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Item No: 7.1

Application: 163203

Applicant: Mr George Bulmer

Proposal: Application to remove condition 19 of planning permission 140208 (retrospective).

Location: 3 Ward Close, Belle Vue Road, Wivenhoe, Colchester, CO7 9LD

Ward: Wivenhoe

Officer: Eleanor Moss

1.0 Reason for Referral to the Planning Committee

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

Neighbours are concerned that this change will detract from their amenity and privacy. They feel replanting has been delayed to the detriment of their borders and therefore of their gardens and homes.

2.0 Synopsis

- 2.1 This application has come about because the majority of a conifer hedge at 3 Ward Close has been removed. This hedge was originally conditioned to be kept in place as part of a previous Planning permission for new housing (reference 140208). It is proposed to remove the remainder of this and the hedging at 2 Ward Close, leaving a 1.8 metre high fence which is already in place.
- 2.2 The key issue for consideration is the impact upon residential amenity with regard to the Council's adopted planning policies and SPD. The report considers that the removal of the conifer hedge is in compliance with planning policy.
- 2.3 The application is consequently recommended for approval.

3.0 Site Description and Context

- 3.1 Condition 19 relates to conifer hedging which was imposed under application 140208. The conifer trees are at the rear boundary of No. 2 and No. 3 Ward Close. These properties share a common boundary with Nos. 6, 7, 8, 9 and 10 Turner Close.
- 3.2 This report will detail the impact upon residential amenity to residents in Turner Close, in relation to the loss of boundary conifer trees.

