

Planning Committee

Thursday, 04 April 2019

Attendees: Councillor Lyn Barton, Councillor Pauline Hazell, Councillor Theresa Higgins, Councillor Brian Jarvis, Councillor Cyril Liddy, Councillor Derek Loveland, Councillor Jackie Maclean, Councillor Philip Oxford, Councillor Chris Pearson

Substitutes: Councillor Roger Buston (for Councillor Vic Flores)

Also Present:

679 Site Visits

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

680 Minutes

There were no minutes for confirmation at this meeting.

681 181537 Land off Butt Road, Colchester

The Committee considered a planning application to vary conditions 2 and 10 and remove conditions 16, 17, 37 and 38 of planning permission 170621 at land off Butt Road, Colchester. The application had been referred to the Committee because it was an amendment to a major application, material objections had been received and a conditional planning permission was recommended subject to a legal agreement. The Committee had before it a report and an amendment sheet in which all information was set out.

RESOLVED (UNANIMOUSLY) that –

(i) The Assistant Director Policy and Corporate be authorised to approve the planning application subject to the conditions set out in the report and the amendment sheet and subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990 within six months from the date of the Committee meeting, to provide for the following:

- NHS England contribution of £12,466;
- Cycleway contribution of £22,000;
- Open Space Sport and Recreation – enhancements to the local environment should be included with seating and appropriate planting to the treed area on the corner of the site being recommended;

- Highway mitigation a) Upgrading of the two bus stops in Butt Road adjacent to the proposal site to include, but may not be limited to, real time passenger information b) A zebra crossing in Goojerat Road, east of the proposal site access roundabout, or any alternative mitigation agreed with the Highway Authority;
- An Essex Coast RAMS contribution of £122.30 per dwelling (5 x £122.30).

(ii) In the event that the legal agreement is not signed within six months from the date of the Planning Committee, Assistant Director Policy and Corporate be authorised, at their discretion, to refuse the application or otherwise be authorised to complete the agreement.

682 190212 65 John Kent Avenue, Colchester

The Committee considered a planning application to vary condition 2 of planning permission 170475 at 65 John Kent Avenue, Colchester. The application had been referred to the Committee because it had been called in by Councillor Flores. The Committee had before it a report in which all information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Chris Harden, Senior Planning Officer, presented the report and, together with Simon Cairns, Development Manager, assisted the Committee in its deliberations. The Senior Planning Officer circulated a plan illustrating the boundary of the application site which had been omitted from the plan attached to the Committee report. He also explained that the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) contribution had yet to be received and the recommendation contained in the report needed to be revised accordingly.

Marion King addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. She referred to previous planning applications related to the plot dating back to 2013, listed under both John Kent Avenue and Smallwood Road locations which she considered had led to the application site becoming a small development. She referred to the potential separation of a piece of land from all neighbouring properties. She speculated this was to enable the applicant to develop the land further and questioned what the implications for the future of the site were likely to be. She considered the garden adjoining the application site to be very small, which was no longer in keeping with other properties fronting John Kent Avenue or Smallwood Road. She referred to recent other nearby planning permissions for sub-division of dwellings which had provided for adequate amenity space, in-keeping with the neighbouring area. She referred to relevant policies and was of the view it did not enhance the character of the site and would cause complications for the owners and neighbours. She was concerned about the potential for anti-social behaviour associated with the isolated area of land and she questioned the legal basis of the sale of the property without adequate planning approval. She also questioned whether a

retrospective application for the whole site would have been recommended for refusal.

Vee Bond addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. She explained that she had previously owned 65 John Kent Avenue and was the current owner of 65A John Kent Avenue following planning permission to convert the extension into a two-bedroom house. She explained that she had initially intended to stay in No 65 but opted to sell it in order to raise funds to convert No 65A. She explained that her decision to move to No 65A had prompted the reallocation of the garden areas so that she would benefit from a larger garden and this had been laid out for prospective purchasers. She had been unaware that she needed to apply for an amendment to the conditions attached to the planning application. She explained that this was an honest mistake, given the practice to sell garden areas to neighbours. She confirmed that she was aware of the minimum garden size for a three-bedroom house and she confirmed that the garden area allocated fully met this requirement. At no time during the sale of No 65 had the garden size been mentioned to her by the purchaser or her solicitor and she considered that the purchaser of the property was aware of the boundaries of the garden that had been set out. She stated her surprise and regret at the trouble that had been caused and she wished the matter to be resolved, enabling her to live at 65A, in accordance with planning rules.

Councillor Flores attended and, with the consent of the Chairman, addressed the Committee. He explained that he had been contacted by the current owners of 65 John Kent Avenue about the application as well as numerous neighbours who all opposed the application. He referred to the original intention to allocate the larger garden to No 65 but this had been changed by the developer such that it had been allocated a much smaller garden than originally planned. He referred to the Council's planning policy in relation to garden sizes and the allocation of 61 metres of garden to No 65 which accorded with the relevant standards but he questioned whether this was the relevant policy as it related to new developments not existing. He referred to more generous allocations for infill and back land developments referred to the Essex Design Guide and the mutual garden boundary line of other properties in the street. He also referred to previous applications relating to the site listed under a Smallwood Road address rather than John Kent Avenue and questioned the motives behind this. He referred to telephone calls he had received from the developer and assertions regarding her future occupation of No 65A and regarding the future of the site to the rear of No 65A. He also referred to the recent withdrawal of an application proposing development of that site and he queried the potential for an application for industrial use of the land. He requested consideration of applying a condition to prevent this eventuality and to prevent it falling into disuse. He also questioned the validity of the submission of a planning application on land not in the ownership of the applicant, without prior notification to the land owner. He sympathised with the owners of No 65 and their circumstances and hoped the determination of the application would bring improvement to this.

