

Planning Committee Meeting

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

Thursday, 20 October 2022 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.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published.

Dates of the meetings are available here:

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

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

Have Your Say!

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

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

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Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to the Library and Community Hub, Colchester Central Library, using the contact details below and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are on each floor of the Town Hall. A water dispenser is available on the first floor.

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www.colchester.gov.uk

COLCHESTER BOROUGH COUNCIL
Planning Committee
Thursday, 20 October 2022 at 18:00

The Planning Committee Members are:

Cllr Lilley
Cllr Barton
Cllr Chapman
Cllr Chuah
Cllr Mannion
Cllr MacLean
Cllr McCarthy
Cllr Nissen
Cllr Tate
Cllr Warnes

Chair
Deputy Chair

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:

Tracy Arnold	Molly Bloomfield	Michelle Burrows	Roger Buston	Mark Cory
Pam Cox	Adam Fox	Mark Goacher	Jeremy Hagon	Dave Harris
Mike Hogg	Richard Kirkby-Taylor	Sue Lissimore	Andrea Luxford Vaughan	Patricia Moore
Sam McLean	Beverly Oxford	Gerard Oxford	Chris Pearson	Kayleigh Rippingale
Lesley Scott-Boutell Tim Young	Paul Smith	Dennis Willetts	Barbara Wood	Julie 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 2 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.

Live Broadcast

This meeting will be audio streamed via the committee webpage:
[· Colchester Borough Council \(cmis.uk.com\)](http://cmis.uk.com)

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 Substitutions

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

3 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.

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 Have Your Say!

At meetings of the Planning Committee, members of the public may make representations to the Committee members. These must be made either in person at the meeting. These Have Your Say! arrangements will allow for one person to make representations in opposition and one person to make representations in support of each planning application. Each representation may be no longer than three minutes (500 words). Members of the public wishing to

address the Committee need to register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk by 12.00 noon on the working day before the meeting date.

These speaking arrangements do not apply to councillors who are not members of the Committee who may make representations of no longer than five minutes each

6 Minutes of Previous Meeting

The Councillors will be invited to confirm that the minutes of the meeting held on 9 September 2022 are a correct record.

2022-09-08 CBC Planning Committee Minutes

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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 213315 West Mersea Floating Pontoon, Coast Road, West Mersea, Colchester

9 - 18

West Mersea floating pontoon erosion control works.

7.2 220739 24 Ken Cooke Court, East Stockwell Street, Colchester, Essex, CO1 1FF

19 - 32

Erection of a 1.37m fence and pedestrian gate to enclose a garden area for the exclusive use of the tenant of the ground floor flat at 24 Ken Cooke Court.

7.3 221639 Century House, North Station Road, Colchester, CO1 1RE

33 - 46

4 x corten steel planters containing trees to be located on the footway/ walkway outside Century House, North Station Road.

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).

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

PLANNING COMMITTEE

8 September 2022

<i>Present:-</i>	Councillors Lilley (Chair), Barton, Chapman, Chuah, Davidson, Hogg, MacLean, Pearson, Tate, and Warnes
<i>Substitute Member:-</i>	Cllr Davidson Substituted for Cllr Mannion Cllr Hogg Substituted for Cllr McCarthy
<i>Also in Attendance:-</i>	Cllr Jowers

940. Minutes

The Minutes of the meeting held on the 28 July 2022 were confirmed as a true record.

941. 213530 & 213531 Land west of Peldon Road & Land adj, Borleys, Peldon Road, Abberton, CO5 7PB

Councillor Warnes (as a resident of the village) declared a non-pecuniary interest in the following item pursuant to the provision of Meetings General Procedure Rule 7(5).

The Committee considered an outline planning application for: up to 50 dwellings; a new vehicle drop-off/pick up point; and access from Peldon Road All Matters reserved, except access & outline application for the erection of five dwellings. The applications were referred to the Planning Committee as they represented a departure from the adopted Development Plan and in the case of the larger application the signing of a legal agreement is required, and objections have been received.

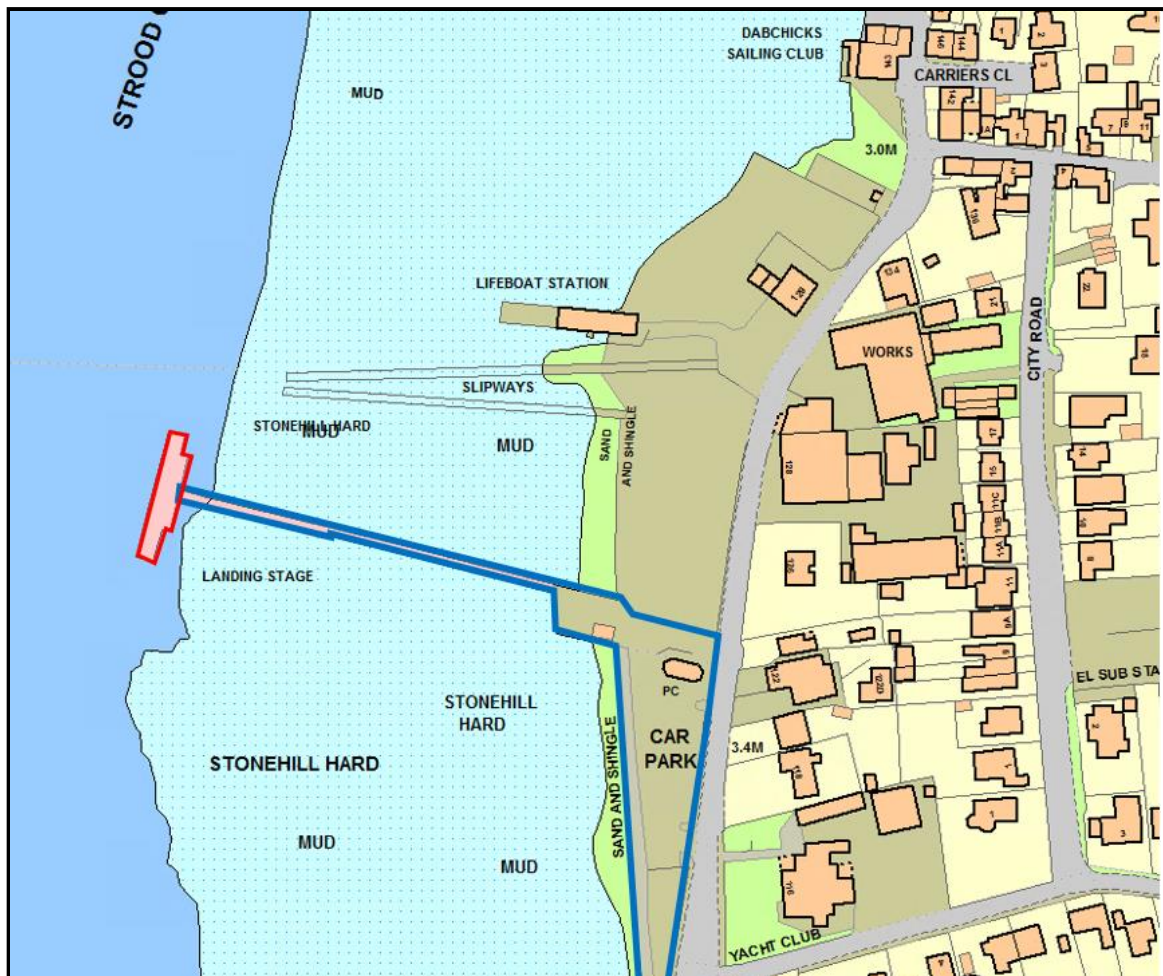
The Committee had before it a report in which all information was set out.

