

PLANNING COMMITTEE

10 JULY 2012

Present:- Councillors Heaney (Chairman), Challinor (Vice-Chairman), Brown, Fawcett, Howard, Johnson, McLeod, G L Mitchell, Simons, White, and attending as Planning Portfolio Holder, Councillor G V Guglielmi.

Substitute Members:- Councillor Nicholls (for Councillor Candy).

Also Present:- Councillors Casey and McWilliams.

In Attendance:- Acting Head of Planning, Legal Services Manager, Temporary Major Projects Officer, Democratic Services Officer (ER).

(6.00 p.m. – 7.02 p.m.)

17.. APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Candy.

18. MINUTES

The minutes of the meeting of the Committee held on 12 June 2012 were approved as a correct record and signed by the Chairman.

19. PLANNING APPLICATIONS WHERE THERE WILL BE PUBLIC SPEAKING

The Chairman advised that there would be public speaking on Planning Application 12/00111/FUL.

20. PLANNING, ENFORCEMENT AND TPO APPEALS, AND APPEAL DECISIONS

The Committee noted the contents of a report (submitted for information only) advising of the details of recent planning, enforcement and TPO appeals and appeal decisions.

21. URGENT ITEM - PLANNING APPLICATION - 11/00244/FUL - LAND NORTH OF KIRBY ROAD, MARTELLO CARAVAN PARK, KIRBY ROAD, WALTON-ON-THE-NAZE, CO14 8QP - ERECTION OF CLASS A1 RETAIL SUPERMARKET AND PETROL FILLING STATION WITH ASSOCIATED ACCESS, CAR PARKING, SERVICING, LANDSCAPING AND PEDESTRIAN FOOTBRIDGE

The Committee was informed by the Chairman that in view of the special circumstances involved, this matter should be considered by the Committee as an urgent item.

Members were aware that this item had been considered previously at its meeting held on 6 March 2012. Minute 123 specified a period of 4 months for the completion of a legal agreement under S106 of the Town and Country Planning Act 1990. The applicant had now requested an extension period of up to 56 days. The main reason for the failure to complete was the complex land ownership situation on the site. Officers had considered that in the circumstances the request was reasonable and were therefore seeking further authority to complete the agreement. This was the first opportunity to bring the matter before Members following the request and to delay until the August committee meeting would have further prolonged the process. Further to the Committee's decision on 6 March 2012, in the interests of transparency, it was important that the position was clarified

as a matter of urgency.

Councillor Johnson declared an interest in the application as she was also a member of Frinton and Walton Town Council.

The Committee had before it the urgent report of the Acting Head of Planning, circulated prior to the meeting, containing an assessment of the request and a recommendation of approval.

It was moved by Councillor White, seconded by Councillor McLeod and:-

RESOLVED – That the request to extend the time period for application 11/00244/FUL be approved in accordance with the following:-

(1) That the Acting Head of Planning Services (or the equivalent authorised officer) be authorised to grant planning permission for the development subject to:

(a) The Secretary of State not exercising his call-in powers under Section 77 of the Town and Country Planning Act 1990.

(b) By the 4th September 2012 the completion of a legal agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 dealing with the following matters (and any further terms and conditions as the Acting Head of Planning Services (or the equivalent authorised officer) in their discretion consider appropriate):-

- Town Centre Management
- Retention of Tesco Express Store, Walton-on-the-Naze until end of lease
- Local Employment
- Construction and Traffic Management Plan
- Service Vehicles Transport Plan
- Heavy Goods Vehicle Signage Review
- Travel Plan
- Town Centre Signage
- Public Transport Contribution
- Monitoring Fees

(c) Planning conditions in accordance with those set out in (i) below (but with such amendments and additions, if any, to the detailed wording thereof as the Acting Head of Planning (or the equivalent authorised officer) in their discretion considers appropriate) and with the reason for approval set out in (ii) below.

(2) That in the event that such legal agreement has not been completed by 4th September 2012 that planning permission be refused as the requirements necessary to make the development acceptable in planning terms has not been secured through S106 planning obligation, contrary to Local Plan Policy QL12.

