

Planning Committee Meeting

**Council Chamber, Town Hall, High Street,
Colchester, CO1 1PJ
Thursday, 31 January 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

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COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 31 January 2019 at 18:00

The Planning Committee Members are:

Councillor Pauline Hazell	Chairman
Councillor Brian Jarvis	Deputy Chairman
Councillor Lyn Barton	
Councillor Vic Flores	
Councillor Theresa Higgins	
Councillor Cyril Liddy	
Councillor Derek Loveland	
Councillor Jackie Maclean	
Councillor Philip Oxford	
Councillor Chris Pearson	

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	Darius Laws
Mike Lilley	Sue Lissimore	Patricia Moore	Beverley Oxford
Gerard Oxford	Lee Scordis	Lesley Scott-Boutell	Martyn Warnes
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 Minutes of 3 January 2019

7 - 12

The Councillors will be invited to confirm that the minutes are a correct record of the meeting held on 3 January 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 180874 The Langenhoe Lion, Mersea Road, Langenhoe, Colchester

13 - 42

Demolition of former public house and erection of 4no. dwellings and car parking.

7.2 182568 182 Old Heath Road, Colchester

43 - 50

Erection of single storey side and rear extension.

7.3 182939 Café in the Park, Castle Park, High Street, Colchester

51 - 60

Extension to existing externally accessed public toilets located within cafe building.

Planning Committee Information Pages v2

61 - 72

8 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, 03 January 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 Patricia Moore (for Councillor Vic Flores)

Also Present:

649 Site Visits

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

650 Minutes of 22 November 2018

The minutes of the meeting held on 22 November 2018 were confirmed as a correct record.

651 181382 Tollgate Centre Shopping Park, Tollgate West, Stanway, Colchester

The Committee considered an application for external alterations to front elevations of the units, along with the continued use for class A1 retail of the units along the main retail terrace at Tollgate Centre Shopping Park, Tollgate West, Stanway, Colchester. The application had been referred to the Committee because it constituted a major planning application where an objection had been received and the recommendation was to approve. The Committee had before it a report and 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.

Lucy Mondon, Principal Planning Officer, presented the report assisted the Committee in its deliberations.

Craig Blatchford addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 in support of the application. He welcomed the comprehensive report with recommendation for approval from the case officer and referred to the lack of objections from the highway Authority and other statutory bodies. The application related to existing premises with a variation of conditions in the urban district centre of Tollgate and recognised the town centre as the primary centre in the

borough. The intention of the application was to ensure that the shopping area retained its district centre status without which it could be undermined and fall into decline. He considered the application to be a proactive proposal, supported by planning policy and sought the approval of the committee.

Members of the Committee generally welcomed the proactive nature of the application, whilst a reference was made to the applicant's consideration of covered cycle parking provision as a further improvement on the site. Reference was also made to the very limited connectivity across the Tollgate sites, including Tollgate Village, and further information was sought regarding the potential to seek additional mitigation measures to improve the connectivity between all of the developments in the Tollgate locality, particularly for pedestrians and cyclists.

The Principal Planning Officer corrected the information in the report in relation to disabled parking provision and confirmed there was an over provision of the standard requirement. She confirmed that the application did not trigger any requirement for additional cycle parking provision. She also commented on the location of a bus stop outside the site and the existence on the site of three electric vehicle charging points as well as the recent addition of a pedestrian crossing. She further commented that, in order to assess the need for additional charging points, the agent had offered, following the grant of permission, to undertake a survey to determine how well the charging points were currently used. In addition she explained that the site the subject of the application had the benefit of an existing use as well as, unlike Tollgate Village, being situated entirely within an urban district centre. As such she confirmed that there was no more, in policy terms, that could be requested in relation to mitigation. Finally, she confirmed that additional crossings would be delivered when the Tollgate Village development was implemented.

RESOLVED (UNANIMOUSLY) that, the application be approved subject to the conditions set out in the report and the amendment sheet and subject to an agreement with the Agent/Applicant to any pre-commencement conditions as required under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 and delegated authority to make changes to the wording of these conditions.

652 182480 ESNEFT, Colchester General Hospital, Turner Road, Colchester

The Committee considered an application for a single storey extension to the Emergency Department and two storey extension to the front of the Hospital to provide healthcare use, ground floor commercial use, a staff and visitor café, all to be used in association with the wider Hospital use at Colchester General Hospital, Turner Road, Colchester. The application had been referred to the Committee because it constituted a major planning application where an objection had been received and the recommendation was to approve. The Committee had before it a report in which all information was set out.

Lucy Mondon, Principal Planning Officer, presented the report and, together with Martin Mason, Essex County Council's Strategic Development Engineer, assisted the Committee in its deliberations.

One member of the Committee suggested that development proposals on behalf of the hospital would benefit from being considered from a visitors perspective as well as those of the patients and staff and referred to her experience when visiting the hospital on a cycle and collecting a patient using the car parking facilities, explaining that cycle parking spaces had been difficult to locate, not covered and were blocked and the logistical problems of retrieving, navigating and returning hospital wheelchairs.

Reference was also made to the potential for the development to deliver in excess of the standard cycle parking provision, the type of retail provision being proposed and also to the long established pond. Assurances were sought in relation to the ecology report being fully completed and that there would be no loss of existing parking provision and confirmation as to the potential for improvements to the access problems onto Turner Road to be considered and for improvements to the aeration of the pond.

The Principal Planning Officer confirmed that proposed conditions provided for the inclusion of 12 cycle parking spaces, in accordance with the policy standard, and for the details of the design of spaces to be submitted for approval and for updates to the Hospital Trust's Travel Plan. She welcomed the feedback on the experience of visiting the hospital and confirmed that the Hospital Trust had confirmed that the reported problems would be investigated. She explained that an Ecology Appraisal had been submitted with the application which had identified the habitats in the area and suggested enhancements which were the subject of proposed conditions. She confirmed there would be no loss of parking and additional disabled spaces near the entrance and in the main car park. The proposed retail provision was in relation to ancillary convenience goods appropriate to patients and visitors.

The Strategic Development Engineer confirmed that the current planning system only allowed for the assessment of the proposed development the subject of the application with no allowance for incremental impact from a series of proposals. As such, he explained that it was not possible to justify the submission of a Transport Assessment as it was unlikely that the proposal would generate a significant increase in traffic.

Members of the Committee generally welcomed the proposals overall, in particular in relation to the public transport and pedestrian enhancements and traffic flow improvements.

The Principal Planning Officer also confirmed the benefits of the Park and Ride in terms of the Travel Plan provisions and that active discussions had been taking place between the bus companies and the Hospital Trust.

RESOLVED (UNANIMOUSLY) that, the application be approved subject to: -

- (i) The conditions set out in the report and the amendment sheet;
- (ii) Any amendments, further information, and/or conditions required by the Council's Contaminated Land Officer;
- (iii) An agreement with the Agent/Applicant to any pre-commencement conditions as required under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 and delegated authority to make changes to the wording of these conditions.

653 182627 32 Wren Close, Stanway, Colchester

The Committee considered an application for additional floor space to be added into the roof creating two more bedrooms, skylight and dormer windows providing natural light to the space, fitting new roof structure and repairing fire damage and repair of fire damage to the garage at 32 Wren Close, Stanway, Colchester. The application had been referred to the Committee because the applicant was a member of staff.

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

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

654 Amendment to Condition 14 and Section 106 Agreement for Stane Park Phase 2, Colchester, Application Ref: 172935

The Committee considered a report by the Assistant Director Policy and Corporate concerning a proposed amendment to Condition 14 and the Section 106 Agreement for the development at Stane Park Phase 2, Stanway, Colchester in relation to the requirement for a pedestrian crossing on London Road, Stanway.

Lucy Mondon, Principal Planning Officer, presented the report and, together with Martin Mason, Essex County Council's Strategic Development Engineer and Simon Cairns, Development Manager, assisted the Committee in its deliberations.

The Principal Planning Officer explained that the provision of a pedestrian crossing on London Road had been conditioned in lieu of a contribution requested by the Highway Authority for improvements at the Stanway Western Bypass/London Road roundabout. However, it had become apparent that it may take some time to establish its acceptability in terms of highway safety and traffic flows. The Highway Authority had accordingly proposed that the requirement for the crossing be included within the Section 106 agreement which would ensure that a financial contribution would be payable should the crossing be deemed not possible or undeliverable within a reasonable timescale.

The Amendment Sheet also included a further representation from the agent for the applicant.

In discussion, members of the Committee voiced their concern as to the reasons for the delay, given the difficulties observed in the area in relation to connectivity for pedestrians. Clarification was sought on the need for the request for a pedestrian crossing to be included in the Section 106 Agreement, whether the financial contribution could be ring-fenced for a crossing and what assurance this arrangement would give in relation to the actual delivery of the crossing. Some members of the Committee also expressed concern that the request for a crossing might be lost in favour of a scheme of general improvements to the roundabout.

The Principal Planning Officer explained that any requirement for a financial contribution had to be incorporated within a section 106 Agreement and she also confirmed that the provision of the pedestrian crossing was considered a priority.

The Strategic Development Engineer explained that the delay had been caused due to information from the applicant on pedestrian movements in the area being awaited. Once this information was received it would be necessary to consult Council Departments, make an assessment and undertake negotiation. This was the reason why the proposal had been made for the crossing requirement to be included in the Section 106 Agreement, as it would ensure that the financial contribution would not be lost should the principle of a crossing not be technically acceptable. He further confirmed that he was aware that the developers were very keen to secure approval for the Section Agreement, he was mindful of further developments being implemented in the future but that it was only possible for mitigation measures to be delivered in relation to the particular application concerned.

The Development Manager advised against the ring-fencing of the financial contribution for a pedestrian crossing as this was likely to mean that the funds would be lost should the crossing prove to be not technically acceptable. He was of the view that the proposal set out in the report was more likely to secure the retention of the funds should the principle of the crossing fail.

