

Planning Committee

Thursday, 15 August 2019

Attendees: Councillor Lyn Barton, Councillor Pauline Hazell, Councillor Brian Jarvis, Councillor Cyril Liddy, Councillor Derek Loveland, Councillor Jackie Maclean, Councillor Martyn Warnes

Substitutes: Councillor Sam McCarthy (for Councillor Andrea Luxford Vaughan), Councillor Gerard Oxford (for Councillor Philip Oxford)

Also Present:

728 Site Visits

Councillors Barton, Hazell, Jarvis, Liddy and Loveland attended the site visits.

729 Planning Committee minutes 4 July 2019

The minutes of the meeting held on 4 July 2019 were confirmed as a correct record.

730 190288 Land adjacent to 56 Berechurch Hall Road, Colchester

The Committee considered an outline planning application for the erection of four flats at land adjacent to 56 Berechurch Hall Road, Colchester. The application had been referred to the Committee because it has been called in by Councillor Harris.

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

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

Benjy Firth, Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Peter le Grys addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that the site had been the subject to an identical application in 2008 which had been granted permission and nothing had changed with the application since that time. However, he acknowledged the need to consider changes in circumstances in relation to the site. He referred to the highway considerations and he confirmed that layout, car parking, visibility splays and the vehicle turning area had been considered satisfactory by the Highway Authority. He was therefore of the view that the application ought to meet with

the Committee's approval. He acknowledged the comments made by a local councillor in respect of the speed of traffic along Berechurch Hall Road but was of the view that this was a matter for the police, outside the Committee's remit and outside the control of the applicant.

Councillor Harris attended and, with the consent of the Chairman, addressed the Committee. He explained that Essex County Council Highways Authority had not accepted his invitation to meet on site to consider the access to the application site. He acknowledged the need for the type of accommodation proposed and welcomed this aspect of the application. However, he was concerned about use of the road by vehicles travelling in excess of the 30mph speed limit and considered that the conclusions reached by the Highway Authority on the application were based on vehicles travelling within the speed limit. He referred to Maypole Green Road and Cumberland Way, both of which had poor access visibility despite their positioning on a straight section of Berechurch Hall Road. On these traffic grounds, given the application site was located at a bend in Berechurch Hall Road, he therefore asked the Committee members to seek assurances that the sight splay for the proposed development would be made as generous as possible in order to improve the visibility as much as possible. He also referred to the Construction Method Statement and the need for provision to be made for the careful management of construction delivery vehicles in and out of the site in order to ensure there would be no traffic congestion around the access.

One member of the Committee welcomed the application whilst also acknowledging the concerns expressed by the ward councillor. He was of the view that proposed access would not be safe. He referred the width of the proposed access which he considered had been calculated using measurements based on derived stopping site distances contained in the Highways Manual for Streets and he considered that an additional condition was required to provide for all the undergrowth to be cut back either side of the entrance. He explained that he had conducted his own traffic survey at the location in order to determine the length of time required for a pedestrian to cross the road. He also referred to the provisions contained in the Government document on vehicular access standards and the requirements for minimum distances between new and existing access points. He considered the Highway Authority's consideration of the proposal had not been sufficiently rigorous and was of the view that the opportunity should be taken for the Highway Authority to re-evaluate the proposal and to provide an explanation regarding the proximity of the proposed access to Berefield Way. Safety concern was particularly raised in relation to vehicle movements from Berefield Way towards the right and across the carriageway at the time when vehicle movement was also taking place from the proposed access to the left.

The Planning Officer explained that the Construction Method Statement would include provisions for the management of delivery vehicles and wheel washing and he confirmed that the Highway Authority was the statutory consultee on matters relating to access and sight splays and, as such, it was not usual to question their conclusions. He also

confirmed that the applicants had confirmed that the Highway Authority requirements regarding the access were achievable. He also confirmed that the application plans did not illustrate the 2.4metre wide footpath which had been constructed in the location which was more than the requirement for the sight splay which the Highway Authority was seeking. In addition there would be the benefit of vegetation clearance to the side of the access and a condition providing for the vegetation to be kept clear.

The Development Manager questioned whether the minimum distance information was pertinent to junction specifications rather than driveway access points.

Other members of the Committee noted the concerns expressed regarding the speed of traffic along Berechurch Hall Road and welcomed the clarification provided by the Planning Officer regarding the width of sight splay, the distance from the road and the intended clearance of vegetation to the side of the access which would make it clearly visible. This was considered to adequately mitigate the concerns expressed by the ward councillors. Reference was also made to the previous permission which had been granted and the likelihood that the proposal would enhance the area.

