

Planning Committee Meeting

**Council Chamber, Town Hall, High Street,
Colchester, CO1 1PJ**

Thursday, 15 August 2019 at 18:00

The Planning 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. Usually, only one person for and one person against each application is permitted. Attendance between 5.30pm and 5.45pm will greatly assist in enabling 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 (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published.

Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. At Planning Committee meetings, other than in exceptional circumstances, only one person is permitted to speak in support of an application and one person in opposition to an application. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here:

<https://colchester.cmis.uk.com/colchester/HaveYourSay/HYSPlanning.aspx>.

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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 the Library and Community Hub, Colchester Central Library, using the contact details below and we will try to provide a reading service, translation or other formats you may need.

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COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 15 August 2019 at 18:00

The Planning Committee Members are:

Councillor Cyril Liddy	Chairman
Councillor Andrea Luxford Vaughan	Deputy Chairman
Councillor Lyn Barton	
Councillor Pauline Hazell	
Councillor Brian Jarvis	
Councillor Derek Loveland	
Councillor Jackie Maclean	
Councillor Philip Oxford	
Councillor Martyn Warnes	

The Planning Committee Substitute Members are:

All members of the Council who are not members of this committee and who have undertaken the required planning skills workshop training:-

Councillors:

Christopher Arnold	Kevin Bentley	Tina Bourne	Roger Buston
Nigel Chapman	Peter Chillingworth	Helen Chuah	Nick Cope
Simon Crow	Robert Davidson	Paul Dundas	John Elliott
Andrew Ellis	Adam Fox	Dave Harris	Theresa Higgins
Mike Lilley	Sue Lissimore	Sam McCarthy	Patricia Moore
Beverley Oxford	Gerard Oxford	Chris Pearson	Lee Scordis
Lesley Scott-Boutell	Lorcan Whitehead	Dennis Willetts	Julie Young
Tim Young			

AGENDA

THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING
(Part A - open to the public)

Please note that Agenda items 1 to 6 are normally dealt with briefly.

An Amendment Sheet is published on the Council's website by 4:30pm on the day before the meeting and is available to view at the bottom of the relevant Planning Committee webpage. Please note that any further information for the Committee to consider must be received no later than 5pm two days before the meeting in order for it to be included on the Amendment Sheet. With the exception of a petition, no written or photographic material can be presented to the Committee during the meeting.

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will introduce themselves.

2 Have Your Say! (Planning)

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

These speaking provisions do not apply to applications which have been subject to the Deferral and Recommendation Overturn Procedure (DROP).

3 Substitutions

Councillors will be asked to say if they are attending on behalf of a Committee member who is absent.

4 Urgent Items

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

5 Declarations of Interest

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other pecuniary interest or non-pecuniary interest.

6 Planning Committee minutes 4 July 2019

7 - 20

The Councillors will be invited to confirm that the minutes are a correct record of the meeting held on 4 July 2019.

7 Planning Applications

When the members of the Committee consider the planning applications listed below, they may decide to agree, all at the same time, the recommendations in the reports for any applications which no member of the Committee or member of the public wishes to address the Committee.

7.1 190288 Land adjacent to 56 Berechurch Hall Road, Colchester

21 - 38

Outline application for the erection of four flats.

7.2 191230 Longacre Bungalow, Colchester Road, Wakes Colne, Colchester

39 - 48

Proposed new annexe and cartlodge.

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

49 - 54

Report by the Assistant Director Policy and Corporate concerning reason for refusal no.1 of the Decision Notice for planning application 182120 (Demolition of existing buildings/structures and redevelopment to provide purpose-built student accommodation; hotel; commercial space fuse Classes A1, A3, A4, B1(c) and D2); artist studios; and associated vehicular access and public realm improvements at Queen Street, Colchester.

9 Exclusion of the Public (not Scrutiny or Executive)

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).

Part B
(not open to the public including the press)

Planning Committee

Thursday, 04 July 2019

Attendees: Councillor Lyn Barton, Councillor Pauline Hazell, Councillor Brian Jarvis, Councillor Cyril Liddy, Councillor Derek Loveland, Councillor Andrea Luxford Vaughan, Councillor Jackie Maclean, Councillor Philip Oxford, Councillor Martyn Warnes

Substitutes: No substitutes were recorded at the meeting

Also Present:

715 Site Visits

Councillors Barton, Hazell, Jarvis, Liddy, Loveland, Luxford Vaughan and J. Maclean attended the site visits.

716 172049 Land West of Chitts Hill, Stanway

The Committee considered an application for the development of the site to provide 100 dwelling houses (Class C3) with access from Chitts Hill, associated on site infrastructure, open space, landscaping and parking. The application had been referred to the Committee because the proposal was a departure from the adopted Local Plan by virtue of it being outside the adopted settlement boundary of Colchester and because the proposal constituted major development where objections had been received and the recommendation was for approval. A section 106 legal agreement was also required.

The Committee had before it a report in which all the information was set out, together with further information on the Amendment Sheet.

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

Lucy Mondon, Principal Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Chris Wheat addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. There was a threat to life if the application was approved. There had been a recent suicide at the level crossing and putting a further 100 dwellings at this location would expose residents to greater risk, especially young adults and children. Concern was also expressed about road

safety. When the level crossing was in use, traffic often backed up from the crossing to Holmwood House school. The development would lead to an increase in traffic, causing further congestion. Traffic coming from the West Bergholt direction wishing to enter the development would impede further the flow of traffic and lead to further delays. It would also increase the risk of traffic getting stuck on the level crossing. The Committee needed to take account of the public safety implications arising from the application.

Robert Eburne addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. The proposal was in accordance with the Local Plan. The development had been subject to public consultation over the last two years to ensure that it was a high-quality development, and it would provide 30% affordable housing, in line with Council policy. One third of the site would be open space and the trees at the frontage of the site would be maintained. No trees that were subject to Tree Protection Orders would be affected. The traffic impact had been thoroughly assessed by consultants and a Transport Assessment submitted with the application. This had addressed the issue of queueing traffic. The Highways Authority had raised no objections on highways grounds. A legal agreement to secure section 106 contributions was also proposed

Councillor Willetts attended and with the consent of the Chairman addressed the Committee, on issues relating to the proposed access junction to the development, which was in Lexden and Braiswick ward. There were grave concerns about the design and placing of the junction in Chitts Hill. Whilst the Highways Authority had not objected to the proposal, their role was to take a high-level view and it was for the Planning Committee to assess the human factors associated with the junction. At peak times there would be conflict between the users of the crossing and those accessing the development. Whilst the Traffic Assessment did look at the issues around peak use, it was not convincing. There was a risk that when traffic was queueing, vehicles seeking to access the development would drive on the other carriageway, increasing the risk of accidents. Remedial measures needed to be put in place to filter traffic into the estate. Whilst the overall design of the development was satisfactory, until a better arrangement for accessing the development was found the application should be deferred.

Councillor Dundas attended and with the consent of the Chairman addressed the Committee. Whilst emphasis was given to the site being included in the emerging Local Plan, this had not been agreed yet and it was not clear what weight the Committee should give the emerging Plan. The emerging Local Plan had not been subject to significant public scrutiny and it was not inconceivable that it would be revised. Members should use their unique local knowledge when considering highways issues around the access to the development. The level crossing was closed 50% of the time at peak traffic periods. There were often long queues of stationary traffic on both sides of the crossing, and it was very likely that this would block access to the

development. At the very least, the junction should have kept clear signs or a mini roundabout. Concern was also expressed about the proposed contributions under the section 106 agreement. The contribution towards the NHS would not secure significant resources. The Public Open Space, Sport and Recreation contribution should be used to provide facilities for older children. In view of the fact that the Landscape Officer did not support the proposal, the conflict with policies and the highways issues, the application should be refused or deferred for further negotiations.

Councillor Barber attended and with the consent of the Chairman addressed the Committee, as a member of the Local Plan Committee. The proposal was not a chosen site in the Local Plan and was contrary to the current Local Plan. The emerging Local Plan had not been ratified and he was not confident that Part 2 of the Local Plan would be adopted. The application was therefore premature. It was also in conflict with a number of planning policies such as ENV1. If the Committee were minded to approve the application, it should seek to improve the junction on Chitts Hill. He was preparing an application to the Local Highway Panel to address speeding issues in the area.

Councillor Scott-Boutell attended and with the consent of the Chairman addressed the Committee. She stressed that the emerging Local Plan was not yet agreed, and she had raised concerns about the development of this site to the Inspector. The application was speculative and premature. The Landscape Officer did not support the application and the Urban Designer had also requested revisions. Concern was expressed that the developer had initially claimed that the development could not support section 106 contributions. In terms of highways issues, the difficulty of fitting infrastructure retrospectively was noted. In addition, she had applied to the Local Highway Panel for funding for a crossing on Halstead Road and this should have been agreed as part of the section 106 agreement. The area was not well served by public transport, which would encourage car use by residents of the development. In addition, the use of the education and NHS contributions outside of Stanway was also a concern and would also encourage car usage. The provision of electric car charging points, solar panels and dog bins had not been specified.

The Principal Planning Officer explained that the principle of the development was addressed in detail in the report. The emerging Local Plan was at an advanced stage of preparation and had been submitted for examination. The report addressed the representations that had had been made on the principle of the development. Whilst the application was not in accordance with the Adopted Local Plan, it was in conformity with the National Planning Policy Framework and the emerging Local Plan.