Nadine Calder, Principal Planning Officer, presented the report and assisted the Committee in its deliberations. A presentation was given outlining the two sites before the Committee with Site A (213530) proposed to have 50 dwellings and will also provide additional parking for the school and site B (213531) proposed 5 dwellings with an additional footpath. The Principal Planning Officer elaborated that the footway from site B could be secured via condition, and that following a review of the crossing point Essex County Council Highways Authority had advised that a controlled crossing was not recommended and would cause a safety issue, and that primary healthcare funding had been secured through site A. Further to this the committee were informed that the officer recommendation for Site A had been updated to remove condition 31 and that condition 29 would be amended to require details of a drop off and pick up point for the school either on school grounds or Site A to be submitted prior to the commencement of any works and that for Site B condition 10 would be amended to secure the proposed footway prior to any development commencing. The Case Officer concluded by outlining the officer recommendation of approval as detailed in the Committee report with the additional conditions read out in the meeting.

Dr Simon Dougherty of Abberton Parish Council (Objector) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 (as amended by the Chair to allow speakers on both applications) in objection of application 213530 and 213531. The Committee heard that most residents in the area did not want development in the area but that any development must ensure that it would address the congestion as detailed in the Local Plan and asked that pragmatic solutions were sought for the proposed developments. The Committee heard that the Head Teacher of Langenhoe Community Primary School welcomed the development of 10 drop off/ pick up spaces but confirmed that the fall-back position was not acceptable and that a further risk assessment would need to be conducted. The speaker noted that it would be unreasonable to ask for 78 spaces to accommodate all the students who did not live in the immediate area. The speaker concluded that the proposal would not meet the adopted Local Plan policies and that the proposal was not safe.

Andrew Ransome (Supporter) addressed the Committee pursuant to the provisions of Planning Committee Procedure Rule 8 (as amended by the Chair to allow speaker on both applications) in support of application 213530. As the speaker addressed the Committee it was brought to the Chairs attention that that HRH, Her Majesty Queen Elizabeth II had passed away. As a mark of respect for the Queen, the Chair proposed that the meeting be adjourned, and the applications be deferred. Following receipt of a seconder a vote was taken.

RESOLVED (UNANIMOUSLY) Deferred for consideration at next committee as a mark of deep respect on receipt of the news of the passing of HRH, Her Majesty Queen Elizabeth II.



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Item No: 7.1

Application: 213315

Applicant: Colchester BC

Agent: Mr Martin Liddell

Proposal: West Mersea floating pontoon erosion control works.

Location: West Mersea Floating Pontoon, Coast Road, West Mersea, Colchester

Ward: Mersea & Pyefleet

Officer: John Miles

Recommendation: Approval of planning permission 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 Council.

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the development, impact on the character and appearance of the area (including impact on heritage assets) and impacts on ecology and flood risk.
- 2.2 This report describes the site, its setting and planning history, the proposal itself and any consultation responses received. The planning merits of the case are then assessed, leading to the conclusion that the proposal is acceptable in planning terms and that a conditional approval is recommended.

3.0 Site Description and Context

- 3.1 The site is an existing pontoon, stretching into the Blackwater Estuary, from a public site in West Mersea. The site is within the West Mersea Conservation Area and the Coastal Protection Belt.

4.0 Description of the Proposal

- 4.1 The proposal is to construct a king post retaining wall comprising driven steel piles, with precast concrete panels set between the posts. The wall is to be set at the level of the riverbed on the rear face and the eroded area infilled to create an approximately level surface to support the pontoon.

5.0 Land Use Allocation

- 5.1 Unallocated Foreshore.
- 5.2 The stretch of water belongs to the Blackwater Estuary Special Protection Area, Ramsar (an international treaty for the conservation and sustainable use of wetlands) which is by extension an SSSI, Essex Estuaries Special Area of Conservation and the Estuaries Marine Conservation Zone.

6.0 Relevant Planning History

- 6.1 The installation of the existing pontoon was approved by the Planning Committee in 2007 (application 071418), with subsequent extensions to the structure approved in 2017 under application 170230.

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

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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 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

- SG8 Neighbourhood Plan
- ENV1 Environment
- ENV2 Coastal Areas
- DM5 Tourism, leisure, Culture and Heritage
- DM15 Design and Amenity
- DM16 Historic Environment
- DM18 Provision of Open Space and Recreation Facilities
- DM23 Flood Risk and Water Management

7.4 Some “allocated sites” also have specific policies applicable to them. The adopted local plan policies set out below are of direct relevance to the decision making process:

- SS12b Coast Road West Mersea

7.5 The Neighbourhood Plan for West Mersea is also relevant. This forms part of the Development Plan in this area of the Borough.

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 **Environment Agency:** No objection.

8.3 **Environmental Protection:** No comments.

8.4 **Natural England:** Natural England is of the view that it cannot be excluded, on the basis of the objective information supplied by the applicant, that the application will have significant effects on the Essex Estuaries SAC and adjacent Blackwater Estuary SPA and Ramsar site. This is because there is a risk that it will affect the following features of the designated site(s) :

- Overwintering birds which are an interest feature of the SPA
- Priority habitats including sandbanks which are slightly covered by seawater at all times (an interest feature of the SAC and SPA)

Officer Comment: It is important to note that this consultation response was received on 17th January 2022. Since this time a detailed Ecological Impact Assessment has since been submitted and mitigation proposed. As outlined at Paragraphs 15.9 - 15.18 it is considered this matter has now been suitably resolved and Natural England have indicated they are now in agreement that the proposal will not have significant effects on the Essex Estuaries SAC and adjacent Blackwater Estuary SPA and Ramsar site, subject to outlined mitigation being secured.

9.0 Parish Council Response

9.1 West Mersea Town Council have commented in support of the application.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. One general comment has been received from a local resident making suggestions on the form of any erosion control works and highlighting the requirement for permission from the Marine Management Organisation and Natural England to carry out the works. The full text of all of the representations received are available to view on the Council's website.

11.0 Parking Provision

11.1 The pontoon is served by the existing public car park accessed from Coast Road. No changes to the existing arrangements are proposed.

12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development concerns works below the publicly accessible pontoon platform and will therefore have no material impact on the public's use of, or access to, the pontoon. Based on the submitted information, the scheme is not considered to cause discrimination in terms of The Equality Act.

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

- 15.1 The main issues in this case are:
- The Principle of Development
 - Design and Impact on the Surrounding Area (Including Heritage Assets)
 - Ecology Impacts
 - Flood Risk

The Principle of Development

- 15.2 Section 2 Local Plan Policy SS12b, sets general Policy requirements for development on Coast Road, including that any new development on the seaward side of Coast Road should require a coastal location and that proposals that would result in the development of existing undeveloped areas of foreshore will not generally be supported unless they accord with criteria in the Coastal Areas Policy ENV2, which includes further criteria for development within the defined Coastal Protection Belt. West Mersea Neighbourhood Plan Policy WM15 provides general support for development that support the retention of the fishing and oyster industries, sailing and boating activities around Coast Road, subject to similar requirements as Policies SS12b and ENV2.
- 15.3 The principle of the pontoon being erected was established in 2007 and the pontoon now forms an established feature of the Coast Road foreshore, and is understood to be well used by the local community. The proposal clearly requires a coastal location as this is where the existing pontoon is located. The development also looks to support existing development, rather than developing undeveloped areas of the coast.
- 15.4 Taking into account the above the proposal is considered acceptable in principle.

Design and Impact on the Surrounding Area (Including Heritage Assets)

- 15.5 Section 1 Policy SP7 states that all new development should respond positively to local character while Section 2 Policy DM15 sets similar requirements for high quality design. Section 2 Policy SS12b requires development on Coast Road to enhance heritage assets and the traditional maritime character of Coast Road, as well as the landscape character of the coast. Policy ENV2 sets similar requirements. The National Planning Policy Framework (the Framework) (2021) and the Planning Practice Guidance recognise the importance of good design and sets further design requirements.

- 15.6 With the site located within the West Mersea Conservation Area, consideration must also be given to potential impacts to the character and appearance of the conservation area. Section 1 Policy DM16 reflects the statutory obligations as set out in S.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Section 1 Policy SP7, Section 2 Policy DM16 and West Mersea Neighbourhood Plan Policy WM26 require development to protect and enhance assets of historical value. In a similar vein, the Framework gives great weight to the conservation of designated heritage assets, noting that the more important the asset, the greater the weight should be. This is irrespective of the level of harm.
- 15.7 The proposed retaining wall, posts and associated engineering operations will take place well below the existing pontoon platform and are not inappropriate in visual terms taking into account their anticipated very limited visibility, with the seabed submerged in all but the lowest tides.
- 15.8 There are therefore no concerns from a design perspective and the proposal is not anticipated to have any material impact on the character and appearance of the conservation area, the setting of any listed buildings fronting Coast Road, or the wider landscape or seascape character of the coast. The proposal is therefore also held to meet the statutory tests for the preservation or enhancement of conservation areas and the setting of listed buildings.

