

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,
HELD ON TUESDAY, 4TH JULY, 2023 AT 6.00 PM
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors Fowler (Chairman), White (Vice-Chairman), Alexander, Bray, Everett, Harris, Placey, Sudra and Wiggins
In Attendance:	Gary Guiver (Director (Planning)), John Pateman-Gee (Planning Manager/Head of Planning), Joanne Fisher (Planning Solicitor), Jacob Jaarsma (Planning Team Leader)(except Items 15 and 16), Ian Ford (Committee Services Manager), Amy Lang (Senior Planning Officer)(except Items 14 - 16), Clive Theobald (Planning Officer)(except Item 16) and Bethany Jones (Committee Services Officer)

8. REPORT OF DIRECTOR (PLANNING) - A.2 - 23/00255/DETAIL LAND TO THE REAR OF MILL HOUSE, HIGH STREET, GREAT OAKLEY, HARWICH, ESSEX, CO12 5AQ

The Chairman informed the meeting that this Planning Application, which was a reserved matters application for the erection of 5 no. four bedroom dwellings, considering details of access, appearance, landscaping, layout and scale, pursuant to outline planning permission 19/00004/OUT, had been included on the published Agenda for this meeting, at the request of Councillor Mike Bush, due to his concerns that the layout and scale of the development would be harmful to the area's character, and would be harmful to the nearby heritage assets.

However, having read the published Officer report and having noted that Essex County Council Heritage, having considered the applicant's amended plans, now felt that the layout of the proposed dwellings had now been simplified in a more holistic and subtle scheme and using traditional external materials which were more in keeping with the local character thereby minimising the visual impact of the proposed development on the setting of the Conservation Area and of Grade II Listed Mill House, had decided not to object to this application, Councillor Bush had subsequently notified the Council that he had withdrawn his "call-in".

The Chairman stated that she had considered the matter and had agreed that this item would be withdrawn from the Agenda for this meeting. She informed the meeting that this Planning Application would now be determined by Officers, in accordance with the powers delegated to them by the Council's Constitution.

9. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were no apologies for absence or substitutions submitted on this occasion.

10. MINUTES OF THE LAST MEETING

RESOLVED that the minutes of the last meeting of the Committee, held on Tuesday, 6 June 2023 were approved as a correct record.

NOTE: Pursuant to the provisions of Council Procedure Rule 19.6, Councillor Wiggins requested that it be recorded in the Minutes that she had abstained from voting on this item.

11. DECLARATIONS OF INTEREST

There were no declarations of interest submitted by Councillors.

12. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were no such Questions on Notice submitted by Councillors on this occasion.

13. REPORT OF DIRECTOR (PLANNING) - A.1 - 22/00556/FUL - SACKETTS GROVE CARAVAN PARK, JAYWICK LANE, CLACTON-ON-SEA, ESSEX, CO16 7JB

It was reported that this application was before Members due to the development representing a departure from the development plan, proposing new residential park homes outside of the defined settlement development boundary for the area.

Members were told that this application related to the land centrally located within Sacketts Grove Caravan Park site, on the western side of Jaywick Lane, Clacton. The site was largely laid to grass but contained the filled in remains of an outdoor swimming pool and an outbuilding which contained the pump house for the pool.

Members heard that the vehicular access from the public highway would utilise the existing Caravan Park entrance on Jaywick Lane. The site was bordered on all sides of existing park homes with wooden close boarded fences denoting existing plot boundaries.

This application proposed to change the use of the land for the siting of up to 8 no. residential park homes with associated development to facilitate the use including new access roads and hardstanding to form car parking. The development represented a small-scale addition to the existing and established park.

The site was located outside the Settlement Development Boundary and within a Safeguarded Holiday Park, Sacketts Grove was situated within a sustainable location close to amenities.

