

# Planning Committee

Thursday, 15 February 2024

**Attendees:** Councillor Lyn Barton, Councillor Robert Davidson, Councillor Mike Hogg, Councillor Michael Lilley, Councillor Jackie Maclean, Councillor Roger Mannion, Councillor Sam McCarthy, Councillor Sam McLean, Councillor Martyn Warnes

**Apologies:** Councillor Leigh Tate

**Substitutes:** Councillor Darius Laws (for Councillor Leigh Tate)

## 1047 Site Visits

A site visit took place for applications 232564 and 232565 Holy Trinity Church, Trinity Square, Trinity Street, Colchester with the following Members in attendance:

- Cllr Lilley
- Cllr Barton
- Cllr Davidson
- Cllr Hogg
- Cllr McCarthy
- Cllr McLean

## 1048 232564 Holy Trinity Church, Trinity Square, Trinity Street, Colchester

**Robert Carmichael, Democratic Services Officer Declared that a close family member had worked on the application for the site and as such did not clerk this item. Matthew Evans, Democratic Services Officer Clerked the item.**

The Committee considered an application for the listed building consent to reposition 23 no. gravestones, minor realignment of boundary wall and new lighting (amended description). The also considered an application for the minor realignment of boundary wall and railings and reposition of 23 no gravestones. Additional footpaths, hard surfacing, additional gates and removal of some railings and new lighting (amended description). The application was referred to the Planning Committee as the application had been called in by Councillor Goacher for the following reasons:

*“Significant concerns raised by residents about the applications to open up the graveyard to the public and move headstones. Concerns that this alters the setting of a heritage building and could lead to increased anti-social behaviour around one of Colchester’s oldest buildings: littering and urination in particular. The opening up of*

*the church door and its location could lead to it becoming a stopping off point for users of the night time economy to relieve themselves. The moving of the gravestones amounts to a change in the setting of the building and raises ethical concerns about the encouraging of the public to eat, drink, and throw litter onto people's graves. Concerns that this shows a casual disrespect and that this lowers the cultural tone of the area. Also significant concerns about the loss of wild flora and fauna to a planned and manicured garden."*

The Committee had before it a report and amendment sheet and addendum sheet in which all information was set out.

Chris Harden, Senior Planning Officer presented the application to the Committee and assisted them in their deliberations. The Committee were shown the plans of the site which included the proposed changes to the positioning of some gravestones, the proposed pathways, and the root protection areas of the existing trees. It was detailed that a balance had been negotiated of the use of the land between public benefits and protection of the heritage asset and confirmed that Historic England supported the application. It was detailed that the proposal would include the repair and refurbishment of the boundary wall and confirmed that some of the gravestones were not in their original positions. It was considered that the moving of the gravestones was acceptable and that they would be repaired and cleaned as part of the proposal. The Committee were asked to note that the lighting details were indicative and would be subject to consultation with the Police and that the anti-social behaviour elements were being addressed via the detailed conditions to manage the site with locked gates at night and other security measures. It was noted that the proposal would increase public access and confirmed that there would not be a significant impact on trees and vegetation, and that there were no highway concerns. The Senior Planning Officer concluded by detailing that there was one additional informative note that needed to be added to the recommendation as follows:

- That the applicant should have regard to the provisions of s.78 of the Mission and Pastoral Measure 2011 concerning the relocation of gravestones.

John Burton addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Committee were asked to refuse planning permission for the application and to restore the walls surrounding the site. The speaker detailed that some people liked the wild appearance to the Churchyard and detailed that they were a member of the Church Building Council and cared for Westminster Abbey and Canterbury Cathedral. It was detailed that placing land into the public highway would change the curtilage of the listed building and that in cases of less than substantial harm this should be taken into account and all harm should be avoided where possible. The Committee heard that the gates were currently locked and one option would be to unlock the gates give access to the site. The speaker concluded by detailing that the National Planning Policy Framework referenced the importance of assets in situ and questioned why so much public money was being spent on this when there were pot holes that needed to

be filled and that the proposal would be adding to the maintenance budget of the Council.

Sir Bob Russell addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Committee heard that if approved the proposal would be cultural vandalism of the site and outlined that there was no mention of the ownership of the site, or of Community 360 using the Church, and would restore anti-social behaviour in the area. The speaker detailed that there was an absence of anti-social behaviour because the gates were locked and that any harm or loss of heritage assets should show justification as they would be against the Public Space Protection Order. The speaker concluded by detailing that the Council should not allow areas where anti-social behaviour could occur and that the proposal was contrary to the spirit of the Biodiversity Supplementary Planning Document.