The Chairman sought clarification as to whether an additional condition would satisfy the concerns expressed regarding the extent of vegetation to the side of the access.

Members of the Committee sought clarification on landscaping matters, 'hit and miss' fencing and the similarity of the application to the previously approved one. The concerns expressed in relation to the management of construction vehicle movements were also noted.

The Planning Officer confirmed that landscaping matters would be dealt with at the application's reserved matters stage, that 'hit and miss' fencing referred to fencing which was not continuous but included gaps and that the current application was exactly the same as the previously approved application, other than the current application was outline only, not full and the landscaping matters would be subject to a separate application.

RESOLVED (FIVE voted FOR and FOUR voted AGAINST) that the planning application be approved subject to the agreed Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) contribution, together with the conditions set out in the report.

731 191230 Longacre Bungalow, Colchester Road, Wakes Colne, Colchester

The Committee considered a planning application for a proposed new annexe and cartlodge at Longacre Bungalow, Colchester Road, Wakes Colne, Colchester. The application had been referred to the Committee because the application has been called in by Councillor Chillingworth.

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

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

David Lewis, Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations. The Planning Officer explained that the Highway authority had withdrawn its requirement for the removal of the western access and had accepted that the access did meet the required standards and, as such, proposed Condition 5 would not be required.

Julian Bowden, a resident at Millbank and also on behalf of the residents of Highview, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He disputed the terminology used by the applicant's agent concerning the application, for example referring to the utility room at his property as not being a habitable room. He considered that the amenity of the utility room would be affected by the development. His main objections to the application related to over-development and access. He referred to the planning permission granted eight years ago for the existing dwelling the decision notice for which referred to matters such visual amenity, over-development and privacy of adjoining occupiers. He considered the current proposal to be clear over-development of a small site in a rural location and deemed it to be 'development creep'. He explained that access was shared between Longacre and Highview, the driveway having been made wider. He referred to the current occupier of Longacre now having a greater number of vehicle movements which had led to disturbance and greater maintenance costs.

Adam Jackson addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that the proposal was for a small annexe for use by the applicant's elderly parents, together with a double cart lodge. The applicant's wished to provide a greater level of care for their parents, to share shopping tasks and to be on hand in the event of an emergency. The annexe had been designed to comply with building regulations, particularly in relation to accessibility and accessibility for wheelchair users. The design had included matched floor levels to the existing house and the sectional height of the building had been minimised so far as was possible to avoid disturbance to neighbours to the west and to mimic historic out-buildings throughout the village. A topographical survey had been undertaken to ensure proposals were accurate. He welcomed the recommendation for approval and he commented that the objections relating to rights to view and over-development should be considered as non-material.

Councillor Chillingworth attended and, with the consent of the Chairman, addressed the Committee. He explained that he had called in the application at the request of the Parish Council due to concern that it may be possible for the annexe to be used as a

separate dwelling in the future. He was of the view that the site was constrained and two separate dwellings would constitute over-development, as well as affecting the amenity of the neighbouring properties. He referred to the Highway Authority's original request for the western access to be closed but that this request had been withdrawn. He also referred to the comments made by Mr Bowden who lived closest to the proposed annexe and asked the Committee members to give them careful consideration, particularly in relation to his amenity and over-development. He confirmed that he agreed with the comments relating to developments in rural locations should reflect the rural aspect and not reflect similar proposals in urban sites. He confirmed that he had no objection to the principle of an annexe for elderly relatives, which he considered to be a satisfactory way for two generations to be housed and, as such, he welcomed the proposed condition which tied the dwelling to the occupiers of the main house, which could only be altered by a new planning application. He explained that both access points were to directly to the A1124 where there was a 30mph speed limit but which was well known for speeding traffic as well as being the scene of numerous accidents. He considered exiting both access points was hazardous and he also referred to the damage caused to the shared drive with Highview and was of the view that the construction of an annexe, together with a greater number of people living at the site, would extend and increase the usage and cause further damage to the shared access. He acknowledged that the Highway Authority had not required the widening of the shared access to the west but he asked the Committee members consider the addition of such a condition to safely accommodate increased traffic and to protect the amenity of occupiers of Highview.

The Planning Officer explained that the Highway Authority was satisfied with the access arrangements as proposed and, as such, it would be difficult to justify the imposition of an additional condition.