Ecology Impacts

- 15.9 Section 1 Policy ENV1 seek to conserve or enhance biodiversity of the Borough. Section 2 Policies SS12b and ENV2, and West Mersea Neighbourhood Plan Policy WM15, require development on Coast Road and in the Coastal Protection Belt more widely to avoid adverse impacts on Habitat sites. The NPPF states that the planning system should contribute to and enhance the natural and local environment by minimizing impacts on biodiversity. Consideration must also be given to the NERC Act 2006 which places a duty to conserve biodiversity on public authorities in England.
- 15.10 The Council also has statutory obligations under the Habitats Directive and Birds Directive to protect important habitats and species designated as habitats sites. Specifically, under the Conservation of Habitats and Species Regulations 2017 (as amended)(the 'Habitats regulations'), as the Competent Authority for the purposes of this legislation for a proposal that is likely to have a significant effect on a designated site an appropriate assessment of the implications of a project on any such sites must be undertaken. The onus is on the applicant to provide sufficient information for it to be concluded adverse impacts will not occur. In this instance an Ecological Impact Assessment has been submitted by the applicant and informs, in part, the conclusions drawn below.
- 15.11 There is a clear potential for works on site to impact upon the interest features of Habitat Sites [Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC], with the site both forming part of, and close to, a number of such sites.

- 15.12 A detailed Habitat Regulation Assessment [HRA] (held on the planning file) has therefore been made by the Council and assess the potential for both direct impacts (the works themselves) and indirect impacts (associated activity i.e. recreational pressure) to Habitat Sites.
- 15.13 In this instance no indirect impacts are expected. In terms of the potential for increased recreational pressures it is important to note that the pontoon is existing and currently operational. While the proposal will prevent the pontoon falling into a state of disrepair such that it is not operational, it is not considered the works proposed will in and of themselves increase recreational pressure on Habitat Sites. Likely significant effects as a result of recreational pressure can therefore be ruled out.
- 15.14 With regard to direct impacts, without proper care being taken during construction and without appropriate construction methodologies in place there is the potential for direct damage to habitats that form part of the aforementioned Habitat Sites.
- 15.15 A number of proposed mitigation methods have however been proposed, as detailed within the submitted Ecological Impact Assessment, to ensure the proposal will not result in adverse effects on the integrity of any designated sites. These include considerations for the occurrence of exceptionally cold weather, restrictions that only existing access routes to the site must be utilised and the use of specific soft-start piling methods. It is also noted that the worst-case scenario where 19 piles maximum would be installed would equate to 0.000001% habitat loss of the total area of the relevant designated sites
- 15.16 It is understood that in addition to planning permission a license is required from the Marine Management Organisation [MMO] for the works proposed. The MMO have previously confirmed that they are in agreement with the mitigation proposed and consider the mitigation proposed will ensure the proposal will not result in adverse effects on the integrity of any of the sites in question. Natural England have also advised (through the MMO licensing process) that they agree with the conclusions drawn on such matters and that the proposal will not have an adverse impact on the integrity of Habitat Sites, providing that all mitigation measures are appropriately secured in any permission given.

N.B. A copy of correspondence between the MMO and Natural England on these matters can be found in the appendices of the submitted Ecological Impact Assessment dated July 2022.

- 15.17 A license was granted by the MMO on 27th July 2022, with the implementation of the necessary ecological mitigation measures included as conditions of the license. A copy of the license is held on the planning file. Given any works must take place in accordance with the conditions of this license this provides certainty that necessary mitigation measures will be implemented. Compliance with the submitted Ecological Impact Assessment can also be conditioned to provide further security that appropriate mitigation measures are implemented.

- 15.18 It is considered that with the secured on-site mitigation, the scheme will not have an adverse impact on the integrity of designated sites, nor does the proposal give rise to any wider concerns from an ecology perspective.

Flood Risk

- 15.19 Planning policy seeks to direct development away from areas of flood risk (both fluvial and coastal), towards sites with the lowest risk from flooding. Section 2 Policy DM23 seeks to promote flood mitigation, while Section 2 Policy SS12b and West Mersea Neighbourhood Plan Policy WM15 require development on Coast Road specifically to be appropriate for its location with regards to flood risk. The NPPF requires a detailed flood risk assessment (FRA) to be produced for all development located within a flood zone.
- 15.20 In this case the site is within Flood Zone 3, being within a functional tidal area and a proportionate Flood Risk Assessment has been provided, in accordance with the requirements of the NPPF.
- 15.21 With due regard to Planning Practice Guidance the proposed development is considered water compatible and taking into account the limited proposed built form the proposal is also not expected to increase flood risk elsewhere. The proposal is therefore considered acceptable from a flood risk perspective.

Other Matters

- 15.22 Finally, in terms of other usual planning considerations (e.g. archaeology, contaminated land, parking and highways etc.) the proposed development does not raise any concerns.

16.0 Conclusion

- 16.1 Taken as a whole the proposed development is found to accord with Council policy, including relevant policies of the West Mersea Neighbourhood Plan. The proposal will prolong the life of the existing pontoon, without resulting in any wider harm in terms of the character and appearance of the area, ecology, flood risk or any other relevant material planning considerations. Accordingly, a conditional approval is recommended.

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 Plan

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 66203003-SWE-ZZ-00-DR-S-0001 and 66203003-SWE-ZZ-00-DR-S-0002.

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

3. Z00 – Ecology Impact Assessment

The proposed development shall be carried out in accordance with the submitted Ecological Impact Assessment (Produced by SWECO, Dated July 2022), including the ecological mitigation measures outlined within this document.

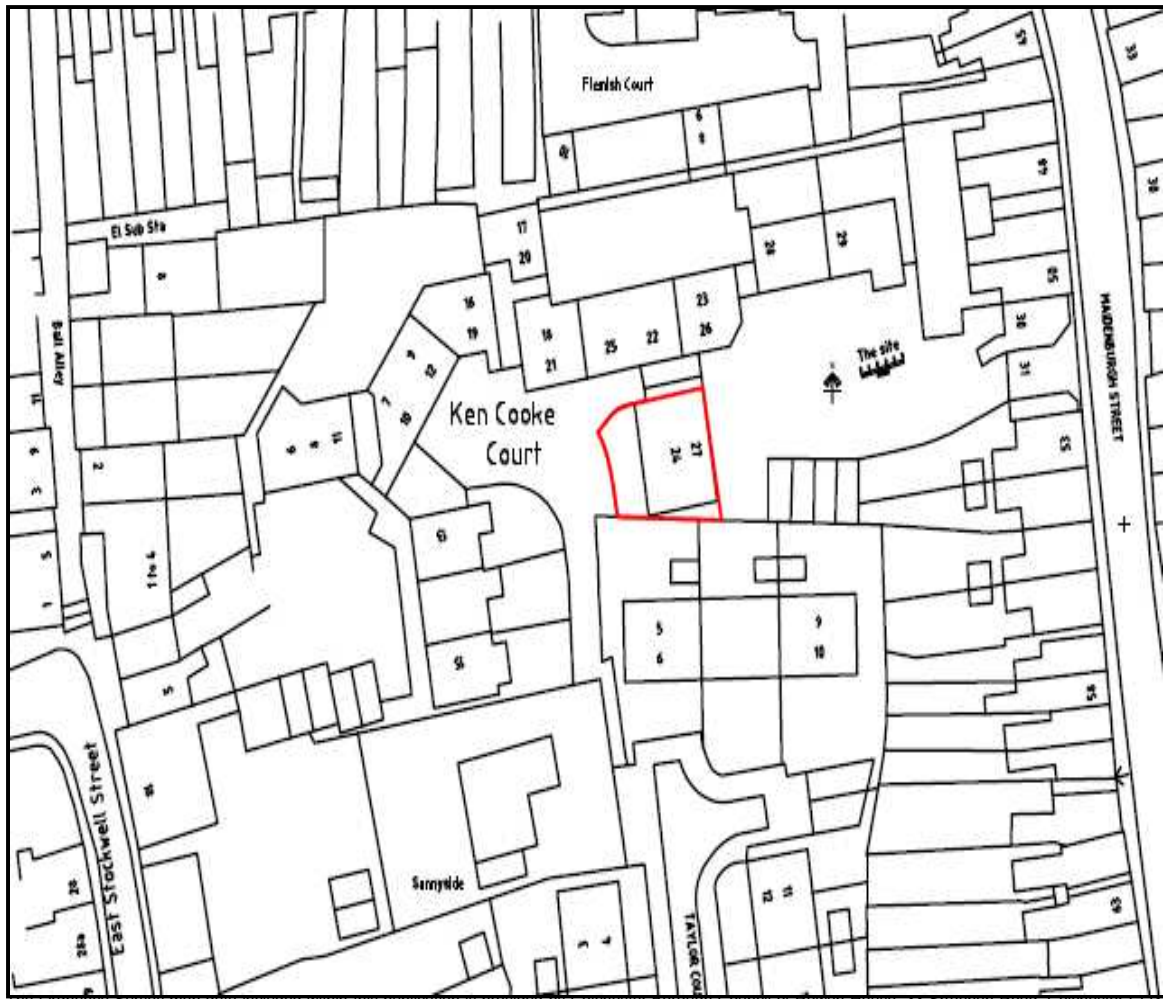
Reason: In the interests of ecology and as this is the basis on which the application has been considered.