In terms of other issues raised, the NHS had requested a contribution of £36,000 to be invested in increasing capacity in local surgeries. A deficit had been identified at the Ambrose Avenue branch surgery. The educational contributions would be invested in two sites in line with Essex County Council's 10 year plan. Car charging points, solar panels and dog waste bins could be secured by condition, if the Committee considered it

necessary. In respect of the junction on Chitts Hill, the Transport Assessment had assessed the impact with the junction at 60 metres from the crossing over a seven-day period, although it was proposed that the junction be 70 metres from the crossing. It had concluded that the average wait times at both morning and evening peaks would be 4-5 minutes and that there would be an average of four cars queuing 93% of the time. There would also be keep clear markings at the junction of approximately two car lengths. Pedestrian numbers that would be generated by the application would not justify a pedestrian crossing. Issues of pedestrian safety in the area were wider issues for Essex County Council to address and were outside the scope of the application. The NPPF is clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe and this was not the case

In terms of ecological issues, Essex Wildlife Trust had indicated that they were content with the information provided with the application and that acceptable mitigation was in place. In addition, an area would be provided under SANGS to offset the impact of the development. Car charging points could be required by condition and dog waste bins could be introduced via the landscaping proposals under condition 18.

In discussion, some concern was expressed that section 106 contributions on education and health were being directed outside the ward. Clarification was also sought about where the proposed play equipment would be located and the nature of this. The need to provide facilities for older children was stressed. Support was expressed for the inclusion of car charging points, solar panels and dog waste bins. Members considered that there were a number of positive aspects to the scheme, particularly the provision of 30% affordable housing and the good quality design. However, concern was expressed about the conflict with the current Local Plan and the proposed access junction on Chitts Hill. The increase in queueing traffic that would result would lead to an increase in traffic using Argents Lane, which was narrow and unsuitable for the volume of traffic that would result.

In view of the concerns expressed on the principle of the development, Bethany Jones was invited to address the Committee on the weight the Committee should place on the emerging Local Plan. She explained that the development site was allocated in the emerging Local Plan. Paragraph 48 of the NPPF set out three tests which needed to be applied to determine the weight that should be applied;

- The stage of preparation of the Emerging Local Plan;
- The extent of unresolved objections;
- Consistency of policies with the NPPF.

The emerging Local Plan had been submitted and was subject to examination and therefore was considered to be at an advanced stage. Officers were working to provide the extra evidence the Inspector had requested. There no unresolved objections to

Policy WC2, which allocated this site in the emerging Local Plan. The proposed policy and the application were in full conformity with the NPPF, so in this case significant weight could be given to the emerging Local Plan. In response to a query from the Committee it was highlighted that if the Local Plan were not be approved, then the default position would be that applications would be considered against the NPPF. As this application was regarded as highly sustainable and in the absence of any conflict with the policy framework it would be recommended for approval.

Further concern was expressed about the highways issues resulting from the proposed access junction off Chitts Hill. Whilst it was noted that the Highways Authority had not objected to the application, members local knowledge suggested that the proposed junction would increase traffic delays and increase the risk to highway safety. The increase in stationary traffic would also have a detrimental impact on air quality. In addition, members were disappointed to note that Network Rail had not commented on the application despite a number of requests.

Members also sought confirmation about the line of Grymes Dyke and the potential impact of the works on the Dyke and whether moving the access would lessen the impact on the Dyke. Concern was also expressed about the applicability of policy DP12 to the development and the potential problems that could arise from the use of management companies. Further information was also sought about classification of the value of the agricultural land.

In response to members discussion it was explained that in respect of construction traffic, condition 10 would require a construction traffic management plan. In terms of the educational contribution Essex County Council had calculated that the application would generate 28.9 primary school places and 19.3 secondary school places, and the contribution had been requested on that basis. No contribution had been sought in respect of school transport and the area was served by regular bus services. The site was classified as Grade 2 agricultural land. Whilst the classification for the general area was at a high level, when the site was looked at in more detail it had been given a lower classification. There was no scheduled ancient monument on the site. The playground would be a LEAP facility which was designed for slightly older children, and would be located some distance from properties, to protect residential amenity. It was confirmed that the open space would be managed by a management company. The Development Manager noted the concerns expressed about highways safety but stressed that this was not supported by the Highway Authority, who were the relevant authority, on either safety or capacity grounds, and there was no evidence that the proposed access junction would be unsafe. There were therefore no grounds to support a refusal.

A proposal to defer the application for further discussions on the access to the development was proposed and seconded. On being put to the vote the proposal was lost (THREE voted FOR, FOUR voted AGAINST).

A proposal to refuse the application was proposed and seconded on the grounds of impact of the proposal on highway safety and that the application was not in conformity with the current Local Plan. As a motion to overturn an officer recommendation had been made and seconded, the Committee considered whether it should follow the Deferral and Recommendation Overturn Procedure (DROP).

The Development Manager explained that if the DROP procedure was followed that enable officers to provide the Committee with some considered advice on the implications of refusing the application, particularly in respect of the Council's 5-year housing supply. This site was included in the 5-year housing supply and to refuse the application could have significant implications. Officers believed that the Committee could give considerable weight to the inclusion of the site within the emerging Local Plan. In addition, officers considered a refusal based on highways issues would be difficult to sustain at appeal and could leave the Council vulnerable on costs.

Some members of the Committee considered that in view of members local knowledge and the clear concerns that had been reiterated by ward Councillors and the Committee the vote on the refusal should proceed, and that if the applicant appealed the decision, an Inspector was likely to give significant regard to the views of the Committee.

The Development Manager reminded the Committee that its duty was to determine the application in accordance with the Development Plan unless material considerations, backed by sound evidence, indicated otherwise.

RESOLVED (FIVE voted FOR) that the application be deferred under the Deferral and Recommendation Overturn Procedure and a report be submitted to a future meeting of the Committee advising on the risks of a refusal of the application on the grounds of the impact of the proposal on highway safety and non-conformity with the current Local Plan.

717 181458 32 Colchester Road, West Bergholt, Colchester

The Committee considered an outline application for the erection of 13 dwellings with vehicular access, landscaping, footpath links and other related infrastructure. The application had been referred to the Committee as it had been called in by Councillor Barber, because it was a major application which received objections and because contributions were required under section 106 of the Town and County Planning Act 1990.

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

Chris Harden, Senior Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Councillor Barber attended and, with the consent of the Chairman, addressed the Committee. Whilst he had called the application in, his concerns had now been addressed. All matters were reserved. The application was in line with the proposed West Bergholt Neighbourhood Plan. On more general matters, as a member of the Local Plan Committee, he stressed that the Committee had not made a decision on the evidence for the emerging Local Plan and it was not appropriate to speculate on the outcome.

Some concern was expressed by members that the application had been brought forward before the West Bergholt Neighbourhood Plan had been agreed, and that so little information was available to the Committee. The Senior Planning Officer explained that whilst the Neighbourhood Plan had yet to be agreed, the application was in accordance with the Local Plan. A member of the Committee explained that West Bergholt Parish Council had approached its Neighbourhood Plan very carefully and consulted widely. There was a very high probability that it would be approved.

The Planning Officer stressed that this was an outline application, with all matters of detail to be dealt with at Reserved Matters stage. The Committee requested that the Reserved Matters application be referred to the Committee to determine.

RESOLVED (EIGHT voted FOR, ONE voted AGAINST) that:-

(a) the application be approved subject to the signing of a legal agreement under Section 106 of the Town and County Planning Act 1990, within 6 months of the date of the Committee meeting. In the event that the legal agreement is not signed within 6 months, authority be delegated to the Assistant Director to refuse the application or otherwise complete the agreement. The permission also to be subject to the conditions and informatives set out in the report.

(b) The reserved matters application be referred to the Planning Committee for determination.

718 190424 and 190425 Land at East Bay Mill, 19 East Bay, Colchester

The Committee considered a planning application and application for listed building consent for the construction of three residential units, together with parking, landscaping and associated works, including the refurbishment of the existing Grade 2 listed granary barn. The application had been considered by the Committee at its meeting on 30 May 2019, but the application was deferred for further consideration of the number of parking spaces within the site and further reducing the potential conflict between motor vehicles and other users of the site.

The Committee had before it a report in which all information was set out, together with further information on the Amendment Sheet.

Alistair Day, Specialist Planning Manager, presented the report and assisted the Committee in its deliberations.

Nick Hardacre addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. According to Essex County Council's guidance, the scheme should provide 45 parking spaces. Whilst it was pleasing to note that three further parking spaces were proposed, the applicant had not approached the issue in a spirit of compromise. The new spaces were provided at the expense of green space and landscaping, and the Urban Design Officer and Landscape Officer now objected to the scheme on the basis that car parking was now dominant. If the density of the scheme was reduced it would provide more opportunity for a genuine compromise on the number of parking spaces.

Richard Quelch addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application and stressed the wider benefits of the scheme. The site was unkempt, the listed building was damaged and there was anti-social behaviour on the site. The development of the site would address these issues and would help meet the borough's housing targets. It was a brownfield site. Four additional parking spaces had been identified, but officers had reduced this to three. This would give a total provision of 30 spaces, which would exceed expected use. The junction with the National Cycle Route had been improved and a number of the safety measures introduced to improve cycle safety. It was noted that Sustrans were content with the proposals.

Councillor Crow attended and with the consent of the Chairman addressed the Committee. Local residents welcomed the redevelopment of the site but still considered that there was insufficient parking. Only three new spaces were proposed, giving 30 spaces for 23 families which was well below the parking standards. This would lead to increased parking on nearby residential streets. The design of the new buildings was also a concern, as they did not reflect the heritage of the area. In respect of the National Cycle Route, whilst the traffic calming measures were welcomed, further work was necessary as there remained a risk to cyclists. Section 106 contributions from the scheme could also be allocated to the redevelopment of the pontoon.