RESOLVED (UNANIMOUSLY) that, in relation to application number 172935, the reference to the provision of a pedestrian crossing on London Road, Stanway be omitted from Condition 14 and that the requirement be added as a clause in the Section 106 agreement, along with an alternative provision that, should the crossing not be agreed by Essex County Council (either by confirmation that the crossing is unacceptable or in the event that they do not confirm within a stipulated time period) following the submission of details, the contribution of £25,000 index-linked (plus monitoring fee) will be paid towards improvements at the Stanway Western Bypass/London Road roundabout, the Section 106 Agreement to also include appropriate triggers for either the crossing to be provided and made available for use, or the payment of the contribution.



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Item No: 7.1

Application: 180874

Applicant: Mr Karl O'Brien

Agent: Mr Robert Pomery

Proposal: Demolition of former public house and erection of 4no. dwellings and car parking.

Location: The Langenhoe Lion, Mersea Road, Langenhoe, Colchester, CO5 7LF

Ward: Mersea & Pyefleet

Officer: Chris Harden

Recommendation: Approval subject to signing of legal agreement

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it has been called in by Councillor Davidson for the following reasons:

“This pub has been reserved to be used as a community asset in previous permissions for market housing within the pub carpark. Subsequent applications had a mixed use with either a shop or a health centre on the ground floor with two market flats above. This application ignores the community need and is for 4 terraced houses only. I would hope this application could be revised to retain the floor area of one of the terraces with its freehold transferred to the parish council, who have strong interest in running a community shop as Langham does.

This would still allow the applicant to get full value from the 3 remaining terraced houses and a flat above the shop as an additional unit with access, with parking spaces, from the back garden which could be accessed from the Fingringhoe road. This is a prime site for a community asset and would serve Abberton, Langenhoe, Fingringhoe and Peldon none of which now have a shop.”

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the development, including loss of a Community facility, and the layout, design, scale and form of the development. Impact upon highway safety, neighbouring residential amenity and wildlife will also need to be considered along with the adequacy of amenity space provision.
- 2.2 Following assessment of material planning considerations the application is subsequently recommended for approval. In terms of the principle of the development it is considered that an appropriate marketing strategy has been followed in an attempt to secure an alternative community use but this has not led to any viable potential uses coming forward. The agent has agreed to make a financial contribution towards alternative community uses. It is therefore concluded that the criteria outlined in the key policy DP4 have been satisfactorily addressed and that the proposal to replace the redundant public house with four dwellings can be supported in principle.
- 2.3 In terms of the detailed planning merits of the case, there are no objections to the loss of the building (which has previously been agreed) subject to the recording of the building. The layout, design, scale and form of the development is considered acceptable and there are no highway objections. There would be no significant impact upon neighbouring residential amenity and adequate amenity space would be provided. A contribution is required to mitigate recreational disturbance on protected sites on the Essex Coast.

3.0 Site Description and Context

- 3.1 The site is located on the corner of Fingringhoe Road and Mersea Road in Langenhoe. The site area is approximately 0.1 hectares and includes the former Langenhoe Lion Public House and its access to Mersea Road. To the rear of the site (South) and West of the site are neighbouring residential properties. The Public House building is two storey and dates from around 1820.
- 3.2 Documents Submitted with the application included: a planning statement, details of marketing efforts and a bat survey.

4.0 Description of the Proposal

- 4.1 The proposal is for the demolition of the former Public House building and the erection of 4 dwellings with car parking. The 4 dwellings would be in the form of a rendered terrace building with each dwelling having two bedrooms. A total of 9 car parking spaces are shown, 8 of them with access off Mersea Road and one off Fingringhoe Road.
- 4.2 In support of the application and in order to clarify the planning history and marketing of the site the agent has made the following points:
- Public house closed in December 2011 and since then has been the subject of 2 significant planning approvals.
 - 136179 allowed demolition of the pub and erection of a doctor's surgery, chemist shop and two detached dwellings. Permission was implemented in that two dwellings were subsequently constructed and are occupied. The pub has remained although a doctor has not come forward to develop remainder of site.
 - Following discussions with local doctors and NHS England over two years, an occupier for the surgery did not emerge. A new proposal for retail use was submitted and approved. (160149)
 - Retail use was approved in April 2016 (160149). Approval sought to demolish pub and erect new retail building with two flats above. At the time of the application, terms were agreed with Budgens. However, shortly after consent issued, Budgens were taken over by Bookers who decided not to purchase.
 - Since then, the site has been marketed and no health or retail use has emerged.(Marketing details provided).
 - Previous Marketing: Agents were instructed in July 2012 to market the site: a sale board was erected and particulars were sent to 793 potential purchasers on the agent's database. 118 sales particulars were posted to enquirers. & formal viewings were arranged. Nobody made a formal offer to purchase the site to reopen the pub or convert it to a similar use.
 - Following withdrawal of Budgens, the applicants continued to follow up leads with prospective purchasers and had discussions with some retailers, including independent local retailers and national brands, as well as independent health professionals. No offers were made.

- Latest Marketing: In March 2017 Chartered Surveyors Morley, Riches and Ablewhite (MRA) agreed a marketing strategy with applicants and relevant officers of Colchester Borough Council (CBC). In May 2017 site was formally placed on the open market for both retail and/or doctor's surgery/chemist use. (Details in Appendix 1 of Planning Statement.)
- MRA Surveyor's letter states that the marketing strategy was agreed with CBC as follows:
 - (i) V Board reading "New Retail Store To Let" on one side and "New Health Centre to Let" on the other erected on 8/6/17 which generated 2 enquiries which did not progress.
 - (ii) Approached convenient stores- no positive response. North East Essex Clinical Commissioning group approached- confirmed no interest in proposed health centre.
 - (iii) Rent levels indicated in the letting details were £40,000 a year for Health Centre and £54,000 a year for retail store. (Approved by CBC).
 - (iv) In opinion of MRA, these rent levels were in line with market levels, the retail unit at £13.38 per sq. ft overall and health centre at £15.64 sq ft overall. Retail rent only slightly less than the rent agreed with Booker Group (Budgens) who had agreed terms n 2016 then pulled out.
 - (v) Other available properties in area: Non-town centre retail properties, 3,191 sq ft at Cotman Rd in Prettygate offered at £12.50 per sq ft, 1500 sq ft shop at Hunwicke Rd Greenstead at £10.59 per sq ft. These two are not brand new properties and in different location so slightly lower rent levels reflect this. Consulting Health use rooms on offer in Layer Rd for £17.00sq ft.
 - (vi) Throughout our marketing campaign we have received no enquiries from anyone interested in alternative commercial or community uses including Public House

5.0 Land Use Allocation

5.1 Within Abberton and Langenhoe settlement limits

6.0 Relevant Planning History

6.1 160149

Demolition of former Public House and erection of mixed use building containing convenience store A1 use (372 sqm) and 2 no two bed flats complete with parking and access.

Approved conditional 22/4/16

6.2 136179
The Langenhoe Lion, Mersea Road, Langenhoe Colchester CO5 7LF
Demolition of Public House & erection of Doctor's Surgery, Chemist Shop, Parking and two detached Dwellings and Garages.
Approve Conditional - 18/03/2014

6.3 120868
Land to Rear of Langenhoe Lion PH, Edward Marke Drive, Langenhoe
Erection of two dwellings on land to rear of The Langenhoe Lion (ph).
Approve Conditional - 08/08/2012

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
- SD3 - Community Facilities
- CE1 - Centres and Employment Classification and Hierarchy
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- H4 - Affordable Housing
- UR2 - Built Design and Character
- 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
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses
- DP12 Dwelling Standards
- DP14 Historic Environment Assets
- DP16 Private Amenity Space and Open Space Provision for New Residential Development

DP19 Parking Standards
DP21 Nature Conservation and Protected Lanes
DP23 Coastal Areas

- 7.4 Some “allocated sites” also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

N/a

- 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
Affordable Housing
Community Facilities
Sustainable Construction
Managing Archaeology in Development.
Developing a Landscape for the Future
ECC’s Development & Public Rights of Way

7.6 Emerging Local Plan

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;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. 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 examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

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

ZPA – Construction Method Statement

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

the parking of vehicles of site operatives and visitors;

hours of deliveries and hours of work;

loading and unloading of plant and materials;

storage of plant and materials used in constructing the development;

the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

measures to control the emission of noise, dust and dirt during construction;

and a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

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.

- 8.3 The Highway Authority originally stated:

Holding Response

The Highway Authority raises an objection to the above application for the following reasons:

It would appear that the red line boundary encloses land which may be considered as highway and therefore the Highway Authority requests sight of Land Registry documentation demonstrating that the applicant does indeed own or control all the land from the junction of Fingringhoe Road across the sites frontage to Mersea Road.”

- 8.4 The Highway Authority has reassessed the proposal after the confirmation of the highway boundary:

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

- (i) Vehicular Access
- (ii) No unbound surface materials

- (iii) Pedestrian visibility splays
- (iv) Car parking Area
- (v) Cycle storage
- (vi) Construction Method Statement
- (vii) Planting clear of visibility splays
- (viii) Refuse/recycling area

(The full wording of the conditions is outlined in the recommended conditions section.)

- 8.5 Archaeologist states: This proposal concerns the demolition of a building (Red Lion Public House) that is of historic interest (undesigned heritage asset), and it is present on the First Edition OS Map dating to the 1880s.

The following condition (**Z00**) relating to historic building recording is recommended in accordance with the *National Planning Policy Framework* (Paragraph 199), which is consistent with my advice relating to the previous application 160149:

Prior to the commencement of any works, a programme of building recording and analysis shall have been undertaken and a detailed record of the building shall have been made by a person or body approved by the Local Planning Authority and in accordance with a written scheme which first shall have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: To secure provision for recording and analysis of matters of historical importance associated with the site, which may be lost in the course of works.

In this case, a historic building survey should be carried out, by a historic buildings specialist. The objective should be to compile a record of the affected building at Historic England Level 2, as described in *Understanding Historic Buildings: A Guide to Good Recording Practice* (Historic England 2016). I will, on request of the applicant, provide a brief for the investigation.