18.0 Informatives

18.1 The following informatives are also recommended:

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.



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Item No: 7.2

Application: 220739

Applicant: Mr Mark Briggs

Agent: N/A

Proposal: Erection of a 1.37m fence and pedestrian gate to enclose a garden area for the exclusive use of the tenant of the ground floor flat at 24 Ken Cooke Court.

Location: 24 Ken Cooke Court, East Stockwell Street, Colchester, Essex, CO1 1FF

Ward: Castle

Officer: Hayleigh Parker Haines

Recommendation: **Approve** subject to conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee due to the Applicant of the application being Colchester Borough Homes.

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the development, design of the development and the impact on the character and appearance of the site, surrounding area and the Conservation Area.

- 2.2 The application is subsequently recommended for Approval.

3.0 Site Description and Context

- 3.1 The application site sits to the eastern side of East Stockwell Street and the western side of Maidenburgh Street, the site is relatively central within Ken Cooke Court. The site is occupied by flatted accommodation, within a predominately residential area and the Colchester Area 1 Conservation Area.

4.0 Description of the Proposal

- 4.1 Planning permission is sought for the construction of a 1.37 metre high fence and associated change of use from communal space to private residential garden; this will have a length of 11.3 metres (including the pedestrian gate). The proposed fence would replace the existing fence which was constructed without planning permission in 2021. The current fence has a height of 1.8 metres.

5.0 Land Use Allocation

- 5.1 Public open space associated with the development

6.0 Relevant Planning History

- 6.1 The most recent relevant planning history is set out below:

82/0416 – Erection of 24 flats, 11 houses and the demolition of existing outbuildings – Approved subject to conditions.

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 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

On 4th July 2022 Full Council resolved to adopt the modified Section 2 Local Plan in accordance with Section 23(2)(b) of the Planning and Compulsory Purchase Act 2004. The following policies are considered to be relevant in this case:

- ENV1 Environment
- DM13 Domestic Development
- DM15 Design and Amenity
- DM16 Historic Environment
- DM17 Retention of Open Space and Recreation Facilities

7.4 The application site does not fall within a Neighbourhood Plan Area.

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

- The Essex Design Guide
- External Materials in New Developments

8.0 Consultations

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

8.2 The Historic Buildings and Areas Officer has objected to the proposal; due to the loss of the communal green areas which are considered to mitigate the hard landscaping and surrounding buildings and result in the courtyards being generally pleasant areas. The impact is somewhat negative but could establish a precedent that could easily culminate in several of the important areas of communal planting being enclosed which would be greatly harmful.

These developments were designed to be reasonably permeable and as such they can be used as walking routes. Also there are many glimpsed views into these developments from the main streets in the Dutch Quarter. The Dutch Quarter has a similar built density to the developments in question but gardens are almost always private and to the rear. Thus the planting in the more modern developments of the area are valuable to the wider area, as relatively

tranquil shared spaces where the passing seasons can be experienced in the changing foliage.

8.3 The Tree Officer has raised no objection to the proposal.

8.4 Colchester Civic Society object to the proposal on the following grounds:

- The interior open space was always designed to be a shared space for the immediate residents
- No reasoned argument in the application for agreeing to any fencing provision for this one tenant or the destruction of communal space.
- The fencing does not improve or enhance this carefully designed development and destructive in its effect.

9.0 Parish Council Response

9.1 The site falls within the Castle Ward which is 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.

Objecting Neighbouring Comments (9th May)	Officer Response
The installation/replacement fence and sheds will diminish the appearance of Ken Cooke Court as a conservation Area with visiting tourists	Comments noted and discussed below
Risk to tree root structure, vitally important as could put surrounding homes in jeopardy if the tree were to die. Roots already been cut and exposed.	Comments noted
The garden should return to being a communal area for all the residents to enjoy as it has been since the 1980's	Comments noted
If the proposed fence is installed the unsightly contents of the garden will be visible.	Comments noted
The gardens located in the car park are left as open spaces and one has previously been rejected for private use for the same reason	Comments noted
Ken Cooke Court won an award many years ago for its outstanding beauty and is renowned for maintaining its open spaces	Comments noted

Since the shrubbery in this area has been removed it has had a significant impact on wildlife	Comments noted
Not in keeping with open natural beauty of the conservation area	Comments noted and discussed below
Loss of communal space	Comments noted and discussed below
Tenant fails to keep garden tidy	Comments noted.
A path has been made for the mobility scooter but it has never been used, it remains outside the main door.	Comments noted.
The mobility scooter is used infrequently by one person not two at the address	Comments noted
The original fence was constructed without planning permission and gave the new tenant an idea it was a better swap. Causing stress to the neighbourhood who would have gladly received a free private grassed area of their own	Comments noted
This is a small community that has been disrupted by not being treated fairly or given the chance to object in the first place	Comments noted
This is unfair on all levels, to the conservation area, the residents of Ken cooke court, the public, the environment and to morale of everyone causing conflict over something that should not of happened in the first place. It has even been said this tenants relation works within the system and knows how get this planning approved. If this is true, it's so very wrong	Comments noted.
Following previous objections the mobility scooter has been moved. Feels like a lot of 'game playing' is going on	Comments noted

10.2 The Dutch Quarter Association objects to the proposal on the following grounds:

- Ken Cooke Court is part of an award-winning housing complex. It is important to support the original planning brief and preserve the pleasant character of these gardens and their enhancement of the Conservation Area

- 10.3 It should be noted that a number of objections mention the construction of sheds and paths which **do not** form part of this current application. As outlined above this application is solely for the construction of a 1.37 metre high fence.

It is also relevant to note that a petition has been submitted and signed by 21 neighbouring occupiers objecting to the proposed development. This petition does not introduce any other concerns from those summarised above.

11.0 Parking Provision

- 11.1 The proposed development would not have an impact on the parking provision required or provided on site.

12.0 Accessibility

- 12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. This application has been made on behalf of the Occupant of 24 Ken Cooke Court and supporting information has been provided which identifies that the potential refusal of planning permission, in this instance has the potential to result in a specific disadvantage being suffered by an individual as a result of their protected characteristics – specifically in relation to accessibility and security. Given this a standalone bespoke equality impact assessment has been undertaken to assess this issue, in light of the Council's Public Sector Equality Duty under the Equality Act 2010. This assessment is held on the planning record but is confidential as it contains personal information. It is considered the Council can suitably discharge their duties under the Equality Act as appropriate action has been taken to remove or minimizing disadvantages suffered by people due to their protected characteristics and the granting of planning permission is not considered to present conflict with any other arms of the Public Sector Equality Duty. This is discussed further within the below assessment.