Matthew Sterling addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that the proposal would be an improvement to the City Centre and part of boosting the local economy through the City Centre Masterplan. The Committee heard that the proposal would not disturb any human remains and confirmed that the application was supported by Historic England. It was noted that there had been a rise of online shopping and changes to leisure patterns and as such the City needed to remain vibrant and that the proposal before the Committee was part of a £40 million investment which would care for the space and which has previously been neglected and would create a quiet space. The speaker concluded by confirming that the gates to the site would be locked at night.

Hannah Loftus addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that they had designed the proposal and outlined that Trinity Church was an extraordinary heritage asset which had been deconsecrated in 1956 when it had been given to the Council under the Open Space Act 1906. It was detailed that this legislation designated that spaces should be made accessible and to allow the enjoyment of open spaces and was remodelled and reduced in size and confirmed that the railings had been installed in the 1970s and did not date back 1000 years. The speaker concluded by detailing that the proposal had done the minimum to restore public access to the site and make it accessible for all so that all citizens could appreciate the significance of the Church and the open space.

Councillor Mark Goacher addressed the Committee as a visiting Councillor and Ward Member for the application. The Committee heard that the presentation did not show what the site looked like in the summer and detailed that the winter photos of the site were unrepresentative. The Committee were asked to refuse permission for the application as it would lead to possible public urination and littering if it was not properly maintained. The speaker also detailed their concern regarding the impact on bats which lived in the tower of the Church and the loss of green open space on site.

The Committee heard that the site needed to be better maintained and that there were concerns on making the area outside the Church a public pavement in the same way as St Botolphs Priory. The visiting Councillor concluded by detailing that they felt that the moving of the gravestones was disrespectful and that the economic gains of the proposal did not outweigh the tranquillity of the area.

Councillor Steph Nissen addressed the Committee as a visiting Councillor and Ward Member for the application. The Committee heard that Castle Ward suffered from anti-social behaviours and detailed that other Churches in the area had their churchyards closed and locked during the day. The speaker detailed that if the application was approved they ask for CCTV to be installed to overlook the areas. It was added that the churchyard was an oasis of biodiversity and did not need to be meddled in. The Committee heard that if approved six new bins would be provided and raised concerns that this would have an additional workload for operatives. The speaker concluded by asking whether the entrance next to the library could be converted into a wheelchair accessible ramp and questioned how Councillors as an administration could change these plans.

Councillor Martin Goss addressed the Committee as a visiting Councillor. The Committee heard that the application had been controversial and that the conversation on the regeneration of Colchester centred on the Town Deal Fund of which the Council had received £19 million. The visiting Councillor detailed that the proposal was good for Colchester and although they had concerns over the original plans these had been resolved in the revised plans and reminded Members that the operation of the grounds was not a material planning consideration. The Committee heard that the ownership of the land should be discounted from consideration, that on balance the development was good for Colchester, that every effort should be made to encourage footfall in the City Centre, and that there were no grounds to refuse the application.

At the request of the Chair, the Senior Planning Officer responded to the points raised by the Have Your Say Speakers. The Committee heard that the impact on the heritage asset had been assessed and that the Council could approve development where there was less than substantial harm and the public benefits outweighed the harm. Committee Members were also asked to take into account the enhancement of assets including the repairs to the wall but ultimately it was a judgement that needed to take into account significant public benefits. The Joint Head of Planning added that the response from Historic England went beyond a no objection response to support the proposal.

Members debated the proposal on issues including: the loss of some of the railings on the site and that there had previously been issues of anti-social behaviour at other similar sites within the City Centre, that there was a concern that the proposal was modernising for the sake of doing so, and that the application was supported by Historic England. Concern was raised regarding the indicative lighting plans and questioned what risks there were to the historic asset currently.

At the request of the Chair, the Senior Planning Officer responded to the points raised and detailed that there had been a response from the Police and added that there would be level access to the site and that the current footpaths on site were narrow and made of gravel with a height difference not allowing access for all. The Committee heard that the proposed footpaths could have been wider but that they had been kept at their current width to protect the trees. The Joint Head of Planning added that the removal of some of the railings would provide an open space 24/7 but also provide a functioning porch for the Church and confirmed that the area would be subject to CCTV and on the Street Wardens patrol route.