Councillor Barlow attended and with the consent of the Chairman addressed the Committee. No real attempt had been made to rethink the scheme and the previously stated concerns all remained.

In response, the Specialist Planning Manager explained that in sustainable and accessible locations parking could be provided at a level lower than that specified in the parking standards. The parking provision was above the levels of car ownership locally. There would be a car club within the development and parking on the development would be actively monitored and regulated through the site management

company. Whilst the concerns about design were noted, this had not been raised at the earlier meeting and officers had not looked further at this issue. Whilst it was argued that further parking could be provided if the density of the scheme was reduced, in terms of viability the scheme could not go below 20 units.

In discussion members explored further the safety improvements and traffic calming measures at the junction with the National Cycling Route. Members noted that Sustrans were content with the proposal. Confirmation was also provided that emergency vehicles could access and turn on the site. In terms of parking, members explored whether there was scope for car parking to be located to the rear or underneath the properties, but it was explained that the proposal was for narrow fronted properties in which it would be difficult to integrate garages.

Members also sought reassurance that the redevelopment of the granary would be sympathetic and that its previous use as a barn would be apparent. The Specialist Planning Manager explained that the design would reflect its heritage and some of the existing walls would be retained, despite fire damage. Sufficient fabric from the existing building would be left to retain the character of the building.

The pontoon was previously proposed by former Councillor Laws. Given the viability of the scheme, it is considered inappropriate to require section 106 contributions to support this proposal. The applicant had offered a contribution towards sustainable public transport, including improvements to bus stops and to the Wivenhoe Trail.

RESOLVED that (EIGHT voted FOR and ONE voted AGAINST):-

- (a) the planning application and listed building consent be approved and that the Assistant Director for Policy and Corporate be authorised to enter into and complete a legal agreement under section 106 of the Town and County Planning Act 1990 within six months to secure the contributions set out in the report;
- (b) in the event that the legal agreement is not signed within six months of the date of the Planning Committee meeting, the Assistant Director, Policy and Corporate, be authorised to refuse the application.

719 183046 and 183047 Land to the north of Mill Buildings, Wakes Colne Mills, Colchester Road, Wakes Colne, Colchester

The Committee considered a planning application and application for listed building consent for the demolition of solid fuel processing buildings, the removal of built up hard surfaces against the north wall of the coach house with associated regrading of the land, removal of the wider coal yard hard surfaces, conversion of coach house to dwelling with single storey extension, erection of a pair of attached dwellings on coal yard; reorientation of yard access road, the erection of detached four bay garage; associated

hard and soft landscaping including improvements to public footpath corridor and biodiversity and implicit change of use from coal years to two residential properties (class C3) with private meadow. The Committee also considered an application for listed building consent for the demolition of solid fuel processing buildings and conversion of coach house to dwelling with single storey extension.

The application had been referred to the Committee because the erection of dwellings in this location would constitute a departure from the Local Plan. Both applications had also been called in by Councillor Chillingworth on the grounds of the effect on the listed building, unsuitable design for the location and dangerous highways access.

The Committee had before it a report in which all the information was set out, together with further information on the Amendment Sheet.

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

Lucy Mondon, Principal Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations.

Matthew Osborn addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application on behalf of concerned local residents. The potential consequences of the development on the heritage assets surrounding it needed careful consideration. Consideration needed to be given to the impact on the whole setting of the listed building. The officer report failed to do so, neither did it address how significant views would be affected by the development. The new buildings would be 3.6 metre above the ridgeline of the Coach House, which would affect views of the Mill from cross the river and from down the valley. There was a statutory presumption against any application which would fail to preserve the setting of a listed building or the character of a conservation area. In this case there would be harm to the setting of the listed building. Heritage concerns were further exacerbated by the failure to notify to Historic England of the application, despite it meeting the relevant criteria. The conversion of the Coach House did not justify the application for two further dwellings, as it could be converted separately to the development of the coal site. This was not an allocated site and was outside the village settlement boundary. Although it was previously developed land, this did not override other concerns. Whilst Colchester had a good track record of housing delivery and protection of heritage assets, but it should not be not so desperate for new housing that it needed to jeopardise this heritage site.

Russell Forde addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He highlighted that he had met with the landowners at the start of the process and the strategy for the application had stemmed from that meeting. The redevelopment of the Coach House could not be

separated from that of the coal yard. There were complex interlinked issues. There had been a number of discussions with planning officers and experts. In terms of the design of the new dwellings on the coal yard, traditional cottages had been ruled out from the outset, in favour of a design that reflected the industrial heritage of the site. They would not be visually dominant. This reflected the advice of the Conservation Officer, who had requested a simple and unadorned design. Their scale was carefully proportionate and would not dominate the Mill complex. The officer report was balanced and comprehensive and addressed all the issues.

Councillor Chillingworth attended and with the consent of the Chairman addressed the Committee. He had called in the applications he wanted to ensure that the views of residents and the parish council were understood. It was accepted in principle that the Coach House could be developed, but the introduction of two new dwellings would cause harm. There were omissions in the officer's report, which had led to an incorrect balance of the planning considerations, leading to a recommendation for approval. The site was outside the village boundary and was only being considered for the development of residential housing on the basis that it was previously developed land It had not been included in the emerging Local Plan. The application stressed the social and economic benefits of the application, but when weighed against the environmental factors necessary for sustainable development, the case was weak. Concern was expressed that Historic England had not been consulted. The Mill was considered to be of national significance. The report recognised that it was the grouping within the Conservation Area that gave the site its character, and this was put at risk. The development would harm the overall setting of the listed building, as viewed from public footpaths. The large, long mass of the new buildings would partially screen some views of the listed building and would be seen as an unsympathetic feature. Concern was expressed that some elevations did not fully demonstrate the design of the new build, nor was there sufficient information about the proposed materials.

In response the Principal Planning Officer explained that although the site had been been discounted from inclusion in the emerging Local Plan, this was because it was not adjacent to a settlement boundary, which was the criteria for the initial sift of sites. This did not prevent it from being considered as a development site. The principle of the development was set out in detail in the report. In terms of the details provided in the application, the level of information provided was not unusual and these issues could be secured by condition. The Development Manager explained that officers had identified and carefully assessed the significance of the heritage assets potentially affected by the application and through negotiation had mitigated the impact. Officers had sought clear and convincing evidence for any harm that could result from the development within the setting of the Mill complex. The officer opinion was that this harm was less than significant and that it was outweighed by the repair and reuse of the listed buildings and the remediation of the contaminated area. Therefore the development was sustainable development in accordance with paragraphs 7 and 8 of the NPPF.

In discussion, members of the Committee welcomed the proposed redevelopment of the Coach House and indicated that there were no objections to the granting of the listed building consent. However, concerns were expressed about the proposed design of the new dwellings and their impact on the setting of the Mill complex. It was suggested by a member of the Committee that a cottage design would be more in keeping with the character of the site.

Officers noted the concerns of members and stressed that design was a subjective matter. The applicant was seeking to reflect the industrial heritage of the coal yard with an industrial design aesthetic. A more vernacular approach might have eroded the authenticity of the site by suggesting that cottages had historically been a feature of the site, when this was not the case. The proposed design was designed to honestly reflect the history and narrative of the site. In respect of the issues raised about the need to consult Historic England, this site did not meet the threshold for the consultation.

Some members of the Committee reiterated their concerns about the design of the dwellings and considered that they would harm the setting of the listed building. They identified their concerns as the block form, the height, the materials, which were out of keeping, and the utilitarian design. A member of the Committee suggested that the quality of the build and the finish would be crucial to the success of the development. It was suggested that the application should be deferred for officers to discuss with the applicant a revised design approach to reflect the vernacular approach in the immediate locality. It would also be important for the Committee to be given detailed information about the materials to be used.

RESOLVED (UNANIMOUSLY) that in respect of application no 183046 that the application be deferred for further negotiations to secure a revised design approach to reflect a more vernacular approach that better reflected the immediate locality

RESOLVED (UNANIMOUSLY) that in respect of application no 183407 that the application be approved.

720 182206 Aveley Lodge, Abberton Road, Fingringhoe, Colchester

The Committee considered an application for the part removal of the existing pitched roof and the addition of an upper floor extension to provide nine new residents rooms and ancillary accommodation. The application had been referred to the Committee because it had been called in by Councillor Davidson.

The Committee had before it a report in which all the information was set out, together with further information on the Amendment Sheet.

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

RESOLVED (UNANIMOUSLY) that the application be approved subject to the conditions and informatives as set out in the report.

721 191036 Papa Johns, 2 Middleborough, Colchester

The Committee considered an application for a living wall created over the existing façade on St Peter's Street and ivy screen covering ducting at ground level along the boundary.

The Committee had before it a report in which all the information was set out, together with further information on the Amendment Sheet.

RESOLVED (UNANIMOUSLY) that the application be approved subject to the conditions and informatives as set out in the report.

722 190952 235 London Road, Stanway, Colchester

The Committee considered an application for the construction of four detached dwellings, two detached cart lodges and a new access. The application had been referred to the Committee because the proposal was a departure from the Local Plan and as the site lies outside the settlement limits in the adopted Local Plan and proposes four new dwellings.

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

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

Chris Harden, Senior Planning Officer, and Simon Cairns, Development Manager, presented the report and assisted the Committee in its deliberations.