- 8.6 Natural England “has no comments to make on this application.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

Natural England and the Forestry Commission have also published standing advice on ancient woodland and veteran trees which you can use to assess any impacts on ancient woodland.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of this site and the impacts of the proposal to assist the decision making process....”

9.0 Parish Council Response

- 9.1 "Abberton and Langenhoe Parish Council object to this application on the grounds that its approval would lead to the permanent loss of a Community Asset from the village.

There has been a Public House or Ale House on the site of The Langenhoe Lion since 1769. Until its closure, the pub acted as the social hub for the village. Following its closure by Greene King in 2012, the village has suffered from a substantial loss of cohesiveness and community spirit. After its closure by Greene King in 2012 and the subsequent development of the former car park and garden to provide 4 detached houses, Barkley Projects LLP made an application for the demolition of The Langenhoe Lion and the erection of a Doctors Surgery, Chemist Shop and parking on 17 December 2013 (Application No 136179). Abberton and Langenhoe Parish Council objected to this application, as did many local residents. Only one letter of support was published. Nonetheless, the application was approved conditionally on 18 March 2014, despite NHS England Essex Team stating on 19 February 2014 that they did not think that at present we can say that there is a proven need for this facility. However, the approval recognised that the site should be maintained as a Community Asset.

On 26 January 2016, Barkley Projects LLP made a second application (Application No 160149) for the demolition of former Public House [The Langenhoe Lion] and erection of mixed use building containing convenience store A1 use (372 sqm) and 2 two-bed flats complete with parking and access. This application was supported by Abberton and Langenhoe Parish Council and by a large majority of the residents who chose to comment. The application was approved conditionally on 22 April 2016. Of particular note were Conditions 3 and 4. Condition 3 stated: The building and its extensions, which comprise the former Langenhoe Lion Public House shall not be wholly or partly demolished, until such time as the Council is provided with and has approved the terms of a completed legally binding contract, which specifically relates to the construction and operation in perpetuity of a convenience store on the application site, as identified on drawing number 948/LOChereby approved. Reason: To ensure that the existing public house building on the site is retained until the approved use as convenience store is contractually in place and is to be delivered on the site. Condition 4 stated: This permission hereby approves a 'convenience store' as set out in the supporting documentation and planning statement and no other use in Class A1 of the Use Classes Order 1987 (as amended). Notwithstanding the provisions of the General Permitted Development (England) Order 2015, as amended in 2016 (or any future amendment) no change from the approved A1 use may occur without the benefit of planning permission. Reason: As justified in the applicant's planning statement, this application is acceptable as it replaces one community facility with another. As the A1 use class is far reaching this condition is required to prevent another A1 use that is not a community facility occupying the unit.

On 29 March 2018, Barkley Projects LLP & Mr and Mrs P. Green registered the current application (Application No 180874) for Demolition of Former Public House and Erection of 4 Dwellings and Car Parking located at The Langenhoe Lion. This application does not acknowledge the loss of the Community Asset. With the deterioration of the former public house over the 6 years since it was closed by Greene King, and the failure to progress of 2 apparently non-viable proposals for development of the site as a Community Asset, the developer has applied to develop the site as 4 houses. Whilst this proposal would improve the current street scene, it would lead to the loss of a significant Community Facility forever, in a village that currently does not have a village shop, does not have a Public House, does not have a GP surgery and does not have a Post Office. Consequently, the Parish Council objects to this application.

The Parish Council noted that neither of the earlier applications have resulted in development: the first (Application No 136179 the Doctors Surgery) perhaps because there was no need for such a facility as stated by NHS England at the time of application nor the second (Application No 160149 the Convenience Store). We understand that this application was for a Budgens Store, but this did not proceed after Budgens were taken over by Bookers. However, we understand that although there has been local interest in running a Convenience Store on the site, the rental charges proposed by the developer were considered to be excessive for a village position like the one proposed and consequently, interest stalled.

The Parish Council proposes that Application No 180874 should be amended to include substantial S106 contribution to be put in place to assist funding the village's desire for a small shop as a replacement for the loss of a significant Community Asset. This new shop could be provided by the Abberton and Langenhoe Parish Council being granted the freehold of the ground floor of one of the proposed terrace.

The Parish Council noted that Application No 180874 was registered on 29 March 2018. However, it was not processed and passed to the Parish Clerk until 17 April 2018. We acknowledge that 2 working days were lost during the Easter Holiday, but a delay of nearly 3 weeks appears excessive, particularly as this important application missed the final meeting of the Parish Council held on 16 April 2018, prior to the local elections being held on 3 May 2018. The next meeting of the Parish Council is on 14 May 2018, after the deadline for comment on this application (8 May 2018). Consequently, a considerable local effort has had to be taken to obtain the views of the Parish Councillors and others on this important application to ensure that the deadline was met.

9.2 Abberton and Langenhoe Parish Council's objection to the original application was published on the CBC Planning Website on 23 April 2018. These **additional comments** are submitted following the submission of an amended scheme on 19 July 2018, the Community Facilities Assessment on 5 July 2018 and correspondence between Harden/Pomery on 19 July 2018. Abberton and Langenhoe Parish Council view the Report on Existing Community Facilities in Abberton and Langenhoe in the context of Criterion IV of Policy DP4 published by Pomery Planning Consultants on 5 July 2018 as a cynical approach to justify their view that the villages have sufficient existing community facilities to meet the published planning criteria. The report includes a list of examples extracted from Policy DP4 which led to the author of the report including the Village Hall, The Langenhoe Community School, Abberton Cricket Club and the Abberton Allotments in the assessment. However, the inclusion of the actual facilities, with the exception of the Village Hall, is considered to be flawed in Abberton and Langenhoe for the following reasons: The Langenhoe Community School is an exceptionally busy primary school. Under present guidelines, like other similar schools, it is closed to residents of the village who are not parents or guardians of pupils attending the school or members of staff, because of safeguarding concerns. Residents may be invited once or twice a year to attend school after hour activities, such as the Christmas Fair. Apart from that, it is not available as an open community facility to residents of the villages. Therefore, it should not be included as a community facility. Abberton Cricket Club is a private members-only club, with an annual subscription. Whilst it is opened to residents of Abberton and Langenhoe for the occasional fundraising or charity activities, it is not generally open to the public so it is not available as an open community facility to residents of the villages. Therefore, it should not be included as a community facility. Abberton Allotments are owned by a long-standing charity, the Edward Marke Trust.

Individual plots are rented out to residents. It is a private area and is not available as an open community facility to residents of the villages: indeed, unauthorised visitors would be judged as trespassers. Therefore, it should not be included as a community facility. Abberton and Langenhoe does not have a shop, a post office or a doctor's surgery. The Public House which had existed since the eighteenth century was the social hub of the village. It was closed by Greene King in 2012 after poor management and its car park and garden sold off for the erection of 4 houses. Barkley Projects LLP made an application for the demolition of The Langenhoe Lion and the erection of a Doctors' Surgery, Chemist Shop and parking on 17 December 2013 (Application No 136179). Abberton and Langenhoe Parish Council objected to this application, as did many local residents. Only one letter of support was published. Nonetheless, the application was approved conditionally on 18 March 2014, despite NHS England Essex Team stating on 19 February 2014 that they did not think that at present we can say that there is a proven need for this facility. However, the approval recognised that the site should be maintained as a Community Asset. On 26 January 2016, Barkley Projects LLP made a second application (Application No 160149) for the demolition of former Public House [The Langenhoe Lion] and erection of mixed use building containing convenience store A1 use

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(372 sqm) and 2 two-bed flats complete with parking and access. This application was supported by Abberton and Langenhoe Parish Council and by a large majority of the residents who chose to comment. The application was approved conditionally on 22 April 2016. Of particular note were Conditions 3 and 4. Condition 3 stated: The building and its extensions, which comprise the former Langenhoe Lion Public House shall not be wholly or partly demolished, until such time as the Council is provided with and has approved the terms of a completed legally binding contract, which specifically relates to the construction and operation in perpetuity of a convenience store on the application site, as identified on drawing number 948/LOChereby approved. Reason: To ensure that the existing public house building on the site is retained until the approved use as convenience store is contractually in place and is to be delivered on the site. Condition 4 stated: This permission hereby approves a 'convenience store' as set out in the supporting documentation and planning statement and no other use in Class A1 of the Use Classes Order 1987 (as amended). Notwithstanding the provisions of the General Permitted Development (England) Order 2015, as amended in 2016 (or any future amendment) no change from the approved A1 use may occur without the benefit of planning permission. Reason: As justified in the applicant's planning statement, this application is acceptable as it replaces one community facility with another.

As the A1 use class is far reaching this condition is required to prevent another A1 use that is not a community facility occupying the unit. Neither of these 2 applications have been taken forward. As NHS England stated on 19 February 2014, they could not see a need for the doctor's surgery or chemist shop, and this proposal (Application No 136179) seems to have floundered. The proposal for the shop (Application No 160149) was strongly supported by Abberton and Langenhoe Parish Council and by many residents. However, it is understood by the Parish Council that the lease or rental costs proposed by the developer made this worthwhile proposal unattractive to potential shopkeepers, so this proposal also seems to have floundered. As stated in the Parish Council's comments on 23 April 2018, Barkley Projects LLP & Mr and Mrs P. Green registered the current application (Application No 180874) for Demolition of Former Public House and Erection of 4 Dwellings and Car Parking located at The Langenhoe Lion. This application does not acknowledge the loss of the Community Asset. With the deterioration of the former public house over the 6 years since it was closed by Greene King, and the failure to progress of 2 apparently non-viable proposals for development of the site as a Community Asset, the Developer has applied to develop the site as 4 houses. The Parish Council considers that with the failure to take forward the earlier applications, particularly that of for a village shop, which had strong support of the residents, together with the current state of the site, the Developer is cynically manipulating the situation to achieve removal of the previous conditions which prevented demolition of The Lion unless a community asset was provided to replace it, in order to maximise personal gain from building 4 more houses, without consideration of the community's needs and riding roughshod over the numerous objections made by residents, despite the fact that the Developer has already profited from the sale of 4 houses on the site. The proposed development fails to meet

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sustainability criteria. Consequently, Abberton and Langenhoe continue to object to Application No 180874. We would wish to see an application with a revised plan which provided a small village shop and parking, in addition to some more residential accommodation such as the ground floor of the house on the corner of Mersea Road and Fingringhoe Road, with a parking area behind and additional street parking in the unrestricted Fingringhoe Road. This would be consistent with the previous conditional approval for the earlier proposals for the site.