In the opinion of Officers, the development would cause no harm in terms of wider landscape, character, and appearance. It would deliver a windfall of up to eight additional dwellings contributing to the continued demand for high quality and affordable retirement and semi-retirement housing whilst also providing a small wind fall contribution to the Council's five-year housing land supply.

Therefore, this application had been recommended for approval subject to a Unilateral Undertaking securing a financial contribution of £156.76 per dwelling toward recreational disturbance mitigation in accordance with RAMS.

At the meeting, an oral presentation was made by the Council's Planning Officer (AL) in respect of the application.

An update sheet had been circulated to the Committee prior to the meeting with details of an additional objection letter that had been received as follows with the Officers' response in bold:-

- *“Contrary to the development plan – yet recommended for approval.*
- *Outside settlement boundary and protected for caravans.*
- *The application was refused initially by the same Planning Officer.*
The application has not been subject of a formal determination. An initial view was provided via email to the applicant.
The principle of development is addressed within the officer’s report.
- *Licensed for 102 properties only.*
Licensing falls outside the remit of Planning but a new / amended site licence would be required in the event of an approval.
- *Loss of central green area of the established park.*
The site is not safeguarded amenity space or subject to any other policy designation that would secure or require it’s retention.
- *Surface water flooding issues.*
The recommendation includes conditions to mitigate surface water flooding.

RECOMMENDATION

- *The Officer recommendation of approval remains unchanged.”*

There was no public speaking on this application.

Matters raised by Members of the Committee:-	Officer’s response thereto:-
<i>Are we satisfied everything is place with surface water?</i>	<i>Yes, Officers are satisfied with the surface water disposal as there is no requirement for consultation due to the area of the application site falling below 1 hectare.</i>
<i>Is there a legal requirement for caravans to be a minimum distance apart?</i>	<i>Yes, at least 6 metres apart in accordance with the Model Standards. Applicant has admitted that the current layout fails some of the requirements within the Model Standards. However, this will be addressed via the proposed conditions.</i>
<i>Can you confirm then that TDC remains in control of the layout?</i>	<i>Yes, description has been amended and TDC have conditioned for a new layout to be submitted to address the planning concerns (retention of tree and tight access) plus the applicant needs to demonstrate compliance with the Model Standards.</i>
<i>Can we see a photograph of the proposed layout with the tree in question?</i>	<i>An existing block plan showing the position of the tree is not included within the applicant’s submission.</i>
<i>Can we have reassurance that the</i>	<i>This is covered as part of proposed condition 3.</i>

<i>hornbeam tree can be preserved?</i>	
<i>Can this site still take touring caravans and tents?</i>	<i>An appeal decision at Sandpiper Gardens gave permission for permanent homes. Saddlebrook Chase includes static caravans and tourers. Officers do not have the information to confirm if camping plots are available as the overall site history is very complex. This information is not required for the purposes of the assessment of this application.</i>
<i>Can we have reassurance on what is happening with the tree?</i>	<i>Officers would want to protect the tree and it is fully contained in the site. Officers were told that the tree is healthy, with amenity value but it is not visible to the wider public so therefore it is not conducive to a Tree Preservation Order to be made. Proposed conditions 3 and 5 seek to protect the hornbeam tree.</i>
<i>Why are we saying “up to 8” plots?</i>	<i>The plan is indicative. Believe there is a scope for smaller units that could result in up to 8 plots and keep the tree. Officers have allowed the applicant to keep flexibility given other issues with meeting the Model Standards. The applicant believes they can have 8 plots and that’s without the tree there so Officers say up to 8 with the tree.</i>
<i>What are the mitigation measures?</i>	<i>As permanent homes, they are covered by RAMS requirements therefore a financial contribution is needed from applicant. Covered by the Unilateral Undertaking (UU).</i>
<i>Could the committee see the final layout?</i>	<i>This application is for a change of use of the land, often there’s cases where planning would not have any control over the layout etc of these sorts of developments. However, in this case there is an opportunity for TDC to control the layout via the Conditions. Officers believe that there is no evidence to justify keeping the tree regardless of proposed layout.</i>
<i>If the applicant comes back with a layout that meets model standards but removes the tree but adds more planted trees, would that be considered?</i>	<i>Yes, it would be considered. The location of the new planting of the trees i.e. ideally in a more usable location for the public would be crucial as to whether it would be approved.</i>

It was moved by Councillor Harris and seconded by Councillor Bray that this application be approved, subject to conditions and a Unilateral Undertaking in relation to a financial contribution towards recreation disturbance mitigation in accordance with RAMS.