A member of the Committee expressed concern that the proposal was a departure from the Local Plan. There were a number of the other sites in the areas where housing had been allocated. The proposal to build an additional four houses on the site represented overdevelopment of the site. It was noted that Stanway Parish Council objected to the application.

The Development Manager explained that unique circumstances pertained to the site. It was opposite a major site that had been allocated for development and it was in a highly sustainable location. No significant harm had been identified from the development and it was therefore considered acceptable.

It was suggested that the gate at the rear of the property should be shut off as there was no right of way and accordingly it was proposed that an informative be added to the permission stressing that any grant of planning permission did not infer a right of access to adjacent private land.

RESOLVED (EIGHT voted FOR and ONE voted AGAINST) that the application be approved subject prior receipt of the RAMS payment, subject to the conditions and informatives set out in the report and an additional informative that the grant of planning permission did not infer a right of access to adjacent private land.

723 191141 Former Bus Depot, Magdalen Street, Colchester

The Committee considered a revision to application 181281 for the redevelopment of the site to deliver student accommodation within a four-storey block to provide 104 bedspaces. The application proposed revision to Block A previously approved under application no. 181281. The application was referred to the Committee as it was a major application and an objection had been received.

The Committee had before it a report in which all the information was set out, together with further information on the Amendment Sheet.

RESOLVED (UNANIMOUSLY) that:-

- (a) the application be approved subject to the signing of a linking agreement under section 106 of the Town and Country Planning Act 1990 within 6 months from the date of the Committee meeting to link the application to the legal agreement for application reference 181281.
- (b) In the event that the legal agreement is not signed within six months, to delegate authority to the Assistant Director, Policy and Corporate, to refuse the application or otherwise be authorised to complete the agreement.
- (c) The Planning Permission to be subject to the conditions and informatives set out in the report and the Amendment Sheet.



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Item No: 7.1

Application: 190288

Applicant: Mr Shah

Agent: Peter Le Grys

Proposal: Outline application for the erection of four flats.

Location: Land Adjacent To, 56 Berechurch Hall Road, Colchester, CO2 8RF

Ward: Berechurch

Officer: Benjy Firth

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application has been called into Planning Committee by Councillor Harris on the following basis:

The call in is in relation to the access on a dangerous curve in Berechurch Hall road. The highways have considered the proposal with regard to a 30 Mph road. There is no regard taking to the higher speed that a lot of drivers travel on this section. The splay needs improvement such that sighting is easier for egress and access to site. A risk exists of a serious accident over next few years unless a better splay is put in place.

2.0 Synopsis

- 2.1 The key issues for consideration are the design of the proposal, its impact on public amenity and its impact on neighbouring amenity.
- 2.2 The application is subsequently recommended for Approval, subject to the signing of a legal agreement regarding the payment of an appropriate contribution to the Essex Coast Rams scheme.

3.0 Site Description and Context

- 3.1 The site comprises of a piece of scrub land adjacent to 56 Berechurch Hall Road. The majority of vegetation has recently been removed from the site. The wider area is generally residential in character with a number of turn of the century dwellings plus later infill and blocks of flats.

4.0 Description of the Proposal

- 4.1 The application seeks outline permission for the construction of four flats. The only reserved matters in this instance would be landscaping.

5.0 Land Use Allocation

- 5.1 The application site is unallocated.

6.0 Relevant Planning History

- 6.1 Planning application 080189 previously granted full planning permission for development identical to that which is the subject of this current application.

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
H1 - Housing Delivery
UR2 - Built Design and Character
ENV1 - Environment

7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity
DP12 Dwelling Standards
DP13 Dwelling Alterations, Extensions and Replacement Dwellings
DP16 Private Amenity Space and Open Space Provision for New Residential Development
DP17 Accessibility and Access
DP19 Parking Standards

7.4 Submission Colchester Borough Local Plan 2017-2033:

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan;
- The extent to which there are unresolved objections to relevant policies in the emerging plan; and
- The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

- 7.5 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide
External Materials in New Developments
EPOA Vehicle Parking Standards
Backland and Infill
Managing Archaeology in Development.

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

- 8.2 The Council's Archaeology Officer made the following comments:

The proposed development is located within an area of archaeological interest recorded in the Colchester Historic Environment Record. The site is on the edge of the medieval (or early post-medieval) heath (HER Monument no. MCC9159) and there is high potential for encountering medieval occupation deposits. Groundworks relating to the application would cause ground disturbance that has potential to damage any archaeological deposits that exist.

There are no grounds to consider refusal of permission in order to achieve preservation *in situ* of any important heritage assets. However, in accordance with the *National Planning Policy Framework* (Paragraph 199), any permission granted should be the subject of a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.

- 8.3 The Council's Contaminated Land Officer made the following comments:

Environmental Protection's files indicate that this site is located on or in the vicinity of former Ministry of Defence land. Consequently, should this application be approved, we would recommend inclusion of the following condition:

Reporting of Unexpected Contamination

In the event that land contamination is found at any time when carrying out works in relation to the development, it must be reported in writing immediately to the Local Planning Authority and all development shall cease immediately. Development shall not re-commence until such times as an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority, and where remediation is necessary, a remediation scheme has been submitted to and approved in writing by the Local Planning Authority. Development shall only re-commence thereafter following completion of

measures identified in the approved remediation scheme, and the submission to and approval in writing of a verification report. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason – The site lies on or in the vicinity of former Ministry of Defence land where there is the possibility of contamination. The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

8.4 The Council's Landscape Officer made the following comments:

Regarding the strategic landscape content/aspect of the outline application proposals lodged on 13/03/19; the following points should be considered:

To accord with the Council's [Landscape strategy for development sites](#) the landscape element of the proposal needs to be cross-checked against the Council's standard generic requirements under Landscape Guidance Note LIS/A (this is available on this CBC landscape [webpage](#) under Landscape Consultancy by clicking the 'read our guidance' link); and where applicable amended accordingly to fully accord with them. In particular it is recommended the clause(s) of LIS/A noted in the Appendix to this document be cross-checked against the current submission.

In support and addition to this/these LIS/A clause(s) and accordance with policy/policies detailed in 3.1 below, the following point(s) should be taken into consideration as part of any revised proposals:

- The proposed frontage enclosure should be revised from walling to hedging set directly behind the sight lines. This in order to better complement the sites existing native hedgerow enclosure, the existing frontage enclosure locally and the sites setting adjacent to the POS, and help soften the street scene.
- The SW & NW boundaries of the site bounds onto the POS woodland, in order to complement this setting these boundaries need to be proposed to be planted up with native hedge set along the boundary line with a 1.8m high dark stain hit & miss fence set 1m back (into the site) from the centre line of the hedge.
- In order to clearly assess 1.3.2 above the NW boundary of the site needs to be clearly plotted on dwg 01.

In conclusion, taking into account all relevant considerations and for the reasons set out above, this application cannot currently be supported on landscape grounds. In order to fully consider the proposals the above point(s) will need to be satisfactorily addressed.

8.5 The Council's Environmental Protection Team made the following comments:

Should planning permission be granted Environmental Protection wish to make the following comments:-

ZPD - Limits to Hours of Work

No demolition or construction work shall take outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

ZGB - *Restricted Hours of Delivery*

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 08:00-18:00

Saturdays: 08:00-18:00

Sundays and Public Holidays: No deliveries

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

Noise

All residential units shall be designed so as not to exceed the noise criteria based on figures by the World Health Authority Community Noise Guideline Values given below:

*Dwellings indoors in daytime: 35dB LAeq 16 hours

*Outdoor living area in day time: 55dB LAeq 16 hours

*Inside bedrooms at night time 30dB LAeq 8 hours (45 dB LA max)

*Outside bedrooms at night 45dB LAeq 8 hours (60 dB LAmax)

Such detail as shall have been agreed in writing by the local planning authority based on the submitted and approved survey and appropriate consequential noise mitigation measures shall be implemented prior to occupation of the development of the site and thereafter maintained.

Reason: To ensure that there are acceptable levels of noise to residents.

EV Charging points

Residential development should provide EV charging point infrastructure to encourage the use of ultra-low emission vehicles at the rate of 1 charging point per unit (for a dwelling with dedicated off road parking) and/or 1 charging point per 10 spaces (where off road parking is unallocated)

8.6 The Highway Authority made the following comments:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

Prior to the first occupation of the proposed dwelling, the proposed vehicular shall be constructed to a width of 5.5m and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that all vehicles using the private drive access do so in a controlled manner and to ensure that opposing vehicles may pass clear of the limits of the highway, in the interests of highway safety and in accordance with Policy DM of the Highway Authority's Development Management Policies February 2011.

No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

Prior to the proposed access being brought into use, vehicular visibility splays of 43m by 2.4m by 43m as measured along, from and along the nearside edge of the carriageway, shall be provided on both sides of the centre line of the access and shall be retained and maintained free from obstruction clear to ground thereafter.

Reason: To ensure adequate intervisibility between drivers of vehicles using the proposed access and those in the adjoining highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

The development shall not be occupied until such time as a car parking and turning area has been provided in accord with current Parking Standards. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

Any garage provided with its vehicular door facing the highway or proposed highway, shall be sited a minimum of 6m from the highway boundary.

Reason: To ensure that the vehicle to be garaged may be left standing clear of the highway whilst the garage door is opened and closed, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

Prior to the occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants of that development, of a design this shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport in accordance with Policy DM 1 and 9 of the Highway Authority's Development Management Policies February 2011.