The Senior Planning Officer confirmed that an application had been made for a dwelling

to the rear of No 65A John Kent Avenue which had been withdrawn following severe concern from the planning case officer in relation to over development. Whilst he could not preclude any development on the site in future, he was of the view that the site was likely to be too small for a dwelling. The garden size was smaller than neighbouring plots but it did meet the standards and there was no significant impact in terms of visual character of the area. He was also of the view that the proposal did respect the character of the area. He also commented that any future anti-social use would be dealt with under relevant Environmental Health legislation. He also confirmed that the land would be allocated as amenity space for No 65A John Kent Avenue. As the garden spaces met the relevant standards and the visual area was unaffected, the fact that the garden areas had already been laid out, did not affect his recommendation to approve the application. He further confirmed that there was no planning approval to erect a dwelling to the rear of No 65A. He also confirmed that standards which had been applied to the consideration of the proposal were relevant, confirming that the property was deemed to be new development and although the garden size for the original dwelling had been reduced this was not to an unacceptable degree. He also confirmed that commercial use would not be possible without a relevant consent which would be considered at the time any such application was submitted. He considered it could be possible to apply a further condition to retain the land to the rear of 65A as amenity space, should the Committee members consider it appropriate.

One member of the Committee commented on the application for the land to the rear of No 65A which had recently been withdrawn and queried why the option had not been taken to divide the gardens equally. A suggestion was made for the Committee's consideration to be deferred to enable the applicant and objector to discuss the matter further with a view to a compromise being achieved and to resolve what appeared to be a land dispute.

The Development Manager explained that, if the applicant had completed the development and occupied the dwelling, there would have been no requirement to seek permission from the planning authority. He also explained that, providing implementation was carried out in accordance with the permission granted, ownership of land was not a planning matter. The Committee was considering the matter because the severance of the garden area had taken place before the development had been completed and occupied. He confirmed that the garden areas each complied with the relevant policies and there was no visual impact from the street whilst the potential development of the garden area to the rear of 65A would have to be dealt with when any such application materialised. Further, he confirmed that it was not possible to anticipate what the intentions of the applicant may be, it being their right to apply for planning permission as they saw fit. Applications for permission must not be pre-determined and must be considered on their merits, however, he did concur with the view that the site was too small to accommodate a further dwelling. Accordingly, he did not consider there were any grounds to support a refusal of the application and he was of the view that a deferral would serve little purpose. He considered the layout of the gardens was in evidence

when the owners of No 65 purchased the property and he therefore was of the view that there was no planning reason to require an equality of garden size, particularly given that the built form was remaining unchanged.

Another member of the Committee referred to the need to distinguish between the legal aspects relating to the site and the planning matters. He was strongly of the view that the legal issues were not a matter for the Committee to consider.

RESOLVED (SEVEN voted FOR, TWO voted AGAINST and ONE ABSTAINED) that authority be delegated to the Assistant Director Policy and Corporate to approve the application subject to the conditions set out in the report and the receipt of the outstanding RAMS fee.

683 190020 45 Winston Avenue, Colchester

The Committee considered a planning application for the part single and part two storey side and rear extension at 45 Winston Avenue, Colchester. The application had been referred to the Committee because it had been called in by Councillor Buston. The Committee had before it a report and an amendment sheet in which all information was set out. The Committee made a site visit in order to assess the impact of the proposals upon the locality and the suitability of the proposals for the site.

Annabel Cooper, Planning Officer, presented the report and assisted the Committee in its deliberations.

Richard Cawley addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in opposition to the application. He explained that, despite the modification of the original application, he considered that his property would suffer from a loss of light from the proposed development due to the orientation of the properties, he explained that his rear garden faced north west and his neighbour's garden was located to the south west of that and he explained the trajectory of the sun throughout the day and considered this would mean his garden would receive sunlight later in the day and for fewer months of the year. He had commissioned an assessment of light impact and had received confirmation of his view. He referred to angles of the sun at different times of the year. He also referred to the breach of the elevation test in relation to angle of outlook by the proposed development.

Keiren Cahill addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He explained that he had purchased the property the subject of the application in August 2018 with the intention to create a long-term family home. He was seeking to create an open downstairs living space with larger bedrooms. He regretted the objection made to the proposals by his neighbour but these concerns had been taken into account and had modified their plans and attempted to compromise. He asked the Committee to approve the application.

The Planning Officer confirmed that the 45-degree angle of outlook test had to breach both plan and elevation tests to merit refusal of an application and the proposal constituted a marginal breach at ground floor level in respect of the elevation test only. She also explained that an existing fence was situated on the ground floor which already blocked some daylight, whilst the dimensions of the extension were within permitted development rights parameters. She confirmed the proposal was acceptable in terms of potential loss of light.

Councillor Buston explained that he had been asked to call-in the application by Mr Cawley prior to the application being modified in response to the neighbour's concerns. He confirmed that he would not vote on the issue.

Members of the Committee referred to the revised plans which incorporated an illustration of the 45-degree angle of outlook test and the ability of the applicant to undertake the majority of the proposal within permitted development rights.

RESOLVED (NINE voted FOR and ONE ABSTAINED) that, the planning application be approved subject to the conditions set out in the report and the amendment sheet.

684 190279 Swan Grove, Chappel

The Committee considered a planning application to create hardstanding for two parking spaces at Swan Grove, Chappel, Colchester. The application had been referred to the Committee because the applicant was Colchester Borough Council. The Committee had before it a report in which all information was set out.

RESOLVED (UNANIMOUSLY) that, the planning application be approved subject to the conditions set out in the report.