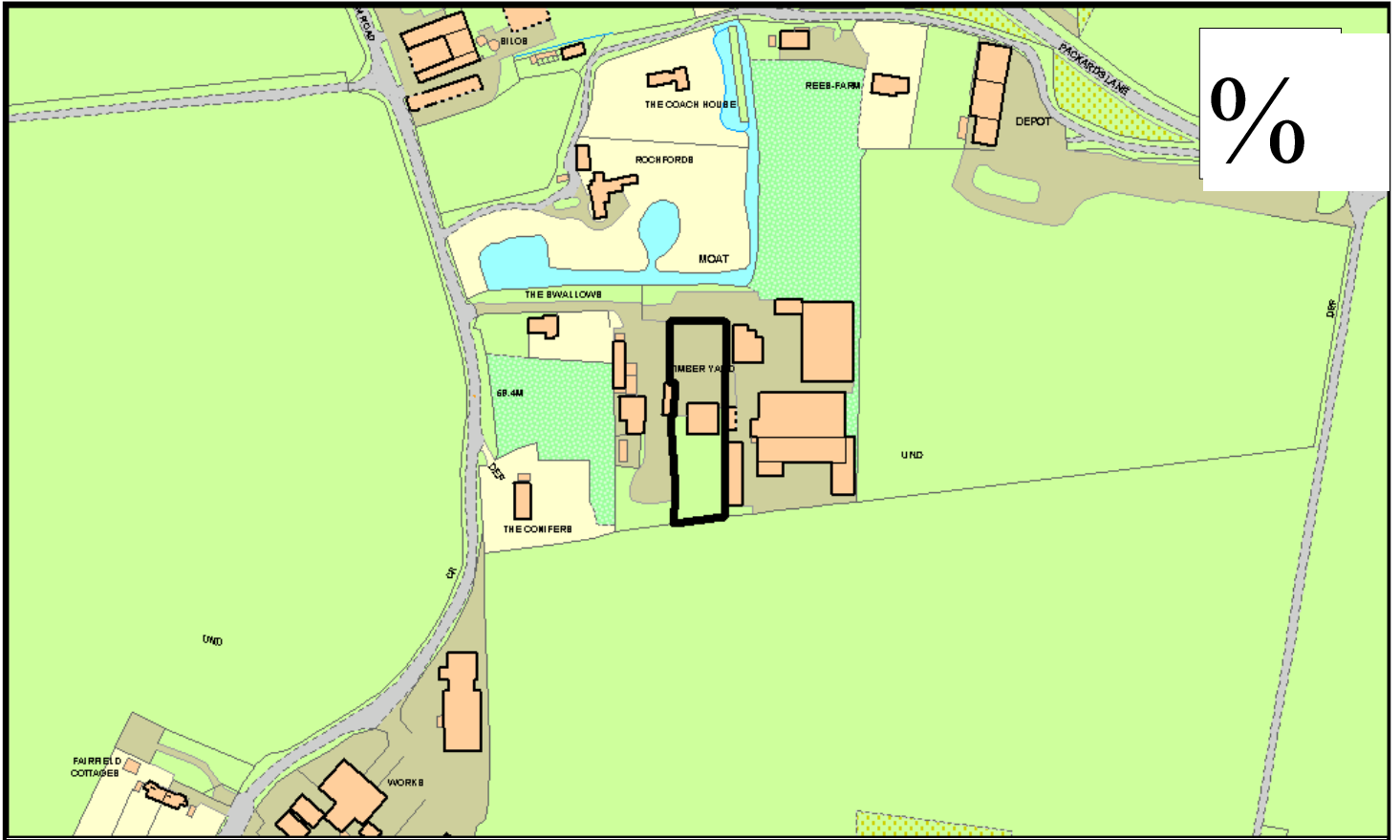
## **10. Exclusion of the Public**

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).







**Application No:** 110304

**Location:** Land Adjacent To Gregory & Card, Wormingford Road, Wormingford, Colchester, CO6 3NS

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

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of PO Box 884, Town Hall, Colchester CO1 1FR under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2011



# Committee Report

Agenda item

**7**

To the meeting of **Planning Committee**  
on: **14 April 2011**  
Report of: **Head of Environmental and Protective Services**  
Title: **Planning Applications**

Relevant planning policy documents and all representations at the time this report was printed are recorded as BACKGROUND PAPERS within each item. An index to the codes is provided at the end of the Schedule.

**7.1 Case Officer: Jane Seeley**

**Due Date: 28/04/2011**

**OTHER**

**Site:** Land adjacent to Gregory and Card, Wormingford Road,  
Wormingford, Colchester, CO6 3NS

**Application No:** 110304

**Date Received:** 3 March 2011

**Applicant:** Mr G Ackerman

**Development:** Application to vary condition 1 of planning permission 090786 (retention of 22 sealed metal containers for storage) in order to extend the temporary time period.

**Ward:** Fordham and Stour

**Summary of Recommendation:** Temporary Approval

## 1.0 Introduction

1.1 This application is referred to the Planning Committee because the applicant is employed in the Life Opportunities section of this Council.

## **2.0 Synopsis**

- 2.1 This report gives consideration to an application which proposes to, in effect, allow the continued siting storage containers and their use for storage, in light of policy and representations/consultation responses. It is concluded that provided that the applicant adheres to conditions to control the use in the interest of the amenity of the adjacent householders a further conditional planning permission can be granted.

## **3.0 Site Description and Context**

- 3.1 The application site is partially located within the Local Employment Rural Business Site on the east side of Fordham Road. The boundary between the industrial development site and the countryside divides the site roughly in half from north to south. The land to the east of this line is within the industrial area, however, immediately to the west of the site is a well established fabrication/welding business and to the south an industrial unit granted planning permission in 2004. To the north of the site is residential property. Boundary hedging and trees provide significant screening.
- 3.2 Temporary planning permission was granted in 2004 for the retention of 20 containers and the siting of 2 additional containers until 31 December 2006. In 2009 a further temporary permission was granted for 22 containers.
- 3.3 The containers are in 2 rows with a hard surfaced area between the containers which also provides access to the industrial unit to the south. Currently there are 21 containers on the site in 2 rows. The containers are let for self storage purposes to individuals/businesses. Their hours of use are restricted by condition and further conditions were imposed at the time of the 2009 permission relating to signage on the containers stating the hours they can be accessed, the provision of lagging and regular greasing of the door mechanisms.
- 3.4 There are 2 containers immediately adjacent to the rows which are outside the application site and the applicant has advised that these are not in his ownership or related to the existing use.

## **4.0 Description of the Proposal**

- 4.1 This application seeks to replace extant permission 090786 in order to extend the time limit for the use of these storage containers.

## **5.0 Land Use Allocation**

- 5.1 Part Local Employment site; Part countryside

## **6.0 Relevant Planning History**

- 6.1 F/COL/04/0367 - New industrial unit (Classes B1 & B2) - Approved 22 April 2004
- 6.2 F/COL/04/2206 – Retention of 20 sealed metal containers (2 containers to be repositioned) and siting of 2 additional containers

6.3 090786 – Continued use of land for storage of sealed metal containers for storage of domestic contents and siting of 2 additional containers - Temporary permission until 31.8.11

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:

Planning Policy Statement 1: Delivering Sustainable Development  
Planning Policy Statement 4: Planning for Sustainable Economic Growth  
Planning Policy Statement 7: Sustainable Development in Rural Areas  
Planning Policy Statement 23: Planning and Pollution Control  
Planning Policy Guidance 24: Planning and Noise

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:

ENV1 - Environment  
ENV2 - Rural Communities

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

DP1 Design and Amenity  
DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses  
DP9 Employment Uses in the Countryside  
DP 19 Parking Standards

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

Vehicle Parking Standards

## **8.0 Consultations**

8.1 Highways – no objection

8.2 Environmental Control -has not received any complaints relating specifically to this use at this site and therefore do not object subject to the continuation of the current restrictions on hours of use.

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 Wormingford Parish Council have stated that they have no objection to a further 3 years extension of current permission but applicant should be reminded of operation times and that the lack of supervision and the gate being left open results in noise and disturbance to neighbouring properties outside stipulated times and on occasions on Sundays.

9.2 Fordham Parish Council – views awaited

## **10.0 Representations**

10.1 2 letters/emails commenting:

- There are 23 containers on site, 2 of which are in poor condition and unlikely to be used for storage, if they are not they should be removed and the need for 22 containers queried.
- The doors are required to be lagged by condition; at present only 13 are lagged.
- There is no evidence that the doors are greased every 3 months, as required by condition.
- Signs have not been deployed as required by Condition.
- It should be made explicit that the hours of operation must be adhered to by the applicant.
- The gate at the entrance to the site should be shut and locked outside of the permitted hours to prevent access.

## **11.0 Parking Provision**

11.1 There is no defined parking area for users of the containers. Users can use the hard surfaced area between the rows of containers to park when accessing their container. There are no on site staff and no longer term parking is required.

## **12.0 Open Space Provisions**

12.1 Not relevant

## **13.0 Report**

13.1 The use is generally very low key. The applicant visits the site approximately once a week for security purposes. The temporary permission restricted use to 0800 hours to 1800 hours on Monday to Friday and 0800 to 1300 on Saturdays ( ie no access on Sundays or Public/Bank Holidays). It is understood that access by individuals/businesses renting the containers varies from weekly to yearly visits.

- Design and Layout

13.2 Storage uses are generally acceptable within Local Employment Zones. However, the siting of containers is not generally encouraged but given that the containers are surrounded on 3 sides by industrial units and uses it is difficult to argue that their visual impact within the site is so visually harmful as to resist their continued use.

- Impact on the Surrounding Area

13.3 The containers are not visible from the entrance into the site from Fordham Road. A conifer hedge, of a similar height to the containers, to the boundary of the house to the north and trees with the garden of that property provide very effective visual screening. Housing to the east of the site is separated from the use by the existing welding/fabrication uses.

- Impacts on Neighbouring Properties

13.4 The neighbouring housing is sufficiently close to the site that there is potential for noise disturbance from the use. The previous permissions have restricted the hours of usage to: 08.00 hours - 18.00 hours on Monday to Friday; 08.00 hours - 13.00 hours on Saturdays and no use on Sundays or Bank/Public Holidays.

13.5 Given that there were concerns from the neighbours that access was occurring outside these hours, further conditions were imposed; these required; the door mechanism on the containers to be lagged and notices advising of the hours when access is permitted to be posted on each container and the hinge and door mechanisms to be greased at least every 3 months.

13.6 There are currently no signs on the containers and lagging is missing from many of the mechanisms. The lack of compliance with the conditions has been discussed with the applicant. He has advised of difficulties of providing signs that do not get damaged by rain. It has been stressed that it is necessary to comply with the condition and he will investigate this matter further in order to provide new signs prior to Committee. Likewise the importance of providing and retaining the lagging has been stressed and this should also be completed prior to the Committee meeting .

13.7 The applicant has advised that he regularly oils the door mechanisms.

13.8 The neighbour's suggestion that the gates to the rural business area be shut during the restricted hours has been considered previously and discussed with the applicant again recently. This remains unfeasible because this would prevent access to other businesses on the site which are able to operate at times when the self storage use should not be accessed.

13.9 It is considered that provided the conditions are strictly adhered to by the applicant the use can continue on the site without undue impact on residential amenity

- Highway Issues

13.10 There are no highway concerns

## **14.0 Conclusion**

14.1 The stationing of containers and their use for storage has taken place on the site for in excess of 7 years. Conditions imposed relating to access times and methods to prevent noise from the door mechanisms should be effective in ensuring that the amenity of the adjacent householders is protected. While there have been breaches of the conditions the applicant is taking steps to ensure that this is rectified. It is therefore considered that a temporary conditional planning permission can be supported.

## **15.0 Recommendation – Temporary Approval**

### **Conditions**

#### **1 - A6.2 Temporary Use**

The use hereby permitted shall be discontinued on or before 31 August 2014.

Reason: To enable the Local Planning Authority to judge the effect of the use on the amenities of the locality.

#### **2 - Non-Standard Condition**

There shall be no outdoor storage of any materials goods equipment plant machinery or vehicles of any description on any part of the site without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual amenity and for the avoidance of doubt as to the scope of the permission hereby granted.

#### **3 - Non-Standard Condition**

No access to the containers shall occur outside the hours of 08.00 hours - 18.00 hours on Monday to Friday or 08.00 hours - 13.00 hours on Saturdays or at any time on Sundays or Bank/Public Holidays.

Reason: In the interests of residential amenity.

#### **4 - Non-Standard Condition**

The existing and proposed containers shall only be sited as detailed on the approved drawings and the containers shall not be stacked. Any variation to the siting of the containers shall be only with the written approval of the Local Planning Authority.

Reason: In the interests of visual amenity and for the avoidance of doubt as to the scope of the permission hereby granted.

#### **5 - B3.3 Light Pollution**

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

Reason: To protect the amenities of adjoining residents.

#### 6 - A3.1 Premises Only to be Used for a Specific Use

The premises shall be used for self storage purposes only and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that Order, with or without modification.

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

#### 7 -Non-Standard Condition

The lagging of the door mechanisms on the containers and the notices advising of the hours when access is permitted to the containers shall be maintained at all times. Any replacement containers shall be lagged and notices erected in a similar manner.

Reason: In the interests of residential amenity.