It was then moved by Councillor Everett and seconded by Councillor Alexander by the way of an amendment that consideration of this application to deferred in order to enable the applicant to submit an amended site layout plan for the Committee’s consideration. Councillor Harris and seconded by Councillor Bray debated acceptance of the amendment without conclusion.

Following a suggestion by the Head of Planning that any Discharge of Condition application relating to the revised layout plan (including any fencing or means of enclosure) could be brought to the Committee for its determination, Councillors Everett and Alexander withdrew their amendment.

Councillors Harris and Bray agreed to incorporate the Head of Planning's suggestion in their motion. On being put to the vote it was therefore unanimously:-

RESOLVED that, the Head of Planning (or equivalent authorised Officer), be authorised to grant permission for the development, subject to:-

- (a) The appropriate terms as summarised below and those as may be deemed necessary to the satisfaction of the Head of Planning to secure the completion of a Unilateral Undertaking under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters:
 - Financial contribution of £156.76 per dwelling being £1,254.08 (index linked) towards recreational disturbance mitigation in accordance with RAMS.
- (b) That the Head of Planning be authorised to grant planning permission subject to the agreed section 106 agreement and conditions as stated at paragraph 8.2 of the Officer's report (A.1) or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained.
- (c) The informative notes as may be deemed necessary; and,
- (d) That any discharge condition application for site layout plan be submitted to the Planning Committee for its determination.

14. REPORT OF DIRECTOR (PLANNING) - A.3 - 22/01138/FUL - STONEHALL FARM BUILDINGS, STONEHALL LANE, GREAT OAKLEY, HARWICH, ESSEX, CO12 5DD

It was reported that this planning application was before the Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any defined settlement development boundary and has a recommendation of approval.

Members were informed that this proposal of dwellings was sited in slightly different locations and resulted in a combined total of 65.5sqm additional footprint, however this was not considered to be materially different to the development approved under prior approval 21/00788/COUNOT. The overall height of Plots 1 and 2 were broadly the same as the existing building, with Plots increased but not to a significant extent.

The Committee heard that there were no significant issues with respect to neighbouring amenities or harm to trees, and there was sufficient parking provision. In addition, no objections had been raised by ECC Ecology subject to conditions. Whilst ECC Highways had objected on the grounds there was a lack of visibility splays information, due to the nature of the site and potential level of activity the existing use provided, as well as the fallback position, it was not considered the impact on the local highway network would be significantly harmful.

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

At the meeting, an oral presentation was made by the Council’s Planning Team Leader (JJ) in respect of the application.

There had been no updates circulated to the Committee prior to the meeting.

Mollie Foley, the applicant’s agent, spoke in support of the application.

Steve Pryer, a member of the public, spoke against the application.