No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- the parking of vehicles of site operatives and visitors
- loading and unloading of plant and materials
- storage of plant and materials used in constructing the development
- wheel and under body washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

Informative: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

9.0 Parish Council Response

9.1 No comments received.

10.0 Representations from Notified Parties

10.1 The application resulted in 3 letters of objection. The full text of all the representations received is available to view on the Council's website. However, a summary of the material considerations is given below:

- Highway safety issues
- Increased traffic
- Loss of green space/habitat

11.0 Parking Provision

11.1 The proposal includes the provision of policy compliant parking in accordance with adopted standards.

12.0 Accessibility

- 12.1 The proposal includes two ground floor flats that are relatively accessible and could accommodate adaptation to increase their accessibility were this to be required by future occupants.

13.0 Open Space Provisions

- 13.1 The proposal does not include, nor is it required by policy to make any open space provisions.

14.0 Air Quality

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

15.0 Planning Obligations

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

16.0 Report

Principle

- 16.1 The application site is located within the settlement limits in a predominantly residential area. On this basis the proposed development is acceptable in principle. Notwithstanding the residents’ concerns, the site does not enjoy any protection as public or private open space so although residents would like it to stay as such there is no policy reason to refuse this scheme on that basis.

Design

- 16.2 The design of the proposal is identical to that previously approved and as a result the design has already been broadly established as acceptable.
- 16.3 The proposed building adopts a traditional architectural approach and reflects the existing local building line. The footprint and height of the proposed building are not dissimilar to existing buildings surrounding the application site. As a result, its scale and form would be generally consistent with the adjoining two storey semi-detached pairs and short terraces. The size and scale of the proposed structure is therefore considered reflective of existing buildings in the vicinity of the application site.

- 16.4 The visual mass of the proposed building is reduced by virtue of the articulation provided by the use of various building elements and the positioning of fenestration. Additionally, it is held that the general architectural approach adopted reflects the character of the area and is acceptable. As such the proposal is not considered out of keeping with the existing character of the area.
- 16.5 The layout of the proposed development respects the character of the area, whilst providing sufficient space for landscaping, amenity space and parking, without allowing the later to overly dominate the street scene.
- 16.6 In light of the above, the design and layout of the proposed development are considered acceptable. Additionally, by virtue of its design and layout the proposal would not cause significant harm to the amenity of the surrounding area. The specific details of materials will be agreed by condition to ensure that an optimal design quality is achieved.

Residential Amenity

- 16.7 By virtue of its scale and position, the proposed structure would have a traditional relationship with the neighbouring residential property. As a result, the scheme would not cause significant detriment to residential amenity in terms of loss of outlook, light or privacy.

Private Amenity Space

- 16.8 The proposal makes provision for adequate and policy compliant private amenity space in line with policy DP16.

Landscaping & Trees

- 16.9 The Council's Tree Officer is satisfied with the Tree Report, in that the trees proposed to be removed are not of significance and that those to be retained will not be affected by the proposed development and can be protected during its construction.
- 16.10 The comments made by Council's Landscape Officer are noted, however these details would be determined at a reserved matters stage.

Highway Safety and Parking Provisions

- 16.11 The proposal contains adequate and policy compliant parking provision.
- 16.12 The Highways Authority are satisfied with the proposed access arrangements and adequate site splays are provided.

- 16.13 Concerns have been raised regarding the safety of adding a new access to this stretch of highway due to the speed of existing highway users. These concerns have been considered as part of consultation with the Highway Authority and paragraph 109 of the NPPF which states that 'development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'
- 16.14 This stretch of Highway is already limited to 30mph and the dimensions of the access and site splays meet the adopted standards. As such, it is not considered that the on-going mis-use of the highway should prejudice the determination of this application, nor would it be sufficient to justify its refusal.

Other Matters

- 16.15 The applicant has agreed to sign a legal agreement requiring the payment of an appropriate contribution to the Essex Coast RAMS scheme, subject to the application gaining a positive outcome at Planning Committee. It is considered that said legal agreement could secure appropriate mitigation for the impact of recreational disturbance caused on European Sites by the proposed development.
- 16.16 In light of the recent clearance of vegetation at the site it is considered unlikely that the site provides any habitat or ecology of any significance.

17.0 Conclusion

- 17.1 To summarise, the proposed development is acceptable in principle, achieves an appropriate standard of design and would not significant harm to public or residential amenity has been identified. As a result, the proposal complies with adopted policy and is considered acceptable.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the agreed Essex Coast RAMS contribution and following conditions:

1. Time Limit for Outline Permissions Part 1 of 3

No development shall be commenced until plans and particulars of "the reserved matters" referred to in the below conditions relating to the LANDSCAPING have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: The application as submitted does not provide sufficient particulars for consideration of these details.

2. Time Limit for Outline Permissions Part 2 of 3

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. Time Limit for Outline Permissions Part 3 of 3

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. Development to Accord With Approved Plans

Notwithstanding the landscape details approved under reserved matters, the development hereby permitted shall be carried out in all other respects in accordance with the details shown on the submitted Drawing Numbers BHR – 01, 01, Site Location Plan and Arboricultural Impact Assessment Ref:HWA10286-AP111.

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

5. Materials To Be Agreed

No works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

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

6. Archaeology

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

The scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Provision to be made for analysis of the site investigation and recording.
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Provision to be made for archive deposition of the analysis and records of the site investigation.
- f. Nomination of a competent person or persons/organisation to undertake the works.

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development.

7. Construction Method Statement

No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- the parking of vehicles of site operatives and visitors
- loading and unloading of plant and materials
- storage of plant and materials used in constructing the development
- wheel and under body washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety.

8. Tree Protection

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

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

9. Reporting Unexpected Contamination

In the event that land contamination is found at any time when carrying out works in relation to the development, it must be reported in writing immediately to the Local Planning Authority and all development shall cease immediately. Development shall not re-commence until such times as an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority, and where remediation is necessary, a remediation scheme has been submitted to and approved in writing by the Local Planning Authority. Development shall only re-commence thereafter following completion of measures identified in the approved remediation scheme, and the submission to and approval in writing of a verification report. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: The site lies on or in the vicinity of former Ministry of Defence land where there is the possibility of contamination. The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The applicant is responsible for the safe development and safe occupancy of the site.

10. Limits to Hours of Work

No demolition or construction work shall take outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

11. Restricted Hours of Delivery

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 08:00-18:00

Saturdays: 08:00-18:00

Sundays and Public Holidays: No deliveries

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

12. Noise

All residential units shall be designed so as not to exceed the noise criteria based on figures by the World Health Authority Community Noise Guideline Values given below:

*Dwellings indoors in daytime: 35dB LAeq 16 hours

*Outdoor living area in day time: 55dB LAeq 16 hours

*Inside bedrooms at night time 30dB LAeq 8 hours (45 dB LA max)

*Outside bedrooms at night 45dB LAeq 8 hours (60 dB LAmax)

Such detail as shall have been agreed in writing by the local planning authority based on the submitted and approved survey and appropriate consequential noise mitigation measures shall be implemented prior to occupation of the development of the site and thereafter maintained.

Reason: To ensure that there are acceptable levels of noise to residents.

13. Access

Prior to the first occupation of the proposed dwelling, the proposed vehicular access shall be constructed to a width of 5.5m and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that all vehicles using the private drive access do so in a controlled manner and to ensure that opposing vehicles may pass clear of the limits of the highway, in the interests of highway safety.

14. No unbound materials

No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.

15. Visibility Splays

Prior to the proposed access being brought into use, vehicular visibility splays of 43m by 2.4m by 43m as measured along, from and along the nearside edge of the carriageway, shall be provided on both sides of the centre line of the access and shall be retained and maintained free from obstruction clear to ground thereafter.

Reason: To ensure adequate intervisibility between drivers of vehicles using the proposed access and those in the adjoining highway, in the interests of highway safety.

16. Car parking & Turning Facilities

The development shall not be occupied until such time as a car parking and turning area has been provided in accord with current Parking Standards. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

17. Refuse Facilities

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

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

18. Bicycle Storage

Prior to the occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants of that development, of a design this shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport in accordance with Policy DM 1 and 9 of the Highway Authority's Development Management Policies February 2011.

19. Lighting

Any lighting of the development shall fully comply with the figures specified in the current 'Institution of Lighting Engineers Guidance Notes for the Reduction of Obstrusive Light'. This shall include sky glow, light trespass into windows of any property, source intensity and building luminance. Upon completion of the development and prior to the use hereby permitted commencing, a validation report undertaken by competent persons that demonstrates compliance with the above shall be submitted to the Local Planning Authority for approval. Having been approved, any installation shall thereafter be retained and maintained to the standard agreed.

Reason: In order to reduce sky glow and safeguard the amenity of neighbouring residential properties by controlling the undesirable, disruptive and disturbing effects of light pollution.