#### 8 - Non-Standard Condition

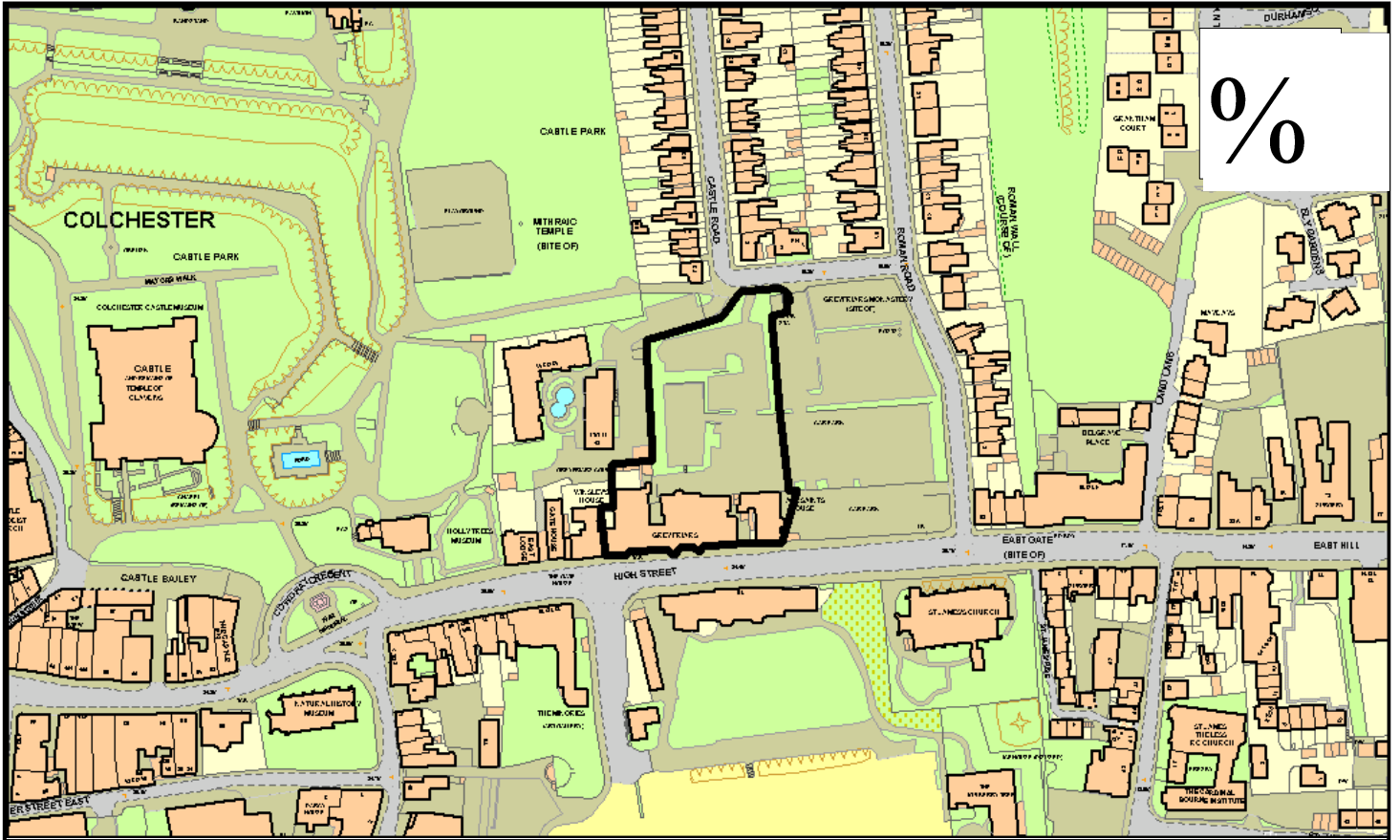
The container(s) hinges and door mechanisms shall be greased at least every 3 months and a log of when the greasing has been undertaken shall be maintained by the applicant and made available for inspection by the Local Planning Authority on request.

Reason: In the interests of residential amenity.

### **17.0 Informatives**

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 01206 838600.





**Application No:** 102680

**Location:** Greyfriars, Hillcrest And All Saints House, High Street, Colchester, CO1 1UG

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

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of PO Box 884, Town Hall, Colchester CO1 1FR under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2011

## 7.2 Case Officer: Mr John More

**OTHER**

**Site:** Greyfriars, Hillcrest And All Saints House, High Street, Colchester, CO1 1UG

**Application No:** 102680

**Date Received:** 30 December 2010

**Agent:** Mr John Lawson

**Applicant:** OMC Investments Ltd

**Development:** Change of use of the site and premises from their existing use within Use Class D1 (Grey Friars/Hillcrest) and Class B1 (last known use of All Saints House) to hotel, with bar, restaurant, function room, ancillary offices and staff flat (primarily within Use Class C1). Partial demolition of outbuildings and boundary walls; and internal and external alterations to existing buildings to form the proposed hotel accommodation. Erection of new three-storey height lift enclosure; single storey extensions to form glazed entrance foyer, office and corridor space; and roofed enclosure for external freezer units. External works including: hard and soft landscaping

**Ward:** Castle

**Summary of Recommendation:** Conditional Approval

### 1.0 Introduction

- 1.1 This application is referred to the Planning Committee because it has been called in by two Councillors.
- 1.2 Cllr Bill Frame comments: *"The proposals in relation to the outdoor areas will have an impact on both visual and residential amenity including loss of privacy, noise disturbance, smell and nuisance to the residents of Greyfriars Court in Castle Road."*
- 1.3 Cllr Henry Spyvee comments: *"The key issue in this application (which is to be welcomed in principle) is a proposed marquee in the grounds which will inevitably cause disturbance to the 24 families resident in Greyfriars Court next door. Many of them have objected and this aspect needs to be decided in Committee."*

## **2.0 Synopsis**

- 2.1 The application is for the change of use and alterations to buildings on the site which are listed and the area of land to the rear. The main issues are the uses proposed, the impact on the heritage assets and the impact on the surrounding area and neighbours' amenity. The use and changes to the building are considered acceptable. The neighbours' objections centre around odours from cooking and waste storage, noise and disturbance from the use and ancillary activities, and traffic and car parking. The marquee which was the subject of many objections has now been removed from the scheme through discussions with the agents. The proposal is recommended for approval for the reasons set out in the report below.

## **3.0 Site Description and Context**

- 3.1 The application site comprises three buildings; Greyfriars, Hillcrest and All Saints House and their respective grounds. Greyfriars and Hillcrest previously formed part of the community college operated by Essex County; it is understood that All Saints House was acquired following its part conversion to a restaurant. The buildings on site are currently vacant apart from the live in caretaker/security in Greyfriars.
- 3.2 The site occupies an important position within Colchester town centre, falling within the Roman walls and on the area of land occupied by a Franciscan monastery (founded in the C14 and dissolved in the mid C16).
- 3.3 Greyfriars is one of the town's finest Georgian houses. The original part of the house dates from circa C18 and consists of the central front range with its two canted bays framing an Ionic door case, above which is a Venetian window beneath a pediment; fine panelling, rich cornices and chimney pieces survive within this part of the building. To this was added the garden range, with its double height bay flanked by sets of Venetian windows; again interior fixtures and fittings survive. Further alterations were made between 1904 and 1908, which included the addition of the red brick wings in C18 style. The house is listed at grade II\* for its special architectural or historic interest.
- 3.4 Hillcrest is a C18 red brick fronted brick house that was linked to Greyfriars as a part of the Edwardian extension works. It is three storeys in height and has an asymmetrical façade with a panel door with a fanlight and sash windows. Internally the house has a typical domestic layout. The ground floor plan remains largely unchanged; the first and second floors were altered in the early C20 to allow access between this property and Greyfriars
- 3.5 All Saints House is described as dating from the C18 and is of a polite stripped classical design. The front façade has a two window range of double hung sashes and pediment head doorcase with Ionic columns. North and east side has modillioned eaves cornice, upper oriel window with double hung sashes. Internally the building has suffered from recent insensitive (unauthorised) alteration works (damage to main stair case, opening inserted into walls etc).
- 3.6 To the rear of the listed buildings is a large open area that is currently used for car parking and contains a Holm Oak tree of significant amenity value.

- 3.7 The site is opposite East Hill House, a Grade I listed building and the entrance to the former bus station which is currently being redeveloped as an art gallery. To the east of the site is the former garden to All Saints House (now used as a car park and in separate ownership) and is enclosed by a high boundary wall that is listed grade II in its own right.
- 3.8 To the rear and side of the site are the residential streets of Roman Road and Castle Road, containing a range of mostly two and three storey Victorian terraced houses with a public house. Castle Road runs across the northern boundary of the site and provides pedestrian links to the upper section of Castle Park to the west and the lower section via a gateway in the Roman wall to the north.
- 3.9 Vehicular access to the site is from Castle Road while pedestrian access is from both the High Street and Castle Road.
- 3.10 The site is located within the designated Colchester Town Centre Conservation Area. The site contains three listed buildings - Grey Friars - listed Grade II\*, and Hillcrest and All Saints House - both listed Grade II. The boundary wall of Grey Friars fronting Roman Road is also listed (Grade II), and the boundary wall of All Saints House to High Street and Roman Road (in separate ownership) is also listed Grade II.

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

- 4.1 The application proposes the change of use and reconfiguration of the site to provide a hotel containing 21 bedrooms, with associated bar, restaurant, staff facilities, access and car parking.
- 4.2 The proposal involves the following main elements:
- Change of use of the site and premises from their existing use within Use Class D1 (Grey Friars/Hillcrest) and Class B1 (last known use of All Saints House) to hotel, with bar, restaurant, function room, ancillary offices and staff flat (primarily within Use Class C1)
  - Partial demolition of outbuildings and boundary walls; and internal and external alterations to existing buildings to form the proposed hotel accommodation.
  - Erection of new three-storey height lift enclosure; single storey extensions to form glazed entrance foyer, office and corridor space; and roofed enclosure for external freezer units.
  - External works including: hard and soft landscaping works; laying out of new terrace and garden areas, vehicular driveway and parking spaces, pedestrian pathways and cycle/motorised cycle parking facilities; and associated tree protection/management works.
- 4.3 A total of 21 guest suites/rooms are proposed, together with bar and restaurant spaces and functions room, available to hotel guests and to the wider public.
- 4.4 The application site comprises an area of 0.506 hectares.
- 4.5 The eastern part of the car park is to be retained in its current use as a public car park.

## **5.0 Land Use Allocation**

5.1 The site is currently allocated for mixed use in the Local Development Framework Proposals Maps, Oct 2010 and is located within Colchester Conservation Area No.1.

## **6.0 Relevant Planning History**

6.1 In terms of relevant planning history, there is a listed building application ref: 102681 which was submitted to accompany this application.

6.2 There is a limited recorded planning history for the site comprising applications for minor development, including alterations to the boundary wall and resurfacing of the car park area to the rear.

6.3 The major part of the application site (Grey Friars and Hillcrest) has a lawful established use within Use Class D1 (Non Residential Institutions), having been in educational use since 1908 - originally as a convent school, then as the Colchester County High School, and latterly (until 2008) as an Adult Community College.

6.4 All Saints House has had a somewhat chequered history with its last lawful use being as offices, although permission was granted subsequently for its conversion firstly to two dwelling houses and then to use as a restaurant with hotel/guest-house on the upper floors. Some work to implement this latter approval was commenced by the previous site owner, but was not completed and presently the building is in a state where it cannot be occupied. Some unauthorised alteration works were also undertaken by the previous owner, which require resolution.

## **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:  
Planning Policy Statement 1: Delivering Sustainable Development  
Planning Policy Statement 4: Planning for Sustainable Economic Growth  
Planning Policy Statement 5: Planning for the Historic Environment  
Planning Policy Guidance 13: Transport  
Planning Policy Guidance 24: Planning and Noise

7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:  
SD1 - Sustainable Development Locations  
CE1 – Centres and Employment Classification and Hierarchy  
CE2 – Mixed Use Centres  
CE2a - Town Centre  
UR1 - Regeneration Areas  
UR2 - Built Design and Character  
TA1 - Accessibility and Changing Travel Behaviour  
TA2 - Walking and Cycling  
TA5 - Parking

- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):  
DP1 - Design and Amenity  
DP4 - Community Facilities  
DP6 - Colchester Town Centre Uses  
DP10 - Tourism, Leisure and Culture  
DP14 - Historic Environment Assets  
DP17 - Accessibility and Access  
DP19 - Parking Standards  
DP20 - Flood Risk and Management of Surface Water Drainage  
DP25 – Renewable Energy

- 7.4 Regard should also be given to the following Supplementary Planning Guidance/Documents:  
Vehicle Parking Standards  
The Essex Design Guide  
External Materials in New Developments

## **8.0 Consultations**

- 8.1 The Conservation Officer has commented on the associated listed building application (102681) and recommends as follows:

*“The proposal to convert these redundant buildings to a hotel use is considered an appropriate one. The works necessary to adapt the buildings to the proposed new use are relatively limited in extent (given the complexity and number of buildings involved) and have been conceived so as largely to protect the significance of these buildings. The proposal, although causing some damage to fabric of historic significance is on balance considered acceptable. I would therefore recommend approval, subject to appropriate conditions to control materials, design detailing etc.”*

- 8.2 Environmental Control recommend conditions to cover the following are attached to any planning permission granted: site boundary noise levels; sound insulation of external plant and machinery; control of fumes and odour; grease traps and light pollution.

- 8.3 The Archaeological Officer recommends:

*“If consent is granted I would recommend that our standard archaeological watching brief condition be imposed. The watching brief shall be commissioned by the applicant from a professional, IFA registered, archaeological contractor. Following discussion with the Agent we agreed that ground disturbance shall be limited to no deeper than 1000mm and that the applicant would consider not planting any new trees to demarcate boundaries, etc. The location is sensitive in archaeological terms as the site of the Franciscan Friary established shortly before 1237 and dissolved in 1538, and being within the Roman town walls.”*

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

- “1. No commencement of the development shall take place until such time as the following have been provided or completed to the satisfaction of the Highway Authority:*
  - Any Clearway Order and Traffic Regulation Order required as a result of relocating the eastbound bus stop mentioned below.*
- 2. No occupation of the development shall take place until such time as the following have been provided or completed to the satisfaction of the Highway Authority:*
  - Re-location of the eastbound bus stop as shown in principle on planning application drawing number J351-003 (December 2010) produced by Ardent Consulting Engineers. Relocated stop to meet ECC’s current bus stop specification to include but may not be limited to a high kerb, shelter and real time passenger information.*
  - The removal/amendment of any road markings required as a result of relocating the eastbound bus stop.*
  - Resurfacing of the High Street/East Hill carriageway to a minimum depth of 40mm with a SMA of PSV 65+ wherever any road markings are removed as a result of re-locating the eastbound bus stop.*
  - The relocation of the refuse bin next to the relocated eastbound bus stop.*
  - If the proposal would have 50 or more employees, a travel plan to include but shall not be limited to a £3,000 contribution to cover the cost of approving, reviewing and monitoring the Travel Plan.*
- 3. Measures shall be provided to ensure no mud and/or debris is deposited on the public highway by any vehicle associated with construction of the proposal. Details to be agreed with the Local Planning Authority and Highway Authority*

*Notes:*

- The above is required to ensure the proposal complies with the Highway Authority’s Development Management Policies, adopted as County Council Supplementary Guidance in February 2011*
- The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate*
- Prior to any works taking place in the highway the developer shall enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works*
- All highway related details shall be agreed with the Highway Authority*
- The number of spaces and how these are laid out shall be in accordance with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009. This applies to all vehicular parking spaces including disabled as well as cycle and motorcycle parking*
- Any proposed traffic calming shall be laid out and constructed having consulted the emergency services and bus operators”*

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 Representations

9.1 7 letters of objection have been received. The material planning reasons for objection to the proposal are summarised below.