During the first consultation for Application No 180874, almost 200 residents from Abberton and Langenhoe made comment. Less than 10 supported the application, (mainly for the reason of removing the eyesore of the now derelict Lion buildings). The huge majority objected to the application and requested the retention of a community facility by way of a Village Shop. Many more-elderly residents who are not able to take the bus into Colchester to do their shopping are reliant on neighbours to drive them to and from the shopping centres, adding to the local traffic problems. They feel that provision of a local shop would meet some of their needs. Further, the Parish Council are aware of a number of residents who have chosen to move away from the village as they become older, due to the lack of suitable local facilities. As evidenced in the comments from residents of Abberton and Langenhoe, there is a strong community view within Abberton and Langenhoe which must be taken into account when deciding this application. The Developer must not be allowed to manipulate the planning process to enhance gain, whilst ignoring the freely expressed needs and views of the residents of Abberton and Langenhoe. Finally, Abberton and Langenhoe Parish Council note the correspondence between Chris Harden and Robert Pomery in an email sent on 17 July 2018 at 1646hrs, published on 19 July 2018. This was marked 'Index Sensitive'. In this exchange, Chris Harden stated to the Developer's Agent that the scheme is looking favourable? In the light of this, Abberton and Langenhoe Parish Council would wish to be reassured that CBC Planning Staff are providing balanced advice which recognises the needs and views of the residents of Abberton and Langenhoe and the Planning Conditions applied to previous planning decisions for this site as well as the desire of the developer to maximise his gain."

9.3 Winstred Hundred Parish Council "would like to comment on the application at The Langenhoe Lion with the following:

Many Peldon people, who have been without a shop for 15 years, would support a community shop locally, regardless of which village. If there is an opportunity for this on the site of the Langenhoe Lion we would support this application over and above further housing."

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 99 letters of objection have been received which make the following comments:

- Pub was focal point of community and social hub. Site should continue to operate as Public House, café or local store. Would be viable if run efficiently and professionally.
- Application purely to maximise financial benefit.
- Garden and car park of Public House already developed into 4 large detached houses.
- Developer should be made to pay as much to the local council as can be squeezed out of them.
- Have no amenities in village, used to have shop and post office and population probably doubled since 1978.
- Viable rent should be set. Rent asked to high. Should be carefully assessed by CBC.
- New shop would offer employment for local people.
- All previous applications have been for community asset. No reason to change.
- Local school and GP already at capacity.
- Only viable site for shop. Could have flats above.
- Too large for site. Could cause traffic problems. Danger to cyclists and pedestrians. Highway dangers: Crossroads is slightly staggered. Buses stop in 4 different positions near site.
- Could remodel junction, change point of access to site.
- Contrary to Policy DP4.
- Local produce shop or tea room would be nice. The two villages need a shop, the nearest is 5 minutes away.
- There has been an Ale House/Pub in the village since 1769. The current building was one of three designed to be a Tram/Rail service from Colchester to Mersea Island and therefore has some historic value and should be listed.
- Last year a CBC representative said no new builds would be allowed as infrastructure can't take it. Water pressure already low.
- Group of local residents could get together and create business.
- Build smaller affordable homes for local residents only.
- This is a very important building in the village and should be used for something else.
- Shop will be good for employment and capture passing trade to Mersea.
- 90% of residents object to scheme.
- Perhaps Sainsburys/Asda/Argos could invest in community shop.
- Colchester Borough Council's current Development Policies (Local Plan) says at Section 3.11:- The Council wishes to protect viable community facilities and services that play an important role in the social infrastructure of the area and support sustainable communities.

- site would be of more value as small enterprise 'hub' or centre for 'not for profit' health/social care/assistive technology enterprise.
- Culturally important buildings. Convert to flats.
- Owner has played clever waiting game, letting pub deteriorate.
- I was the MD of a specialty food store and coffee shop in Pepperstock Beds, built on the site of a former public house. This site is very suitable for that use if investors can be found, and if the proposed specification for the shop site can be reconfigured to provide more parking for shop customers. A retail store with attached coffee shop/function room would be a great asset to the surrounding villages.
- So the rich property developer wants to give the people of Langenhoe 11 grand? What will this buy?
- A small sum of money to the village does not provide a community asset.
- Langenhoe Community Primary School:
The school is at capacity and while it certainly is a school in the village of Abberton a majority of those attending are from outside of the area. Pupils attend from surrounding villages within the area administered by Colchester Borough Council. It is not a village school. It should not be defined as a community asset.

Abberton Cricket Club:

The Cricket Club is a private club and reserved for members of the club. While there are a few residents who are social members. It should not be defined as a community asset. Notwithstanding the aerial picture used in the submission by the developer is not of Abberton Cricket Club. The calculations based on this entry are incorrect.

Edward Marke Charity:

The allotments referred to in the submission of the developer are not an asset generally available for use by the local community. It is in fact an ancient charity and its charitable objects are:
For the relief of the sick-poor living in Langenhoe and the surrounding area either generally or individually through the provision of grants, goods or services.

Again as such the Edward Make Charity should not be defined as a community asset.

- Building could become a community pub.
- The community facilities assessment is flawed as not all the facilities are available to all villagers.
- Houses should be sited in line with other houses.

10.3 10 letters of support have been received which make the following comments:

- Support with some minor adjustments.
- Clear that the old Langenhoe Lion building has passed a useable state and it's clear that the offer of commercial premises or indeed a medical centre is not financially viable in the area having been offered with planning for the previous year with little or no interest.
- Return to a public house is no longer an option being surrounded by residential premises and also not having adequate parking.
- Fully support the demolition and construction of four sympathetically designed houses for the site.
- Aesthetically pleasing.
- Bin store and parking alongside boundary of Dillon House. Suggest reposition to avoid small and disturbance.
- Layout dominated by bin store.
- It has been shown that there is no commercial interest and the site is currently a deteriorating eyesore.
- 4 houses must be a considerable improvement and also maybe affordable housing for new buyers. We have a good bus service and local shops and pubs within 3 and 5 miles, we also have doctors and dentists within the 3 and five mile radius. We will not lose a community asset by demolishing this building.
- None of previous schemes have been appealing to would be investors/ owners and these plans have consequently failed. As it stands the Lion is not a community asset (more a liability!) and having been available for development for such use for the past 6 years seems never likely to be.
- Highly unattractive building that remains is in urgent need of development or replacement and the area occupied needs tidying up to match the general quality of the surrounding area and thus, whilst a community amenity would have been a more favourable option, it seems this is never going to happen and it is therefore time to accept the next best thing - the proposed development of housing to at least remove what has become a very unattractive corner of Langenhoe.
- Viable use of parcel of land.
- Pub closed due to lack of use.
- The more recent proposal for a retail food outlet collapsed, not dissimilarly, because the demand for a service was not matched by likely earnings.
- The convenience food sector expects a weekly sales volume that cannot be achieved from this site.
- Continuing need for further houses. Provides four two bedroom dwellings.....perhaps for the first time in this community for generations. Could benefit younger people. May give older people chance to downsize.
- I am very much attracted to the P.C's mention of the merits of a Community lead retail food outlet which deserves further examination but not, for all the reasons shown, on this parcel of land.
- Whilst an amenity for the village would be preferred, if this is not commercially viable, then houses are better than the site continuing to deteriorate.

- The need for a commercial premises is really not an acceptable argument. Within a very short drive or bus journey there's a Tesco's, coop, post office, medical center and soon to be two Lidl supermarkets .
- support the development with possibly an adjustment stating a small parish run shop on the lower floor of the north end, although I would be concerned with its financial viability as shown by the loss of previous businesses.
- Proposal better than building falling in to disrepair.
- although they are not required to contribute to amenities of the area it is positive to see developer voluntarily contribute a significant sum to the parish council. It is important that the parish council does have a plan on how the money will be best utilised for the benefit of the community.
- Best way forward. Council could look at making the start of Fingringhoe Road yellow lined to stop the on road parking that several objectors had complained of.
- Parish Council should not be objecting to erection of 4 houses. If a shop/surgery/pub was allowed where would they park! The site is a complete eyesore and has been for many years.
- Please parish council reverse your decision you're had enough time to sort and frankly failed move on.

11.0 Parking Provision

11.1 9 car parking spaces proposed.

12.0 Open Space Provisions

12.1 Not applicable.

13.0 Air Quality

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

14.0 Planning Obligations

14.1 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. However a Unilateral Undertaking is offered regarding an alternative Community provision payment. The necessary Habitats Regulations Assessment mitigation payment can also be secured via the Unilateral Undertaking.

15.0 Report

Principle of Development:

15.1 The site lies within the Settlement Limits of Langenhoe, as defined in the Local Plan. Accordingly the proposal should be judged on its planning merits having regard to the settlement policies SD1 (Sustainable Development Locations) and H1 (Housing Delivery) which aim to guide residential development to the most sustainable locations, including within settlement limit boundaries.

15.2 Policy DP4 (Community Facilities) of the Development Plan document is particularly relevant as the site contains the former Langenhoe Lion Public house which would have been deemed a community facility when open. This Policy states the following:

Policy DP4: Support will be given to the provision of new community facilities, and to the retention and enhancement of existing community facilities, where these positively contribute to the quality of local community life and the maintenance of sustainable communities in accordance with other policy requirements.