19.0 Informatives

19.1 The following informatives are also recommended:

1. Advisory Note on Construction & Demolition

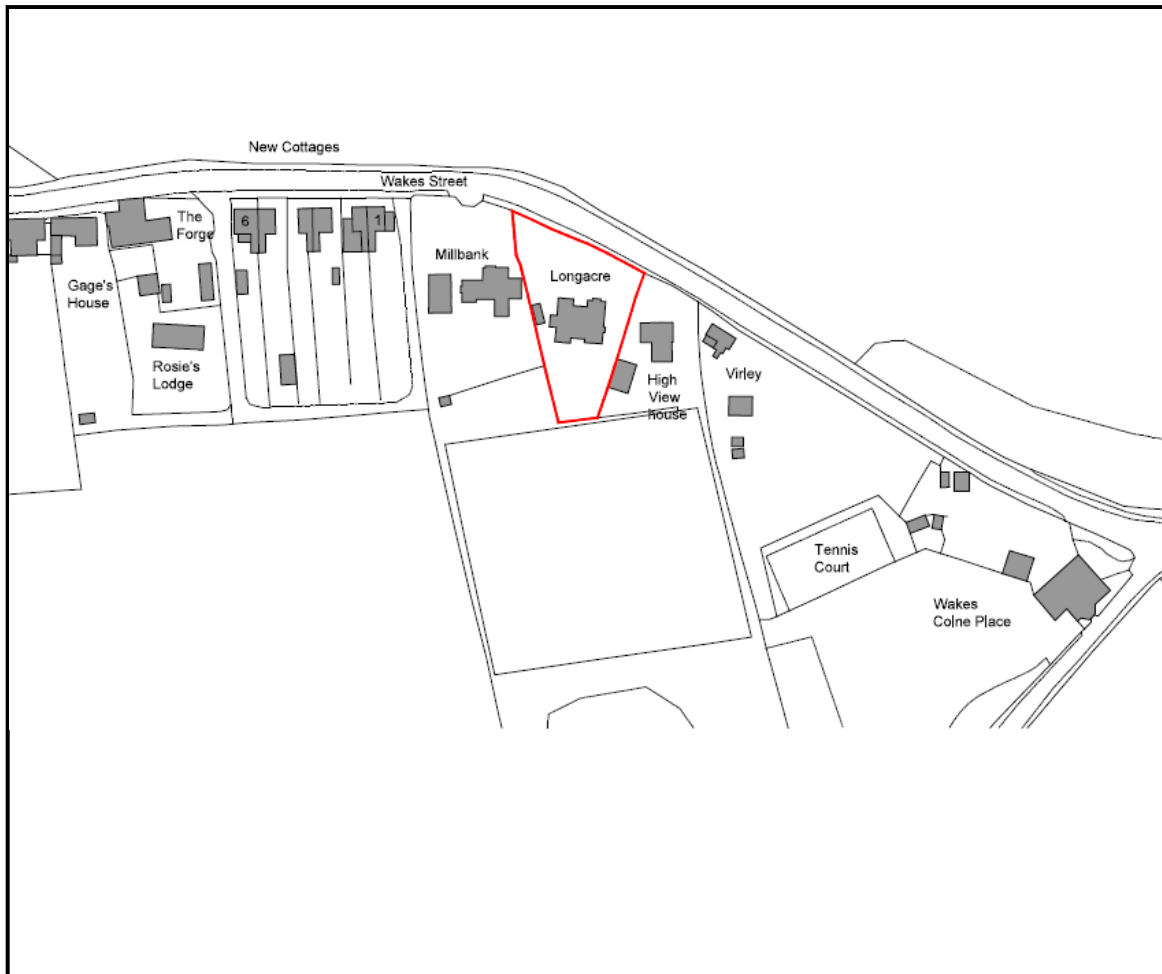
The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental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

2. Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

3. Highways Informative

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.



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Item No: 7.2

Application: 191230
Applicant: Mr & Mrs Dyer
Agent: Mr Adam Jackson
Proposal: Proposed new annexe and cartlodge
Location: Longacre Bungalow, Colchester Road, Wakes Colne, Colchester, CO6 2BY
Ward: Rural North
Officer: David Lewis

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because a call-in request has been received from Councillor Chillingworth to enable the Committee to consider the proposals. The following comments are made by Councillor Chillingworth;

'The subject dwelling which is not a bungalow as indicated on the application, but a substantial house on a relatively small plot on a very busy A road. The present application is for a domestic annex and garage, large enough to be used as a separate dwelling resulting in overdevelopment of this village site and this will affect the amenity of neighbouring property. The western wall being very close to their common boundary and in turn the neighbours house and windows.'

2.0 Synopsis

- 2.1 The key issues for consideration are the design, location and impact of the proposed development, both on the character and amenity of the area in general and that of the adjoining neighbours, having regard to local and national planning policy and other material considerations. The assessment concludes that it is acceptable in planning terms, subject to the conditions as listed at the end of this report.
- 2.2 The application is subsequently recommended for approval.

3.0 Site Description and Context

- 3.1 The application property is located on the south side of Colchester Road and is recently completed following approval in 2011. The plot has a wide frontage of 20m but tapers towards the rear of the site and has an area of 1450 sqm, (0.35 acres). The main road rises when travelling east to west such that the property to the west, Millbank, is set at a higher level, while the property to the south, Highview House, is a little lower. There are two access points serving the property, one shared with Highview House and the other, a more recent addition. The frontage is screened by high hedgerows
- 3.2 Within the settlement boundary, development within the vicinity is mainly residential of differing eras. The adjacent houses date from the 1990's (Highview House), and the inter war period, (Millbank). Housing in the wider area is predominantly 19th Century.

4.0 Description of the Proposal

- 4.1 It is proposed to construct a single storey, 1-bedroom annexe that is wheelchair friendly, to enable dependant family members to receive support from the applicants living in the host property. The application also includes a cartlodge for two vehicles, as the garage approved under the earlier approval is in the position of the annexe now proposed.

5.0 Land Use Allocation

5.1 Village Settlement Boundary

6.0 Relevant Planning History

- 6.1 The property recently completed was granted permission under reference 100805, in February 2011

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations

H1 - Housing Delivery

H2 - Housing Density

H3 - Housing Diversity

UR2 - Built Design and Character

TA2 - Walking and Cycling

TA3 - Public Transport

TA4 - Roads and Traffic

TA5 - Parking

ENV1 - Environment

ENV2 - Rural Communities

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity

DP12 Dwelling Standards

DP13 Dwelling Alterations, Extensions and Replacement Dwellings

DP16 Private Amenity Space and Open Space Provision for New Residential Development

DP17 Accessibility and Access

DP19 Parking Standards

- 7.4 Some "allocated sites" also have specific policies applicable to them. However, there are no adopted Site Allocations (adopted 2010) policies that are applicable to the consideration of this planning application.

7.5 The application site is not within an area currently included within a neighbourhood plan

7.6 Submission Colchester Borough Local Plan 2017-2033:

The Council is developing a new Local Plan that has been submitted to the Planning Inspectorate (October 2017). An Inspector has been appointed and the formal examination commenced in January 2018. The examination is ongoing.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
1. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
2. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry some weight in the consideration of the application, but as it is yet to undergo a full and final examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

7.7 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

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

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.2 The Highway Authority state the proposal is acceptable from the highway and transportation perspective, but recommend conditions that seek to close off the westernmost access, (reducing unnecessary points of traffic conflict in the highway and to prevent indiscriminate access and parking on the highway); ensure the parking provision is delivered as shown on the plan and; the prior agreement to a Construction Management Plan.

9.0 Parish Council Response

9.1 The Wakes Colne Parish Council have objected and state the following;

'It was noted that the drawings were inconsistent referring to a cart lodge and then to a garage. Overdevelopment within a small plot, site line of light encroachment onto neighbouring property.'

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

10.2 As a result of notification two representations of objection have been received from the occupiers of the properties adjacent on either side. The objections raised can be summarised as follows;

- Overdevelopment of the site on what is considered to be a small plot.
- Increase in traffic movements.
- Potential to set a precedent.
- Loss of a view.

11.0 Parking Provision

11.1 The previous approval for the replacement dwelling included the construction of a single garage, that has not been implemented yet. This proposal intends providing two covered spaces, in addition to having a very large area to the frontage of the site suitable for accommodating several vehicles without entailing reversing movements onto the highway.

12.0 Accessibility

12.1 Not applicable and no issues arising.

13.0 Open Space Provisions

13.1 The rear garden area exceeds considerably the policy requirements concerning private amenity space.

14.0 Air Quality

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

15.0 Planning Obligations

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

16.0 Report

16.1 The main issues in this case are;

- the principle of development;
- the design and appearance having regard to the character of the area;
- the impact on neighbouring amenity in terms of outlook, light and privacy;
- parking provision.

16.2 The site is within the Village Settlement Boundary of Wakes Colne. Adopted Policy DP13 relates to Dwelling Alterations, Extensions and Replacement Dwellings stating that, 'Within the Borough's settlement boundaries, residential alterations, extensions and replacement buildings will be supported where they meet other policy requirements, including the adopted SPD 'Extending Your House?'. *(n.b. this particular SPD is no longer relevant)*.

16.3 The policy is silent in respect of annexes in settlement areas but state the circumstances where they are acceptable outside of the settlement boundaries. In cases such as this a building that is not attached to the main residence or does not demonstrate some dependence on the host would not be supported, but as the site is within a settlement boundary, the fact that the annexe is detached and has limited dependence on the host property, this does not apply. It is of note that the emerging Local Plan has removed some small clusters of properties from the settlement boundary status, where they are not considered to be as sustainable as others. The settlement boundary including the application site is one such example. This does demonstrate a direction of travel of the Local Plan, but as these changes are subject to objections and are yet to be fully examined at Public Inquiry, then they can be afforded only limited weight. The principle of adding an annexe is therefore regarded as being acceptable, although a condition tying the use to the host property is recommended..

16.4 The design of the buildings is intended to be sympathetic to the character of the area and the relationship of the buildings to the host property intended to mimic the arrangement of other properties in the rural scene. The buildings are proposed to be clad in predominantly feather-edged timber cladding and corrugated black mild steel cladding, (for the cartlodge), with plain roof tiles. They are subservient to the host property and are not considered overly prominent given the screening to the frontage of the site and general topography.