- A smaller car park will result in longer queues at peak times on Roman Road and Castle Road making access to properties more difficult than the current situation
- Concerns regarding noise from general operation, plant and extract equipment, glass recycling, deliveries and servicing, vehicle movements (late night car door slamming) and from customers using the terrace and the function rooms, events including bands etc
- The proposal will cause further highway problems in an already congested area
- The road layout would not accommodate large vehicles
- Concerns regarding odour from cooking and from refuse storage areas
- Concern regarding outdoor events
- Would the proposed gazebo structure be a drinking and smoking area?
- Proposed marquee is opposite bedrooms in Greyfriars Court leading to amenity concerns
- Proposed marquee would be visually intrusive and harm the setting of the listed buildings
- Which boundary wall is scheduled for demolition?
- What are the external lighting plans, they should be considered at this stage?
- Inadequate parking for staff and customers
- Noise and disturbance during the construction phase, strict working hours should be applied
- The current car park is closed at 2200hrs, the proposal will result in vehicle movements much later at night causing noise and disturbance
- Extract units should be resited to avoid noise and smells
- There are no late night pubs or club in close proximity
- Repeated reference is made to future expansion which is cause for concern
- The function room should be sound insulated and windows and doors kept closed
- The perimeter path will generate noise from pedestrians as it is the main access to the car park
- Will the existing trees and bushes remain?
- A Holm Oak tree was lost last year with no formal notice and no plans are shown to restore this tree
- Little landscaping is shown to protect our views

## 10.0 Parking Provision

10.1 The application proposes 31 car parking spaces (3 of which are disability spaces), 3 Powered Two Wheeler (PTW) spaces and 10 cycle spaces.



## Car Parking

- 10.2 For hotel development, a maximum provision of 1 space per bedroom is applicable. The informative notes in the adopted parking standards recognise that: *‘The modern day hotel is seldom used solely as a hotel and often offers multifunctional amenities such as conference facilities, restaurants and gyms. These multifunctional uses must be considered per individual class use and adequate parking allocated to encompass all uses when considering the potential for cross-visitation.’*
- 10.3 For conference facilities, a maximum of 1 space per 5 seats is applicable for sustainable locations. The informative notes state that: *‘...when conference facilities are included in a hotel facility, appropriate parking standards must be applied for each use, however cross-visitation must be taken into account.’*
- 10.4 For restaurants and drinking establishments, a maximum provision of 1 space per 5m<sup>2</sup> GFA is applicable.
- 10.5 Applying the above parking standards to the proposed uses results in the following maximum permissible provision:
- Hotel – 21 spaces
  - Function Room – 10 spaces
  - Restaurant – 23 spaces
  - Bar/Lounge – 13 spaces
- This gives a total of 67 spaces
- 10.6 The adopted parking standards accept that a lower provision of vehicle parking may be appropriate in town centre locations where there is good access to alternative forms of transport and existing car parking facilities.
- 10.7 The site is located in a highly accessible location within the town centre and a short walk away from other tourist attractions, shops, bars and restaurants, and leisure facilities. The level of car parking proposed, while below the maximum permissible, is considered appropriate in this case given the site’s accessible town centre location, access to other car parks and with consideration given to cross-visitation between shared uses.

## Disabled Provision

- 10.8 The adopted parking standards identify that a minimum of 3 disabled car parking bays are required for a car park of 200 spaces or less. 3 such spaces are proposed located close to the hotel’s rear entrance.

## Powered Two-Wheelers (PTWs)

- 10.9 For all of the proposed uses, a minimum of 1 PTW space is required, plus 1 space per 20 car parking spaces up to 100 spaces. This results in a provision of 3 spaces for PTWs for a 30 space car park.

## Cycle Parking

- 10.10 For hotel development, a minimum of 1 secured covered cycle space per 5 staff is required, plus 1 space per 10 bedrooms. A minimum of 1 space per 4 staff is required for conference facilities, whilst visitor parking is considered on individual merits. For restaurants and drinking establishments, a minimum of 1 cycle space per 100m<sup>2</sup> for staff is required, plus 1 space per 100m<sup>2</sup> for customers.
- 10.11 Applying the above cycle parking standards to the proposed uses and the anticipated number of staff results in the following proposed provision:
- Hotel – 4 spaces
  - Function Room – 2 spaces
  - Restaurant – 2 spaces
  - Bar/Lounge – 2 spaces
- This gives a total of 10 spaces
- 10.12 The provision of parking for PTWs, cycles, and people with disabilities are provided in accordance with minimum standards.

## **11.0 Open Space Provisions**

- 11.1 The proposal makes no provision for open space although a garden / terrace area is proposed to the rear of the main buildings to serve the hotel.

## **12.0 Report**

- 12.1 The main issues in this case are considered to be as follows:
- *Use*
  - *Heritage*
  - *Impact on the Surrounding Area*
  - *Impacts on Neighbouring Properties*
  - *Highway Issues*
  - *Other Matters*

## Use

- 12.2 The site is located in a sustainable location on the edge of the town centre with good access to public transport. The proposal involves the conversion and refurbishment of vacant listed buildings that would be brought back into an effective and appropriate use which would ensure the continued longevity of the heritage asset. The site is identified in the LDF proposals map for mixed use development. The proposed uses would be consistent with the land uses permitted by that policy.
- 12.3 The site is located adjacent to the St Botolph's regeneration area. The proposals would involve significant investment within the town centre, bringing new life to these important historic buildings enhancing the vitality of the Conservation Area and furthering wider regeneration aims in the town centre.

- 12.4 The proposals would make a valuable contribution to the hotel bed space targets set out in table CE1b of the Core Strategy. The site is also identified in the Humbert's Leisure Hotel Market and Sequential Site Appraisal document which identifies Greyfriars as suitable for conversion to a boutique style hotel.
- 12.5 The proposed hotel use of the Grey Friars buildings is in accordance with the Development Brief for the site prepared by Essex County Council and Colchester Borough Council in 2008 and with further aspirations for regeneration of Colchester town centre, augmenting hotel provision in the town, for which there is a recognised need. The use proposed would not prejudice future development opportunities in the adjacent car park site identified in this Brief.

### Heritage

- 12.6 The main conservation issues raised by this application are the effect that the proposed alteration works would have on the special interest of the listed buildings, the setting of the conservation area and potential archaeological deposits.
- 12.7 Greyfriars, All Saints and Hillcrest have been vacant for a number of years and in order to avoid their deterioration (and the potential for vandalism and/or theft) it is important to find new sympathetic uses for these buildings.
- 12.8 In many ways Greyfriars lends itself to hotel use – the principal rooms of the Georgian house forming the new reception rooms of the hotel with bedroom upstairs and with further bedrooms / services areas within the later (historically less sensitive) wings.
- 12.9 The present scheme is considered broadly sympathetic; the proposed alteration works are relatively limited (certainly in comparison to any proposal to convert the building into flats for example) and would, for the most part, be concentrated in the later additions to the building. Some of the proposed alterations would damage the architectural and historic interest of the building - notably the creation of new doors between rooms. However, other works, for example, the removal of the modern screen from the staircase, would be beneficial in terms of returning the interior of the building back to its original character.
- 12.10 The proposed addition of the new entrance structure to the east of Greyfriars constitutes a significant intervention. The new entrance does however resolve many of the internal circulation problems that would otherwise be encountered by attempting to use the original front door to Greyfriars and would not result in damage to fabric of significant historic interest.
- 12.11 The proposed new entrance is designed in a contemporary style which is considered to be the correct approach as it allows for the insertion of a light weight glass structure that would not only contrast with the architectural character of Greyfriars and All Saints House but allow the building to 'breathe'.
- 12.12 The proposed new lift shaft to the rear has been sited to minimise its impact both in terms of the potential loss of historic fabric and its visual impact. The external detailing and the execution will be critical to ensuring that the lift tower does not appear as a poor quality addition to this important building. This detailing can be controlled by way of conditions.

- 12.13 No works are proposed to the front elevation of Hillcrest other than minor repair works. The proposed enclosure of the open rear courtyard by the insertion of a roof is considered acceptable subject to satisfactory design detailing which again can be controlled by condition. Only minor works of alteration are proposed to the interior of Hillcrest.
- 12.14 The interior of All Saints House has been significantly damaged by the previous owner and as a part of the conversion and refurbishment works it is proposed to reinstate / repair the damaged architectural features. In order for the internal circulation of the building to work, it is necessary to create new door openings; however, these are relatively minor and are certainly outweighed by the benefits of repairing the main historic staircase amongst other features. No significant changes are proposed to the exterior of the building.
- 12.15 The proposals to re-landscape the area to the rear of Greyfriars to create a terrace / garden area, a drop off area and car parking is generally considered acceptable subject to detailed design and materials being controlled by condition. The landscaping of this area would improve the setting of the listed buildings which has been much degraded by the incursion of the car park. The Conservation Officer recommends that the boundary treatment between the site and adjacent car parking requires further consideration, recommending consideration be given to the erection of a brick wall. This detail could potentially raise issues with disturbance of archaeology but could be adequately dealt with under the submission of detailed landscape proposals required by condition.
- 12.16 In summary, the proposal to convert these redundant buildings to a hotel use is considered an appropriate one. The works necessary to adapt the buildings to the proposed new use are relatively limited in extent (given the complexity and number of buildings involved) and have been conceived so as largely to protect the significance of these buildings. The proposal, although causing some damage to fabric of historic significance is, on balance, considered acceptable.

#### Impact on the Surrounding Area

- 12.17 Greyfriars, All Saints and Hillcrest have been vacant for a number of years. The proposals would bring these buildings back into an appropriate active use which would enhance the vitality, character and appearance of the area.

#### Impacts on Neighbouring Properties

- 12.18 One of the main objections from neighbouring residents in Greyfriars Court was due to noise / disturbance and visual intrusion from the proposed events marquee. Following discussions with the agent this element has now been removed from the proposal. It is recommended that a condition is placed on any permission granted restricting the erection of a marquee or other such temporary structures without prior written approval from the Local Planning Authority.

- 12.19 In terms of the internal layout of the hotel, this has been informed by the existing room structure and the need to safeguard the historic layout and existing features of these listed buildings. More invasive uses such as the kitchens and service area have been placed in areas of lesser historical significance. The concerns of residents regarding noise and disturbance from plant and odour from extraction equipment are noted, as are the comments from Environmental Health, who do not object to the proposals but recommend conditions to control these aspects to protect the amenity of nearby residents.
- 12.20 Another source of concern from neighbouring residents was potential noise from the proposed function room. Environmental Health also recommends a general noise condition to protect the amenity of nearby residents from excessive noise from any sources within the site. It should also be remembered that it is not in any hotelier's best interests to create noise or nuisance which may disturb paying guests.
- 12.21 With regard to noise and disturbance from the late night use of the gardens and terrace conditions could be applied to control the hours of use of these areas, although the applicants would reasonably be expected to provide a smoking area for guests to use.
- 12.22 As with any town centre location there will inevitably some later night noise from customers departing. However, the main entrance and egress point to the site would be from the High Street with rear access leading only to the car park and Castle Road. It is noted that the car parking area for the neighbouring development is between the car park for the proposed hotel and the residential units. There is also considered to be reasonable separation between the uses. It is not considered that noise and disturbance from the proposal would warrant refusal of the proposals in this town centre location.

#### Highway Issues

- 12.23 A detailed Transport Statement was submitted as part of the suite of documents which accompany the application. This has been assessed by the Highway Authority who has no objection to the proposals subject to a list of requirements.
- 12.24 Measures to ensure no mud and/or debris is deposited on the public highway by any vehicle associated with construction of the proposal can be dealt with by means of a construction method statement condition.
- 12.25 The proposed use would not envisage having more than 50 employees (25 full time employees are proposed) therefore a travel plan is not required in this case.
- 12.26 The re-location of the eastbound bus stop as shown in principle on the planning application drawings is not required for the proposal to go ahead or for it to be acceptable in planning terms. It is an aspiration of the applicants to improve the appearance of the front of the building. It is therefore not reasonable or necessary to impose the requirements associated with this element by way of planning conditions. It has been agreed with Highways that they can be placed on any decision as informatives.

## Other Matters

- 12.27 The scheme has been designed to ensure that the proposals would not disturb areas of archaeological importance previously identified within the site from desk top studies and trial trench works. Further, the Archaeological Officer recommends a watching brief condition be applied to any condition granted.
- 12.28 An arboricultural report was submitted to accompany the application. It is recommended that this is updated to take into account the detailed design for the external works required by conditions and that a method statement be submitted to cover all development works on the site. This can be controlled by conditions.

### **13.0 Conclusion**

- 13.1 In summary, the proposals are considered to be an appropriate use of the site, sympathetic to the special interest of the listed buildings. They would involve significant investment within the town centre, bringing new life to these important historic buildings, enhancing the vitality, character and appearance of the Conservation Area and furthering wider regeneration aims in the town centre. The concerns of the neighbouring properties are noted, however it is considered these concerns can be adequately mitigated by conditions suggested by Environmental Health. The proposal is considered to accord with local and national policy and approval is therefore recommended.

### **14.0 Background Papers**

- 14.1 PPS; Core Strategy; CBDP; SPG; DHU; HH; AT; NLR

### **15.0 Recommendation** - APPROVE subject to conditions and informatives to cover the following:

- Time limit
- Materials
- Detailing
- Site boundary noise levels
- Sound insulation of external plant and machinery
- Control of fumes and odour
- Grease traps
- Light pollution.
- Archaeological Watching Brief
- Construction Management Agreement
- Working hours during construction
- Hours of use of external garden and terrace areas
- Restrictions on erection of marquees or other temporary structures without prior approval
- Detailed submission of hard and soft landscaping
- Implementation and monitoring programme
- Submission of proposed water conservation measures to be incorporated

Informatives to cover:

- Advisory Notes for the Control of Pollution during Construction & Demolition Works
- The applicant's attention is drawn to the comments made by the Highway Authority regarding the relocation of the bus stop.
- The applicants are strongly advised to prepare and monitor a staff travel plan.

14 April 2011

<b>Report of</b>	<b>Head of Environmental and Protective Services</b>	<b>Author</b>	<b>Vincent Pearce</b> ☎ 01206 282452
<b>Title</b>	<b>Information item. Making a TPO – A short explanation of the process along with clarification of the possibility of making a TPO on Garrison land with specific reference to a recent application at 16-23 Darwin Close (Planning application Ref: 102121)</b>		
<b>Wards affected</b>	<b>All and specifically Berechurch</b>		

**This report provides the first of what will become an occasional series of explanatory notes on a particular aspect of the planning process. In this case the Tree Preservation order (TPO) process. This report also looks at a recently taken decision in Darwin Close and reflects on the report that was presented to members and the impact of a factual error therein**

## **1.0 Decision Required**

- 1.1 Members are asked to note the report and to give an indication that had the report made a correct reference to the ability to TPO the trees on adjacent land they believe that their decision would have been the same for the reasons previously agreed in that the amenity value of the trees was fully considered at the time and their protection was not given as much weight as securing affordable housing units in very particular circumstances of the case.