The involvement of the local community will be sought in identifying the importance of local facilities. Any proposal that would result in the loss of a site or building currently or last used for the provision of facilities, services, leisure or cultural activities for the community, or is identified for such uses by the Site Allocations DPD/Proposals Map, will only be supported if the Council is satisfied that:

- (i) An alternative community facility to meet local needs is, or will be, provided in an equally or more accessible location within walking distance of the locality (800 m); or
- (ii) It has been proven that it would not be economically viable to retain the site/building for a community use; and
- (iii) The community facility could not be provided or operated by either the current occupier or by any alternative occupier, and it has been marketed to the satisfaction of the Local Planning Authority in order to confirm that there is no interest and the site or building is genuinely redundant; and
- (iv) A satisfactory assessment has taken place that proves that there is an excess of such provision and the site or building is not needed for any other community facility or use.”

15.3 The explanatory text of Policy DP4 goes on to state that:

“the Council wishes to protect viable community facilities and services that play an important role in the social infrastructure of the area and support sustainable communities” and provides examples of community sites and buildings which “include amenity open space, children's play areas, sports fields, village halls, local shops, leisure and cultural centres, public houses, community centres, churches, allotments, post offices, petrol stations, *doctor's surgeries*, libraries and schools, etc.”

- 15.4 Whilst the Langenhoe Lion Public House has been closed since 2011, Policy DP4 and its associated criteria are still considered to remain applicable. Hence, on the previously approved applications, the aim was to secure some form of replacement community facility which would have been in the form of a health or retail use.
- 15.5 The planning history of the site is outlined in detail in sections 4.0 and 6.0 of this report. To briefly summarise, under the latest approval 160149, a Budgens was to be located on the site but this fell through at a late stage when Bookers took over Budgens. Since then, in accordance with the provisions of Policy DP4, the site has been marketed to let either for a new convenience store or new health centre. The precise marketing details are outlined in the description of the proposal section of this report.
- 15.6 The loss of the Public House was previously accepted under approved application 136179, with the officer delegated report concluding:
- “Public House has been closed for two years and the redundant community facility is therefore not considered to be viable, nor does a redundant pub have a positive contribution to the quality of local community life. The Design and Access Statement (DAS) that has been submitted together with this application sets out that ‘The Langenhoe Lion closed in December 2011, following a series of landlords appointed over the last ten years, who made various attempts to make the pub viable commercial business’. The pub was subsequently placed on the market for sale in July 2012. The application has been supported by evidence that the pub has been marketed for a reasonable amount of time (11 months) and at a reasonable price, which, despite significant interest has not resulted in any purchase of the site with the view to running it as a pub.”
- 15.7 Accordingly, as before, it is not considered that the loss of the Public House can be objected to under the provisions of Policy DP4. The marketing exercise for an alternative community facility, in accordance with point (i) of Policy DP4 therefore needs to be assessed. Having regard to the latest marketing details submitted, it is considered that an appropriate level of marketing has been undertaken in an effort to secure an alternative community use on the site.
- 15.8 The marketing strategy was agreed with Colchester Borough Council, namely to advertise the property with the benefit of both retail consent and health centre consent. As outlined in detail above, the property was advertised for 10 months on a property website in 2017 and a V board was placed on site but the general enquiries that this generated did not progress further. The agent states that marketing will continue during the processing of the application. Members of the Association of Convenience stores and the North East Essex Clinical Commissioning Group were approached. The convenience store responses were that surrounding housing numbers were not sufficient to justify the provision of a store in this location (response letters attached in Appendix 1 of the submitted Planning Statement). In terms of healthcare, North East Essex CCH replied that “This is not a proposal we

wish to explore further as it does not fit within our Primary Care or Estates Strategy for providing transformational primary care services for the future.”

- 15.9 The rent levels of £40,000 a year for the Health Centre and £54,000 a year for the retail store were previously presented to and agreed by the Council at the beginning of the marketing campaign. The Chartered Surveyors state that it is considered that the asking rents of £13.38 per sq ft for the retail unit and £15.64 per sq ft for the pharmacy shop are in line with market levels. The retail rent is only slightly lower than that previously agreed with Budgens. The Planning Authority considers that these rent levels advertised are appropriate and realistic. The Chartered Surveyor has compared rent levels at other sites and the conclusions reached, including the fact that the other sites are not new buildings, are considered reasonable by the Planning Authority. Accordingly it is considered that, overall an appropriate marketing strategy has been implemented and that it accords with the provisions and expectations of Policy DP4. It is considered that there has been ample opportunity for an alternative community facility use on the site, including when regard is had to original marketing in 2012.
- 15.10 With regard to part (iv) of Policy DP4 (assessment of community provision), Para 3.14 of the Policy supporting statement states: “Support will be given to the provision of additional facilities where this will enhance the sustainability of community life and will meet the anticipated needs of a growing and changing population. The use of developer contributions and or Community Infrastructure Levy may well be appropriate in this respect.”
- 15.11 Having regard to point (iv), the agent has submitted details of what he considers to be existing community facilities in the vicinity. Council Policy officers have advised that in the event the applicant’s assessment showing that there is a deficit of community facilities in Abberton and Langenhoe, then a financial contribution of £11,435.64 would be required in lieu of on-site provision. The contribution could potentially go towards a community use as part of the proposed site in Peldon Road, which is allocated for residential development in the emerging Local Plan.
- 15.12 The agent’s submitted details of community facilities have identified the following facilities:
- Abberton & Langenhoe Village Hall
 - Langenhoe Community Primary School
 - Abberton Cricket Club
 - Public Open Space at the Village Hall, sports grounds at the Cricket Club and Allotments adjacent to the village hall.

- 15.13 Given these facilities, the agent states that “The applicant can demonstrate from the findings of this report that without taking account of all facilities, the village hall, school, cricket clubhouse and allotments amount to ten times the required floorspace of 620 sqm.” The counter argument has been put forward by the community that a number of these listed facilities are private clubs and should not be counted as part of existing community facilities. It should be noted that the NPPF refers to community facilities as being ‘local shops, meeting places, sports venues, open space, cultural buildings, public houses, and places of worship’; there is no mention of whether said facilities are private or public clubs.
- 15.14 The agent’s view is that “Whilst the application proposals have been found to be fully policy compliant, the applicant would be willing to make the financial contribution of £11,435.64 to be spent on community facilities in Abberton and Langenhoe.” Given that a number of the community facilities put forward are private it is considered reasonable to request that this payment be made and this can be secured by way of a Unilateral Undertaking.
- 15.15 Overall in terms of the principle of the development it is considered that an appropriate marketing strategy has been followed in an attempt to secure an alternative community use but this has not led to any viable potential uses coming forward. The agent has agreed to make a financial contribution towards alternative community uses. It is therefore concluded that the criteria outlined in the key policy DP4 have met satisfactorily addressed and that the proposal to replace the redundant public house with four dwellings can be supported in principle.
- 15.16 Paragraphs 83 and 84 of the NPPF aim to support a prosperous rural economy. As every effort has been made to find viable alternative economic uses, it is not considered that the proposal can be objected to having regard to the provisions of the NPPF. Overall, the proposal should therefore be judged on its planning merits, having regard to the issues outlined below.

Loss of the building

- 15.17 The demolition of the Public House building has previously been agreed under the approvals 136179 and 160149. The conclusion remains that the building does not have sufficient historic merit to warrant an insistence that it be retained. It is not a Listed Building and is not locally listed. The comments raised by the community in this respect have been considered, including the reference put forward that the building dates from the early 19th century and was originally built as a Tram/Rail service building.
- 15.18 Accordingly, as per the Council Archaeological Adviser’s recommendation, a condition will be applied to secure a programme of building recording which will secure provision for recording and analysis of matters of historical importance associated with the site, which may be lost in the course of works. Subject to compliance with this condition it is not considered that the loss of the former Public House building can be resisted.

15.19 With this condition the proposal would not contravene the provisions of Policy DP14 of the Local Plan which aims to ensure that the historic environment is not undermined. The proposal would also not undermine the aims of the NPPF Section 16 which aim to conserve and enhance the historic environment.

Layout, Design, Scale and Form

15.20 It is considered that the site can satisfactorily accommodate the replacement building without it appearing cramped or overdeveloped. Overall the footprint of the new building is similar to that of the original Langenhoe Lion on the site. The building is on a similar building line to the existing building and is of traditional design, scale and form, being just over 7 metres in height and having visually appropriate hipped gables. The design detailing also relates well to the character and form of the dwelling and precise details can be conditioned. The building would therefore respect the character of the street scene and its surroundings.

15.21 It is considered that the bin store is of an appropriate design, scale and form. Its positioning quite well forward on the site has the advantages of screening some of the car parking, being readily accessible and away from rear private amenity areas. The suggestions made by a neighbour to reposition it have been considered but it is considered that this is an acceptable position for it for the above reasons.

15.22 Overall the proposal would therefore accord with Policy DP1 of the Local Plan which provides that all development must be designed to a high standard and respect and enhance the character of the site, its context and surroundings in terms of architectural approach, height, size, scale and form. It would also comply with Policy UR2 which promotes high quality and inclusive design in all developments.

Highways Issues

15.23 There was initially an objection from the Highway Authority which had concern that part of the red line site boundary enclosed highway land and that there would be some impingement on highway. However, following a reassessment of the highway map and a change to the red line site plan, there are no longer Highway Authority objections in this respect.

15.24 It is considered that there are no highway dangers arising from the development subject to conditions suggested by the Highway Authority. These include conditions relating to visibility splays, car parking provision and a Construction Management Plan. The concerns raised but objectors in this respect are noted but these conditions can ensure appropriate visibility splays are achieved close to this crossroads.

15.25 Eight car parking spaces with manoeuvring space will be provided on site, as well as an additional car parking space accessed from Fingringhoe Road. The car parking provision is adequate to provide for 4 dwellings. Policy DP19 refers to the adopted County Council car parking standards which provide that 2 car parking spaces for each two bedroom dwelling should be provided along with 0.25 visitor space. Cycle parking can be provided on site as there is sufficient private amenity space; a condition is recommended to secure details of cycle parking. The scheme complies with this and the provisions of Policy DP19 are thus met. Policy DP1 is also complied with as the proposal creates a safe environment in this respect.