Members of the Committee generally confirmed they had no objection to the principle of the development, provided permitted development rights were not exceeded but referred to the potentially hazardous nature of the access points to the site and sympathised with the concerns of the residents of Highview in relation to the increased use of the shared access by the residents of Longacre. Clarification was sought regarding the possibility of seeking the applicant's agreement to constructing a separate access, adjacent to the shared access.

The Planning Officer was of the view that any future application to improve the access for the site was likely to be supported by the Highway Authority but he did not think it would be justified to require such an application to be made or to add a condition as part of the current application. He did, however, consider the addition of an informative that encouraged continued dialogue to seek an improvement to the access for the site would be possible.

One member of the Committee sought clarification regarding deferral of the Committee's consideration to allow for further discussion with the Highway Authority on the access

and safety requirements.

The Planning Officer was of the view that the applicants were keen to secure safe access for the site and, as such, an informative may be helpful in bringing forward further discussions on the matter.

RESOLVED (EIGHT voted FOR and ONE ABSTAINED) that the application be approved subject to the conditions set out in the report, with the exclusion of proposed Condition 5 and with an additional informative providing for improvements to the driveway access.

732 Appeal at Land at Queen Street, Colchester (Appeal ref: 3231964 and Planning Application No: 182120)

The Committee considered a report by the Assistant Director Policy and Corporate concerning first reason for refusal (relating insufficient community consultation) in the Decision Notice for planning application 182120 for the demolition of existing buildings/structures and redevelopment to provide purpose-built student accommodation; hotel; commercial space (use Classes A1, A3, A4, B1(c) and D2); artist studios and associated vehicular access and public realm improvements at Queen Street, Colchester.

Additional information received since the publication of the report was set out in an amendment sheet.

Simon Cairns, Development Manager, presented the report and, together with Alistair Day, Planning Specialists Manager, assisted the Committee in its deliberations.

The Development Manager explained that the recommendation in the report had incorrectly referred to the withdrawal of the first reason for refusal as set out in the decision notice. He confirmed that, in accordance with the advice of Pegasus Group, the national planning, urban design and heritage consultancy, who had been appointed to represent the Council at the scheduled Public Inquiry, the Committee was being asked to confirm that the first reason for refusal (insufficient community consultation) would not be defended by Pegasus Group, on behalf of the Council, at the Public Inquiry. He further confirmed that the Committee's endorsement of this recommendation would not prevent any third party from seeking to defend this reason for refusal.

The Development Manager referred to the Statement of Community Involvement, a document adopted by the Council, setting out certain requirements such as consultation with immediate neighbours and, for Major applications, additional measures were strongly recommended, proportionate to the nature and scale of the proposal, to engage with the local community and local councillors. He went on to confirm that the applicant had submitted a Statement of Community Involvement (SCI) as part of the planning

application which included details of the community engagement undertaken by the applicants. He further referred to the provisions for community engagement set out in Paragraph 128 of the National Planning Policy Framework (NPPF), including the need for design proposals to take into account the views of the local community.

The Development Manager confirmed that the SCI submitted with the application explained that the applicants, Alumno, had sought to work with the local community by:

- Informing local elected representatives, local groups, neighbours and nearby residents about the proposals;
- Engage the community on the proposals for the site and capture feedback to inform the further progression of the scheme;
- Identify concerns and respond to these, where possible through the design process, liaison and understanding local views about the site and the surrounding area to help the applicants to work with the local community to the planning submission phase.

He also detailed the actual measures undertaken to meet the objectives identified, including:

- A public exhibition on 4 July 2018 at Greyfriars Hotel, High Street, Colchester;
- A letter to 2,690 local residences and businesses, including invitations to the exhibition and contact details of the project team and details of a consultation website with details of the project and an online feedback mechanism;
- A press release to the Colchester Gazette;
- 158 people (including a number of Borough Councillors and key members of the local community) attended the exhibition, and 30 feedback forms were submitted at the exhibition and a further nine forms by post;
- Meetings with local elected representatives, including the local MP, Borough and County Councillors;
- Consultation with local artistic groups, including representatives from Firstsite and Space, the creative business centre;
- Contact with local business groups, including the Colchester Retail and Business Association and the Colchester Business Improvement District;
- Community Groups contacted on 18 July 2018, including Priory, Roman and Castle, Dutch Quarter, Rosebery and Smythies and Riverside Residents Associations;
- Feedback forms were supplied at the exhibition and a Freepost facility, email address and dedicated telephone number and website were also made available.

Following the initial public consultation further images of the proposals were published together with a series of Frequently Asked Questions on the website. The applicants had also undertaken to continue to engage with the local community following submission of the application and throughout the post-submission phase.