## **2.0 Reasons for Decision**

- 2.1 Members are asked to note and agree this information item in order to (1) acknowledge that the TPO process has been explained and that members are keen to see similar planning process information items presented from time to time and (2) to ensure that the Committee has been made aware of the error in the report referred to and had a further opportunity to consider the implications for their decision taken on 17 February 2011.

## **3.0 Alternative Options**

- 3.1 None

## **4.0 Making a Tree Preservation Order (TPO): The Process explained**

- 4.1 Tree Preservation Orders are made to protect trees that have a high level of public amenity value. They are used to protect trees that provide a benefit to the public as a whole.
- 4.2 Tree Preservation Orders are made when it is expedient in the interest of the public to protect the trees for the long term and it is clearly possible to show that the trees are at risk. Government guidance advises that TPOs should not be used to frustrate development and should not be routinely made when trees are under good management.



- 4.3 In order to make a tree preservation order Colchester Borough Council undertakes the following steps:
1. Call received from member of the public or request for setting of TPO form received
  2. Arboricultural Planning Officer undertakes a site visit to assess the tree/s using the Tree Evaluation for Making a Preservation Order methodology (TEMPO). This uses criteria based on the trees physiology and condition, safe life expectancy, context (including historical context), public visibility and expedience to make the preservation order. At this time a hand drawn map is created to plot the tree/s.
  3. The details collected at step 2 are passed to the Professional Support Unit (PSU) in Environmental and Protective Services to input onto the CIVICA database ('Civica Authority' is the Planning Services software system), create a digital plan and make up the Tree Preservation Order documents
  4. The documents are passed to Legal Services at CBC to be signed by the Proper Officer and the Mayor.
  5. Documents returned to PSU and sent out to all parties affected by the order.
  6. If after 28 days no objections have been raised the order should be confirmed at the earliest opportunity.
  7. If valid objections are raised within the 28 days the matter is passed to the planning committee to make a decision on whether to confirm.
  8. Letter sent to all affected parties notifying of confirmation or non-confirmation of the order and updated on CIVICA.
  9. Preservation order file stored in basement at Rowan House.
- 4.4 The above is in line with the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999 (amended 2008). Guidance relating to this is provided by DETR guidance from advisory book, Tree Preservation Order - A Guide to the Law and Good Practice.
- 4.5 Guidance regarding trees on Crown Land was changed in 2007 when the Circular 02/06 - Crown Application of the Planning Acts whereby Tree Preservation Orders can now be applied directly to trees within the boundaries of Crown Land without requiring permission being sought first. It should also be noted that section 300 notices are now also redundant following changes to the Compulsory Purchase Act in 2004 and therefore the Tree Preservation Order can come into force while the trees are still under Crown ownership and not only after the land has been sold.
- 4.6 It should also be noted that within the next year further changes are likely to occur to the TPO legislation. Under current streamlining consultation the Department for Communities & Local Government (DCLG) is proposing to fundamentally change the Model TPO to make it simpler to administer and use. A majority of the change will be the removal of the 'wordy' order document and replacement with a 2 page document consisting of Schedule 1 and the map showing the tree/s position. When and if these changes occur you will be notified.

4.7 Some of the most common TPO questions asked are detailed below with answers provided by the Council's arboricultural officer:-

Q: When is a tree a tree?

A: Legislation does not define but case law suggests when any reasonable person believes it is a tree.

Q: When is a line of trees a hedge (*as you cannot TPO a hedge*)?

A: When they have been managed as a hedge at any point in time.

Q: Can newly planted trees be the subject of a TPO?

A: Yes

Q: Are trees in Conservation Areas protected?

A: Yes. A tree that is not the subject of a TPO but is within a conservation area has a degree of statutory protection not available to other trees in that before any work/s can be carried out the owner is required in law to notify the Council who in turn then have 6 weeks to decide whether to TPO the tree or agree the proposed works. Failure of the Council to issue its decision before expiry of the 6 weeks is taken in law to be a deemed approval of the proposed works

Q: Can the planning authority grant a permission on land with a TPO?

A: Yes. Planning permission can be granted that results in the felling of or works to a TPO'd tree/s. A planning permission over-rides a TPO in law.

#### 4.8 **The Darwin Close case**

4.9 On 17 February 2011 the Planning Committee considered a report on an application to redevelop a disused and cleared garage block site at 16-23 Darwin Close and granted planning permission.

4.10 That detailed report contained a factual error when it stated:-

"Further, as the trees are within MOD ownership the Council cannot place a TPO on the trees."

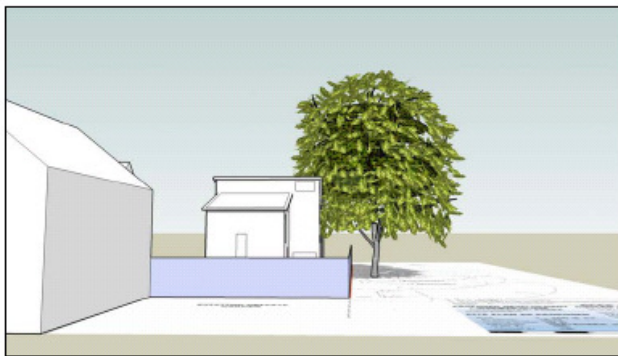
4.11 In fact the trees could have been TPO'd as the law had changed in 2007 as outlined earlier in this report. That said the decision taken at the meeting followed a detailed discussion which explored the amenity value of the trees vs the need for affordable housing. The relevant Committee report is reproduced in the appendix for reference. The Planning Service Manager is clear that it would not have been expedient to TPO the trees (or just T3 (Oak)) at the time because it was clear to planning officers that the new housing could not be approved and create a satisfactory living environment for the residents with the trees in situ. Councillor Mudie made strong written and verbal objection to the loss of the trees including speaking at the meeting and sought to save T3 but members whilst understanding his position took the view that based on its planning merits the proposal could be approved as the high need for affordable homes outweighed the desire to save the trees in this particular case (when in all other respects it was acceptable). Planning permission was granted and the trees have been felled.

4.12 Councillor Mudie has been in dialogue with the Planning Service over this matter and the error contained in the report since the meeting and it is considered appropriate to set out the TPO process and to refer to the Darwin Close case for information.

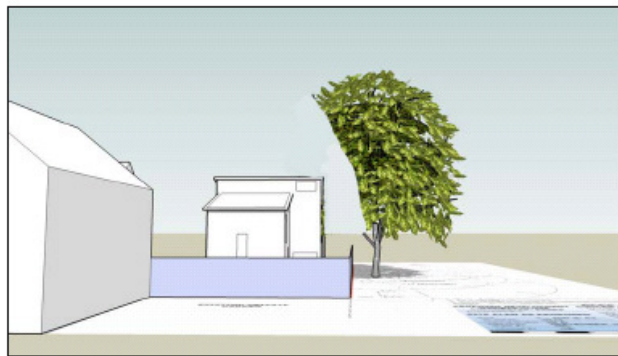
4.13 Members may wish to view the shadowing models and pruning diagrams produced by the Planning Service to illustrate the impact of T3 on the amenity of occupiers of the new dwellings had it been retained. Officers remain of the view that the decision made was sound and based on reasonable planning grounds and members will no doubt welcome the opportunity to see these as it provides further evidence to support the decision taken. These illustrations are shown below for information.

4.14 Members are advised that the new development will be subject to new planting and the applicants have offered to plant new trees within the MoD land to complement existing woodland planting.

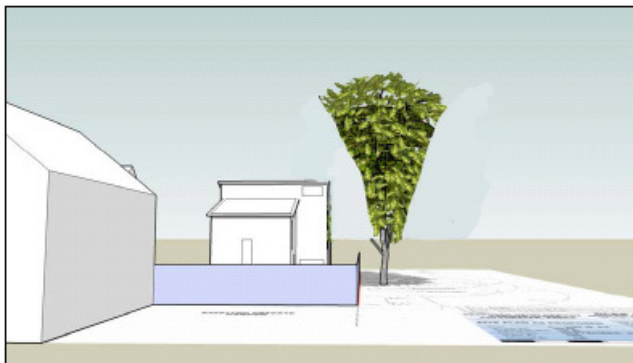
**Diagram 1: Required cutting back of T3 to allow sunlight into the new dwellings**



Original situation with T3 in place



Situation with T3 in place and cut back on the side closest to the new dwellings



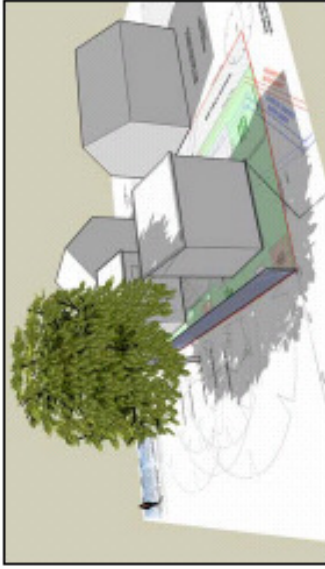
Situation with T3 in place and cut back and balanced

Illustrative representation

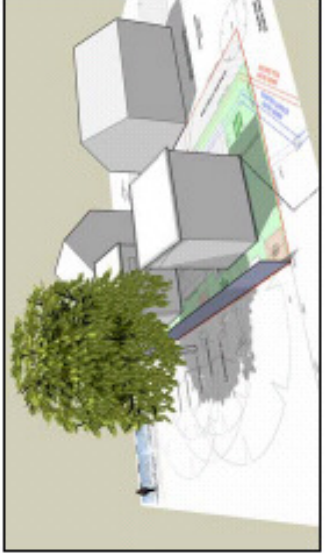
**Darwin Close**

Diagram 2: Shadow model for various periods throughout the year

With T3 in situ



March 11.30am



June 11.30am



October 11.30am

## Darwin Close: shadow modelling



March 11.30am



June 11.30am



October 11.30am

With T3 in removed

## **5.0 Strategic Plan References**

5.1 Shift resources to deliver priorities, homes for all & improving community safety

## **6.0 Consultation**

6.1 Discussion with Councillor Mudie has been ongoing

## **7.0 Publicity Considerations**

7.1 None

## **8.0 Financial Implications**

8.1 No financial considerations are expected to arise from this decision.

## **9.0 Equality, Diversity and Human Rights Implications**

9.1 It is expected that the planning decision as relates to the Darwin Close site will deliver two units of affordable rented accommodation on a site that has been prone to anti-social behaviour thereby helping to provide much needed accommodation to those in housing need and to resolve longstanding community safety issues.

## **10.0. Community Safety Implications**

10.1 Redevelopment of the former garage site in Darwin Close will resolve longstanding problems of anti-social behaviour

## **11.0. Health and Safety Implications**

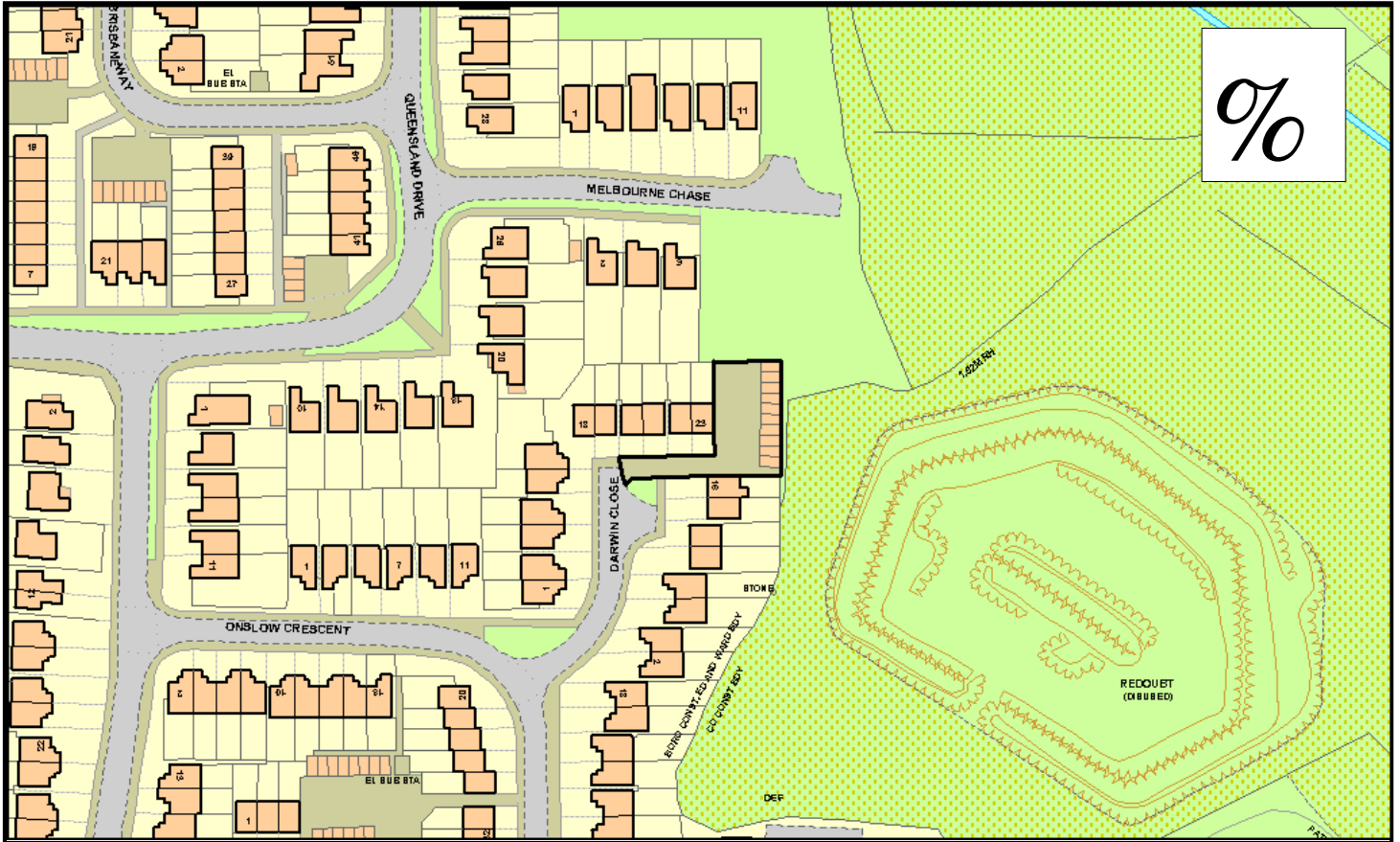
11.1 As above

## **12.0. Risk Management Implications**

12.1 This report, by airing the issues raised by Councillor Mudie, will ensure that the Committee is presented with all the facts as they have become clear since the meeting of 17 February 2011 in the public interest and in the interest of transparent decision making.