Matters raised by Members of the Committee:-	Officer’s response thereto:-
<i>Is there a fallback position on the footprint of the existing building?</i>	<i>*The Officer showed the changes on the screen*</i>
<i>Is the fallback conversion of the existing building on the current footprint?</i>	<i>Yes, that is correct.</i>
<i>When the Class Q application was made, was there any discussion of Ecology? E.g., Bats, and other protected species.</i>	<i>Bio-diversity information was not available initially.</i>
<i>If the fallback position did not exist, would you be recommending approval?</i>	<i>It is unlikely that Officers would have recommended approval for three new builds in the countryside outside the Settlement Development Boundary of Great Oakley.</i>
<i>Given the new bio-diversity ecology information, what is the legal ability to convert existing buildings given that protected species are present?</i>	<i>Yes, realistic proportion exists, therefore fallback position is given considerable weight. ECC Ecology “holding objection” has been overcome, as little evidence of bats and barn owl activity exists and given the qualified ecologist’s belief that the current buildings are not suitable for protected species.</i>
<i>Would it be legal to convert given the presence of bats in some of the buildings?</i>	<i>Under Class Q – Ecology is not a major consideration, but the Council does have a duty under the Wildlife Act. This was considered in making the original Class Q application. Therefore, Officers have nothing to hand to say there is not a realistic proposition to implement the prior approval. Acknowledgement that mitigation measures may be an issue for the applicant in the future. Weight to be given to the fallback position is for the decision maker based on the material facts presented in each identical case.</i>

<i>If these buildings were brought forward as a non-designated heritage asset, how would it be viewed?</i>	<i>Officers fully acknowledge that these buildings have historic value but are not protected legally by listing. These have not been considered to be non-designated heritage assets. The application must be considered on its current merits. Officers have not consulted Place Services Heritage Team as the buildings are not listed.</i>
<i>Any change in Highways matters from the fallback position?</i>	<i>Nothing has changed. Visibility splays are acceptable. Parking provision is acceptable and impact on highway network is low.</i>
<i>Could you expand on reference in Section 6.54 that site is not located within a Drinking Water Safeguard Zone?</i>	<i>Section 6.54 explains the context and thought process of Officer to justify using a package treatment plant and a soakaway and it was considered acceptable.</i>
<i>Does this site need a soakaway and where will it go?</i>	<i>Yes, it does. Soakaway provision will be covered by Building Control under the Building Regulations.</i>
<i>SPL3 (Suitable Designs) – Does this application meet the criteria of that Policy, given the loss of these historic farm buildings? Also given the increase in the size of the buildings.</i>	<i>Not statutorily listed but accept the historic nature. With SPL3 it comes down to the design of the proposed buildings. The merit of the proposal outweighs its negatives in the opinion of the Officers but it's down to Members to make their own judgements.</i>

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor Everett and:-

RESOLVED that, contrary to the Officer's recommendation of approval, the Head of Planning (or equivalent authorised Officer) be authorised to refuse planning permission for the development due to the following reasons:-

“The erection of 3no. dwellings (in lieu of Prior Approval for three dwellings) would, if approved, result in increased footprint, massing and forward projections directly adjacent to Stonehall Lane and fails to enhance the setting of the locality. Moreover, the appearance would consist of excessive use of cladding out of character in an area where the use of brick is currently the predominant material. Collectively the new development would harm visual amenity, not be in keeping with prevailing rural character and fails to maintain local character and distinctiveness or enhance the location compared to the existing building with retained historic features and materials. Therefore, the development is considered to conflict with the development plan including policies SPL2 SPL3, SP7, PPL3 as well as the NPPF including Section 12. Achieving well-designed places.”

15. REPORT OF DIRECTOR (PLANNING) - A.4 - 22/01937/FUL - LAND ADJACENT TO THE WILLOWS, LITTLE CLACTON ROAD, GREAT HOLLAND, ESSEX, CO13 0ET

It was reported that this application had been referred to the Planning Committee at the Director of Planning's discretion in light of the recent planning history of this site and due to the fact that planning application 22/01052/FUL for the proposed demolition of former livestock building and replacement with a two bedroom bungalow (in lieu of Prior Approval for conversion of building into a dwelling subject of application 21/00460/COUNOT) had been previously refused by the Planning Committee following an Officer's recommendation of approval.