Impact on neighbouring residential amenity

- 15.26 Owing to the scale of the building and its distance from neighbouring property, the proposed development would not appear overbearing on the outlook of neighbours. The Council policy sets out that a 45 degree angle of outlook from the mid-point of the nearest neighbouring windows should be preserved and it is considered that this proposal satisfies this requirement.
- 15.27 Similarly, there are no concerns regarding loss of light. The combined plan and elevation tests are not breached and the proposal therefore satisfies the Council's standards for assessing this issue as set out in the Essex Design Guide.
- 15.28 Additionally, the proposal does not include any new windows at first floor level that would offer an unsatisfactory angle of overlooking that harmed the privacy of the neighbouring properties, including their protected sitting out areas as identified in the above SPD.
- 15.29 It is not considered that moving the car parking serving the new dwellings away from the neighbouring boundary can be justified. This was previously where the parking would have been for the Public House and it is not an unreasonable volume of cars. There is a boundary fence dividing the sites and the dwelling is also a little off the boundary. Accordingly it is not considered that there would be a significant impact upon neighbouring residential amenity from noise and disturbance.
- 15.30 Accordingly the proposal is considered to comply with Policy DP1 which provides that all development must be designed to avoid unacceptable impacts upon amenity, including in respect of privacy, noise and disturbance, daylight and sunlight.

Amenity Space Provision

- 15.31 It is considered that adequate private amenity space would be provided for each dwelling. Policy DP16 provides that a minimum of 50 m² of private amenity space should be provided for a dwelling with two bedrooms. In this case between 60 m² to 71 m² has been provided for each dwelling and this complies with the provisions of Policy DP16. This layout is also in keeping with the character of the area.

Wildlife

- 15.32 A bat survey has been undertaken and no evidence of bats at the site was found. A European Protected Species licence will therefore not be required. The proposal would therefore comply with Policy DP21 in this respect which aims to conserve or enhance biodiversity.
- 15.33 Under the Conservation of Habitats and Species Regulations 2017 (commonly referred to as the Habitat Regulations) a Habitat Regulations Assessment (HRA) is required for land use plans and for planning applications, which are likely to have significant effects on a Habitat Site. Having regard to latest comments received from Natural England in accordance with emerging Essex Coast RAMS requirements, a proportionate financial contribution is considered to be required to mitigate the impact from recreational disturbance on protected sites on the Essex Coast (i.e potentially caused by people occupying new residential units).
- 15.34 The Draft RAMS identifies necessary measures to avoid and mitigate likely significant effects from recreational disturbance in-combination with other plans and projects. The Draft RAMS sets out a tariff of £120.30 per dwelling, which applies to all residential development within the Zone of Influence (Zol) of protected sites. The whole of Colchester Borough is within the Zol. All residential proposals within the borough should therefore make a contribution towards the measures in the RAMS to avoid and mitigate adverse effects from increased recreational disturbance to ensure that Habitat Sites are not adversely affected and the proposal complies with the Habitat Regulations. The appropriate payment will therefore need to be made prior to occupation of the development.

Other Matters

- 15.35 No trees or vegetation of significance would be affected.
- 15.36 The application site is located within the Coast Protection Belt as identified in the Local Plan. Development Policy DP23 states that within the Coastal Protection Belt and along the undeveloped coast an integrated approach to coastal management will be promoted and, development will only be supported where it can be demonstrated that it:
- (i) Requires a coastal location and is located within the developed area of the coast;
 - (ii) Will not be significantly detrimental to conserving important nature conservation, historic environment assets, maritime uses and the landscape character of the coast;
 - (iii) Will deliver or sustain social and economic benefits considered important to the well being of the coastal communities; and
 - (iv) Provides opportunities and scope for adaptation to climate change.

15.37 In response to the requirements of DP23, the proposal is located within the developed area of the coast and the proposal would not be detrimental to nature conservation, the historic environment, maritime uses, or landscape character of the coast (subject to conditions as assessed in the main body of this report). Opportunities and scope for adaptation to climate change can be accommodated in the same way as they would be for existing surrounding development. Point (iii) of the policy is addressed in paragraphs 15.2- 15.16 of this report. In conclusion, the proposal is considered to address the requirements of policy DP23 in terms of coastal protection.

16.0 Conclusion

16.1 To summarise, in terms of the principle of the development it is considered that an appropriate marketing strategy has been followed in an attempt to secure an alternative community use but this has not led to any viable potential uses coming forward. The agent has agreed to make a financial contribution towards alternative community uses. It is therefore concluded that the criteria outlined in the key policy DP4 have met satisfactorily addressed and that the proposal to replace the redundant public house with four dwellings can be supported in principle.

16.2 In terms of the detailed planning merits of the case, there are not objections to the loss of the building (which has previously been agreed) subject to the recording of the building. The layout, design, scale and form of the development is considered acceptable and there are no highway objections. There would be no significant impact upon neighbouring residential amenity and adequate amenity space would be provided. A payment will be required in respect of wildlife mitigation.

17.0 Recommendation to the Committee

17.1 The Officer recommendation to the Committee is for:

17.2 APPROVAL of planning permission subject to:

- Agreement with the Agent/Applicant to the pre-commencement conditions under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 and delegated authority to make changes to the wording of these conditions as necessary;
- the signing of a legal agreement (Unilateral Undertaking or Section 106) to secure the payment that will go towards an alternative community use and the receipt of a payment in relation to Wildlife Mitigation under the Habitat Regulations. In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement.
- The Permission will also be subject to the following conditions:

17.3 APPROVAL of planning permission subject to the following conditions:

1. ZAA – Time Limit for Full Permissions

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. ZAM - Development To Accord With Approved Plans

The development hereby permitted shall be carried out in accordance, with the details shown on the submitted Drawing Numbers: 948-305 A received 19/7/18, 948/301, 948/302, 948/303, 948/304, 948/306 received 17/4/18.

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

3. ZBB - Materials To Be Agreed

No external facing or roofing materials shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and colours of these 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.

4. Non Standard Condition - Contract Prior to Demolition

The building and its extensions, which comprise the former Langenhoe Lion Public House shall not be wholly or partly demolished, until such time as the Council is provided with and has approved the terms of a completed legally binding contract, which specifically relates to the construction and operation in perpetuity of a convenience store on the application site, as identified on drawing number 948/LOC hereby approved.

Reason: To ensure that the existing public house building on the site is retained until the approved use as convenience store is contractually in place and is to be delivered on the site.

5. Non Standard Condition - Vehicular Access

Prior to the first occupation of the proposed dwelling, the proposed vehicular access shall be constructed to a width of 6.0m 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.

6. Non Standard Condition - No unbound Materials

No unbound materials shall be used in the surface treatment of the proposed vehicular access within 6m of the highway boundary.

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

7. Non Standard Condition - Access Pedestrian Visibility Splay

Prior to the proposed access on the proposed development being brought into use, a 1.5m. x 1.5m. pedestrian visibility splay, relative to the highway boundary, shall be provided on both sides of that access and shall be retained and maintained free from obstruction clear to ground thereafter. These splays must not form part of the vehicular surface of the access.

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

8. Non Standard Condition - Parking Laid Out Prior to Occupation

The development shall not be occupied until such time as the car parking area, indicated on the approved plans has been hard surfaced, sealed and marked out in parking bays. 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.

9. Non Standard Condition - Cycle 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.

10. Non Standard Condition - 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:

- 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.

11. Non Standard Condition - Visibility Splays

Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

Reason: To ensure that the future outward growth of the hedge does not encroach upon the highway or interfere with the passage of users of the highway and to preserve the integrity of the highway, in the interests of highway safety.

12 – Non Standard Condition - Refuse/Recycling

Prior to first occupation of the proposed development, a communal recycling/bin/refuse collection point shall be provided within 15m of the highway boundary or adjacent to the highway boundary and additionally clear of all visibility splays at accesses and retained thereafter.

Reason: To minimise the length of time a refuse vehicle is required to wait within and cause obstruction of the highway, in the interests of highway safety.

13 – Non Standard Condition - Building Recording

Prior to the commencement of any works, a programme of building recording and analysis shall have been undertaken and a detailed record of the building shall have been made by a person or body approved by the Local Planning Authority and in accordance with a written scheme which first shall have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: To secure provision for recording and analysis of matters of historical importance associated with the site, which may be lost in the course of works.

14 – Non Standard Condition - Tree or Shrub Planting

The development hereby permitted shall not be occupied until details of tree and/or shrub planting and an implementation timetable have been submitted to and approved, in writing, by the Local Planning Authority. This planting shall be maintained for at least five years following contractual practical completion of the approved development. In the event that trees and/or plants die, are removed, destroyed, or in the opinion of the Local Planning Authority fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed in writing with the Local Planning Authority.

Reason: To ensure an appropriate visual amenity in the local area.

15 – Non Standard Condition - Removal of PD- Extensions and Outbuildings

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to ensure the development avoids an overdeveloped or cluttered appearance.

16 – Non Standard Condition - Surfacing Materials

Prior to the laying down of any surface materials for private, non-adoptable accessways, driveways, footpaths, courtyards, parking areas and forecourts, full details of these materials shall be submitted to and agreed, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: There is insufficient information within the submitted application to ensure that these details are satisfactory in relation to their context and such details are considered important to the character of the area.

17 – Non Standard Condition - Boundary Details

The dwelling(s) hereby approved shall not be occupied until details of the provision, siting, design and materials of screen walls and fences have been submitted to and agreed, in writing, by the Local Planning Authority. The approved screen walls and fences shall then be erected prior to the first occupation of the dwelling to which they relate and shall thereafter be retained in the approved form.

Reason: There are insufficient details within the submitted application to ensure that the boundary treatments are satisfactory in relation to amenities and the surrounding context.