## **Background Papers**

**Previous report to Committee in respect of application reference 102121**



**Application No:** 102121

**Location:** Plot of land between, 16 & 23 Darwin Close, Colchester, CO2 8US

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

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of PO Box 884, Town Hall, Colchester CO1 1FR under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use.

This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2011

## 7.1 Case Officer: Mr John More

**MINOR**

**Site:** 16 & 23 Darwin Close, Colchester, CO2 8US

**Application No:** 102121

**Date Received:** 1 November 2010

**Agent:** Duncan Clark And Beckett

**Applicant:** Colne Housing Association Ltd

**Development:** Proposed erection of 2no. 2 bedroomed dwellings.

**Ward:** Berechurch

**Summary of Recommendation:** Conditional Approval with Grampian Condition

### 1.0 Introduction

1.1 This application is referred to the Planning Committee because an objection has been received and Colchester Borough is the landowner.

### 2.0 Synopsis

2.1 The application is for the erection of 2 two-storey two-bed dwelling houses with associated parking and amenity space on a former Colchester Borough garage site, by Colne Housing Association. The main issues are the need for affordable housing, the design and layout of the properties, the amenity of neighbouring properties, the amenity of the end users of the proposed dwellings and the large Oak Trees adjacent to the site. One objection has been received relating to the removal of the oak trees. On balance the application is recommended for conditional approval subject to being able to attach a Grampian condition preventing the commencement of development unless or until the trees on the boundary outside the application site have been removed.

### 3.0 Site Description and Context

3.1 This site is a disused estate garage site, rectangular in plan form measuring approximately 28m x 16m, giving a site area of 0.45 ha. The garage buildings having been demolished and cleared from the site leave an area of concrete hard standing.

3.2 The site is bounded to the north and east by open space (Middlewick Ranges); to the south by the windowless north flank wall of number 16 Darwin Close and its garden wall, and to the east by the windowless eastern flank wall of number 23 Darwin Close and its garden wall. There is a row of 5 mature oak trees standing just outside the eastern boundary of the site within MOD land.

3.3 A right of way crosses the site from south to north, giving pedestrian access from Darwin Close to the public open space.

3.4 A foul water sewer and a surface water sewer run from southwest to northeast across this site, generating an 8-metre wide easement.

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

4.1 The application is for the erection of 2 no. 2-bedroomed 3-person 2-storey houses of 68m<sup>2</sup>, comprising an open-plan kitchen/living area and wc at ground floor, and 2 bedrooms and a bathroom at first floor.

4.2 In terms of private amenity space plot 1 has an enclosed rear garden of 60m<sup>2</sup> while plot 2 has an enclosed rear garden of 55m<sup>2</sup>.

4.3 A shared surface permeably paved access route with a Type 5 turning head is proposed leading to 2 off road car parking spaces per house. Each property would have secure cycle storage in the form of a shed in the garden.

4.4 The proposal is for Code 4 general needs social rented housing.

4.5 It is proposed to redirect the surface water sewer leaving a strip of buildable land along the eastern boundary which is 8.7 metres wide.

4.6 The original proposal was to remove three of the oak trees (T2, T4 & T5) to the rear of the site which are outside the application site on MOD land. The most recent set of amended plans now shows all 5 Oak trees removed from the MOD land.

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

5.1 The land is currently designated in the Development Plan as predominantly residential.

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

6.1 There is no relevant planning history.

#### **7.0 Principal Policies**

7.1 The following national policies are relevant to this application:  
Planning Policy Statement 1: Delivering Sustainable Development  
Planning Policy Statement 3: Housing  
Planning Policy Statement 23: Planning and Pollution Control



- 7.2 In addition to the above national policies, the following policies from the adopted Colchester Borough Core Strategy (December 2008) are relevant:
- SD1 - Sustainable Development Locations
  - SD3 - Community Facilities
  - H1 - Housing Delivery
  - H2 - Housing Density
  - H3 - Housing Diversity
  - H4 - Affordable Housing
  - UR2 - Built Design and Character
  - PR1 - Open Space
  - TA5 - Parking
  - ENV1 - Environment
  - ER1 - Energy, Resources, Waste, Water and Recycling
- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (October 2010):
- DP1 Design and Amenity
  - DP3 Planning Obligations and the Community Infrastructure Levy
  - DP12 Dwelling Standards
  - DP16 Private Amenity Space and Open Space Provision for New Residential Development
  - DP19 Parking Standards
  - DP25 Renewable Energy
- 7.4 Regard should also be given to the following Supplementary Planning Guidance/Documents:
- Backland and Infill
  - Community Facilities
  - Vehicle Parking Standards
  - Open Space, Sport and Recreation
  - The Essex Design Guide
  - Affordable Housing
- 8.0 Consultations**
- 8.1 Environmental Control recommend a condition relating to light pollution and the '*Advisory Notes for the Control of Pollution during Construction & Demolition Works*' informative.

- 8.2 The Arboricultural Officer recommends refusal of the application as originally proposed (with only 3 of the 5 Oak trees removed). He states:

*"I am in agreement with the tree survey and however I am not in agreement with the conclusions of the report.*

*It is noted that trees T2, T4 & T5 are of low importance and should not constrain the site. It is also recommended within the report that these trees should be removed. As these trees are not in the ownership of the developer this cannot be agreed to unless evidence can be provided that the owner of the trees also agrees.*

*T1 & T3 are large important trees that will significantly impact the site if they are retained. These are in good condition and should be retained. If buildings are situated beneath them it will create an oppressive living environment and residents will constantly be requiring work to be done to these trees.*

*The position of the buildings beneath these trees is in my opinion inappropriate and (although not much better) parking would be more appropriate.*

*Conclusion*

*I would advise against the site layout as currently proposed."*

- 8.3 Following suggestions to remove one additional Oak leaving one tree (T3) the Arboricultural Officer made the following additional comments:

*"The retention of T3 with the buildings in there proposed locations still creates significant problems, however, the issues are regarding the end use of the area rather than the construction. Ultimately we need to construct buildings that are usable in the long term – which with significant overshadowing from the retained tree and the direct conflict with the built form may be problematic.*

*Ultimately it is the decision of the tree owners as to whether the trees are retained but my view would be that with T1 or T3 remaining in place the issues remain the same."*

- 8.4 The Contaminated Land Officer states that the report *"has identified any potential risks from potential contamination to relevant receptors as low to very low. However, it has also recommended that, given the sensitivity of the proposed new use (residential with gardens), "following the removal of the concrete surfacing which covers the site, an inspection should be made, by a suitably experienced Engineer, to highlight any evidence of sources of contamination such as spillages of hydrocarbons which then may warrant further assessment and/or investigation". Consequently, I have adapted one of the standard contamination conditions/informatives, which I suggest is attached to any permission granted."*

8.5 The Highway Authority would not wish to raise an objection to the above subject to the following;

- Prior to occupation of the development the vehicular parking and turning facilities, as shown on the submitted plans shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.  
Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety and to ensure accordance with Policy 1.1 of the Highways and Transportation Development Control policies.
- No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.  
Reason: To avoid displacement of loose material onto the highway in the interests of highway safety to ensure accordance with Policy 1.1 of the Highways and Transportation Development Control policies.
- The vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each parking space.  
Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy 7 of the Highways and Transportation Development Control policies.
- Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Travel Information and Marketing Scheme for sustainable transport, approved by Essex County Council.  
Reason: In the interests of promoting sustainable development and transport in accordance with policy in F.32 in the Essex Road Passenger Transport Strategy 2006/11.
- **INF01:** All works affecting the highway to 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 to the Area Highways Manager (01206 838600).

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 Representations

9.1 Cllr Harris writes in support of the application stating

*"With reference to this site I wish to support the principle of developing this site. The residents in Darwin Close had to endure bad behaviour in the area, when some old garages existed there. A petition was collected in and asked for CBH/CBC to remove the derelict garages. It was always thought the only solution was to use this parcel of estate land to use for Social or affordable housing. I note there is intention to ensure existing path from Darwin Close to public open space is retained by provision of a footpath, this is a positive step. The proposal here puts closure on the problems of the past. I feel that two issues can be easily resolved:  
a) Saplings to be provided further into the copse to be replace the trees to be removed  
b) A look at providing off street parking for numbers 21 and 23*

*I support this plan as it deals with the problems of the past, and indeed provides much needed social accommodation.”*

9.2 Cllr Mudie objects to the removal of the trees adjacent the site.

*He states: “I wish to register my objection to the removal of all the trees in the close vicinity to the above proposal. The reasoning behind my objection is based on the following: The original proposal suggested that 3 of the 5 trees should be removed because of their poor condition and this would also facilitate the proposed development. I am extremely disappointed that the recent revised plans should include the removal of all 5 trees which includes 2 sound mature oak trees. Having discussed the issue with Liam McKarry Arboricultural Planning Officer and Paul Evans MOD Estates Surveyor, I have found lacking any support for the indiscriminate removal of the 2 sound oak trees. As far as I'm aware, the only documented reason for the removal of these 2 trees is that the new residents may find that the shedding of their leaves would cause a nuisance. These trees are on a boundary which was probably an ancient woodland and therefore so long established that we should all be trying to protect them. Should the only reason for their demise be that they may cause a nuisance, then I shall conclude that the revised planning application is in need of further revision.”*

9.3 Cllr Mudie has subsequently submitted the following comments:

*“Further to my original objection submitted 15th December 2010 subsequently posted on your web site 14th January 2011. I wish to amend my objection regarding the 5 trees adjacent to the proposed development site. Following a recent study of the site I noticed that tree (1) although apparently sound, would have little aesthetic value towards the amenity if it were retained and the site developed. However, tree (3) is a fine specimen of a traditional English oak and should be retained at all cost. It is a great shame that for many years the ivy has been allowed to cover most of the trunk and canopy and it is the ivy that will continue to shade the site on a year round basis. I would hate to think that we could save tree (3) only to see it's demise due to strangulation by clinging ivy! I would welcome Liam McKarry's thoughts on saving tree (3).”*

## **10.0 Parking Provision**

10.1 The adopted parking standards require the following provision for this proposal:

- A minimum of 5 vehicle parking spaces. (1 of which to be visitor/unallocated, which, subject to appropriate design, can be located on or near the road frontage)
- A minimum of 1 cycle space per dwelling or none if a garage or secure area is provided within curtilage of dwelling.

10.2 The parking standards do allow for reductions of the vehicle standard where the development is in an urban area (including town centre locations) that has good links to sustainable transport.

10.3 This proposal provides the following:

- 4 vehicle parking spaces, 2 for each property.
- 1 shed/cycle store for each property.

10.4 While the proposal provides 2 off road vehicle parking spaces for each property and secure cycle storage it fails to provide a visitor/unallocated parking space within the site. Due to the location of the site along the access track, on-street visitor parking would not be closely related to the proposed dwellings and would be outside other dwellings or in the turning head at the end of the cul-de-sac.

10.5 The current planning application does not directly take into account the previous use of the site as a parking/garaging court and the parking provision which has been lost to the estate by the withdrawal of the estate garage site. No's.19, 21 and 23 Darwin Close do not appear to have any satisfactory off road parking associated with the dwelling. This is likely to lead to greater competition for on-street parking in Darwin Close and vehicles parking on the footpath in front of No. 21 and 23 Darwin Close and in the turning head at the end of Darwin Close.

10.6 The loss of the garage court combined with the two new dwellings lacking visitor parking could result in additional on street parking pressure at the turning head in Darwin Close. It is noted however that the Highway Authority have not raised this as a concern.

## **11.0 Open Space Provisions**

11.1 No public open space is provided within the site.

## **12.0 Report**

12.1 The main issues in this case are considered to be as follows:

- *Background*
- *Design and Layout*
- *Scale, Height and Massing*
- *Impact on the Surrounding Area*
- *Impacts on Neighbouring Properties*
- *Amenity Provisions*
- *Trees*
- *Affordable Housing*
- *Highway Issues*
- *S106 contributions*
- *Other Matters*

### Background

12.2 The block of 10 garages were constructed in approximately 1976 of precast concrete panels bolted together with an asymmetric pitched roof covered in corrugated metal panels. The garages had fallen into a state of disrepair and were subject to vandalism and antisocial behaviour. Local residents lobbied a local Councillor and the MP to get the garages demolished due to their condition.

- 12.3 A report on the condition of the garages from 2008 highlighted a number of issues. It indicated that the garages appeared to be a magnet for local youths and other undesirables. Further, all of the garages appeared to have been abandoned and, given the level of vandalism, were probably beyond economic repair. It identified that there was a risk of partial collapse of the block. The report concluded that given as there appears to be no demand for these garages and many of these precast concrete, site assembled garages are now obsolete, the only logical course must be to demolish the remainder of these structures and clear the site.
- 12.4 The garages were eventually demolished in late 2008.

#### Design and Layout

- 12.5 This is a rather cramped and awkward site to develop. The layout of the proposal is very much dictated by the constraints of the sewer easements, access to the open space, tree cover and the location of neighbouring properties.
- 12.6 The proposal is for a backland development where the layout does not reflect the prevailing pattern of development in the surrounding area in terms of layout, plot size and shape. The proposed dwellings would appear rather cramped in their plots and have awkward shaped small private garden areas. That said the site is set back from the road frontage in the corner of this cul-de-sac served by an existing access and would not read as part of, or harm, the street scene.
- 12.7 With regard to the appearance of the proposed dwellings, the adopted SPD for Backland and Infill development accepts that not all infill or backland development must be a pastiche of existing buildings. It indicates the Council will consider contemporary design on its ability to respond positively to the site constraints and whether it makes a positive contribution to the surrounding area.
- 12.8 In this case, the existing dwellings are of no particular architectural merit. The proposed dwellings would be set back from the street frontage so the contemporary design approach taken would not directly clash with the style of the street scene.
- 12.9 While it is not considered the proposal would harm the existing street scene due to the tucked away location of the site, the proposed houses would appear unduly cramped in their plots and out of character with the pattern of development in the surrounding area. The proposal would therefore conflict with the adopted Backland and Infill SPD.

#### Scale, Height and Massing

- 12.10 The ridge and eaves heights of the proposed dwellings have been designed to be slightly lower than the surrounding dwellings to reflect the tucked away location of the development. The front elevations have been articulated to improve the visual appearance. The scale, height and massing of the proposed dwellings is considered acceptable in this case.

### Impact on the surrounding area

- 12.11 The proposed dwellings would be visible across the POS to the north of the site. The end elevation of plot 2 has been designed with windows overlooking this space to improve passive security and give some visual interest to this elevation.

