

# Planning Committee

Item  
**8**

Date 15 August 2019

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

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

## 1.0 Decision(s) Required

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are requested to endorse the officer recommendation that Reason for Refusal No.1 of the Decision Notice 182120 is withdrawn and that the applicant and Planning Inspector is advised of this matter as soon as possible.

## 2.0 Reasons for Decision(s)

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

## 3.0 Alternative Options

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

## **4.0 Supporting Information**

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

## **5.0 Proposals**

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

## **6.0 Consultation**

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

## **7.0 Publicity Considerations**

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

## **8.0 Financial Implications**

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

## **9.0 Equality, Diversity and Human Rights Implications**

- 9.1 None directly arising from this report

## **10.0 Community Safety Implications**

- 10.1 None directly arising from this report

## **11.0 Health and Safety Implications**

- 11.1 None directly arising from this report

## **12.0 Risk Management Implications**

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

## **Background Papers**

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