18 – Non Standard Condition - Fenestration Details

Prior to their implementation, precise details, of the following shall be submitted to and agreed in writing by the Local Planning Authority:

- (i) Windows, doors and door surrounds (Scale 1:20) including glazing bar details and materials.
- (ii) Chimneys
- (iii) Eaves, verges and bargeboards

Only the approved details shall then be implemented.

Reason: To ensure the satisfactory appearance of the development.

19. 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.

18.0 Informatives

18.1 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.

Informative 3: 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 email at development.management@essexhighways.org or by post to:

SMO1 – Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester
CO4 9YQ



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Item No: 7.2

Application: 182568

Applicant: Mr Gordon Taylor & Mrs Angela Cole

Agent: Mrs Urjana Shrestha, The Building Plans Shop

Proposal: Erection of single storey side & rear extension.

Location: 182 Old Heath Road, Colchester, CO2 8AQ

Ward: Old Heath & The Hythe

Officer: Eleanor Moss

Recommendation: Approval subject to conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because Cllr Lilley called it in for the following reasons:

I believe that the proposed extension will affect the next doors light quality and quality of life. It is too high and will be of an imposing nature on the family. If the extension was to match the height of the neighbours existing one then that I believe would be acceptable. To build directly up to the fence also is overbearing and should be at least a metre away. I cannot see why the upstairs window should be made bigger as that should remain the same. When the owner states that she wants to turn it into a multi person rental home that becomes a worry as then it would be classed as a HMO. Could I request a planning visit to the site please if its recommended for approval. All 3 Ward Councillors are against this on the grounds of safety concerning the foundations considering the problem that occurred in the past and we have concerns also after hearing of the medical condition of the children.

2.0 Synopsis

- 2.1 The key issues for consideration are the impact upon character and appearance of the area and impact upon neighbouring amenity. It is considered the proposal does not create a harmful impact upon the character of the area nor does it breach the loss of light tests within the Essex Design Guide.
- 2.2 The proposal also benefits from a realistic 'fallback position' under Permitted Development. The proposal is considered to be acceptable and therefore your Officer recommends approval.

3.0 Site Description and Context

- 3.1 The application site relates to a semi-detached two-storey dwelling on the eastern side of Old Heath Road. The properties along this side of the road have north-easterly facing gardens. A number of properties within the area have extended within the rear gardens. To the south-east of the site are a group of Protected Trees (02/05).

4.0 Description of the Proposal

- 4.1 This application seeks planning permission for a single storey rear extension and a single storey side extension.

5.0 Land Use Allocation

- 5.1 Residential

6.0 Relevant Planning History

6.1 Residential

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
UR2 - Built Design and Character

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
DP13 Dwelling Alterations, Extensions and Replacement Dwellings

7.4 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
Sustainable Construction
Shopfront Design Guide

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.

Arboricultural Officer – no objections
Tree Officer – no objections

9.0 Parish Council Response

9.1 Non-Parished

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:

- Loss of light
- Loss of access
- Damage to property
- Damp
- Impact upon foundations
- Privacy
- Health and safety impact
- Party wall concerns

Officer response: The concerns from the neighbours are acknowledged however a number of concerns raised are not considered to be material planning considerations and thus will not be discussed within the below report. Included below are non-material planning considerations which were raised in the responses:

- Problems arising from the construction period of any works, e.g. noise, dust, construction vehicles, hours of working – These are covered a number of Acts including Environmental Protection Act 1990 and Control of Pollution Act 1974.
- Matters controlled under building regulations or other non-planning legislation e.g. structural stability, drainage details, fire precautions, matters covered by licences etc.
- The Party Wall etc Act 1996 provides a framework for preventing and resolving disputes in relation to party walls, boundary walls and excavations near neighbouring buildings. A building owner proposing to start work covered by the Act must give adjoining owners notice of their intentions in the way set down in the Act. Adjoining owners can agree or disagree with what is proposed. Where they disagree, the Act provides a mechanism for resolving disputes. The Act is separate from obtaining planning permission or building regulations approval and is not a material planning consideration as it is an entirely civil matter. It is therefore advised that the neighbouring property seeks independent legal advice on this matter.

11.0 Parking Provision

11.1 No loss of car parking.

12.0 Open Space Provisions

12.1 N/A.

13.0 Air Quality

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

14.0 Planning Obligations

14.1 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.

15.0 Report

Design:

15.1 In this instance, the proposed extension will be lean-to roof in design and covering the rear garden area and side of the dwelling. The floor area covered by the proposed new extension is very minor and the design and proposed materials are in keeping with the age and character of the property.

Impact upon Surrounding Area:

15.2 The application site itself is large enough to accommodate the proposed development. Although the side extension is prominent within the public realm, it is considered that the proposal would have a marginal impact overall. The proposed single storey rear extension is to be located at the rear of the dwelling and therefore there are limited views from the public realm. The proposal is to be constructed upon existing hardstanding and therefore no green amenity space to be lost. The development is therefore visually acceptable and would not detract from the appearance of the original building. Consequently the design and layout do not harm the surrounding area either.

Impact upon Residential Amenity:

15.3 The proposed extension would be positioned directly to the north of No. 182a Old Heath Road. Given this, it is not considered the single storey proposal would result in any materially harmful loss of light or overlooking to No. 182a Old Heath Road. In terms of impact to No. 180a Old Heath Road, the proposal seeks to construct the single storey extension up to the common boundary. Due to the orientation of the property’s rear gardens any potential impact on the occupiers of No. 180a Old Heath Road would be felt in the afternoons/evenings. Guidance in the Supplementary Planning document ‘The Essex Design Guide’ is that a 45-degree angle from the mid-point of windows is required in order to preserve outlook. This proposal complies with this test.

15.4 On balance, it is considered that any loss of light impact to the occupiers would be negligible and does not breach the adopted SPD guidance. The proposed roof form is considered to be shallow which will help mitigate against loss of light. Furthermore, an approximately 1.8 metre high fence exists along the shared boundary between the application property and No.180a Old Heath Road (to the side of where the extension is proposed). It is considered that the fence would further preclude any impact upon the occupiers of No.180a Old Heath Road. The proposal is not considered to create undue overlooking due to the fact the proposal is single storey in nature. In summary, it is not considered that there would be any loss of light to or harm to the outlook from neighbouring properties and any impact on residential amenity would be negligible.

15.5 An objection has been made to the height of the extension. The proposal is not considered to be excessively high at approximately 3.6 metres (maximum height) and, as such, is considered to be acceptable.

Permitted development 'fall-back'

15.6 Legislation allowing larger single-storey rear extensions to be built under permitted development rules came in to force on 30 May 2013, and was subsequently updated by new legislation which came into effect on 6 April 2016. Until 30 May 2019 a single storey extension can be larger than previously allowed under permitted development rights. In order to benefit from these larger permitted development rights, the proposal must not extend beyond the rear of the original house by more than 8 metres if a detached house, or by more than 6 metres in any other case. These larger extensions are not allowed for houses on article 2(3) land (a conservation area, AONB, Broads, National Park or World Heritage Site) or on a site of special scientific interest (SSSI). The height of the extension must not be more than 4 metres. In this instance, the rear element of the proposal complies with the permitted development fallback position as it complies with the size and height requirements and does not fall within 2(3) land or in a SSSI.

15.7 That said, the applicant would still need to apply (free of charge) under the "larger homes" procedure, with neighbours being consulted and any objection based on amenity would need to be considered by the Local Planning Authority. Issues of design, however, would not be considered.

Parking and Highway Safety

15.8 The proposal does not result in the loss of parking and therefore no concerns are raised in this regard.

Trees

15.9 There is a group of protected trees within the neighbouring garden of No. 182a Old Heath Road. Given the distance, the Tree Officer has not raised a concern with the proposal. The proposal is therefore considered to be acceptable in this regard.

16.0 Conclusion

16.1 To summarise, the design of the proposed extension is appropriate and minimises its impacts upon the neighbouring properties. No test for overbearing, overshadowing or overlooking as laid out within the “Essex Design Guide” guidance document has been infringed and no unacceptable impacts have been identified. The proposed single storey rear extension would not appear out of character in the street-scene or as an overly-prominent addition. Your Officer therefore recommends approval.

17.0 Recommendation to the Committee

17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. ZAA - Time Limit for Full Permissions

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. ZAM - *Development to Accord With Approved Plans*

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 36/PL04 Revision A and 36/PL05 Revision C.

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

3. ZBB - Materials As Stated in Application

The external facing and roofing materials to be used shall be those specified on the submitted application form and drawings, unless otherwise agreed, in writing, by the Local Planning Authority.