### Impact on neighbouring properties

- 12.12 There would not be sufficient separation between the proposed development and existing dwellings to overcome problems of overlooking. Much direct overlooking has been mitigated by the use of high level windows, obscure glazing and an angled bay window to plot 2. There is still some potential overlooking to the north. Plot 2 has windows in the front and side/north elevation at first floor level serving bedrooms, which look north towards 6 Melbourne Chase. This property sits at a higher ground level and the back of the property is visible from the site. The proposal would increase the height and thereby the angle of this overlooking. However, back to back distances between the properties would be approximately 25m and set at an angle of approximately 50 degrees. This separation distance would accord with the guidance contained in the Essex Design Guide which recommends a minimum of 25m back to back. Therefore, it is not considered the proposal would result in undue harm in this case.
- 12.13 Due to the layout and design of the proposed houses it is not considered the proposal would result in loss of light or overbearing impact on neighbouring properties.

### Amenity provisions

- 12.14 In terms of private amenity space plot 1 has an enclosed rear garden of 60sqm while plot 2 has an enclosed rear garden of 55sqm. While these areas accord with the areas required for two bed houses in policy DP16, both private amenity areas are of a rather substandard, awkward, unusable shape. Further, if either T1 or T3 are to be retained these areas would also be overshadowed by these mature Oak trees. In this respect it is considered the proposal would conflict with policy DP16 and the Backland and Infill SPD providing substandard private amenity space in qualitative terms. This however must be balanced against the site location, adjacent to and with easy access to the public open space.

### Trees

- 12.15 While there are no trees within the application site there is a row of 5 large Oak trees to the east of the site on the edge of the woodland within MOD land.
- 12.16 The backland and infill SPD states that new development should seek to retain existing trees and hedges, in particular along site boundaries, where they have high amenity value or create privacy. New development should not be sited too close to existing trees or hedgerows as they may result in overshadowing of a building, cause damage to the root structure or lead to pressure from the occupier of the house to remove the tree or hedge in the future.

- 12.17 An arboricultural report was submitted with the planning application. This has been assessed by the Arboricultural Planning Officer who is in agreement with the tree survey but not in agreement with the conclusions of the report. He states that T1 & T3 are large important trees that will significantly impact the site if they are retained. He notes that these are in good condition and should be retained. However, if buildings are situated beneath them it will create an oppressive living environment and residents will constantly be requiring work to be done to these trees. He concludes that the position of the buildings beneath these trees is inappropriate and advises against the site layout with the trees retained.
- 12.18 As a result of this the applicants proposed to remove all of the trees with the land owner's permission. This would remove the potential harm to the end users of the site however would result in the loss of all five of the large oak trees which would have a significant visual impact.
- 12.19 It is to the removal of all of the existing oak trees to which Cllr Mudie originally objected. Cllr Mudie subsequently revisited the site and suggested a compromise removing T1 and retaining T3 (the best specimen).
- 12.20 To this the Arboricultural Planning Officer commented that the retention of T3 with the buildings in their proposed locations still creates significant problems, however, the issues are regarding the end use of the area rather than the construction process. Ultimately we need to construct buildings that are usable in the long term and in this case with significant overshadowing from the retained tree and the direct conflict with the built form proposed this may be problematic.
- 12.21 It is important to remember at this point that the trees are outside the application site and not within the ownership or control of the applicants. As the trees are outside the application site their retention or removal cannot be controlled by way of a planning condition. The Council therefore cannot require their removal to ensure satisfactory levels of amenity for any end users of the properties, or require their retention for visual amenity value or biodiversity reasons. Further, as the trees are within MOD ownership the Council cannot place a TPO on the trees.
- 12.22 This is a "catch 22" situation. T1 and T3 are large important oak trees that are in good condition and should be retained in normal circumstances. We cannot however ensure their retention through the planning process. Equally if the trees are retained they would compromise the living conditions of the end users of the properties if approval is granted, and we could not ensure their removal through the planning process if we were minded to approve the application.
- 12.23 Ultimately it is the decision of the tree owners as to whether the trees are retained. However, it is considered that if either T1 or T3 remain in place, the siting of houses beneath them as proposed would create an unacceptable, oppressive living environment for the end user, contrary to the backland and infill SPD.
- 12.24 The current version of the site plans show all of the trees removed. The applicants have submitted a letter from the MOD Estates Surveyor which gives consent to remove the trees on MOD land subject to certain requirements including the erection of boundary fencing on the eastern boundary of the application site and the southern boundary of the public open space.



- 12.25 As the Council is unable to condition the removal of the trees as part of the planning process, and acknowledging that their removal may not be desirable in terms of visual amenity and biodiversity, while they remain in situ they would result in an unacceptable, oppressive living environment for the end user of the site and to that end the proposal should not be supported.

#### Highway and access issues

- 12.26 The access to the site is as exists for the garage site at present. It would not dominate the street scene or harm the character or appearance of the area. It is not considered the use of the access would cause harm to the amenity of neighbouring residents as the proposal would not generate significantly more vehicle movements than the original use of the site for parking and garaging of vehicles.
- 12.27 The Highway Authority does not object to the proposal as submitted. They recommend standard conditions relating to parking and turning facilities, parking space dimensions, hard surfacing materials and the implementation of a Travel Information and Marketing Scheme for sustainable transport for each property to encourage sustainable transport choices.

#### Affordable housing

- 12.28 The scheme is put forward by Colne Housing Association and is for the development of 2 code 4 affordable homes. The provision of Affordable housing is a key objective of CBC and this is reflected in the Core Strategy.

#### S106 contributions

- 12.29 A development proposal such as this would normally generate a requirement for S106 contributions towards Open Space, Sports and Recreational Facilities along with Community Facilities, in accordance with the adopted SPDs of the same names.
- 12.30 In this particular case the Planning Service Manager comments that:-

“This type of development would normally trigger SPD requirements for financial contributions towards Open Space, Sports and Recreational Facilities along with Community Facilities. However it has been agreed by the Planning Service Manager, the Spatial Planning Manager, the Parks & Recreation Manager and the Community Project Officer that in this case the requirement be waived. This is based on the pressing need hereabouts being for the delivery of affordable housing and as the site is owned by the Council there would, in this case, be no net gain to the community by requiring payment of SPD contributions because such sums would eventually come from another Council budget. The Council has other budgets and programmes for the delivery of sports and community facilities”

## Other matters

- 12.31 The Contaminated Land Officer, having considered the report submitted, recommends suitable conditions to ensure the site is suitable for the end user.
- 12.32 The scheme is proposed to achieve a code 4 rating in the Code for Sustainable Homes, having a level of thermal performance significantly in excess of the Building Regulations and incorporating renewable energies, integral water efficiency and recycling management. This exceeds the expectation of Core Strategy policy ER1 which states that residential dwellings will be “encouraged” to achieve a minimum 3 star rating in accordance with the Code for Sustainable Homes.

## **13.0 Conclusion**

- 13.1 In summary, the redevelopment of this site would resolve the existing antisocial behaviour problems associated with this site and thereby improve the living environment for existing neighbours. Further, the scheme would provide much needed affordable housing in the Borough. It is proposed to achieve a code 4 rating in the Code for Sustainable Homes which is in excess of current policy requirements. It would also resolve a long-standing anti-social behaviour issue and would reduce the fear of crime which is a material planning consideration. The Planning Service Manager comments “Members will be acutely aware of the fact that grant funding to support the delivery of affordable homes from the Homes & Communities Agency (HCA) is becoming scarcer and that the private sector housing building industry is delivering fewer affordable homes because of the slow down in the economy. This project does have allocated funding from the HCA and would see affordable housing delivered at a time when every new unit provided helps another household in need at a time when demand is high but supply cannot match that need. However whilst a reasonable case can be made for allowing these units there is concern that the price that would be paid is the loss of all the trees along but outside the site boundary. A number of these trees do contribute to enhancing the quality of the streetscene and ordinarily the service would seek to resist their loss unless exceptional circumstances existed. These are such circumstances. However because the applicant does not own the land upon which the trees are positioned the quality of the living space for future residents of the units would be inadequate because of the adverse impact of these trees were they to remain. However it should be possible with the co-operation of the MOD & the applicant to employ a GRAMPPIAN condition that will prevent development proceeding unless the trees have been removed. If the MOD withdraw their co-operation then the scheme would not be implementable if approved with the GRAMPPIAN condition. Successful deployment of a GRAMPPIAN condition in this case will result in the removal of all these trees.
- 13.2 On balance, for the reasons set out above it is considered that the proposal can be supported subject to co-operation of the applicant and adjoining owner with the addition of a GRAMPPIAN condition restricting implementation until and unless the trees along the boundary have first been removed.

## **14.0 Recommendation**

1.

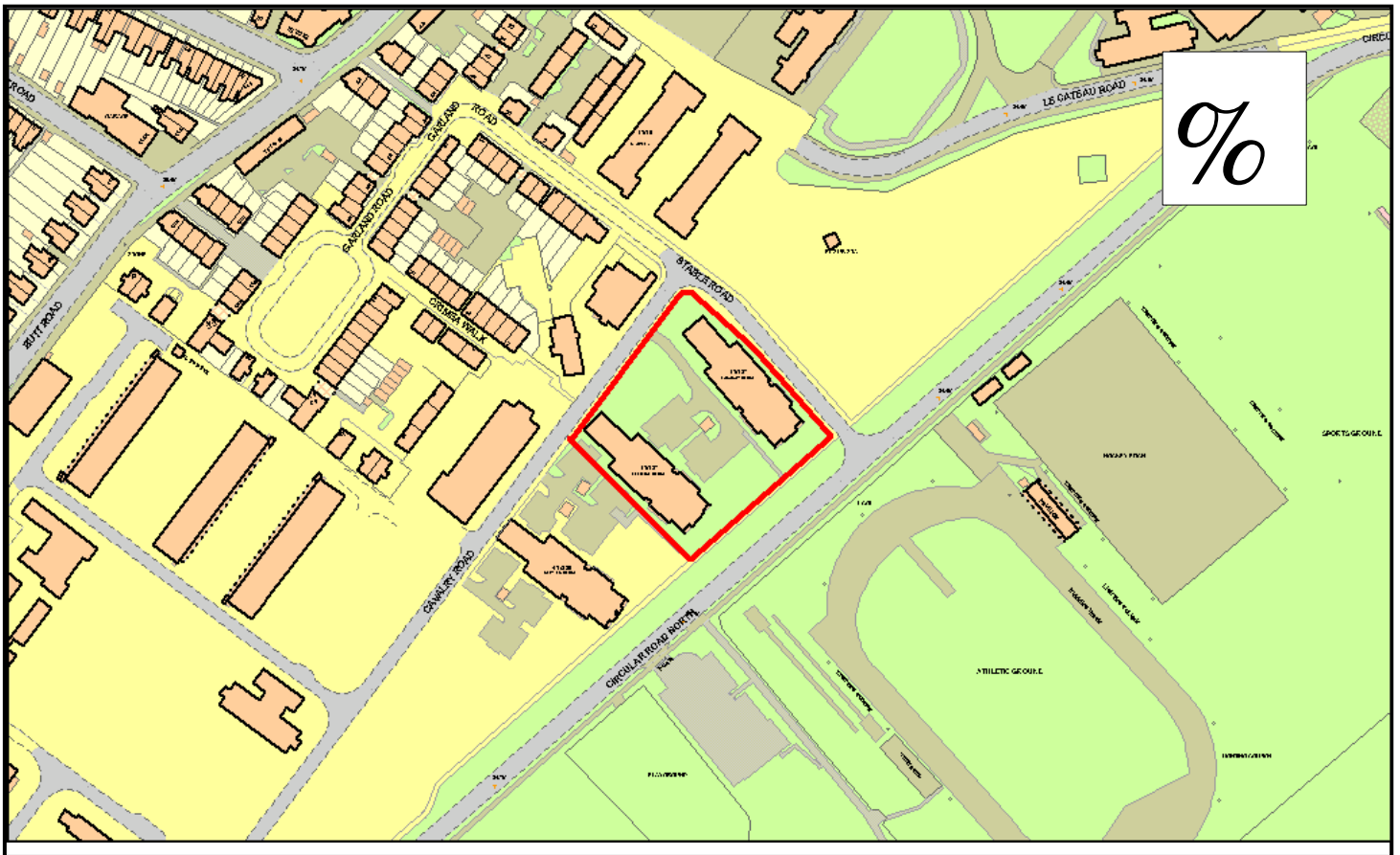
Defer and authorise the Head of Environmental & Protective Services to GRANT planning permission in the event that the MOD and the applicant can satisfactorily agree to the removal of trees and the erection of new boundary treatment and subject to an appropriate GRAMPPIAN condition that prevents development commencing until and unless the trees on the common boundary have been removed and subject to appropriate conditions to be agreed.

2.

In the event that the GRAMPPIAN condition cannot be delivered or satisfied then The Head of Environmental & Protective Services be authorised to REFUSE planning permission for the following reason:-

### **Reasons for Refusal**

Whilst the delivery of affordable housing is a priority for the Council this site cannot be properly developed without the loss of a number of mature trees on land outside but immediately adjoining the site boundary. Whilst a number of these trees enhance the quality of the streetscene and their retention would normally be an important objective within any redevelopment proposal the Council is mindful of the fact that this site has a history of anti-social behaviour which has generated a fear of crime in the locality. It is also conscious of the fact that the need for affordable housing is high and its delivery is becoming increasingly difficult. In considering this proposal however the Council is of the opinion that the retention of the existing trees (as the applicant does not own the land upon which they are located) will result in a substandard living environment for occupiers of the proposed dwellings. Therefore the proposal should be refused on the grounds that the accommodation would lack adequate natural daylight, the value of the rear gardens would be severely reduced as a consequence of the oppressive impact of the adjacent trees on outlook, as would, more importantly, outlook from rooms within the houses.



**Application No:** 110445 & 110447

**Location:** Colchester Garrison Site J1, Circular Road North, Colchester

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

The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of PO Box 884, Town Hall, Colchester CO1 1FR under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use. This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2011

## Planning Committee

Item  
**9**

14 April 2011

<b>Report of</b>	<b>Head of Environmental and Protective Services</b>	<b>Author</b>	<b>Vincent Pearce</b> ☎ 01206 282452
<b>Title</b>	<b>Information item. Decision on planning applications reference 110445 &amp; 110447, Faraday House, Circular Road North made by the Council's Proper Officer under 'Urgent Matter' powers provided by Rule 12 of the General Meeting Procedures Rules of the Constitution</b>		
<b>Wards affected</b>	<b>Christ Church</b>		

**This report concerns the reporting of two planning applications determined under 'Urgent Matters' powers contained in The Constitution.**

### 1.0 Decision Required

- 1.1 Members are asked to note the decision taken by the Council's Proper Officer, Lucie Breadman, Head of Corporate Management (as described in this report ) under 'Rule 12' after consultation with the Chair of the Planning Committee and Group Spokesmen and advice from the Planning Service Manager.