13.0 Open Space Provisions and landscaping

- 13.1 Policy DM17 advised that existing public and private open spaces, including allotments, within the Borough, represent important assets serving the communities in which they are located (or in some instances wider areas). This importance can relate not only to their function, but also to the amenity value and contribution they make to the character of an area in general by providing a 'green lung', opportunities for a well-designed and inclusive public realm, and visual breaks in the built environment. If such provisions are lost to other uses it can be extremely difficult to find alternative locations particularly as open land is scarce and, therefore, at a premium

The proposed development is to utilise land which as part of the original development approved under the terms of 82/0416 was intended as an open communal area and landscape feature; whilst the change of use and construction fence would result in an increase in private, usable amenity space for the occupant of 24 Ken Cooke Court, it is considered to reduce the amount of shared

amenity space afforded to other occupiers of the wider development. This is discussed further below

14.0 Air Quality

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

15.0 Planning Obligations

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

16.0 Report

16.1 Principle of Development

Recently Adopted Plan policy DM17 seeks to protect and enhance the existing network of green links and open spaces. Development including change of use, of any existing public or private open space, including allotments, will not be supported unless it can be demonstrated that:

- (i) Alternative and improved provision will be created in a location well related to the functional requirements of the relocated use and its existing and future users; and,
- (ii) The proposal would not result in the loss of an area important for its amenity or contribution to the green infrastructure network or to the character of the area in general; and
- (iii) It achieves the aims of any relevant prevailing strategy relating to open space and recreation.

Development proposals resulting in a loss of open space must additionally demonstrate that:

- (iv) There is an identified excess provision within the catchment of the facility and no likely shortfall is expected within the plan period; or
- (v) Alternative and improved provision will be supplied in a location well related to the functional requirements of the relocated use and its existing and future users.

In all cases, development will not be permitted that would result in any deficiencies in public open space requirements or increase existing deficiencies in the area either at the time of the proposal or be likely to result in a shortfall within the plan period.

Additionally, development that would result in the loss of any small incidental areas of open space, not specifically identified on the policies map but which contribute to amenity value and the character of existing residential

neighbourhoods, and any registered common, heathland or village green or which contribute to green infrastructure will not be permitted

The surrounding area is characterised by low-rise high density flats arranged around courtyards with communal outside areas. This high density could easily appear oppressive, but the generous planting of shrubs and perennials in the common areas make a considerable contribution to mitigating the hard landscaping and surrounding buildings, and the courtyards are generally pleasant areas. As part of this application, no evidence has been provided to suggest that this area of open space is no longer required and is surplus to requirements, or that the proposal has resulted in the replacement of the land with new open space and the land is not for alternative sports or recreational provision. Therefore, it is not considered that the construction of a fence and a change of use to garden land would be acceptable, and the development is contrary to DM17.

Notwithstanding the above, it is pertinent to note that the Occupant of the site has protected characteristics, an appropriate Equalities Impact Assessment has been carried out whereby it was concluded that the refusal of this application would have the potential to result in a specific disadvantage being suffered by these individuals. Therefore, in this instance, subject to conditions to ensure that the development and associated change of use of this land, is only used and present whilst this Occupant is a tenant at 24 Ken Cooke Court, and is subsequently returned to communal land with all operational development and residential paraphernalia removed following the termination of this tenancy, it is considered for the Council to suitably discharge their duties under the Equalities Act, this weighs heavily in favour of the proposed development, and it is therefore, in these personal circumstances, considered acceptable in principle.

16.2 Design and Impact on the Character and Appearance of the Site, Surrounding Area and Conservation Area.

Policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment. Policies DM15 and DM16 set out design criteria that new development must meet, seeking to enhance and protect the historic environment and its setting. These require new development to be of a high quality and respect the character of the site and its context

The application site contains a residential dwelling and the land in question, up until recently, was an open piece of land for public benefit. Close boarded fencing has been erected around the boundary of the site. It should be noted that the property to the south does benefit from similar fencing; however, this forms part of a separate site whereby there is no planning history readily available to suggest that this fencing was not part of the original submission for the development and if not that this is lawful and therefore, is of limited weight in the assessment of this application. Furthermore, each application must be determined on its own merits.

The introduction of a 1.8 metre close boarded fence in this location is considered to be an incongruous feature within Ken Cooke Court, this is further exacerbated

by its prominent location on what is classed as public land, that previously contributed open views within a relatively high-density residential area. Furthermore, as the site is bordered by a public footpath and is public amenity land, the fencing is considered to be a dominant and obtrusive form of development.

The change of use of this land to residential curtilage and the associated fencing is considered to have a detrimental impact on the character and appearance of the site and surrounding area as by its very nature it has removed the essential characteristic and reason for its protection as public open space, which is to enhance the quality of the residential area as a whole. Furthermore, as noted earlier, the built form by way of the fencing is a discordant and highly visible feature resulting in the introduction of residential paraphernalia onto the land, and although the fence would prevent this from being highly visible, it would result in the domestication of the land to the detriment of the locality.

The introduction of a fencing in this location has had a marked impact on the character of the immediate area and if approved, could set a realistic precedent for similar development within the surrounding area. Whilst any subsequent planning applications would need to be assessed on their own merits, precedent creation can be a material consideration to be given weight in the decision making process where applications for the same type of development are likely to be made at other locations with similar circumstances which future decision makers could not resist in all fairness; this is considered to be the case with Ken Cooke Court, given the small pockets of open communal areas close to residential properties, whereby occupants could also wish to construct fencing similar to that proposed. Site characteristics are considered suitably similar for there to be a risk of precedent should the fencing be approved, and this would be of further detriment to planning policy requirements of DM15.

The application site sits within the Colchester Area 1 Conservation Area; Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Council to pay special attention to desirability of preserving or enhancing the character or appearance of the conservation area. This stance is mirrored in the recently adopted section two plan policy DM16.

The development was originally designed to be reasonably permeable and as such they can be used as walking routes. Also there are many glimpsed views into Ken Cooke Court from the main streets in the Dutch Quarter. The Dutch Quarter has a similar built density to the developments in question but gardens are almost always private and to the rear. Thus the planting in the more modern developments of the area are valuable to the wider area, as relatively tranquil spaces where the passing seasons can be experienced in the changing foliage. Therefore, the removal of this open space is considered to have resulted in harm to the character of the conservation area contrary to policy DM16 of the Local Plan, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Section 197 of the NPPF.

Notwithstanding the above, it is pertinent to note that the Occupant of the site has protected characteristics, an appropriate Equalities Impact Assessment has

been carried out whereby it was concluded that the refusal of this application would have the potential to result in a specific disadvantage being suffered by these individuals. Therefore, in this instance, subject to a condition seeking supplementary planting to the western boundary of the site, on what remains communal land, it is considered for the Council to suitably discharge their duties under the Equalities Act, this weighs heavily in favour of the proposed development, and it is therefore, in these personal circumstances, considered acceptable in principle.

16.3 Neighbouring Amenity

The application site is bordered by a number of neighbouring properties. To the north are 18, 21, 22 and 25 Ken Cooke Court, to the west are 13-15 Ken Cooke Court and to the south are 5 and 6 Ken Cooke Court. The proposed fence would sit over 8 metres from the neighbouring properties to the west and south (with the southern neighbouring properties occupying higher ground), due to this degree of separation it is not considered that the proposed development would represent an unneighbourly form of development in relation to these neighbouring occupiers.

The proposed fence would sit approximately 3 metres from neighbouring windows to the properties to the north of the site, due to this degree of separation, alongside the orientation of the properties, it is not considered that the proposal would represent an unneighbourly form of development in relation to these neighbouring occupiers in terms of loss of light, or having an overbearing nature. However, Policy DM19 requires sufficient shared amenity space to be provided for flatted accommodation, this was evident in the original approval for the development (82/0416), therefore, the loss of this communal area has resulted in an unacceptable level of communal amenity space being provided to neighbouring residents. However, extensive public open space is available in Castle Park only short distance from the site.