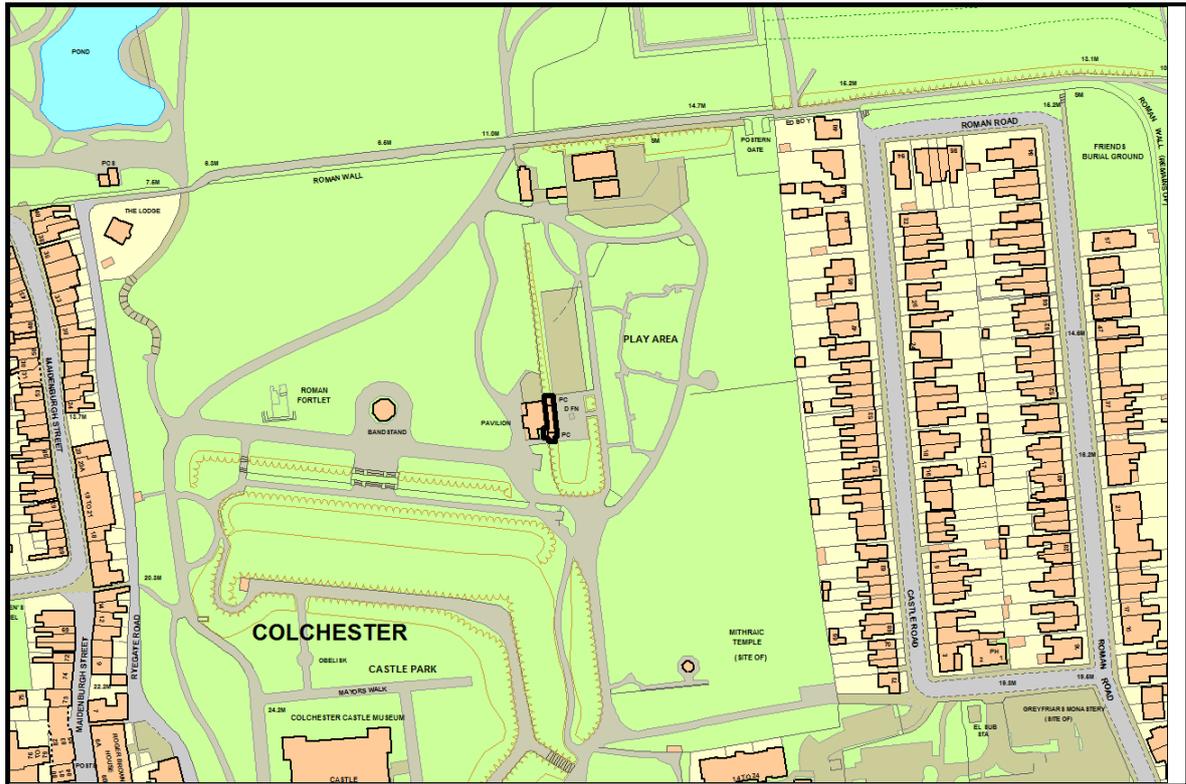
Reason: To ensure that materials are of an acceptable quality appropriate to the area

18.0 Informatives

18.1 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.



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Item No: 7.3

Application: 182939

Applicant: Colchester Borough Council

Agent: Colchester Borough Homes Ltd

Proposal: Extension to existing externally accessed public toilets located within cafe building.

Location: Cafe in the Park, Castle Park, High Street, Colchester, CO1 1TS

Ward: Castle

Officer: Alistair Day

Recommendation: Approval subject to conditions

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because the applicant is Colchester Borough Homes.

2.0 Synopsis

2.1 The key issues for consideration are the impact that the proposed development would have on the identified heritage assets and the character and appearance of the area.

2.2 The application is subsequently recommended for conditional approval.

3.0 Site Description and Context

3.1 The application relates to the alteration and extension of the café pavilion in Castle Park. The café is positioned fairly centrally within Upper Castle Park at the eastern end of an avenue of trees that includes the grade II listed band stand. To the south of the avenue are formal planting beds; to the north the ground falls away and contains an open grassed area, flanked by groups of mature trees. To the east of the café there is a children's play area.

3.2 The application site is situated in Colchester Castle Park, a Grade II Registered Park. It is also located within the boundary of the Scheduled Monument "Colchester Castle and the Temple of Claudius", as well as a close to number of listed structures within Castle Park. The site is also within Colchester Conservation Area No. 1.

4.0 Description of the Proposal

4.1 It is proposed to alter and extend the café pavilion in Castle Park to provide additional public toilets and changing facilities.

5.0 Land Use Allocation

5.1 Open Space

6.0 Relevant Planning History

6.1 None directly relating to this 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
 - SD3 - Community Facilities
 - UR2 - Built Design and Character
 - PR1 - Open Space
 - 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
 - DP14 Historic Environment Assets
- 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:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. 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 examination, it is not considered to outweigh the material considerations assessed above in accordance with up-to-date planning policies and the NPPF.

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 Environmental Protection

No comment

8.3 Historic Buildings Officer

The planning application seeks permission for the construction of an extension to the café building in Castle Park. The size of the addition should not raise particular issues and the expected public benefits outweigh any harm caused.

Gardens Trust

8.4 We have considered the information provided in support of the application and on the basis of this confirm we do not wish to comment on the proposals at this stage. We would however emphasise that this does not in any way signify either our approval or disapproval of the proposals.

9.0 Parish Council Response

9.1 Not Parished

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. One letter of representation has been received. This states:

This is an excellent proposal and well thought out. I am pleased with the design and how much it will help the residents of Colchester who have assisted and complex sanitary needs. The dignity it will bring to residents with disabilities can never be overstated. Well done Colchester Borough Council.

11.0 Parking Provision

11.1 N/a

12.0 Open Space Provisions

12.1 N/a

13.0 Air Quality

13.1 The proposal will not generate significant impacts upon the zones.

14.0 Planning Obligations

14.1 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.

15.0 Report

Principle

15.1 The application site occupies a broadly central position in Upper Castle Park; the Castle Park is located immediately to the east of the heart of the town centre.

15.2 The proposed alteration and extension of the toilet facilities at the café are considered to accord with CS Policy SD1 and the Framework which promote development in sustainable locations. The Castle Park is identified in the Site Allocations Plan as ‘Open Space’ and the current application is not considered to conflict with or undermine this land use designation.

Design and Heritage Consideration

15.3 S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving listed buildings or their setting. S72 of the same Act requires special regard to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. CS Policy ENV 1 and DPD Policy DP 14 seek to protect the historic environment. With regard to design, CS Policy UR2 and DPD DP1 seek to promote and secure high quality design.

15.4 Paragraph 194 of the NPPF (2018) states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraph 195 and 196 deal with substantial harm and less than substantial harm respectively. Where less than substantial harm is caused to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

- 15.5 The café is a relatively modern building and is a split level structure which takes advantage of the change in ground levels. The west part of the building (the public café) is single storey; the eastern part of the building is two storey (kitchen and storage on the upper level with storage at the lower level). It is proposed to add a small extension on south elevation by building over the existing store and the internal remodeling of the existing toilets to create a changing facility and a wheel chair accessible toilet (the latter will serve the café). The extension is modest in scale and its general design is intended to reflect the character of the host building. The existing store is also to be remodeled internally to create new male and female toilets and a wheelchair accessible and baby changing facility. Minor alterations are proposed to east elevation which involve the insertion of high level windows.
- 15.6 The main heritage consideration generated by this application is the impact that the development would have on the character and appearance of the Conservation Area, the setting of the Registered Park and Garden and that of nearby listed buildings, notably the bandstand. The proposed extension, by virtue of its size, scale and general design is not considered to have an adverse impact on the identified heritage. Any harm that may be caused, is outweighed by the public benefits of provided improved public toilet and changing facilities. The proposed alteration and extension of the pavilion will not have a direct impact on existing trees.
- 15.7 Members may wish to note that the proposed works will involve some ground disturbance works (drainage runs and access ramp) and that Scheduled Ancient Monument Consent has been granted for these works.
- 15.8 For the reasons given above, the current planning application is considered to accord with the aforementioned local plan, national guidance and statutory provisions that require development schemes to protect heritage assets.

Residential Amenity

- 15.9 Development plan policy DP1 states that all development must be designed to a high standard and avoid unacceptable impacts on amenity. Part III of this policy seeks to protect existing public and residential amenity.
- 15.10 The proposal represents the upgrading and extension of existing toilet facilities in Castle Park. The building occupies a central position within the park and is located well away from neighbouring residential properties.
- 15.11 It is possible that construction works could cause some disturbance to local residents; however it is considered that this can be adequately controlled by a condition (hour of construction work).

15.12 Given the above, it is not considered that the proposed development would have a significant adverse effect on the living conditions of the nearby residential properties and will not therefore conflict DPD Policy DP1.

Highway Considerations

15.13 CS Policy TA1 seeks to improve accessibility and change travel behaviour as part of a comprehensive transport strategy. Policy TA2 promotes walking and cycling as an integral part of sustainable means of transport. Policy TA4 seeks to manage the demand for car travel and make the best use of the existing network.

15.14 The proposed development constitutes an improvement of an existing facility within Castle Park and, as such, it is not considered to generate any significant highway issues. Moreover, Castle Park's position in the heart of the town centre means that that it is highly accessible by a various sustainable modes of transport. Visitors to the park will continue to use the existing town centre car parks, if coming by car, or travel by public transport, by foot or cycle.

15.15 Given the scale of the proposed development, construction traffic will be limited. Construction vehicles will access the park via the Castle Road entrance (as per existing maintenance traffic) and works will take place during the existing opening times of the park. The movement of construction vehicles associated with this development will not have a significant impact on the highway network.

15.16 For the reasons given above, it is considered that the proposed development would accord with relevant development plan policies and national planning policy guidance set out in the Framework.

16.0 Conclusion

16.1 To summarise, the proposed alteration and extension of the Café pavilion is considered to accord with local and national planning policies and with appropriate conditions it is considered that any potential harm caused by this proposal can be suitably mitigated. The application is therefore recommended for a conditional approval.

17.0 Recommendation to the Committee

17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following condition:

1. ZAA - Time Limit for Full Permissions

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. ZAM - Development to Accord With Approved Plans*

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

- Block Plan COR 351258 011
- Elevations Proposed – COR 351258 108
- Lower Level Proposed COR 351258 105
- Upper Level Proposed COR 351258 106
- Upper Level Proposed COR 351258 109

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

3. ZBB - Matching Materials

The external facing, roofing materials and rainwater goods to be used shall match in colour, texture and form those used on the existing building.

Reason: This is a publicly visible building where matching materials are a visually essential requirement.

4. Non Standard Condition - Details of Windows and Doors

Notwithstanding the details submitted, additional drawings that show details of new windows and doors) by section and elevation, at scales between 1:50 and 1:1, as appropriate shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: Insufficient detail has been submitted to ensure the architectural detailing is of a high quality and where such details are considered important to the character of the building in this historically sensitive site.

5. Non Standard Condition - Hours of Construction

No construction works or construction deliveries shall take place outside the standard hours of opening of Castle Park.

Reason: To safeguard the amenities of nearby residential properties.

6. Non Standard Condition - Tree and Hedgerow Protection: General

All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

18.0 Informatives

18.1 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.

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 withhold 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.