Members were informed the purpose of this application was the demolition of a former livestock building and its replacement with a two bedroom bungalow (in lieu of Prior Approval for conversion of building into a dwelling subject of application 21/00460/COUNOT). This application was therefore effectively a resubmission of application 22/01052/FUL. This proposal would conflict with the requirements of the Development Plan, principally Policies SP3 and SPL2 of the Tendring District Local Plan 2013-2033 and Beyond, being located outside of any Settlement Development Boundary.

Members of the Committee were told that the Officer's considered view was that the lawful ability to undertake the extant Prior Approval conversion scheme under 21/00460/COUNOT was now highly unlikely and that the weight that could be attributed to the so called 'fall-back position' was much further reduced whereby the further deteriorated condition of the building as seen on site for the current resubmission application since the refusal of application 22/01052/FUL was such that the possibility of compliance with the General Permitted Development Order (as also already previously cited for refusal reason No.1 for refused planning application 22/0152/FUL) was highly unlikely also. For this reason, the proposal was considered by Officers to fail the second element of the legal fallback test where there was no likelihood or real prospect of such a lawful event occurring as set out in the explanatory paragraph 6.16 of this report regarding the fall-back position.

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

At the meeting, an oral presentation was made by the Council's Planning Officer (CT) in respect of the application.

An update sheet had been circulated to the Committee prior to the meeting with the following details: -

- *"Members should be aware that an email dated 26th June 2023 has been received by the Council from a person stated to be acting as Local Power of Attorney (LPA) on behalf of Mr Graham John Stevens, stated owner and proprietor of The Willows (7 Acre Farm) and applicant for the above planning application in which it is stated that there is currently a dispute over land ownership between two parties. The Council has been made aware (through the contact from the LPA referred to above) that this dispute is currently in the hands of solicitors acting for both parties concerned.*
- *This information (referred to above) provided to the Council has raised an ownership issue that potentially needs to be addressed before the issue of any decision notice.*

RECOMMENDATION

- *The Officer recommendation of refusal remains unchanged. However, final issuing of decision is to be fully delegated to officers and subject to resolution of the correct serving of the certificate as may be needed."*

The Head of Planning addressed Planning Committee in respect of the ownership confirming that as a precautionary measure Members were advised not to access the site and view from public areas only. Member should consider that they have sufficient understanding of the site and proposal to make a reasonable judgement. The matter of ownership is not a determining factor for planning judgement and the Head Of Planning outlined the provisions of Article 14 of the Development Management Order 2015. However, he noted that the agent had already helpfully been in touch and provided additional supporting information likely to make this matter resolved and avoid any delay.

Matters raised by Members of the Committee:-	Officer's response thereto:-
<i>Can we have clarity whether it is realistic to carry out the Class Q fallback application?</i>	<i>Officers cannot state how rudimentary the rebuild is but it could be possible. However, the view is that the first position of the fallback could not be lawfully carried out i.e., a straight conversion.</i>
<i>The Committee can recall an earlier site visit in September 2022. Can Officers confirm whether the approved Class Q application is the same size as this now suggested building?</i>	<i>Supporting documentation shows it was in its pre-existing state, with its two halves in place.</i>
<i>Referred to hedge that had been removed since September 2022 that was between the building and footpath.</i>	<i>Officer was aware and acknowledged that there might be implications under the Hedgerows Regulations.</i>
<i>Is there any suggestion of what percentage of the original building must be included within the fallback conversion?</i>	<i>The percentage figure is not specified. The Legal Officer (JF) also read out a description of Class Q and its limitations on reliance, such as size.</i>

Following discussion by the Committee, it was moved by Councillor Placey, seconded by Councillor Wiggins and unanimously **RESOLVED** that the Head of Planning be authorised to refuse permission for the development for the following reasons:-

1. Policy SP3, Section 1 of the Tendring District Local Plan 2013-2033 and Beyond sets out the spatial strategy for North Essex and directs growth towards existing settlements, whilst Policy SPL2, Section 2 of the Local Plan has similar aims and objectives specifically to Tendring District. The application site lies outside of any defined Settlement Development Boundary in the 2013-2033 Local Plan. The proposed development would therefore extend beyond the area planned to provide growth.