(i) Conditions

- Time limit;
- List of approved plans;
- Opening hours;
- Information Board provision;
- Delivery times;
- Limit on net sales area;
- No pharmacy or Post Office element within store;
- No internal expansion of sales area;
- Limit on proportion of sales area for comparison goods;

- Highway works to be completed prior to opening;
- Staff travel plan;
- Materials of building and car park and circulation areas;
- Sustainability details;
- Archaeology;
- Disabled parking;
- Construction method statement, including timing of site demolition and site clearance;
- Hard and soft landscaping;
- Flood Management plan;
- Building stability;
- Noise;
- Security;
- Pollution control;
- Design of seating, trolleys bays lighting and public art;
- Design of water storage features (SuDS);
- Details of floor levels and finished floor height relative to Martello Tower K;
- Rainwater harvesting;
- Surface water drainage;
- Kirby Road Access (Grampian Condition);
- Signalised Pedestrian Crossing of Kirby Road (Grampian Condition);
- Speed Signage at Kirby Road (Grampian Condition);
- Bus Stop upgrades (Grampian Condition);
- Footway enhancement on Mill Lane (Grampian Condition);
- New 3 metre wide Foot/Cycleway to north of Kirby Road between the site access and Mill Lane Car Park (Grampian Condition);
- 3 Metre wide Foot/Cycleway enhancement on northern boundary of Drainage Ditches (Grampian Condition).

(ii) Reason for Approval:

This site is designated in the Tendring District Local Plan (2007) as part of a wider site for caravan and chalet park use and should normally be retained for that purpose. The development of the land for retail purposes is acceptable if the proposals meet the requirements of policy ER18 of the Local Plan and the criteria set out in the National Planning Policy Framework. The application has been assessed against these criteria, in particular the sequential approach and the impact test. There are no sequentially preferable sites to that proposed and there is no clear evidence that the proposal, as assessed, is likely to lead to any significant adverse impacts in terms of the criteria in the Framework. The proposals also retain the existing caravan park on the wider site.

The site lies in Flood Zones 2 and 3a as defined by the Environment Agency. Shops are identified as a less vulnerable use which is acceptable in Zones 2 and 3a. New development should wherever possible be steered to areas with the lowest risk of flooding (Zone 1). The sequential test has been applied and no sequentially preferable sites that are reasonably available and that are appropriate for the type of development proposed have been identified in the locality in lower flood risk areas. Therefore the development would accord with the guidance in the Framework and its technical guidance.

The application site lies close to a Scheduled Ancient Monument and the impact on the heritage asset has been assessed against the criteria in the Framework. Whilst there would be an adverse impact the overall benefits of the development have been judged to outweigh this impact.

Having had regard to the negative and positive impacts of the proposal assessed against the criteria in the Framework and policies ER18 and EN23 of the Local Plan, the proposals for public realm improvements that would be secured through the planning permission and planning obligation, and taking account of other material considerations, including the

representations made in response to the application and the responses from consultees the Local Planning Authority has concluded that on balance that there would be no material conflict with the Local Plan or the National Planning Policy Framework and that the application should be approved.

22. PLANNING APPLICATION - 12/001111/FUL - LAND ADJACENT BALTIC WHARF, ANCHOR LANE, MISTLEY, CO11 1NG

The Committee had before it the published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of refusal.

An update sheet stating that three additional representations had been received was circulated to Members before the meeting and explained to the Committee by the Temporary Major Projects Officer. A further representation was also reported verbally.

Isoldt Harris, on behalf of TW Logistics Ltd, spoke against the application.

Martin Rayner, on behalf of Mistley Parish Council, spoke against the application.

Joseph Greenhow, on behalf of the applicant, spoke in support of the application.

It was moved by Councillor Johnson, seconded by Councillor Heaney and:-

RESOLVED – That application 12/001111/FUL be refused in accordance with the Officers' recommendation for the following reasons:-

The proposed development is considered to be contrary to the policies and guidance in the National Planning Policy Framework and policies QL1, QL9, QL11, EN1, EN5, EN5a, EN17, LMM1, QL6, HG1 and HG3 of the Tendring District Local Plan (2007).

Policies QL1, HG1 and HG3 seek to ensure that new housing development is directed to sustainable locations within defined built up areas. The application site is located outside of the settlement limits defined for Mistley and would not meet the three roles for sustainable development identified in the Framework. It fails to adequately protect and enhance the natural, built and historic environment and would, therefore, be unsustainable.

The proposed development would have any unacceptable adverse impact on the character and appearance of the Manningtree and Mistley Conservation Area contrary to the Framework and policies LMM1, QL6, EN17, QL9 and QL11. The proposals would fail to make a positive contribution to local character and distinctiveness and no public benefit of any weight has been identified such as to outweigh the harm that would be caused.

The proposed development would have a serious detrimental impact on the landscape character of the area, including the Suffolk Coasts and Heaths AONB and its proposed extension, and would not make a positive contribution to local character and distinctiveness contrary to the guidance in the Framework and to policies QL6, LMM1, EN1, EN5 and EN5a. There would be a serious adverse impact on the character and appearance of the AONB when viewed from the northern bank of the River Stour and from within the proposed extension to the AONB south of the river. The design of the proposed dwellings does not respond adequately to this sensitive setting. The form of the buildings is bulky and their massing and three storey height will make them unduly visible from the river and AONB, including the proposed extension.