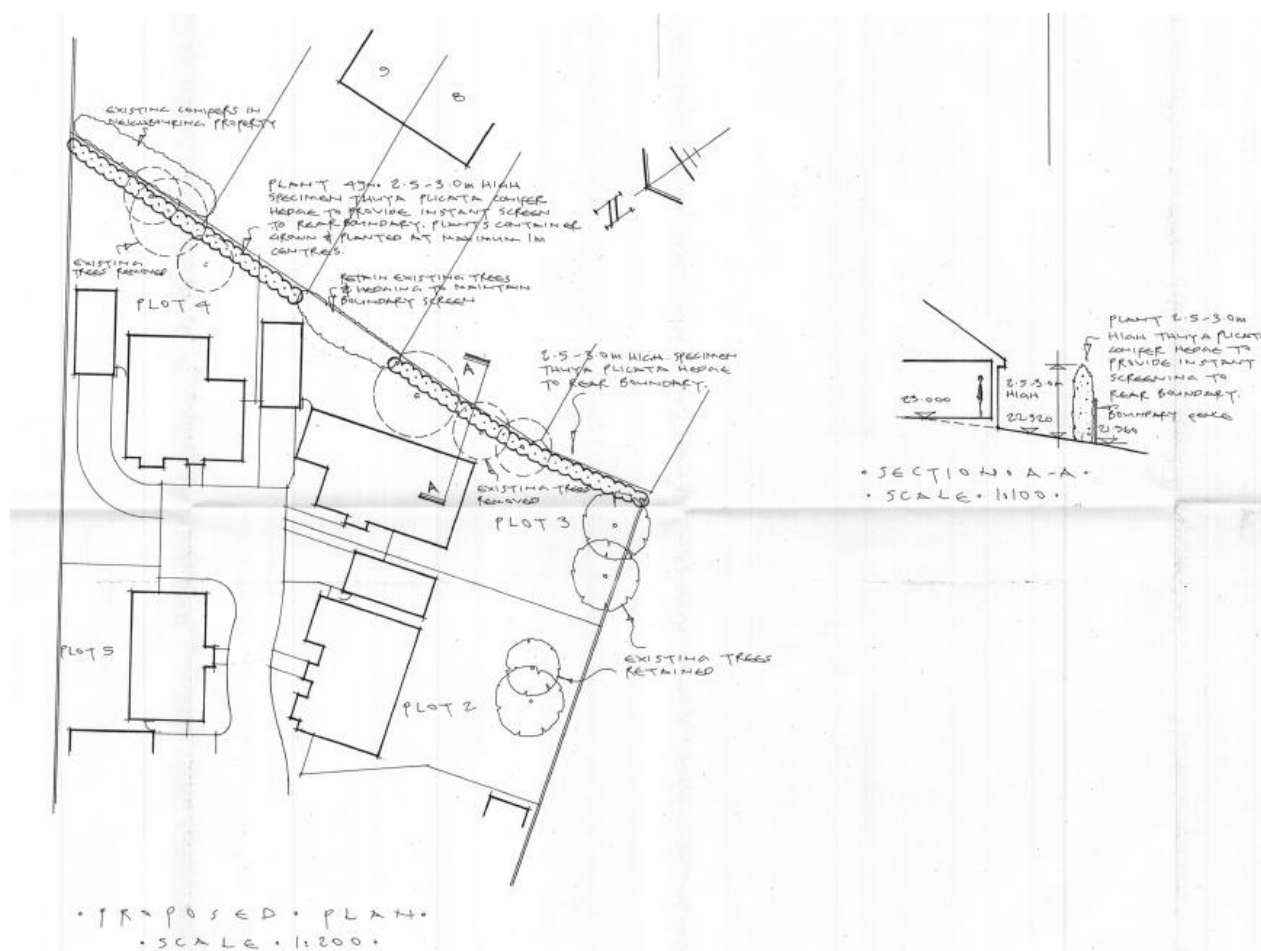
4.0 Description of the Proposal

- 4.1 This application seeks planning permission for the removal of condition No.19 (Landscaping) of application 140208, which reads as follows:

The replacement instant hedge shown in principle on the Landscape Plan drawing 01 shall be provided along the southern boundary of the application site within the first planting season following substantial completion of either the plot 3 or the plot 4 dwelling (whichever is completed soonest) and as soon as practicable after the removal of the existing hedge, unless otherwise agreed in writing by the Local Planning Authority. The hedge shall thereafter be permanently retained and maintained at a height not less than 2.5 metres above ground level. In the event that any part of the hedgerow (or its replacements) die, are removed, destroyed, fail to thrive or are otherwise

defective, they shall be replaced during the first planting season thereafter to specifications to be agreed in writing by the Local Planning Authority. Any works agreed shall be carried out in accordance with BS3998. Reason: In the interests of local residential amenity and to secure the privacy of adjoining occupiers.

4.2 The Landscape drawing 01 is as follows:



4.3 The removal of condition No.19 (Landscaping) relates to No. 2 and No. 3 Ward Close (Plots 3 and 4 in the above drawing). The removal of this condition would remove the requirement for No. 2 and No.3 Ward Close to retain conifer trees, of at least 2.5 metres in height, along their rear boundary.

5.0 Land Use Allocation

5.1 Residential

6.0 Relevant Planning History

6.1 140208 - Proposed demolition of existing two bedroom bungalow and construction of 1 x 2 bedroom and 5 x 3 bedroom detached bungalows and associated garages. Approved 17 April 2014.

7.0 Principal Policies

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

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

SD1 - Sustainable Development Locations
H1 - Housing Delivery
H2 - Housing Density
H3 - Housing Diversity
UR2 - Built Design and Character

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

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

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

N/A

7.5 The Wivenhoe Town Plan and emerging Wivenhoe Neighbourhood Plan are also relevant. This forms part of the Development Plan in this area of the Borough.

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

Backland and Infill
Community Facilities
Vehicle Parking Standards
Open Space, Sport and Recreation
The Essex Design Guide
Wivenhoe Town Plan and Executive Summary

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 Landscape Planning Officer – No objection

The landscape works proposals lodged on 22/12/16 would appear satisfactory in terms of their having no detrimental impact on public amenity. This with the proviso that there is no longer any requirement 'to maintain a screen' as originally proposed under application 140208 under drawing 578/9 lodged 16/01/14, above the agreed 1.8m high boundary fence agreed under drawing 578/1.D lodged 19/08/14, as would appear evident by Vaughan & Blyth's letter of 13/12/16.

In conclusion, there are no Planning Projects Team objections to this application on landscape grounds subject to the above.

8.3 Highway Authority – No objection

8.4 Environmental Protection – No objection

9.0 Parish/Town Council Response

- 9.1 Wivenhoe Town Council has stated the following:

Members expressed concerns regarding the privacy of neighbouring properties and recommend that the hedge is re-instated and temporary fence installed until the hedge has re-grown.