The Development Manager explained that Pegasus Group, the Council's Consultants, were of the view that there was no conflict with Paragraph 128 of the NPPF as pre-

application discussions, including ward councillors and the local community, had taken place and had been acknowledged as complying with the Council's Statement of Community Involvement. As such, Pegasus Group had concluded it was not possible for them to defend the first reason for refusal.

The Development Manager also gave details of a further letter submitted by the applicants, Alumno, setting out their view that the reason for refusal should be withdrawn by the Council.

The Chairman explained that the amendment sheet had referred to the first reason for refusal not being 'contested' and he confirmed that the Committee was being asked to confirm that the first reason for refusal (insufficient community consultation) would not be 'defended'. He further explained that, due to the level of interest in the application, he had used his discretion to vary the Committee's usual speaking arrangements such that up to three representations in opposition to the recommendation and up to three representations in support of the recommendation would be permitted.

Kathryn Oelman, of Lawson Planning Partnership Ltd. on behalf of OMC, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the recommendation in the report. She referred to the requirements of the NPPF in terms of early, proactive and effective engagement, to work closely with the community, to take account of views and evolve designs. She was of the view that if this didn't take place it was a material consideration. She also explained that the Council's SCI was not included in the first reason for refusal of the application and, as such, there was no expectation that the Council would seek to defend the reason on this basis. She explained that many of the people listed as being consulted had stated they had not been consulted effectively or early enough. She referred to requests for meetings with the developers which had not been granted, design concerns had been raised but had not been addressed. She was of the view that evidence should be sought from the developers regarding the evolution of designs to take account of views expressed. Minor revisions had been undertaken but these did not address the concerns previously expressed. She did not consider that this complied with the NPPF as the consultation had not been meaningful and the developer had failed to listen to the community, with design opportunities being missed. She was of the view that the Committee needed to decide whether the reason for refusal was reasonable and coherent not whether it would win.

John Burton, President of Colchester Civic Society, addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the to the recommendation in the report. He was of the view that the Planning Committee had been fully justified in refusing the planning application on the grounds of lack of public consultation. He considered the Alumno SCI, in comparison with those undertaken by other developers, was wholly inadequate. He was of the view that the duration of the exhibition was too short for such a large-scale proposal in such a critical area of the town

centre. He acknowledged that five local associations had been contacted by the developers but concerns had been expressed about the short timescale for engagement which had prompted a request for a meeting with all the resident's associations at one time. This request had been declined with an assurance that a meeting would take place but this did not happen. Following the exhibition the proposals were materially changed but without community involvement to explain the changes or to obtain community views. He considered the developers had avoided the required openness of the planning process, causing distress to residents. He asked the Committee to retain the first reason for refusal.

Dorian Kelly addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the to the recommendation in the report. He referred to three pieces of case law and good practice. Firstly, the Planning Inspectorate Good Practice Advice Note 9 concerning the Secretary of State considering the same matters that were considered by the local Planning Authority which he considered would not be the case if the Committee agreed not to defend the first reason for refusal. He also argued that the consultation was not carried out in a proper manner, was unfair and therefore unlawful. He referred to a case involving the London Borough of Brent and whether public consultation was a legal requirement, whether they were proper and undertaken at an appropriate stage. He did not consider the consultation undertaken was adequate in this regard. He had attended the exhibition on 4 July following sight of the details in the local newspaper. He referred to artists impressions of plans submitted by the developers which lacked detail but paperwork which was far too difficult to interpret. He considered no notice had been taken of views from the public, the only changes being as a consequence of comments from Historic England. He also referred to a case involving Holborn Studios v the London Borough of Hackney concerning failure to reconsult being deemed to be unfair and unlawful. He considered this was the case with the Alumno project and, as such it should have involved a full 13-week consultation period and no re-consultation had been undertaken.

The Development Manager responded to matters raised. He explained that the Committee members were entitled to make their own judgement in relation to compliance with the Council's Statement of Community Involvement and he reiterated and clarified the measures reported to have been undertaken by Alumno in their submitted SCI. He explained that adequacy of the hours of opening of the exhibition was a matter for the Committee members to determine. He also confirmed that the Committee was being asked to agree to the first reason for refusal to be not defended and it was not being suggested that the reason would be withdrawn. As such, there would be nothing to preclude all other third-party groups making representations to the Inspector in relation to the community consultation undertaken. He confirmed that he had no knowledge of the case law referred to by Mr Kelly and, as such, was unable to provide any guidance as to their relevance to the matter.