16.5 A detailed survey was submitted with the application to identify the varying levels within the site. The design and siting of the buildings has sought to minimise the impact on the neighbouring amenity. The proposed floor levels of the proposed buildings are intended to be between 0.5 and 1m lower than the floor levels of the site to the west, (Millbank). The roof of the annexe has been designed to be as low as possible by reducing the eaves and floor to ceiling heights within the proposed building so far as is physically possible and the roof has a ridge that runs north/south so that the massing is less apparent when viewed from the property to the west. The property Millbank, that is closest to the proposed works, was extended towards the eastern boundary in the late 1990's. The

single storey element of that proposal added a utility room with a flank window that overlooks the site and the position of the proposed annexe. However, given the differing levels and low profile of the building, together with the boundary treatments, this impact is not considered to be significant. The built form is not considered to cause undue loss of light to habitable rooms of the neighbouring property and does not breach the Council's 45° code.

16.6 The cartlodge, an open fronted building to house two vehicles is considered proportionate to the needs of the property and complies with the parking standards of the authority.

16.7 There are no additional trees to be lost as a consequence of this scene, (a maple on the frontage is subject to removal by virtue of the earlier approval), however 3 additional maple trees are proposed to be planted to the frontage of the site to mitigate for the loss. The hedgerow to the frontage is relatively high and further landscape proposals are not warranted above the 3 additional trees.

17.0 Conclusion

17.1 To summarise, it is considered that a conditional planning permission for this development can reasonably be granted. The concerns of the neighbours and the Parish council are fully acknowledged and appreciated, however, the individual and cumulative impacts are deemed to be acceptable and, where appropriate, can be properly mitigated through the use of conditions.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. **Time Limit**

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

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

2. **Approved Plans**

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers

0467_A_DD_01; 0467_A_DD_02; 0467_A_DD_03; 0467_A_DD_04A; 0467_A_DD_05; 0467_A_DD_06 and ;0467_A_DD_07.

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

3. **Materials**

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings.

Reason: To ensure that materials are of an acceptable quality

appropriate to the area.

4. **Ancillary to host dwelling**

The development hereby permitted shall not be occupied or used at any time other than for purposes ancillary to the residential use of the dwelling known as Longacre.

Reason: For the avoidance of doubt as to the scope of the permission as this is the basis on which the application has been considered and any other use would need to be given further consideration at such a time as it were to be proposed.

5. **Western access to be closed**

The existing western access shown on the submitted plan shall be suitably and permanently closed to the satisfaction of the Local Planning Authority, incorporating the reinstatement to full height of the highway verge/footway/kerbing to the specifications of the Highway Authority, prior to the first occupation of the proposed development.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway and to prevent indiscriminate access and parking on the highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

6. **Car parking and turning**

The development shall not be occupied until such time as the car parking and turning area, has been provided in accord with the details shown in Drawing Numbered 0467_A_DD_04A. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

7. **Construction Management Plan (CMP)**

No development shall take place, including any ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority.

The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and under body washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety

19.1 Informatives

19.1 The following informatives are also recommended:

(1) ZT0 – Advisory Note on Construction & Demolition

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

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

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

(3) ZTB - Informative on Any Application With a Site Notice

PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

(4) – Highway Informative

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by e mail at development.management@essexhighways.org or by post to SM01 – Essex Highways, Colchester Highways Depot, 653 The Crescent, Colchester CO4 9QY.

Planning Committee

Item
8

Date 15 August 2019

Report of	Assistant Director of Policy and Corporate	Author Alistair Day 01206 282479
Title	Appeal at Land at Queen Street, Colchester (Appeal ref: 3231964 and Planning ref: 182120)	
Wards affected	Castle	

This report concerns Reason for Refusal No.1 of the Decision Notice for planning application 182120 (Demolition of existing buildings/structures and redevelopment to provide purpose-built student accommodation; hotel; commercial space fuse Classes A1, A3, A4, B1(c) and D2); artist studios; and associated vehicular access and public realm improvements.

1.0 Decision(s) Required

- 1.1 Members are requested to endorse the officer recommendation that Reason for Refusal No.1 of the Decision Notice 182120 is withdrawn and that the applicant and Planning Inspector is advised of this matter as soon as possible.

2.0 Reasons for Decision(s)

- 2.1 The Council has appointed consultants to act on behalf of the Council and they have advised that in respect of Reason No. 1 there is no breach of the development plan and no conflict with the National Planning Policy Framework. In view of this, the consultant has stated that it would not be possible to defend this reason for refusal.

3.0 Alternative Options

- 3.1 Members could decide not to withdraw Reason No.1 of the Refusal Notice. Should Members wish to continue with the Reason for Refusal, the consultant has advised that they would be forced to concede that the reason is unreasonable when cross-examined at the Public Inquiry. Officers share this professional planning view point and would therefore also not be able to defend this reason for refusal. Should the Planning Committee wish to continue with Reason 1, a witness would need to be found, who feels able to defend this reason on cogent planning grounds, as a matter of urgency. This could be a Member of the Planning Committee.
- 3.2 The Council would run a risk of paying costs to the Appellant if it continues with a reason for refusal that is not defensible or if it fails to present evidence to justify its approach.

4.0 Supporting Information

- 4.1 A report for the redevelopment of the land to the east of Queen Street to provide purpose-built student accommodation; a hotel; commercial space (Use Classes A1, A3, A4, B1(c) and D2); artist studios; and associated vehicular access and public realm improvements (Ref: 182120) was considered by the Planning Committee at its meeting on 28 February 2019. At that Planning Committee meeting Members resolved to refuse this application on the following grounds:
- I The level of consultation undertaken prior to the submission of the application is considered to fall below the guidance set out in the NPPF and, in particular, the pre application consultation did not engage directly with Ward Councillors and/or local community groups;
 - II The application is considered to constitute poor design and, by virtue of this, the development will have an adverse impact on the townscape of the area, including that of the town centre conservation area (Colchester Conservation Area No.1); and
 - III The design of the proposed access ramp to the south of the Town Wall would not be accessible to all users with disabilities
- 4.2 A refusal Notice was duly issued on this basis.
- 4.3 The applicant has lodged an appeal in respect of the Council's decision to refuse the application. The Planning Inspectorate has confirmed that this appeal will be heard at a Public Inquiry, which is scheduled to commence on 16th October 2019.
- 4.4 The Council has appointed consultants (Pegasus Group) to act on behalf of the Council at the Public Inquiry as officers are professionally conflicted.
- 4.5 The Council's consultant has advised, in respect of Reason No.1, that there is no breach of the development plan and no conflict can be found with the National Planning Policy Framework. In view of this, the consultant has stated that it would not be possible to defend Reason for refusal No.1 of the Decision Notice. Moreover, by attempting to defend this reason, the consultant has highlighted that this would undermine their credibility as a witness and the remainder of the evidence that they will need to present which, in turn, could undermine the entire case for the Council. For this reason, the consultant has recommended that Reason 1 is withdrawn from the appeal.
- 4.6 A copy of the letter from the Pegasus Group (planning and heritage consultants) is attached to the report for Members for information.
- 4.7 Officers are of the view that it would be difficult to appoint another consultant who would be prepared to defend the reason for refusal as they are likely to share the same view as Pegasus.

5.0 Proposals

- 5.1 To enable the Council's consultant to robustly defend the Council's decision to refuse application 182120, it is recommended that reason for refusal No.1 (that refers to the level of consultation undertaken prior to the submission of the application) is withdrawn as a reason for refusal.

6.0 Consultation

- 6.1 The content of this report is based on advice from the team assembled to defend the decision of the Council to refuse application 182120. This includes legal and planning representation. No further consultation has taken place.

7.0 Publicity Considerations

- 7.1 As the report relates to an application that remains under consideration (appeal lodged), the Local Planning Authority has notified those that had previously made representations in respect of planning application 182120.
- 7.2 The application was highly controversial and further publicity is expected as a result of this report and the during the course of the public inquiry.
- 7.3 Publicity is also likely if costs are awarded against the Council for acting unreasonably.

8.0 Financial Implications

- 8.1 The Planning Inspectorate expects all parties to act reasonably throughout the appeal process. If the Planning Inspector considers that the Council has acted unreasonably, they can award costs against the Council. In the light of the advice from the appointed planning consultant, should Members wish to continue to seek to defend Reason for Refusal No.1 of the Decision Notice, there is a potential risk that costs may be awarded against the Council.

9.0 Equality, Diversity and Human Rights Implications

- 9.1 None directly arising from this report

10.0 Community Safety Implications

- 10.1 None directly arising from this report

11.0 Health and Safety Implications

- 11.1 None directly arising from this report

12.0 Risk Management Implications

- 12.1 The planning consultant has advised that to continue with reason for refusal No.1 of the Decision Notice, could undermine the case for the Council in seeking to defend reasons for refusal No.2 and No.3 of the Decision Notice.

Background Papers

Planning Application 182120; the Adopted Local Plan; the NPPF.

25th July 2019

Dear Simon,

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 (Ref: 182120)

I note that there is no alleged breach of the development plan in this reason for refusal and that it is the NPPF that the scheme is said to be in conflict with. As you know, the NPPF is not a development plan document but does constitute a material consideration when making planning decisions.

Officers have confirmed that preapplication discussions had taken place and that these included the Ward Councillor and the local community. Furthermore, officers have confirmed that this exercise complied with the Council's own adopted Statement of Community Involvement. Therefore, it is not possible to defend the first reason for refusal and any attempt to do so will undermine my credibility as a witness, which could taint the remainder of my evidence and potentially undermine the entire case.