23. PROVISIONAL TREE PRESERVATION ORDER - 11/00048/TPO

The Committee was requested to determine whether the provisional Tree Preservation Order (TPO) made in respect of two woodlands known as Pedlars Wood and situated either side of Central Avenue, Frinton-on-Sea, should be confirmed, confirmed in a modified form or allowed to lapse.

Councillor Johnson declared a personal interest as a Ward Member in respect of the application.

It was moved by Councillor Johnson, seconded by Councillor Challinor and:-

RESOLVED – That Tree Preservation Order 11/00048/TPO be confirmed without modification in accordance with the Officers' recommendation.

24. PLANNING APPLICATION - 11/01381/FUL - 1 THE LANE, MANNINGTREE, CO11 1AW

Further to minute 129 (3.4.12) the Committee had before it the updated published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of refusal.

An update sheet with details of an additional representation was circulated to Members before the meeting.

Councillor G V Guglielmi declared a personal interest both as a Ward Member and as a Member of Manningtree Town Council in respect of the application.

Councillor Talbot expressed concerns about the decision of officers not to implement the decision of the Committee on 6 March 2012 (Minute 125 refers) to grant planning permission for the application. Councillors Johnson and McLeod also expressed similar concerns. Councillor Candy explained why she disagreed and considered that officers had followed the correct procedure. The Legal Services Manager explained why officers had taken the view that material planning considerations had unintentionally been omitted from the written report to the Committee's meeting on 6 March 2012 and that the action taken was intended to protect the Council from a legal challenge or a complaint to the Local Government Ombudsman being upheld. The Development Planning Manager gave a further explanation of the action taken by officers and indicated how it complied with case law which established the principles that (a) the Council's decision takes legal effect when the written decision notice is issued (as distinct from when the Committee resolves to approve or refuse an application) and (b) if further material considerations arise or come to light after the Committee resolution but before any written decision notice is issued, the Council is under a duty to return the application to the Committee so that it can take into account the additional material planning considerations.

A lively discussion ensued with questions from Councillor Howard and other Members of the Committee. The Chairman ruled that she considered the action taken by officers had been proper and appropriate and that it was time to close the debate on the matter and to move on to consider and determine the planning application.

Sue Brown, on behalf of the Manningtree and District Chamber of Trade, spoke against the application.

Malcolm Westwood, the applicant, spoke in support of his application.

It was moved by Councillor Candy and seconded by Councillor Simons that application

11/01381/FUL be refused in accordance with the officer recommendation (duly updated to take into account the Nation Planning Policy Framework) on the grounds that the proposed mixed use would result in the loss of a potential retail unit. On being put to the vote, the motion was declared LOST.

It was then moved by Councillor Talbot, seconded by Councillor Johnson and:-

RESOLVED – That application 11/01381/FUL be APPROVED contrary to the Officers' recommendation for the following reason(s):-

In approving this application the local planning authority has taken account of the development plan policies and/or proposals listed above. While the proposal may be in conflict with policy ER33 of the adopted Tendring District Local Plan (2007) it is considered that the proposed change of use to youth café/drop-in centre does not adversely undermine the retail function of Manningtree Town Centre due to the property's siting along a narrow lane set back off the main retail frontage of the High Street. Additionally, the proposal would provide for the continued running of a community facility for which the applicant has proven local need. This sits comfortably with paragraph 70 of the National Planning Policy Framework which requires Local Planning Authorities to plan positively for the provision of community facilities. Furthermore, due to the lack of complaints to the Council's Public Experience (Environment Health) department regarding noise and amenity concerns and the fact the site is sited within a town centre location (where some noise is to be expected) the proposed permanent use of the premises as a youth cafe/drop-in centre would not have a significant adverse impact upon local resident's amenity levels.

25. PLANNING APPLICATION - 12/00099/FUL - 23 JACKSON ROAD, CLACTON-ON-SEA, CO15 1JA

The Committee had before it the published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval with a summary of recommended conditions.

It was moved by Councillor McLeod, seconded by Councillor Johnson and:-

RESOLVED – That application 12/00099/FUL be approved in accordance with the Officers' recommendation and subject to the following conditions:-

- Time Limit
- Development in accordance with the plans

Reason for approval:

The loss of the public house is regrettable but its loss is outweighed by the fact the proposed mixed use scheme will bring the building back into beneficial use and will provide a new retail unit and housing in the town centre which is also well served by other public houses and clubs. The scheme also takes the opportunity to improve the façade of the building with a new rendered parapet wall in place of the unattractive metal handrail on the roof. Therefore the scheme is an improvement on the existing situation and complies with the development plan.