One member of the Committee was minded to take the advice provided by the Council's

professional and independent consultants, also acknowledging that consultation had taken place and, as such, was of the view that the recommendation to not defend the first reason for refusal should be supported, bearing in mind that third parties would be permitted to defend the reason at the appeal.

Other members of the Committee referred to the conflicting evidence presented by members of the public and the developers about the timing, duration and adequacy of the public consultation and sought further clarification and more detailed information as to why the Committee needed to make a decision on the defence of a reason for refusal which had previously received the full support of the Committee when the application had been determined in February. Clarification was also sought, should the Committee determine that the reason for refusal should be defended would this mean that the consultants would be unable to act for the Council.

The Development Manager referred to concerns regarding the need for a decision by the Committee on the defence of the reason for refusal, he acknowledged views expressed that the consultation had been flawed but explained that the Council's consultants had confirmed that they were unable to defend the reason for refusal as it could potentially undermine their professional credibility. He explained that this proposal would mean that the local planning authority would not provide evidence in relation to the first reason for refusal, this would not prevent third parties giving evidence and it would be for the Inspector to form their own independent view. He considered the views expressed about the inadequacy of the consultation may possibly have emanated from the design outcomes and the mix of uses on site not reflecting the community group's aspirations. He also confirmed that Lawson Planning Partnership Ltd. had confirmed that it intended to provide evidence at the appeal in relation to the first reason for refusal as a Rule 6 party to the appeal.

The Planning Specialists Manager confirmed that Alumno had not been involved in any way with the writing or preparation of the report before the Committee. He also clarified that no further consultation had been undertaken by the applicants following amendments during the course of the planning application. However, the Council had consulted all those who had made representations to the original application, in accordance with their adopted policies as part of the usual planning process.

The Development Manager went on to explain that the report had been submitted to the Committee because the consultants had advised they would be unable to defend the first reason for refusal on the grounds that they had to adhere to a Code of Conduct which required them to provide evidence which they honestly believed to be true and, in their view, there was an adequacy of compliance with the SCI. This did not mean the consultants would not be able to act for the Council, and, should the Committee wish the reason for refusal to be defended, either another consultant would need to be appointed or an appropriate Committee member could act in this capacity.

One member of the Committee reiterated concerns about the Committee being required to adjudicate on a reason for refusal and questioned whether the reasons supporting the Committee's previous decision to refuse the application were being undermined. The view was expressed that the Committee's determination of the application had been genuine and reasonable and, as such, it was considered unlikely that an Inspector would deem the reasons for refusal to be weak. Accordingly, it was argued that the Committee's decision should be confirmed and evidence presented to the appeal on that basis.

Another member of the Committee confirmed their determination that the Council should win the appeal, whether or not the first reason for refusal was considered robust. Reference was made to the consultation not being meaningful, together with an absence of design modifications in the light of comments made during the consultation. However, acknowledgement was also given to the consultation being deemed to have complied with the requirements of the NPPF and the need to focus on the potentially far more robust ground for refusal that it was a poorly designed scheme in the historic core of the town centre conservation area.

Reference was also made to the advice of the consultants that the reason for refusal was not possible to defend given that pre-application discussions had taken place with ward councillors and the local community and that planning officers had confirmed that this complied with the requirements of the adopted Statement of Community Involvement.

The Development Manager explained that the Council's adopted SCI provided a measure against which community engagement measures could be judged. He again highlighted the provisions in the document and detailed again the measures undertaken by Alumno which were known to have taken place. As such, without making a judgement regarding the quality of the measures undertaken, he was able to confirm that all the requirements identified in the adopted SCI had taken place and therefore complied with the adopted SCI. Accordingly, the Council's consultants had concluded that it was not possible for them to defend that reason for refusal on behalf of the Council. He reiterated he was able to confirm that the measures had taken place evidentially, that he was not in a position to judge the measures from a qualitative perspective and that no influence had been exerted on the Council's consultants by the planning officers in forming their independent opinion on the matter.

The Planning Specialists Manager also confirmed that the Council's consultants had been supplied with details of the contents adopted SCI, together with the extent of the consultation, in terms of the content of the Alumno SCI and the measures said to have been undertaken.

RESOLVED (SEVEN voted FOR and TWO voted AGAINST) that the recommendation of Pegasus Group, the consultants appointed to act on behalf of the Council at the

forthcoming appeal, that the first reason for refusal of application 182120 at land at Queen Street, Colchester (referring to a level of community engagement undertaken prior to the submission of the application) be not defended by them on behalf of the Council be approved.