I find no conflict with paragraph 128 of the NPPF. The NPPF provides a clear recommendation for preapplication engagement but it is not a mandatory requirement and it certainly does not prescribe how such engagement should be carried out. Notwithstanding this, it is clear that preapplication discussions were held. The effectiveness of such discussions in terms of the final scheme is an entirely different point. The proposal may not be what the committee wanted to see at this site but I suggest that that point is better dealt with by the second reason for refusal.

The Planning Inspectorate expects all parties to act reasonably throughout the appeal process and clarify any important issues that may influence how the appeal is dealt with in an effort to focus the issues for the evidence to address. I therefore strongly

Suite 4, Pioneer House, Vision Park, Histon, Cambridge, CB24 9NL

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recommend that the Council reconsiders the first reason for refusal in light of my advice above and I would advise withdrawing it from this case. Should the Council disagree with my advice and decide to pursue this matter I will be forced to concede that it is unreasonable when cross-examined on the issue by the appellant's barrister.

As you are aware, we need to settle the Statement of Case and the Statement of Common Ground by 13/8 and therefore your prompt response on this point would be greatly appreciated.

Yours sincerely

Nicky Parsons
Executive Director

Direct Dial: 01223 202100

Email: nicky.parsons@pegasusgroup.co.uk

Material Planning Considerations

The National Planning Policy Framework highlights that the planning system is plan-led and reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require (in law) that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.

Where our Development Plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

The following approach should be taken in all planning decisions:

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

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

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

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

- Planning policies, including the NPPF and our own Development Plan
- Government guidance, case law, appeal decisions, planning history
- Design, scale, bulk, mass, visual appearance and layout
- Protection of residential amenities (light, privacy, outlook, noise or fumes)
- Highway safety and traffic issues, including parking provisions
- Heritage considerations; archaeology, listed buildings and conservation areas
- Environmental issues; impacts on biodiversity, trees and landscape, flooding
- Economic issues such as regeneration, job creation, tourism and viability
- Social issues; affordable housing, accessibility, inclusion, education, recreation

The above list is not exhaustive

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

- land ownership issues; private property rights, boundary disputes and covenants
- effects on property values
- loss of a private view
- identity of the applicant, their character, previous history, or possible motives
- moral objections to a development, such as may include gambling or drinking etc
- competition between commercial uses

- matters specifically controlled through other legislation

Strong opposition to large developments is a common feature of the planning process but whether or not a development is popular or unpopular will not matter in the absence of substantial evidence of harm (or support from the policies within the Development Plan). It is the quality of content, not the volume that should be considered.

The law also makes a clear distinction between the question of whether something is a material consideration, and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case but provided it has given regard to all material considerations, it is for the Council to decide what weight is to be given to these matters. Subject to the test of “reasonableness”, the courts (or the Local Government Office) will not get involved in the question of weight. Weight may be tested at appeal.

Planning Obligations

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are:

1. necessary to make the development acceptable in planning terms
2. directly related to the development, and
3. fairly and reasonably related in scale and kind.

These legal tests are set out as statutory tests in the Community Infrastructure Levy Regulations and as policy tests in the National Planning Policy Framework.

Human Rights, Community Safety and Equality and Diversity Implications

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

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

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

Using Planning Conditions or Refusing Planning Applications

The Planning System is designed to manage development, facilitating (not obstructing) sustainable development of a satisfactory standard. The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG) reinforce this, stating that “Planning should operate to encourage and not act as an impediment to sustainable growth”. Therefore, development should be considered with a positive approach. Where a condition could be used to avoid refusing permission this should be the approach taken.

The PPG sets out advice from the Government regarding the appropriate use of conditions, and when decision makers may make themselves vulnerable to costs being awarded against them at appeal due to “unreasonable” behaviour. Interpretation of court judgments over the years is also an important material consideration. Reasons why a Planning Authority may be found to have acted unreasonably at appeal include lack of co-operation with applicants, introducing fresh evidence at a later stage, introducing a new reason for refusal, withdrawal of any reason for refusal or providing information that is shown to be manifestly inaccurate or untrue.

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

Whenever appropriate, the Council will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. Therefore, before refusing any application the Planning Committee should consider whether it is possible to resolve any concerns by use of conditions before refusing permission. Failure to do so on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.

Any planning condition imposed on a development must pass 6 legal tests to be:

- | | |
|--|-------------------------|
| 1. Necessary | 2. Relevant to planning |
| 3. Relevant to the development permitted | 4. Reasonable |
| 5. Precise | 6. Enforceable |

Unless conditions fulfil these criteria they are challengeable at appeal as ultra vires (i.e. their imposition is beyond the powers of local authorities).

If no suitable condition exists that can satisfy these tests a refusal of planning permission may then be warranted. In considering the reasons for that refusal, the Council must rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. In all matters relating to an application it is critically important for decision makers to be aware that the courts will extend the common law principle of natural justice to any decision upon which they are called to adjudicate. The general effect of this is to seek to ensure that the Council acts fairly and reasonably in executing our decision making functions, and that it is evident to all that we have done so.



Colchester Borough Council Development Management

Highway Safety Issues

When considering planning applications, Colchester Borough Council consults Essex County Council Highways Authority on all highway safety issues. They are a statutory consultee, and a recognised expert body. This means that they must be consulted on planning applications, by law, where the proposed development will involve a new access to the highway network, create “material” changes in traffic movement, or where new roads are to be laid out. Where developments affect the trunk road network Highways England become a statutory consultee.

When the Highway Authority is consulted they are under a duty to provide advice on the proposal in question as the experts in highway matters. Their opinion carries significant weight upon which the Local Planning Authority usually relies. Whilst this Council could form an opinion different to the Highway Authority, it would need to provide counter-evidence to justify an argument that the expert body was incorrect. That evidence would need to withstand challenge in appeal or through the courts. Failure to do so would result in a costs award against the Council for acting unreasonably (see other notes pages within this Agenda). Similarly, if the Highway Authority were unable to support their own conclusions they may face costs being awarded against them as the statutory consultee.

Officers of Essex County Council Highway Authority conduct their own site visits to each site in order to take account of all highway safety matters. They also consult their own records and databases, traffic flow information and any other relevant material that may be available, including any submitted documents within planning applications.

Parking Standards

Although the Highway Authority has some remit over parking in so far as it relates to highways safety issues, parking itself is a matter for the Local Planning Authority to determine against national policy and our own adopted standards. Like the other Essex Authorities, Colchester Borough Council has adopted the Essex Planning Officer's Association Parking Standards. These standards set out that:

- 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.

For residential schemes:

- 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.
- A garage should have an internal space of 7 metres by 3 metres. Smaller garages do not count towards the parking allocation.
- One visitor space must be provided for every four units.

Residential parking standards can be relaxed in areas suitable for higher density development and where there is good walkable access to shops, service and public transport, such as town centres.



Colchester Borough Council Environmental Control

Advisory Notes for the Control of Pollution during Construction and Demolition Works

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Control.

Best Practice for Construction Sites

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974)

Noise Control

1. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holiday days.
2. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
3. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
4. Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Emission Control

1. All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
2. No fires to be lit on site at any time.
3. On large scale construction sites, a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.
4. All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Best Practice for Demolition Sites

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Planning & Protection Department. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

Noise Control

If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Planning & Protection prior to the commencement of works.

The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

Emission Control

All waste arising from the demolition process to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

The Town and Country Planning (Use Classes) Order 1987 (as amended)

Class A1. Shops

Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of —

- (a) financial services, or
- (b) professional services (other than health or medical services), or
- (c) any other services (including use as a betting office)

which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments

Use as a public house, wine-bar or other drinking establishment

Class A5. Hot food takeaways

Use for the sale of hot food for consumption off the premises.

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for any industrial process,
- being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

Class B8. Storage or distribution

Use for storage or as a distribution centre.

Class C1. Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C2A. Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.

Class D1. Non-residential institutions

Any use not including a residential use —

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,

(b) as a crèche, day nursery or day centre,

(c) for the provision of education,

(d) for the display of works of art (otherwise than for sale or hire),

(e) as a museum,

(f) as a public library or public reading room,

(g) as a public hall or exhibition hall,

(h) for, or in connection with, public worship or religious instruction, (i) as a law court.

Class D2. Assembly and leisure

Use as —

(a) a cinema,

(b) a concert hall, (c) a bingo hall or casino,

(d) a dance hall,

(e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

Sui Generis Uses

Examples of sui generis uses include (but are not exclusive to):

theatres, amusement arcades or centres, funfairs, launderettes sale of fuel for motor vehicles, sale or display for sale of motor vehicles, taxi businesses or a business for the hire of motor vehicles, a scrapyard or the breaking of motor vehicles, hostels, retail warehouse clubs (where goods are sold, or displayed for sale, only to persons who are members of that club), night-clubs, or casinos.

Interpretation of Class C3

For the purposes of Class C3(a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004.

Interpretation of Class C4

For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004

Supreme Court Decision 16 October 2017

CPRE Kent (Respondent) v China Gateway International Limited (Appellant).

This decision affects the Planning Committee process and needs to be acknowledged for future reference when making decisions to approve permission contrary to the officer recommendations.

For formal recording in the minutes of the meeting, when the Committee comes to a decision contrary to the officer recommendation, the Committee must specify:

- Full reasons for concluding its view,
- The various issues considered,
- The weight given to each factor and
- The logic for reaching the conclusion.

Deferral and Recommendation Overturn Procedure (DROP) Flowchart

If Councillors require more information, or minor amendments to be explored, then the item should be deferred.

If no more information or amendment is desired Councillors will proceed to propose a motion.