Officer response: It is worth noting that a boundary fence is already existing and will remain in perpetuity

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 concerns is given below:

- Impact upon residential amenity
- Loss of view due to residential development
- Appearance of constructed residential development

Officer response:

A number of concerns raised are in relation to views of the roof tops and garages of the constructed development, the loss of a private view is not a material planning consideration and therefore not taken into account within this report.

A number of objectors also raised the point that the conifer trees are to 'soften' the appearance of the constructed residential development. As the conifer trees are at the back of the properties, there will be no impact on the character of the area.

11.0 Parking Provision

11.1 The parking provision on site complies with the adopted car parking standards; the removal of condition 19 would not affect the parking provision.

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

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

14.0 Planning Obligations

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

15.0 Report

Impacts on Neighbouring Properties

- 15.1 A number of concerns have been raised regarding impact upon residential amenity due to the proposed loss of boundary conifers from residents at Turner Close, these concerns have been noted.
- 15.2 The case officer has visited No. 2 and No. 3 Ward Close, where a number of the conifer trees have been removed from No. 3's rear boundary. The case officer has also visited a number of the rear gardens within Turner Close which could to be affected by the removal of condition 19.
- 15.3 Both No. 2 and No. 3 Ward Close contain an existing boundary fence which measures approximately two metres in height. This fence runs along the entire length of the rear boundary. It is evident that the existing fence protects the current levels of residential amenity and the removal of conifer trees would not result in a detrimental impact upon residential amenity. There would be no overlooking issues resulting in the loss of conifer trees. As such, no concerns are raised regarding the removal of these trees as the impact on the amenity of neighbouring properties is considered to be acceptable.

The use of Planning Conditions

- 15.4 Paragraph 203 of the National Planning Policy Framework states "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions"
- 15.5 Paragraph 206 of the National Planning Policy Framework states "Planning conditions should only be imposed where they are:
1. Necessary;
 2. relevant to planning and;
 3. to the development to be permitted;
 4. enforceable;
 5. precise and;
 6. reasonable in all other respects."
- 15.6 In relation to condition 19, the case officer has assessed this condition against paragraph 206, the advice contained within the Planning Practice Guidance (PPG).
- 15.7 As noted above, the existing boundary fence provides for sufficient screening between the Ward Close and Turner Close common boundaries and, as such, residential amenity is not altered by the imposition of condition 19. As the original condition fails to serve its original and intended purpose, the condition is not considered to be reasonable, relevant to the previously permitted residential development or necessary.
- 15.8 Although condition 19 is worded in a manner in which it is enforceable, discussions have been undertaken with the Enforcement Manager. These

discussions have confirmed that it is not considered to be expedient to enforce a replanting of the trees, as the boundary fencing is sufficient to protect residential amenity.

15.9 Additionally, although the condition states that the conifers must be kept at a minimum height of 2.5 metres, no upper height limitation has been imposed.

15.10 Therefore, Planning enforcement action would not be able to be taken should the imposed conifers grow to their theoretical maximum height of 35 metres (although there would be the option of neighbours taking action under the high hedges legislation).

15.11 Overall, condition 19 is considered to be unnecessary to protect residential amenity and is could potentially lead to harm.

15.12 Therefore it is not considered that the original condition as worded would meet the Framework tests and would fail at an appeal.

16.0 Conclusion

16.1 To summarise, the removal of condition 19 is considered to be acceptable as the existing boundary fence is sufficient to retain existing residential amenity.

17.0 Recommendation to the Committee

17.1 APPROVAL of planning permission subject to the following condition:

1 – Non Standard Condition - Removal of Condition(s) Approval

With the exception of condition 19 of Planning Permission 140208 which is hereby removed, the requirements of all other conditions imposed upon planning permission 140208 remain in force and shall continue to apply to this permission, including the details and provisions of any approved matters discharging any condition(s) of that permission.

Reason: To avoid any doubt that this application only applies for the removal of the stated condition of the previous planning permission as referenced and does not seek the review of other conditions, in the interests of proper planning and so that the applicant is clear on the requirements they need to comply with.