16.4 Other Matters

The proposed development does not impact on the parking provision required or provided on site.

It is noted that there is a tree of significant amenity value to the west of the proposed fence. A letter from Colchester Borough Homes Tree Manager advises that the footings for the existing fence do not appear to have significantly disturbed the roots of the tree or to have made it unstable. No response had been received from the Council's Tree Officer at the time of writing this report, however, should this be received prior to committee a member's update will be provided

17.0 Conclusion

- 17.1 To summarise, the permanent use of this semi-public amenity land as residential curtilage and construction of a fence, due to lack of evidence and sufficient justification, is not acceptable and therefore would not comply with Policy DM17

of the recently adopted Local Plan and therefore, the principle of this development is not founded. Similarly, the construction of a fence and change of use of land to residential, by reason of their location and design has a detrimental impact on the character and appearance of the surrounding area and conservation area contrary to Policies ENV1, DM15 and DM16 of the LDP.

- 17.2 However, in light of the personal circumstance and protected characteristics of the Occupier of the residential Unit 24 Ken Cooke Court, alongside the duty of the Council under the Equalities Act and the potential impact and disadvantage suffered by the Occupant of the dwelling should the application be refused, it is considered that appropriate conditions ensuring that this is a personal permission, and that supplementary planting is implemented, mitigates the permanent harm identified. The site would return to its former condition and use when the current tenancy of the property ceases.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. Time Limit

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

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

2. Development to Accord With Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: Proposed Site Plans - 10 and Proposed Elevations - 12

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

3. Materials

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

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

4. Personal Permission

This permission shall be personal to Ms Elizabeth Smith and shall not enure for the benefit of the land.

Reason: For the avoidance of doubt as to the scope of this permission because the development is granted solely in recognition of the personal situation and individual circumstances of this case and would not have otherwise been acceptable to the Local Planning Authority.

5. Removal of Permitted Development Rights (outbuildings)

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no provision of buildings, enclosures, swimming or other pool shall be erected except in accordance with drawings showing the design and siting of such building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: The site is already heavily constrained and any further development on the site would need to be considered at such a time as it were to be proposed.

6. Soft Landscaping Scheme

Within 6 months of the date of this permission, a scheme of soft landscaping works for the publicly visible parts of the site shall have been submitted to and agreed, in writing, by the Local Planning Authority. The scheme as agreed shall be implemented within the first available planting season, in line with the approved details and retained in perpetuity.

This scheme shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission. It is recommended that this scheme references the existing planting within the surrounding area.

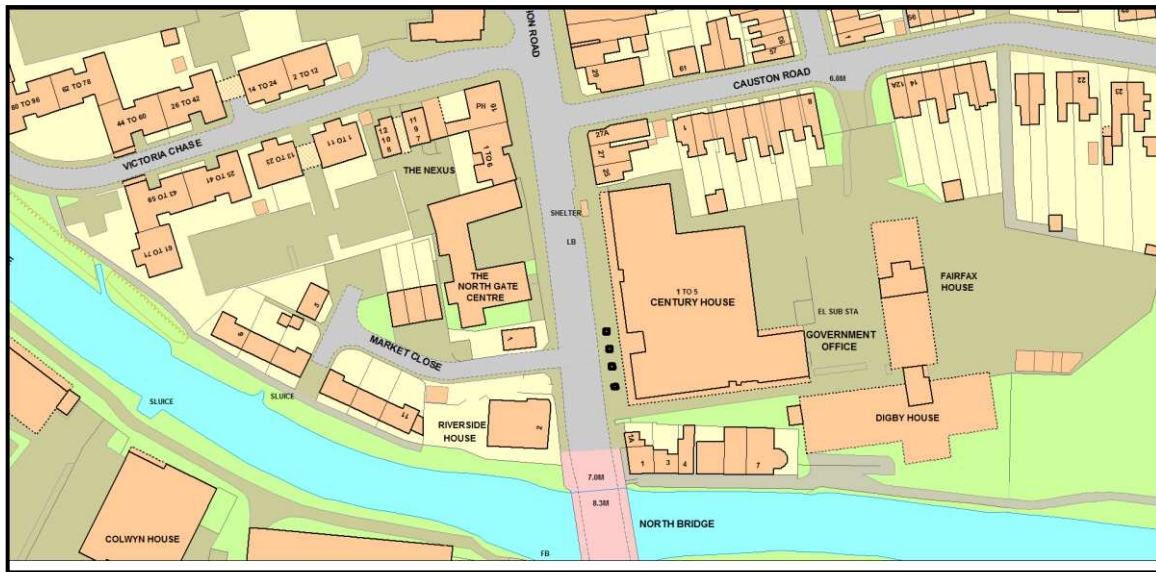
Reason: In order to ensure that there is a sufficient landscaping scheme for the relatively small scale of this development and to mitigate the loss of a communal area and the associated harm to the character and appearance of the surrounding area as a result of the close boarded fence

7. Removal of Fence and Reinstatement of Land as Communal.

Within 6 months of the termination of Ms Elizabeth Smiths tenancy at 24 Ken Cooke Court, the development hereby granted shall be removed and

the associated change of use shall cease. All residential paraphernalia shall be removed from the site as outlined in red and the site shall return to communal open space (with associated planting in line with the wider development) and retained as such, in perpetuity.

Reason: The proposed development is considered unacceptable in principle and design terms, however, in light and having due regard, to the Occupants specific personal circumstance, it is considered necessary and therefore, following the cessation of their tenancy at the property, it is considered necessary to ensure that this temporary development and use is not retained on site to the detriment of the surrounding environment.



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Item No: 7.3

Application: 221639

Applicant: Mrs Jane Thompson

Proposal: 4 x corten steel planters containing trees to be located on the footway/walkway outside Century House, North Station Road.

Location: Century House, North Station Road, Colchester, CO1 1RE

Ward: Castle

Officer: Chris Harden

Recommendation: Authority to Approve subject to receipt of satisfactory revised drawings (rounded edges) and a satisfactory Health and Safety assessment.

At the Planning Committee of 22nd September the proposal was Approved subject to submission of a circular planter design and re-consultation with neighbours (including traders and CO1 Residents Association) - Delegated to officers.

It should be noted that subsequently the applicant has confirmed that if the planters are altered to be circular, costs will increase and also that the County Council would start the licensing process again, resulting in considerable delay. Accordingly the proposal is returned to the Committee for consideration.

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 Council. The application has also been called in by Cllr Coacher who has noted concerns raised by residents “about the detrimental visual look of rusty coloured metal planters. Concerns that trees in planters are stunted and of limited ecological value. Fears from residents that this is greenwashing and a poor substitute for restoring proper street trees that once lined the area.”

2.0 Synopsis

- 2.1 The key issues for consideration are the impact upon the character of the Conservation Area and streetscene and consideration of any issues relating to highway safety, residential amenity and the environment.
- 2.2 The application is subsequently recommended for approval. The proposal is considered to have a positive impact upon the character of the Conservation Area and streetscene, would not be detrimental to highway safety or residential amenity and would have positive environmental benefits. It would therefore accord with adopted Local Plan policies and the NPPF.
- 2.3 In addition the applicant has indicated that the edges of the planter can be softened with rounded curved elements. Details of such alterations are awaited and will be reported to the Committee. This should help overcome the safety concerns as raised at the previous Committee.

3.0 Site Description and Context

- 3.1 The site lies within the Conservation Area and is part of the public highway for pedestrians that lies in front of a relatively modern building known as Century House.

4.0 Description of the Proposal

- 4.1 The proposal is for the positioning of 4 planters in front of Century House. The planters would be constructed of Corten steel and would be 1.2 metres wide and 1 metre in height. It is proposed to include the elephant motif in the design.
- 4.2 The options put forward for the trees are as follows:

- *Betula jaquimontii* - West Himalayan birch
- *Corylus colurna* - Turkish hazel (with attractive cat-kins)
- *Alnus cordata/incana* - Italian alder/Grey alder (with attractive cat-kins)

4.3 In respect of the tree type the agent states:

“Added benefits are that they are all hardy, pollution tolerant and can contribute to air quality pollution control. The final decision on the tree to be installed will be taken by the Borough Councils tree adviser.