At the request of the Chair Eirini Dimerouki, Historic Buildings and Areas Officer, detailed that the works on the site would address some of the vegetation and drainage issues as well as rising damp. It was added that the proposal would provide rainwater management and would maintain the trees on site as well as cleaning and maintenance of the area.

Members continued to debate the proposal on issues including: the less than substantial harm of the proposal, the parking restrictions alongside the Church, whether one of the tombs would be subject to anti-social behaviour being in the accessible 24/7 public area, and whether there was any provision for the railings to be drawn across after hours.

At the request of the Chair the Senior Planning Officer responded that the impact of less than substantial harm was weighed against the public benefits to improve the public realm, enhancement of the railings, and the gravestones themselves. It was detailed that any change to the scheme limiting the open space would undermine the reasoning behind the proposal and detailed that there were differing heights on site that needed to be accounted for when looking at access. In response to a further question the Joint Head of Planning outlined that a fully compliant ramp would need to have a 1 in 20 incline and would have a significant impact on the archaeology of the site and the root protection area of the existing trees.

Members continued to debate the application on issues including: that the proposal would improve the space within the City Centre, that the lighting needed to be reviewed to be within acceptable levels and the proposed opening and closing times of the churchyard.

It was proposed and seconded that the applications be approved as detailed in the officer recommendation with the additional informatives as follows:

1. The applicant should have regard to the provisions of s. 78 of the Mission and Pastoral Measure 2011 concerning the relocation of gravestones.
2. The condition of the tomb chest on the north side of the west tower should be monitored and reviewed with regard to the potential need for relocation should

damage occur.

*RESOLVED (SIX votes FOR and THREE votes AGAINST, with ONE ABSTENTION)*  
That application 232564 is approved as detailed in the officer recommendation with the additional informatives as follows:

1. The applicant should have regard to the provisions of s. 78 of the Mission and Pastoral Measure 2011 concerning the relocation of gravestones.
2. The condition of the tomb chest on the north side of the west tower should be monitored and reviewed with regard to the potential need for relocation should damage occur.

*RESOLVED (SIX votes FOR and FOUR votes AGAINST)* That application 232565 is approved as detailed in the officer recommendation with the additional informatives as follows:

1. The applicant should have regard to the provisions of s. 78 of the Mission and Pastoral Measure 2011 concerning the relocation of gravestones.
2. The condition of the tomb chest on the north side of the west tower should be monitored and reviewed with regard to the potential need for relocation should damage occur.

#### **1049 231600 Land to West of, The Folley, Layer-de-la-Haye, Colchester**

A short break was taken between 19:48-20:01 following the conclusion of application 232565 but before the commencement of 231600.

It was noted that Cllr Laws left the meeting during the break.

The Committee considered an application for the Construction of 70 dwellings including 24 affordable homes (Rural Exception Site Local Letting homes, Affordable Rent Homes and Shared Ownership Homes), garages, parking, vehicular/ cycle and pedestrian accesses, public open space, landscaping, drainage infrastructure and other associated works. The application was referred to the Planning Committee as it was a major application on an allocated site where the proposal is a departure from the adopted local plan. The proposed access point deviates from the allocation policy of SS10 Layer De La Haye. The policy requires primary access to serve the development from Great House Farm Road, (South Boundary of the site) whereas the proposal is for sole vehicle access onto and from The Folley. In addition policy SS10 also requires a fully equipped Children's play area. However, due to local objections,

this is not included in the final proposal. Furthermore, the rural exception site has been amalgamated into the wider scheme and does not site within an area outside of the settlement limits as per the previous approval.

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

Daniel Cooper, Planning Officer presented the application to the Committee and assisted them in their deliberations. The Committee were shown the site layout plan and access to the site as well as the pedestrian accesses to the site. It was noted that the power lines were not in the gardens of the proposed houses and there was a mixture of designs on site and the Committee were shown a mock-up of the street scenes. It was noted that the application had been brought before the Committee as it did not include a Children's play area as detailed in policy SS10 and because the site allocation policy required a second access. The Planning Officer concluded that despite these departures from the policy it was considered that the proposal was acceptable and that the officer recommendation was for approval as detailed in the Committee report.

Robert Eburne (Applicant) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that the application before the Committee was a culmination of two separate applications that had been master-planned and had been designed to retain the benefits of both sites including the local lettings policy. It was noted that concerns had been raised over the access to the site but confirmed that these had been addressed and that this was a high-quality development.