A representation from the Tendring CAMRA branch was carefully considered, in particular the comments relating to the draft National Planning Policy Framework (NPPF) have been carried across in the NPPF. The objection due to the loss of a public house, inaccuracies in the Design and Access Statement and application form and the lack of private amenity space was carefully considered but did not warrant the refusal of a mixed use scheme that

will bring a new retail/office unit and 6 flats to the town centre in close proximity to existing local services including other public houses.

26. PLANNING APPLICATION - 12/00306/FUL - KIOSK 3A, KINGS PROMENADE, CLACTON-ON-SEA, CO15 5AF

The Committee had before it the published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval with a summary of recommended conditions.

It was moved by Councillor Candy, seconded by Councillor A J Mitchell and:-

RESOLVED – That application 12/00306/FUL be approved in accordance with the Officers' recommendation and subject to the following conditions:-

- Time Limit
- Plans

Reason for approval:

In approving this application the Local Planning Authority has taken account of the development plan policies listed and it considers that the proposed development is in accord with those policies and does not harm public amenity. The proposals improve the appearance of the kiosk and will provide a new bar area which will be a positive tourist addition. There will be no impact on the geological SSSI on which the kiosks are located.

27. PLANNING APPLICATION - 11/01383/FUL - KIOSK NO 1, NO 2 & NO 3, KINGS PROMENADE, CLACTON-ON-SEA

The Committee had before it the published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval with a summary of recommended conditions.

It was moved by Councillor Johnson, seconded by Councillor Challinor and:-

RESOLVED – That application 11/01383/FUL be approved subject to the following conditions:-

- Time Limit
- Plans

Reason for Approval:

In approving this application the Local Planning Authority has taken account of the development plan policies listed in the Officer report and it considers that the proposed development is in accord with those policies and does not harm public amenity. The proposals improve the appearance of the kiosks, promenade and seafront whilst retaining a 4.2 metre wide promenade that is adequate to allow the free movement of pedestrians and emergency vehicles. There will be no impact on the geological SSSI on which the kiosks are located and/so no harm to designated public open space.

28. PLANNING APPLICATION - 11/01489/FUL - CROOKED ELMS SHELTERED HOUSING UNIT, MAPLE CLOSE, HARWICH, CO12 4AL

The Committee had before it the published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval with a summary of recommended conditions.

It was moved Councillor McLeod, seconded by Councillor Johnson and:-

RESOLVED – That application 11/01489/FUL be approved subject to the following conditions:-

- Standard Time Limit (3 years)
- Approved plans

Reason for Approval:

In approving this application the local planning authority has taken account of the development plan policies and it considers that the proposed development is in accord with those policies, preserves the appearance of the conservation area and does not harm public amenity.

29. PLANNING APPLICATION – 11/01168/FUL – 11-13 WEST AVENUE, CLACTON-ON-SEA, CO15 1QS

The Committee had before it the published Officer report containing an appraisal of the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval with a summary of recommended conditions.

Mr Peter Le Grys, agent on behalf of the applicant, spoke in support of the application.

It was moved by Councillor Candy, seconded by Councillor Simons and:-

RESOLVED – That application 11/01168/FUL be REFUSED contrary to the Officer recommendation for the following reason:-

Reasons for refusal:

The proposal involves the change of use from Class A1 retail to Class A2 Financial use.

The application site is located in West Avenue in Clacton within a designated primary shopping frontage in the Local Plan and within the designated primary shopping area.

Policy ER32a of the Local Plan says that within the primary shopping area "proposals for non-retail development at ground floor level will not be permitted". The application is within fundamental breach of this policy.

Policy ER33 of the Local Plan is concerned with non-retail uses within primary shopping frontages. The proposal does not meet the requirements of this policy. It requires that non-retail uses do not dominate and that the proportion does not exceed 10% of the length of the individual street frontage. This 10% is already exceeded as on this street frontage it is currently 38%. If this was approved it would increase to 54%. This is far in excess of the policy and at over 50% will mean non-retail uses will dominate contrary to policy. The proposal is also in direct conflict with the final sentence of Policy ER33, which

states that:- "Within the Primary Shopping Frontages non-retail uses will not be permitted at the ground floor level."

The proposal is therefore contrary to the policies in the Development Plan and in particular to saved policies ER32a and ER33 in the adopted Tendring District Local Plan (2007).

Chairman