### 2.0 Reasons for Decision

- 2.1 The decision was taken to determine the applications on their merits and subsequently grant planning permission for the two applications referenced above (and described further on in this report) using the Urgent Matter provisions of the Constitution because if the Council was minded to grant permission it had only until mid-day on 31 March 2011 to do so before access to £680,000 of affordable housing funding was lost. Consultations expired at 5pm on the 31 March by which time the funding would have been lost along with access to a further £2.2m thereafter. Within that context it was felt that an Urgent Matter had arisen.
- 2.2 The reason for this report being presented to the Planning Committee is that Rule 12 requires any decision taken under that Rule as an Urgent Matter to be reported back to the Committee for information as soon as possible. This report is designed to provide Committee members with a full retrospective briefing on the matter.

### 3.0 Alternative Options

- 3.1 The application could have been determined as a 'late item' at the Planning Committee meeting of 31 March 2011 or at a subsequent meeting but this would have meant that the substantial affordable housing grant that was on offer from the Homes & Communities Agency (HCA) would have been lost. The HCA had been asked, by the Council, to extend the mid-day deadline but they were unable to agree to this request because after that time any unclaimed monies would have been taken from the table as required by Treasury.

## 4.0 Supporting Information

- 4.1 When it was clear that the matter had become urgent the Legal Services & Monitoring Officer, Andrew Weavers, was approached by the Planning Service Manager, Vincent Pearce and it was agreed that the situation warranted the invoking of Rule 12 Urgent Matters Powers.
- 4.2 On 21 March 2011 the following councillors were e-mailed to advise them of the situation and to seek their views as required by the Rule 12 powers.

Formal consultation: (required by Rule 12)

- Councillor Ray Gamble: Chair of Planning Committee
- Councillor Stephen Ford: Labour Group Spokesman
- Councillor Philip Oxford: Highwoods Independents Spokesman
- Councillor Andrew Ellis: Conservative Group Spokesman

Informal consultation: (not required by Rule 12 but extended as a courtesy)

- Councillor Martin Hunt: Christ Church ward
  - Councillor Nick Cope: Christ Church ward
  - Councillor Lyn Barton: Portfolio holder for Planning & Sustainability
  - Councillor Tim Young: Portfolio holder for Housing & Community Safety
- 4.3 That e-mail was accompanied by a report that explained the circumstances and gave a planning perspective on the merits of the proposal.
- 4.4 That report is reproduced below:-

**Special report presented under  
Rule 12 of the Meetings General Procedure Rules as set out in  
the Council's Constitution.**

**“Matters of Urgency”:**

**Planning applications ref 110445 & 110447, Circular Road North [Christ  
Church ward]  
Securing early delivery of 15 affordable rented units**

**Report by Vincent Pearce, Planning Service Manager**

### 1.0 Introduction

- 1.1 This special report is presented to Councillor Ray Gamble as Chair of the Council's Planning Committee and Councillors Stephen Ford, Philip Oxford and Andrew Ellis as nominated Group Spokespersons in view of the urgency of the matter at hand. This report is presented under Rule 12 of the Meetings General Procedure Rules.

1.2 This report relates to the need to determine planning applications reference 110445 & 110447 ahead of the Planning Committee meeting of 31<sup>st</sup> March 2011. It is urgent because the application scheme has secured an initial grant award of £680,000 from the HCA as part of a wider package of a further £2.2m related to the Ascott House temporary accommodation project. The deadline to secure the initial grant by producing a planning permission decision notice expires at mid-day on 31<sup>st</sup> March 2011. The consultation period expires on 31 March 2011 and so the application would ordinarily fall to be determined after the HCA deadline of midday by 5 hours. Unfortunately by that time the grant will have been lost. The deadline has already been extended and there is no leeway for further extensions of time. Failure to trigger the initial £680,000 payment would then expose the remaining £2.2m to risk as the ring-fenced money would not be available after that time/date.

1.3 Application 110445 is as follows:-

Variation of condition 20 attached to 072105 to allow early delivery of affordable units by way of a location swap within area J to a constructed building known as Block B 'Faraday House'. The proposal does not reduce the delivery requirement of affordable units within Area A which remains 99. What it does however represent is earlier delivery. The RSL Family Mosaic is anxious to take on the units and the proposal is supported by the Council's Strategic Housing Team, The Planning Service and the HCA.

1.4 Application 110447 is as follows:-

Variation of condition 26 to provide early delivery of affordable dwellings in association with the RSL – Family Mosaic Housing.

## 2.0 Rule 12

2.1 For members information Rule 12 states:-

“Where the Proper Officer considers that a matter of urgency has arisen in connection with the work of a Panel, Committee or Sub-Committee and requires a decision before the next ordinary meeting of the Panel, Committee or Sub-Committee, the Proper Officer after consulting with the Chairman and Group Spokespersons of the Panel, Committee or Sub-Committee or in their absence their respective deputies, shall have power to act and shall report the action to the next meeting of the Panel, Committee or Sub-Committee; provided that no action shall be taken under this provision except in matters which have been delegated by the Council to the respective Panel, Committee or Sub-Committee.”

47  
Constitution, Meetings General Procedure Rules, Rule 12, Matters of Urgency, Part 4, page 30.

### **3.0 Decision required**

- 3.1 Members are asked to consider this special report and indicate whether they have no objection or an objection to the proper officer exercising Urgent Matters powers to approve planning application reference 110445 in time to secure the HCA grant that has been allocated subject to confirmation of the grant of planning permission by midday on 31 March 2011. The associated Deed of Variation permitting the swap within the terms of the S299A Agreement (equivalent of S106 on Crown Land) has already been signed by all parties.
- 3.2 Cllrs Gamble, Ford, Oxford (P) & Ellis are asked to consider this report and respond formally by e-mail indicating to the Councils Proper their position in respect of the recommendation below (Section 5.0) by no later than 5pm on Tuesday 29 March 2011. It is suggested that the said councillors give a clear indication of support or opposition. If Members have any questions in respect of this matter they contact Vincent Pearce on 01206 282452 or [vincent.pearce@colchester.gov.uk](mailto:vincent.pearce@colchester.gov.uk). Or Alistair Day on 01206 282479 or [alistair.day@colchester.gov.uk](mailto:alistair.day@colchester.gov.uk)

### **4.0 The applications**

- 4.1 Faraday House (Block 3) currently contains 15 empty open market units and it is intended to convert these into 15 affordable rented units thereby bringing forward early delivery of affordable rented units. This allocation will be brought forward from within Area J2, Other units within Faraday House are already in affordable rented use.
- 4.2 The 12 of the 15 additional units will be drawn from approved blocks 6 and 7 on area J2A and the remaining 3 units from J2B which has yet to be approved (general location shown on the map below).
- 4.3 At the time of writing this report (17.00hrs on 23 March 2011) no objections had been received from other residents within Block 3 Faraday House or beyond and it is unlikely that the use for additional affordable rented housing units will raise any new material planning



considerations. It is unlikely that any new material objection that raises a new issue that has not been previously considered will arise. The application is not subject to a member call-in.

**Figure 1: Location of Garrison sites known as J2A & J2B**



#### 5.0 Web link to application

5.1 The web link to view the application documents is given below and will be attached to the e-mail that accompanies this report:-

<http://www.planning.colchester.gov.uk/WAM/findCaseFile.do;jsessionid=5ABE5BF150B56E497BB6EBD788055E6E?appNumber=110445&appType=planning&action=Search>

## 6.0 Recommendation

That in view of the risk of losing an initial affordable rented housing grant of £680,000 from the HCA and an associated £2.2m as part of the wider Ascott House temporary housing project if this application is not determined by midday on 31 March 2011 this application be approved under powers defined above within the Constitution on the grounds of urgency before midday on 31 March 2011. The Council has considered the fact that the planning consultation period relating to the application does not expire until 5pm on 31 March 2011 against the impact of losing significant HCA grant funding towards a corporate priority and has taken the advice of the Planning Service in assessing the possible

grounds for objection on planning grounds and has determined that the application can reasonably be determined in the manner agreed as no reasonable planning reason to refuse the application that could be sustained at appeal exists. Account has also been taken of the related S299A Agreement that has predetermined the number and general distribution of affordable units on the Garrison.

- 
- Members should note that the Constitution requires that a report explaining the urgent matter and decision taken be presented to the Planning Committee by the Planning Service as soon as possible after any decision is taken under Rule 12. It is intended to present a written report to the Planning Committee on 14 April 2011.

- 4.5 Once all the formal (and as it happens all the informal as well) responses had been received a further report was prepared for the Proper Officer to consider how she wished to determine the applications. Having considered all material matters, including the prior need for an amended legal agreement she granted planning permission in accordance with the recommendation in the report that was presented to her. The planning decisions were issued in time to qualify for the mid-day deadline on 31 March 2011.
- 4.6 The report upon which Lucie Breadman made her decision as Proper Officer is reproduced below:- (scanned extract with signatures appears in the appendix)



## **PROPER OFFICER DECISION**

Special report presented under  
Rule 12 of the Meetings General Procedure Rules as set out in  
the Council's Constitution.

"Matters of Urgency":

Planning applications ref 110445 & 110447, Circular Road North [Christ  
Church ward]  
Securing early delivery of affordable rented units

# **FORMAL DECISION**

**Determined and recorded on pages 2 & 3 of this document**

**This decision is made in conformity with Rule 12 of the Meetings  
General Procedure Rules by Lucie Breadman, Head of Corporate  
Management in her capacity as the authorised Proper Officer as  
confirmed by Andrew Weavers, Legal Services Manager &  
Monitoring Officer.**

**Advice of Planning Service Manager to the Proper Officer:**

Having regard to all material planning considerations I find the applications acceptable and that no material reason for refusal can, in my view, be reasonably sustained. I confirm that I would have authorised/endorsed the granting of planning permission via delegated authority or at Planning Committee were it not for the urgency of the matter. That decision would have been subject to the satisfactory signing & completion of an appropriate Deed of Variation to the relevant S299A Agreement and appropriate planning conditions.

Signed:

Position held: Planning Service Manager  
Date: 29 March 2011

## FORMAL DECISION:

Having considered the following (as attached):-

- Report to Members setting out the details and context for an Urgent Matter decision
- Report to proper officer describing member responses to consultation as required by the Constitution

**(tick ( ✓ ) the option being Agreed and put a cross ( x ) in the other option box to indicate that it is not being agreed)**

OPTION ONE  (✓ or x)

I hereby exercise the power provided by Rule 12 of the Meetings General Procedures Rule and

**GRANT** planning permission in respect of application 110445 & 110447, Circular Road North, [Christ Church ward] subject to:-

- 1) The satisfactory completion and signing of a Deed of Variation to the S299A Agreement that applies to the Garrison site to reflect the amendmended matters the subject of the planning applications referred to above AND
- 2) Appropriate conditions to be attached to the relevant planning permissions. Such conditions to be identified by the Head of Environmental & Protective Services.

In considering this matter I have had regard to the requirements of Rule 12 of the Meetings General Procedures Rules, the content of the two reports presented by Vincent Pearce, Planning Service Manager (the initial Rule 12 trigger report to Members and the subsequent Consultation responses report), the fact that no public consultation responses had been received by the time of deciding this matter, the fact that no member call-in had been triggered, all material planning considerations, relevant human rights, community safety and equality & diversity implications.

Rule 12 Decision signed by:

Name: **Lucie Breadman**

Position held: **Head of Corporate Management**

Dated:

Confirmation of Deed of Variation being held in escrow:

Name: **Andrew Weavers**

Position held: **Legal Services Manager & Monitoring Officer**

Dated:

decision record: page one of 2

OR OPTION TWO  (✓ or x)

I hereby choose not to exercise the power provided by Rule 12 of the Meetings General Procedures on the grounds that:  
please describe:

signed by:

Name: **Lucie Breadman**

Position: **Head of Corporate Management**

Dated:

decision record: page two of 2



**"Matters of Urgency":**

**Planning applications ref 110445 & 110447, Circular Road North [Christ Church ward]  
Securing early delivery of affordable rented units**

---

# **CONSULTATION RESPONSES**

**from:-**

**Chair of Planning Committee: Councillor Ray Gamble  
Labour Group Spokesman: Councillor Stephen Ford  
Highwoods Independents Spokesman: Councillor Philip Oxford  
Conservative Group Spokesman: Councillor Andrew Ellis**

**as required by Rule 12.**

**Prepared by: Vincent Pearce, Planning Service Manager.  
Date: 29 March 2011**



Special report to the Proper Officer, presented under  
**Rule 12 of the Meetings General Procedure Rules as set out in  
the Council's Constitution.**

**"Matters of Urgency":**

**Planning applications ref 110445 & 110447, Circular Road North [Christ  
Church ward]  
Securing early delivery of affordable rented units**

---

## **Consultation responses**

**Responses received from the '4 Members' identified in The  
Constitution.**

---

**Cllr Gamble: ✓ (for recommendation)**

**From:** ray gamble [mailto:cldr.ray.gamble@gmail.com]

**Sent:** 24 March 2011 11:08

**To:** Vincent Pearce

**Subject:** Re: URGENT URGENT - Urgent matter special report under rule 12 of procedure  
rules in  
Constitution £2.8m at stake

I confirm my support for what you are doing on the basis that it is rare indeed and that  
a report will  
go in writing to the full committee in April.

---

**Cllr Ford: ✓ (for recommendation)**

**Sent:** 25 March 2011 18:28

**To:** Vincent Pearce; Ray Gamble - Cllr - own email; Philip Oxford; 'Andrew Ellis'

**Cc:** Martin Hunt; Nick Cope - Cllr - own email; Lyn Barton; Tim Young; Beverley Jones;

Lindsay Barker; Lucie Breadman; Andrew Weavers

**Subject:** RE: URGENT URGENT - Urgent matter special report under rule 12 of procedure  
rules in Constitution £2.8m at stake

Vincent

Sorry for the delay but I have been very busy since you e-mailed yesterday. I have read your  
comments and I have no objection to the decision by senior officers to grant permission using  
Urgent Matters Powers to planning applications 110445 and 110447.

Cllr. Steve Ford---Planning spokesperson for the Labour Group.

---

chair

labour group spokes

**Cllr Oxford (P):**

**Note: Councillor Philip Oxford's e-mails are not getting through from his smart phone and so Cllr Gerard Oxford has taken Cllr Philip Oxford's advice and interceded on his behalf..**

**From:** Gerard oxford [highwoodsandindependentgroup@hotmail.co.uk]

**Sent:** 29 March 2011 09:46

**To:** Vincent Pearce

**Subject:** Message from Philip

Page 1 of 1

29/03/2011

Dear Vincent,

i text Philip he has o.k'd me to e-mail you confirming he is happy to support your decision.

Regards

Gerard

pp Philip

Ring my mobile 07926374233 as philip is unable to take calls while at work.