The trees will be root ball or container grown and not bare root. The trees will be large, initially 3 - 4m in height and multi-stemmed, which helps maintain the tree if they are vandalised. Trees will need to be vandal resistant and it is not intended to using stakes.”

4.4 The agent has explained that the reason for choosing planters is as follows: “Trees planted into the ground is preferred due to ongoing watering/maintenance issues. However permissions for planting into the ground can be time consuming/problematic due to permissions required and buried services etc.”

4.5 In support of the application the agent has submitted the following further information:

- **Fixing the Link:** The application is to re- introducing 4 trees with planters and is part of the second phase of the Fixing the Link project. Old photographs show sections of North Station Road as a tree-lined avenue, most which have been lost over the years. This proposal will help to reinstate the line of trees on the eastern side of the road, greening and helping to improve this area.
- Fixing the Link (FTL) is a joint initiative involving the borough and county council and Greater Anglia the rail operator. The FTL aim is to improve the link between the rail station and the town centre by installing better wayfinding and various enhancements along the route to welcome visitors to Colchester, and encourage them to walk the route.
- The phase 1 included wayfinding signage within the station underpass, the yellow flags showing the walk time, planters, Corten steel elephant at the station and in the town centre to direct visitors to and from the station, bronze historical information plaques, as well as a seating area at Middleborough and lighting the St Peters Church.
- Funding was made available for the project from New Homes Bonus, ECC and Greater Anglia the rail operator. Following the success of phase 1 phase 2 has been planned and includes this proposal to reintroducing trees in North Station Road.
- Further measures are also proposed as part of Fixing phase 2, including a drought planting and lighting scheme on the Albert roundabout, improving the North Bridge and reducing unnecessary street signage etc.

- **In planters or in ground:** Consideration has been given to the possibility of either locating the trees in the ground or within moveable planters. Trees planted into the ground is preferred due to ongoing watering/maintenance issues, however ECC indicate that permissions for planting into the ground could be problematic due to the many buried services in this area.
- Also ECC are currently working on plans for walking and cycling improvements as part of the Colchester Active Travel schemes. For this reason, ECC would prefer trees in planters so that the trees can be moved if required, as part of the Active Travel works.
- Moveable planters will mean trees can be installed in locations in North Station Road later this year, and when development opportunities arise, or any new highway layout is proposed, trees in the ground could be proposed. This will mean that the planters and trees could be relocated to another location.
- **Design and Conservation Area:** Consideration has also been given to the type of planter suitable for the Conservation Area. Corten Steel is the material used, and is part of the Fixing the Link style, used in the Albert planter as well as the elephants at the station and in the High Street.
- The company who supplied the Corten steel planter at the Albert Pub have been asked to produce the planters for the trees. It is proposed to include the elephant motif in the design to continue the Fixing the Link identity. The Borough Council's tree advisers have stated 1.2m square planters are provided and height of 1m to allow enough root space for the trees to thrive.
- **The Locations:** Various sites were considered and following discussions with CBC's Conservation Officer a shortlist of 9 locations was proposed. All of the locations are within highway land. Due to sightline issues and following discussions with ECC, the location of four trees outside Century House, north of the river and south of the existing trees were agreed.
- In discussions with ECC, they felt the planters should be located on the tarmac area of the footway to continue the line with the existing trees. The tarmac area of footway is 2.8m wide and is abutted by paved area which is a further 4-5m wide. The planters will reduce the tarmac area of footway to around 1.6m however there is still ample space for people to walk through or stop and browse the shops. If the locations of the planters proved problematic, then they can be easily moved.
- **Funding and Costs:** Funding is available from the partners to purchase and install the 4 trees and their planters. Funds will also be set aside for ongoing watering and maintenance regime. This funding will disappear if not spent this year, and it is unlikely that ECC will give permission for trees in the ground at this moment in time.
- We do aspire to plant more trees – preferably in the ground and we will consider this if further funding or development opportunities arise.
- Costs – very approximate for 4 trees and planters:

- Planning application - **£464**
- Licence – no cost
- Planter 4x £1,300 each = **£5,350**
- Deliver each planter to its site location - **£1,560**
- Trees around £250 each x 4 = **£1,000**
- Planting and topsoil £500 each x 4 = **£2,000**
- Total pruning, watering and weeding 4 trees x 5 years = **£ 3,000**
- Pruning - 1 hour tree maintenance per year at £10 per hour. Therefore suggests the cost for us to maintain the 4 trees over the next 5 years would be: 4 x £10 (per hour) x 5 years = £200.
Watering - the total watering costs for these 4 trees over a period of 5 years will be £ 2,640.00.
- Weeding - To weed one planter will cost £2.2984 per year If soil area is 1m2. Eight occasions in the summer and one in the winter. Weeding £2.30 x 4 trees x 9 occasions = £82.80
- Total costs - £13,374

5.0 Land Use Allocation

5.1 Town limits

6.0 Relevant Planning History

6.1 None of recent relevance.

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 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP7 Place Shaping Principles

7.3 Section 2 of Colchester Borough Local Plan 2017-2033 has also been adopted:

Policies relevant to this application include:

ENV1 Environment
ENV3 Green Infrastructure
ENV5 Pollution and Contaminated Land
CC1 Climate Change
DM15 Design and Amenity
DM16 Historic Environment
DM21 Sustainable Access to development
DM22 Parking

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

The Essex Design Guide
External Materials in New Developments
Sustainable Construction
Urban Place Supplement
Managing Archaeology in Development.

8.0 Consultations

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

- 8.2 Cllr Mark Coacher has called in the application and states:

Reason for comment: Object to the proposal.

Comment: Trees in planters have limited growth and are of limited ecological value. The metal planters often look rusty and ugly. The removal of mature trees outside the Mercury Theatre to be replaced with little ones in planters amounted to greenwashing. North Station Road once had proper trees situated on it and it would be good to see them replaced rather than stunted tiny trees in planters.

Concern from residents about the detrimental visual look of rusty coloured metal planters. Concerns that trees in planters are stunted and of limited ecological value. Fears from residents that this is greenwashing and a poor substitute for restoring proper street trees that once lined the area.

- 8.3 Conservation Officer recommends approval and states (slightly precisised):

1.0_Heritage Asset: Summary Of Significance

The site is within Colchester Conservation Area 4 and adjacent to several listed buildings, the closest being 25 and 27 North Station Road.

3.0_Relevant Statutory Duties

Planning (Listed Buildings and Conservation Areas) Act 1990, sections 66(1) and 72(1)

4.0 Analysis of Impact Upon Heritage

This is a very prominent street in the town because it is on the main walking route from the railway station to the town centre. It has a number of very attractive features and buildings, but is unfortunately let down by some negative buildings and a generally rather run-down appearance, an issue shared by several other major routes into the town centre. The area used to benefit from a number of street trees, which were an attractive feature and contributed a more intimate residential character to the street, which is rather wide for the scale of many of the buildings. Sadly only a few street trees remain and the gaps where they have been lost can sometimes appear somewhat bleak and urban, highlighting the lack of maintenance of some buildings and the disproportionately large scale of others.

Any move to reinstate street trees in this location is to be encouraged. It is disappointing that the ones currently proposed would be semi-temporary, in planters rather than planted into the ground, but it is to be hoped that should these be successful then a more permanent scheme might be considered in the future.

The location proposed, outside Century House has particularly wide pavements, and the building itself is too large to suit the character of the conservation area. Trees here would soften both these unwelcome features and would enhance the street-scape in a place where this is sorely needed. While the planters proposed would limit the softening effect, it is still considered that the impact would be positive and would have a positive impact on the character of the conservation area, and for this reason I am happy to support the proposal.

6.0 Conclusions & Recommended Actions

Recommend approval on the grounds that the proposed trees would enhance the character of the conservation area in a location where there is considerable scope for enhancement.