At the request of the Chair, the Democratic Services Officer read out the statement from Councillors Andrew Ellis and Kevin Bentley, Ward Members for Marks Tey and Layer and read as follows:

*"Thank you Chairman and Committee members for taking a few moments to hear what Cllr Bentley and I have to say with regard this application.*

*We have had an involvement with this application site for over 8 years. During that time working with the Parish Council on behalf of residents, we met with the previous applicants, Tollgate Partnership, (who had strong local connections to the village) on a number of occasions. I have lost count of the number of round table meetings with officers, the Parish Council and Tollgate Partnership that we attended. Cllr. Bentley spoke at a village meeting about this development at its inception, and I did likewise about five years ago. These development plans have been a long time in 'gestation'!*

*This Committee granted outline approval for 70 homes back in 2022, since then Tollgate Partnership has sold the site to Denbury Homes. They did not sell to 'just any*

*developer', Denbury was chosen with care because the Tollgate Partnership wished to see the site developed sensitively and as well as they would have hoped. Looking at the plans before you this evening, it appears that Denbury has fulfilled that brief.*

*I cannot hand on heart claim that they meet with universal approval in Layer de la Haye, most people dislike change and this development will change the outlook for a number of people. It will increase the number of residents in the village calling on its facilities and services, such as they are, and it will inevitably increase traffic flows. That said, the site IS allocated in the Local Plan and 70 homes will be built on it come what may. I happen to believe that if we are to see a development on the site, then the one before you is a pretty good one. I know that as a committee you will determine this on planning grounds and I know that amalgamating the Rural Exception site into the main scheme is a Plan departure, but it's one that makes sense and should be welcomed. The developer has also paid great attention to the numerous submissions made by residents to the outline applications and has changed the access arrangements as a result. The saying goes, 'you can't please all the people all the time', but this change has been a positive one that has pleased many.*

*As Ward Councillors we have always worked with the Parish Council to try to ensure that any benefits of development are reaped by the local community and that issues caused by the development can be mitigated. I know that people tend to look at the negatives, but development, done well, can bring positives too.*

*The inclusion of a Rural Exception site was one such positive. It was the result of much work by the Parish Council, Ward Cllr's and Officers. Providing affordable housing for Layer residents and their families in perpetuity, must be viewed as an incredibly positive thing.*

*In addition to the 8 affordable units in the Rural Exception Scheme, there will be an additional 16 affordable units within the main scheme. I am grateful to officers and the applicant for agreeing to maintain the Pilot Scheme for a policy which as the then Portfolio Holder for both Housing and Planning, I wished to introduce for Colchester. I referred to it as 'Communities that grow together, stay together'. As a policy title that might sound a tad corny but in my opinion it's imperative that rural communities accepting growth, should see very tangible benefits from that growth, this is one of those. With rising costs of living, and property, particularly rural property, in short supply, the need for access to affordable housing in our village communities has never been greater.*

*Affordable housing that ensures that families can stay close to one another is a tremendous benefit, both socially, economically and environmentally. This development will afford the opportunity to a large number of people in Layer de la Haye and villages local to Layer de la Haye to remain close to their support network of family and friends providing something demonstrably positive for this rural community development.*



*And with the development comes some financial planning mitigation for Layer which will see much needed improvements to the Village Hall, the Play area which, it should be noted, is sufficiently close to the development to negate the need for an on-site play area, and a variety of schemes around the village which will improve it for its current residents and its new ones.*

*Chairman and Committee members, whilst few like change, and we would all prefer that this land remained undeveloped, we are where we are. You are looking at plans for an allocated site this evening and as Ward Cllr's we feel this is an acceptable scheme."*

Members debated the application on issues including: the inclusion of a Children's play area as detailed in the Local Plan Policy SS10 and whether the Committee should insist on its inclusion. Some Members did not feel that this was necessary following the statement from the Ward Member and comments from the Parish Council. Members discussed the distance from the site to the existing Childrens Play Area which was 420 metres, and it was confirmed that the high voltage power cables could be buried if needed.

It was proposed and seconded that delegated authority be given to the Joint Head of Planning to approve the application as detailed in the officer recommendation subject to a further requirement for the delivery of an on-site children's play area and undergrounding of the existing overhead lines with securing these matters delegated to officers and no need for the application to be returned for committee reconsideration.