**Cllr Ellis: ✓ (for recommendation)**

**From:** Andrew Ellis [mailto:andrew@birchandwinstree.com]

**Sent:** 25 March 2011 09:49

**To:** Vincent Pearce; Ray Gamble - Cllr - own email; Stephen Ford; Philip Oxford

**Cc:** Martin Hunt; Nick Cope - Cllr - own email; Lyn Barton; Tim Young; Beverley Jones;

Lindsay Barker; Lucie Breadman; Andrew Weavers

**Subject:** Re: URGENT URGENT - Urgent matter special report under rule 12 of procedure rules in Constitution £2.8m at stake

Dear Vincent,

My apologies for the delay in providing you with a full response; as you know I was away in Spain on business and unable to open the report attached to your email of 24th March. I have returned to the UK and have now had time to study the report. While I can foresee the possibility of some objections being raised regarding the use of Faraday House (Block 3) as affordable rented units rather than open market units, I concur with your view that there can be no material planning grounds on which to object. Therefore I can confirm that **I have no objection** to the proper officer exercising Urgent Matters powers to approve planning application reference 110445 in time to secure the HCA grant that has been allocated subject to confirmation of the grant of planning permission by midday on 31 March 2011 in accordance with the recommendation below.

**Recommendation:**

**That in view of the risk of losing an initial affordable rented housing grant of £680,000 from the HCA and an associated £2.2m as part of the wider Ascott House temporary housing project if this application is not determined by midday on 31 March 2011 this application be approved under powers defined above within the Constitution on the grounds of urgency before midday on 31 March 2011. The Council has considered the fact that the planning consultation period relating to the application does not expire until 5pm on 31 March 2011 against the impact of losing significant HCA grant funding towards a corporate priority and has taken the advice of the Planning Service in**



assessing the possible grounds for objection on planning grounds and has determined that the application can reasonably be determined in the manner agreed as no reasonable planning reason to refuse the application that could be sustained at appeal exists. Account has also been taken of the related S299A Agreement that has predetermined the number and general distribution of affordable units on the Garrison.  
Kind regards,  
Andrew

Cllr. Andrew Ellis  
Member for Birch and Winstree  
Colchester Borough Council  
Tel: 01206 735166 Mob: 07768 986611

---

**The Constitution does not require additional consultation but as a courtesy the ward members (Cllrs Cope & Hunt) and portfolioholders responsible for Planning & Housing (Cllrs Barton & Young (T) respectively) were notified**

**Cllr Cope: ✓ (supports recommendation)**

**From:** Nick Cope [mailto:n.silverwoodcope@btinternet.com]  
**Sent:** 24 March 2011 12:16  
**To:** Vincent Pearce; Ray Gamble - Cllr - own email; Stephen Ford; Philip Oxford; Andrew Ellis  
**Cc:** Martin Hunt; Lyn Barton; Tim Young; Beverley Jones; Lindsay Barker; Lucie Breadman; Andrew Weavers  
**Subject:** Re: URGENT URGENT - Urgent matter special report under rule 12 of procedure rules in Constitution £2.8m at stake

Dear Vincent,  
Many thanks for kindly including me in this pressing consultation as ward councillor in the cases raised. The extension of the numbers of affordable housing units as proposed looks as far as I can see within our policies on affordable housing and I have to take the point on the grant that you have emphasised: I leave it to Councillor Gamble to respond officially as nominated in your email and attached document. However this notification gives me the opportunity to at least ask what provision there is for amenity space in these developments. Can you indicate what the requirements are in such cases and whether these are met, and how?

Many thanks again for this notification/consultation. Only other point: Christ Church is two words!  
Regards,  
Councillor Nick Cope  
Christ Church Ward  
Colchester BC.

---

**Cllr Hunt:** ✓ (supports recommendation)

**Sent:** 24 March 2011 12:41

**To:** Vincent Pearce; Ray Gamble - Cllr - own email; Stephen Ford; Philip Oxford; Andrew Ellis

**Cc:** Nick Cope - Cllr - own email; Lyn Barton; Tim Young; Beverley Jones; Lindsay Barker; Lucie Breadman; Andrew Weavers

**Subject:** RE: URGENT URGENT - Urgent matter special report under rule 12 of procedure rules in Constitution £2.8m at stake

Vincent

Regrettably my council laptop is down so although I can get emails on my pc I can't download attachments, It seems to me that increasing social housing is what we would want and we certainly wouldn't want to lose the money. I am happy to be guided by the chairman from the planning aspect and Cllr Young from the housing aspect.

Martin

---

**Cllr Young (T):** ✓ (supports recommendation)

**From:** Tim Young

**Sent:** 25 March 2011 14:58

**To:** Vincent Pearce; Ray Gamble - Cllr - own email; Stephen Ford; Philip Oxford; 'Andrew Ellis'

**Cc:** Martin Hunt; Nick Cope - Cllr - own email; Lyn Barton; Beverley Jones; Lindsay Barker; Lucie Breadman; Andrew Weavers

**Subject:** RE: URGENT URGENT - Urgent matter special report under rule 12 of procedure rules in Constitution £2.8m at stake

Page 1 of 2

25/03/2011

You will not be surprised that I would want urgent consideration and support for this.

Tim

Cllr Tim Young  
Portfolio Holder for Housing & Community Safety  
Leader of the Labour Group  
Colchester Borough Council  
34 Mascot Square Colchester CO4 3GA  
Tel: 01206 795343 Mob: 07949 066915

---

**Cllr Barton:** spoken by phone. She has read all the comments and notes the support. Cllr Barton is grateful for courtesy consultation and will leave the Proper Officer to decide using comments already received.

**Public consultation responses:** nil (@ 11.20 on Tuesday 29 March 2011)

**Member call-in within prescribed 21 days:** nil

**END of Consultation summary. Planning officers planning report sheet follows.....**



Colchester "Matters of Urgency":

Planning applications ref 110445 & 110447, Circular Road North [Christ Church ward]  
Securing early delivery of affordable rented units

---

## **Planning case officer report**

This is a extract copy of Alistair Day's (the case officer) file report on the planning merits of the proposal

---

**DELEGATED REPORT FOR APPLICATION NUMBER 110445/110447**

**Site Address: Colchester Garrison Site J1, Circular Road North Colchester**

**Relevant Policies:**

National Policies

PPS 3

Core Strategy

H4 - Affordable Housing  
UR1 - Regeneration Areas

Development Policies

DP1 - Design and Amenity (2010)

SPD and Other

**Case Officer's Report:**

Relevant Background

Planning permission previously granted for the erection of apartment buildings on the former Paddocks site; planning permission is subject to a condition securing the distribution of affordable housing in accordance with submitted plans.

Garrison legal agreement requires 66 affordable to units to be provided on Area J1 and 33 affordable units on Area J2.

Consultation Responses

Legal Services – advice on planning process and DoV – although delegated power to agree DoV, planning applications and DoV should be determined concurrently. This should take place after the public consultation period expires.

Housing – Mike Taylor – scheme intrinsically linked to HCA grant and not to approve this scheme will jeopardise the whole grant allocation; this needs to be completed by midday on 31 March 2011 at the latest. The proposal will secure early delivery of affordable rented accommodation.

Environmental Control – No objection

Proposal

Proposal – change existing 15 private sale apartments in Block 3 on Area J1D into affordable rent allowing the early delivery of affordable accommodation by swapping 12 units from apartment on Area J2A (Approved Blocks 6 & 7) with the remaining 3 units coming from the remainder of Area J2B.

The tenure is affordable rent; the 33 units on Area J2 only need to shared ownership (see earlier DoV) and therefore proposal represent an improvement and will assist the Council to meet its affordable housing needs.

The overall affordable housing numbers do not change.

See Special Report.

**Recommendation:**

Approve Subject to the Conditions Below:

**Draft Condition – pending consultation responses / member approval.**

*The distribution of affordable housing between Area J1 and Area J2 shall be undertaken in accordance with the Planning Statement dated 04.03.2011 and drawing no.CO-AF-02 Rev A.  
Reason: For the avoidance of doubt as to the scope of this consent*

*Informative:*

*All planning conditions attached to the main planning approval(s) remain strictly in force*

*Affordable housing should proportionately reflect the private sale units. When considering the affordable housing mix on Area J2 account will be taken of the transfer of the affordable to Area J1.*

<b>Case Officer's Initials and Date</b> AJD 28/03/2011	<b>Authorising Officer's Initials and Date:</b> VP 29 March 2011
--	--

- 4.7 Members will have seen that at the time of taking the decision there had been no public comments received. However on the afternoon of the 29 March 2011 and after planning permission had been granted a telephone call was received from the owner/developer of currently empty blocks nearby who expressed concern at the proposals because of alleged existing noise nuisance issues at Faraday House. Those complaints about an alleged existing nuisance are now being investigated by the Environmental Control Service and the caller has accepted this as the appropriate way to proceed.
- 4.8 Members will not unreasonably want to understand the chronology of events that meant the applications required exceptional Urgent Action rather than the normal process of determination. Further more members are likely to want to know if the situation could have been avoided.
- 4.9 The Planning Service had advised Bovis, the applicants, to submit the applications earlier than they did, however they waited until 4 March to make the applications as they hadn't until then accepted the need to amend the existing legal agreement to reflect the changes that would be brought about by then current negotiations on affordable housing delivery. Eventually they accepted the advice they were given by the Service. It in turn subsequently calculated that even with a 21 day consultation period expiring on 31 March 2011 the matter could have been dealt with either by delegated action after 5pm on 31 March or as a late item at Planning Committee if necessary because of a 'call-in' provided the HCA would accept notification first thing on the morning of 1 April 2011. Unfortunately the decision to close the period for drawing down the affordable housing grant at mid-day proved irreversible and this stymied the intended course of action.

4.10 Having considered the planning merits of the applications and realising that the scheme of delegation would ordinarily have allowed the applications to be decided by officers even if objections had been received it was felt reasonable to invoke the Rule 12 powers to determine the applications ahead of the expected timetable for ordinarily determining the applications provided that all the requirements of Rule 12 had been followed and provided that the Proper Officer was willing to take the decision after seeking the views of prescribed members and considering the reports referred to above. The first priority was to ensure that the applications were acceptable from a planning perspective.

## **5.0 Strategic Plan References**

5.1 Shift resources to deliver priorities & homes for all

## **6.0 Consultation**

6.1 As required by Rule 12

## **7.0 Publicity Considerations**

7.1 None at the time but this report brings the decision and its background into the public domain.

## **8.0 Financial Implications**

8.1 No financial considerations are expected to arise from this decision other than those referred to in the reports associated with securing the HCA affordable housing grant.

## **9.0 Equality, Diversity and Human Rights Implications**

9.1 It is expected that this decision which relates to the grant of planning permission to acceptable proposals when judged on their planning merits will in due course have the benefit of delivering 15 units of affordable rented accommodation earlier than otherwise expected thereby helping to provide much needed accommodation to those in housing need and to do so sooner rather than later.

## **10.0. Community Safety Implications**

10.1 None

## **11.0. Health and Safety Implications**

11.1 None

## **12.0. Risk Management Implications**

12.1 The risks managed within this report and the process followed in determining the applications as they were are

- (1) The loss of £680,000 affordable housing grant and the subsequent loss of a further linked £2.2m
- (2) Criticism of the Council for determining the planning applications before expiry of the consultation period

**Background Papers**  
**Report to Prescribed Members (21 March 2011)**  
**Report to the Proper Officer (29 March 2011)**



Colchester

# PROPER OFFICER DECISION

Special report presented under Rule 12 of the Meetings General Procedure Rules as set out in the Council's Constitution.

"Matters of Urgency":

Planning applications ref 110445 & 110447, Circular Road North [Christ Church ward]  
Securing early delivery of affordable rented units

## FORMAL DECISION

Determined and recorded on pages 2 & 3 of this document

This decision is made in conformity with Rule 12 of the Meetings General Procedure Rules by Lucie Breadman, Head of Corporate Management in her capacity as the authorised Proper Officer as confirmed by Andrew Weavers, Legal Services Manager & Monitoring Officer.

**Advice of Planning Service Manager to the Proper Officer:**  
Having regard to all material planning considerations I find the applications acceptable and that no material reason for refusal can, in my view, be reasonably sustained. I confirm that I would have authorised/endorsed the granting of planning permission via delegated authority or at Planning Committee were it not for the urgency of the matter. That decision would have been subject to the satisfactory signing & completion of an appropriate Deed of Variation to the relevant S299A Agreement and appropriate planning conditions.

Signed:

Position held: Planning Service Manager

Date: 29 March 2011

(please see following pages)





## FORMAL DECISION:

Having considered the following (as attached):-

- Report to Members setting out the details and context for an Urgent Matter decision
- Report to proper officer describing member responses to consultation as required by the Constitution

(tick ( ✓ ) the option being Agreed and put a cross ( x ) in the other option box to indicate that it is not being agreed)

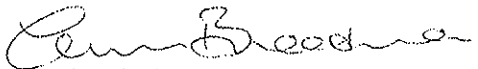
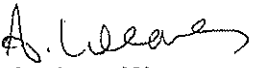
OPTION ONE  (✓ or x)

I hereby exercise the power provided by Rule 12 of the Meetings General Procedures Rule and

**GRANT** planning permission in respect of application 110445 & 110447, Circular Road North, [Christ Church ward] subject to:-

- 1) The satisfactory completion and signing of a Deed of Variation to the S299A Agreement that applies to the Garrison site to reflect the amendmended matters the subject of the planning applications referred to above AND
- 2) Appropriate conditions to be attached to the relevant planning permissions. Such conditions to be identified by the Head of Environmental & Protective Services.

In considering this matter I have had regard to the requirements of Rule 12 of the Meetings General Procedures Rules, the content of the two reports presented by Vincent Pearce, Planning Service Manager (the initial Rule 12 trigger report to Members and the subsequent Consultation responses report), the fact that no public consultation responses had been received by the time of deciding this matter, the fact that no member call-in had been triggered, all material planning considerations, relevant human rights, community safety and equality & diversity implications.

<p>Rule 12 Decision signed by:</p>  <p>Name: <b>Lucie Breadman</b></p> <p>Position held: <b>Head of Corporate Management</b></p> <p>Dated: <i>29.03.11.</i></p>	<p>Confirmation of Deed of Variation being held in escrow:</p>  <p>Name: <b>Andrew Weavers</b></p> <p>Position held: <b>Legal Services Manager &amp; Monitoring Officer</b></p> <p>Dated: <i>29 March 2011</i></p>
--	--

decision record: page one of 2

OR OPTION TWO  (✓ or x)

I hereby choose not to exercise the power provided by Rule 12 of the Meetings General Procedures on the grounds that:  
please describe:

[Empty box for describing grounds]

signed by:

Name: **Lucie Breadman**

Position: **Head of Corporate Management**

Dated:

decision record: page two of 2



## **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.