In view of its favourable housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement. The proposal therefore gives rise to harm through failing to comply with a statutory plan-led approach to the location of future housing. In view of this, the proposal's conflict with local plan policy gives rise to a significant degree of harm. The spatial strategy of Policy SP3, Section 1 also reflects the National Planning Policy Framework (2021) sustainable development objectives and the proposal's policy conflict with this policy in this context is

given full weight. The principle of development is therefore not acceptable in this location. Consideration has been given to the proposed scheme as a self-build proposal, although limited weight is afforded to this possibility due to the scheme being contrary to the self-build eligibility criteria of Policy LP7 of the Tendring District Local Plan 2013-2033 and Beyond relating to self-build schemes proposed beyond the Settlement Development Boundaries.

The availability of a building subject to an approved Prior Approval for Class Q is acknowledged and given weight (21/00460/COUNOT), but given the poor condition of the building and its subsequently further deteriorated state since the determination of planning application 22/01052/FUL resulting in its partial collapse, it is the Council's assertion that the lawful ability to undertake the extant Prior Approval conversion scheme under 21/00460/COUNOT is now highly unlikely and that the weight that can be attributed to the so called 'fall-back position' (R v Secretary of State for the Environment and Havering BC (1998) EnvLR189) is much further reduced as such that the possibility of compliance with the General Permitted Development Order (as also already previously cited for refusal reason No.1 for refused planning application 22/1052/FUL) is highly unlikely also. For this reason, the proposal is considered to fail the second element of the legal fallback test where it is considered that there is no likelihood or real prospect of such a lawful event from occurring.

2. Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. Policy SP2, Section 1 of the Tendring District Local Plan 2013-2033 and Beyond states that financial contributions will be secured from development towards mitigation measures in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy 2018-20238 (RAMS), whilst Policy PPL4, Section 2 of the Tendring District Local Plan 2013-2033 and Beyond has a similar contributions requirement.

The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 4,152 metres from the Hamford Water SAC and Ramsar. However, new housing development within the Zol would be likely to increase the number of recreational visitors to Hamford Water and, in combination with other developments, it is likely that the proposal would have significant effects on this designated site. Mitigation measures must therefore be secured prior to occupation.

The RAMS contribution is to be secured by way of Unilateral Undertaking to be completed prior to determination of an application and for the contribution to be paid prior to commencement of development ensuring there will be certainty that the development would not adversely affect the integrity of European Designated Sites in accordance with Policies SP2 a PPL4 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017. A Unilateral Undertaking has been submitted for the application proposal. However, this has yet to be finalised at the issue date of this decision notice

and as such the proposal fails to comply with the aforementioned policy requirements of Policy SP2, Section 1 and PPL4, Section 2 of the Tendring District Local Plan 2013-2033 and Beyond.

3. That the Head of Planning be authorised to issue the decision notice once the issues surrounding the correct serving of the ownership certificate have been resolved.

16. REPORT OF DIRECTOR (PLANNING) - A.5 PLANNING ENFORCEMENT UPDATE REPORT

The Committee was given an updated report on the following areas, in accordance with the Council's approved planning enforcement policy:-

- Number of complaints received/registered in the quarter;
- Number of cases closed in the quarter;
- Number of acknowledgements within 3 working days;
- Number of harm assessment completions within 20 working days of complaint receipt;
- Number of site visits within the 20 day complaint receipt period;
- Number of update letters provided on/by day 21;
- Number of live cases presented by category, electoral ward and time period since receipt;
- Enforcement-related appeal decisions.

At the meeting, an oral presentation was made by the Council's Head of Planning (JP-G) in respect of the report.

RESOLVED that the contents of this report be noted.

The meeting was declared closed at 9.22 pm

Chairman