8.4 Highway Authority states:

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

No works shall take place within the highway until such time as the necessary licencing from Essex County Council has been received by the applicant and all necessary conditions / requirements of that licence have been complied with.
Reason: To protect the highway user and the integrity and fabric of the highway in the interests of highway safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

Informative1: 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.

8.5 Landscape officer: “No landscape objections.”

8.6 Colchester Civic Society state: “Make a general observation. Comment: The Civic Society welcomes the reintroduction of trees again into the streetscape of North Station Road.

Many people can remember trees growing here in the pavement within recent times and we are very much of the opinion that the planters do not balance the already existing trees on the same site.

We can appreciate the argument for movable planters in other sites on the road to reintroduce trees but we are unconvinced of the choice of Corten steel in this conservation area if this policy is to be pursued. We would then welcome a more heritage approach in choice.

We would further contend that this is a road that would benefit from the removal of street furniture rather than adding to it.

We would contend that trees grow best in the natural ground than in an artificial provision and a local care scheme can be successful in ensuring survival.”

8.7 Environmental Protection have “no comments”.

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.

10.2 3 letters of objection have been received which make the following points:

- Quickly dry out without frequent watering. Who responsible?
- Sound temporary. Where is long term investment?
- Existing 5 trees need care.
- If planters the only option why not in more strategic locations?
- Whole of North Station Rd could do with improving.
- In favour of trees in the street scene BUT NOT when they are in rust-bucket looking containers! Ugly.
- Witness those in front of the Mercury Theatre – a Conservation Area and next to a Scheduled Ancient Monument. They are a visual outrage.
- North Station Road is also a Conservation Area.
- There used to be several trees along this side of North Station Road, but over the years most have been “lost”. Suggest that the sites of the “lost” trees in front of Century House have new trees planted BUT without putting them in ugly rust-bucket looking containers.
- Trees YES – containers NO.
- Request that the Application be Refused.

10.3 The agent has undertaken a re-consultation/liaison with the following and any views received will be reported to the Committee: Traders within Century House, Soormally's (major business owners in North Station Road), Residents' Association, Colchester civic Society.

11.0 Parking Provision

11.1 N/A

12.0 Accessibility

12.1 With regards to the Equalities Act, the proposal has the potential to comply with the provisions of Policy DM21 (Sustainable Access) which seeks to enhance accessibility for sustainable modes of transport and access for pedestrians (including the disabled), cyclists, public transport and network linkages.

13.0 Open Space Provisions

13.1 N/A

14.0 Air Quality

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

15.0 Planning Obligations

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

16.0 Report

The Principle of Development

- 16.1 The most significant planning issues are the design and form of the proposed development, in particular the impact upon the character of the Conservation Area and street scene. Any highway implications and safety issues also need to be considered. As outlined in the applicant’s supporting statement, the proposal is to help fix the link from the railway station to the Town Centre.

Design, Form and impact upon Conservation Area and street scene.

- 16.2 In considering the design and layout of the proposal, Policy SP 7 Place Shaping Principles states all new development must meet high standards of urban and architectural design. Policy DM15 has similar provisions. These policies seek to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings. Policy DM16 aims to preserve the character of Conservation Areas.
- 16.3 In addition, as the site is within the Conservation Area Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 199 of the NPPF (2021) 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. Paragraphs 200, 201 and 202 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.
- 16.4 It is considered that the proposed works, involving the four planters with trees would have a positive visual impact upon the character of this part of the Conservation Area and thus no harm. As pointed out by the Conservation officer, this is a very prominent street in the town and the area used to benefit from a number of street trees, which were an attractive feature and contributed a more intimate residential character to the street, which is rather wide for the scale of many of the buildings. Only a few street trees remain and it is considered that the gaps where they have been lost can appear somewhat bleak and urban, highlighting the lack of maintenance of some buildings and the disproportionately large scale of others.
- 16.5 Accordingly it is considered that any move to reinstate street trees in this location would be visually beneficial. Whilst it would be preferable to have the trees planted in the ground rather than in planters, there are serious logistical

problems with planting in the ground including the relevant permissions required and potential impact upon underground services. Accordingly the use of planters for the trees is considered to be the next best option at this stage.

- 16.6 As concluded by the Conservation officer, the location proposed, outside Century House has particularly wide pavements, and the building itself is overscaled to suit the character of the conservation area. The trees in the planters here would soften both these unwelcome features and would enhance the street-scape in this location. While the modern Corten steel planters (as used for High Street elephants) proposed would limit the softening effect, it is still considered that the impact would be positive and would have a positive impact on the character of the conservation area. The objectors' comments about the design and material of the planters is noted. However, overall in this context they are considered appropriate, especially when combined with the provision of the trees and would provide a net overall visual benefit to the area. It should be noted that there is a Listed Building off set on the opposite side of the road and one further down the road on the same side but the proposal is not considered to have any significant impact upon their respective settings.
- 16.7 Overall, it is therefore considered that the proposal meets the requirements of the NPPF in particular paras 197, 199-202. The proposal would comply with adopted Local Plan Policies SP7 (Place Shaping Principles) & DM15 (Design) as the proposal respects the character of the site and its surroundings. The proposal would also comply with Policy DM16 which provides that development will not be permitted that will adversely affect a listed building or Conservation Area and that development affecting the historic environment should seek to preserve or enhance the heritage asset.

Health and Safety

- 16.8 At the Planning Committee on 22nd September, concerns were raised by Councillors about children in particular being injured on the edges of the containers. The agent has stated that "the issue of rounding the edges of the planters has been agreed. It must be borne in mind that the road is lit and a 1.2m square planter will be hard not to spot so less likely to be a safety issue than smaller street furniture." Any revised drawings received showing the rounded edges will be reported to the Committee. A Health and Safety assessment is also being undertaken and the conclusions reached will also be reported to the Committee.
- 16.9 It is considered that the rounding of the edges would be likely to address the safety concerns but the Committee will be updated on this issue at the meeting. Policy DM15 is applicable in this respect which provides that all development should "(vi) Create a safe, resilient and secure environment..."

Environmental and Carbon Implications

- 16.10 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to

be pursued in mutually supportive ways. These are economic, social and environmental objectives. The consideration of this application has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that, on balance, the application can contribute to achieving sustainable development. The site is considered to be in a sustainable location.

Other Issues

- 16.11 Finally, in terms of other planning considerations, the proposed development does not raise any concerns. The County Highway Authority has raised no objections and there will be highway safety issues although a licence will be required from the Highway Authority and its provisions will need to be met. There will still be a substantial and adequate footpath width retained and it is not considered the planters will cause an unacceptable obstruction, including to the visually impaired. The planters will also be far enough from the road to avoid obstruction in that respect.
- 16.12 It is not considered there would be any impact upon neighbouring residential amenity. Inevitably the planting of trees has a benefit in terms of provision of green infrastructure, pollution and climate change (Policies ENV1 Environment, ENV3 Green Infrastructure, ENV5 Pollution and Contaminated Land and CC1 Climate Change.)

17.0 Conclusion

- 17.1 To summarise, the proposal is considered to have a positive impact upon the character of the Conservation Area and streetscene, would not be detrimental to highway safety or residential amenity and would have positive environmental benefits. It would therefore accord with adopted Local Plan policies and the NPPF.
- 17.2 The revisions to the containers involving rounding of the edges and the conclusions of the Health and Safety assessment will be reported to the Committee.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

Authority to APPROVE planning permission subject to submission of satisfactorily revised drawings and a satisfactory Health and Safety assessments, and 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 in Accordance with Approved Development

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers: 1:500 Block Plan, 1:2500 Location Plan Rec'd 20.7.22 , L1200 W1200H100-ASSY Rec'd 11.7.22. To be revised where appropriate.

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

3. ZBB - Materials as Submitted

The material to be used for the planters shall be that specified on the submitted application form and drawings.

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

4. Non Standard Condition - Highways

No works shall take place within the highway until such time as the necessary licencing from Essex County Council has been received by the applicant and all necessary conditions / requirements of that licence have been complied with, the details of which shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of the works.

Reason: To protect the highway user and the integrity and fabric of the highway in the interests of highway safety.

19.0 Informatives

1. 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.

2. 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.

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.