**RESOLVED (SEVEN votes FOR and TWO votes AGAINST)** That delegated authority be given to the Joint Head of Planning to approve the application as detailed in the officer recommendation subject to a further requirement for the delivery of an on-site children's play area and undergrounding of the existing overhead lines with securing these matters delegated to officers and no need for the application to be returned for committee reconsideration.

**1050      232367 4 St. Botolphs Street, Colchester, CO2 7DX**

The Committee considered an application for planning permission for replacement of timber sash windows with upvc sash windows which will be painted black. The top corners of the proposed sash windows located on the front corner to be curved to match original windows. Also, the provision of a new timber door to serve upper floor flats and re-instatement of parapet and clock to front elevation. (resubmission of 231370). The application was referred to the Planning Committee as the previous application 231370 was refused at Committee and this submission aims to overcome the previous concerns.

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

Daniel Bird, Planning Officer presented the application to the Committee and assisted them in their deliberations. The Committee heard that the application was a locally listed building and was within the conservation area and were shown photos of the site and the windows as well as the proposed clock as well as its historical context. The officer detailed that there were other sites in the area that had upvc windows and concluded that the officer recommendation was for approval as detailed in the report.

John Burton addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. The Committee heard that they sat on other buildings committees and detailed that the preserving of Historic Buildings and keeping their character was vital to the tourist trade and that a previous application had required the retention of the sash windows. The Committee heard that the works that had been undertaken and the application before Members was in contravention of the previous conditions and concluded by detailing that they were not sure what the public benefits of the proposal where and that the window frames should have been retained.

Sam Good addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The Committee heard that there had been frustration that the previous application on site had been rejected by the Committee after a member of the Committee had called a local businessman disgraceful. The Committee were asked to note that the proposals would have less than substantial harm to the conservation area designation and detailed that there were other businesses in the area that had not followed the conservation area rules and that there was a distinction between homes and businesses that was unfair. The Speaker concluded by detailing that the local list of significant dwellings was not publicly available and that they had invited the Civic Society to have discussions regarding the application, but these had not been taken up.

Councillor Martin Goss addressed the Committee as a visiting Councillor. The Committee heard that they were addressing the Committee as the applicant was a resident in their ward. The Committee heard that they had visited the site and outlined that there were no material planning reasons to refuse the proposal. The speaker reminded Members that they needed to declare interests in items and that the proposal was a high-quality development which would restore the clock on the building and detailed that the flats had been developed to a high standard. The speaker detailed that Queen Street was known locally as Kebab alley and that the City Centre Masterplan had been made to regenerate the area but could not find any reason to object to the proposal and noted the objection from the Civic Society and that it was a shame that a meeting had not taken place between the Civic Society and the Applicant. The speaker concluded by detailing that they did not feel that there were any grounds to refuse the application and that if it went to appeal the Council would lose and would be liable for costs.

At the request of the Chair the Democratic Services Officer detailed that all Members had been contacted earlier in the day following consultation with the Monitoring Officer and advised that if Committee Members were also members of the Civic Society then they would need to declare this as an Other Registerable Interest and that if this was the case then they would also need to consider whether they were predetermined or not.

Councillor Robert Davidson declared an Other Registerable Interest that he was a Member of the Civic Society and that he did was not predetermined with regards to the application.

At the request of the Chair the Planning Officer responded to the points made by the Have Your Say Speakers. The Committee heard that on a previous application for the site there was a condition to not change the windows and that following an enforcement investigation an application was invited to regularise the windows as it was a non-designated heritage asset in a conservation area. The Joint Head of Planning detailed that Planning does not run on the principle of precedent and detailed that works had been carried out on an unauthorised basis and planning permission was required. The Committee heard that there was a statutory duty to preserve and enhance the conservation area and that this needed to be balanced against public benefits and detailed that a thermal upgrade to the windows would have been required. The Joint Head of Planning concluded that the works were unauthorised, but the harm needed to be balanced against the benefits of the pediment, clock and other works.

Members debated the proposal on the issues of the heritage preservation and what impact this would have on the wider area as there were other instances of other planning breaches. The Joint Head of Planning detailed that the Council would be looking at other breaches in the area as a matter of fairness.

Members continued to debate the proposal and detailed that the windows had not been noticed by many people and that the Council needed to support businesses in the City. At the request of the Chair, the Joint Head of Planning detailed that substantial harm was a very high bar to reach in terms of damage to a heritage asset.

*RESOLVED (FIVE votes FOR and TWO votes AGAINST and TWO)* That the application is approved as detailed in the officer recommendation.

