

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,
HELD ON MONDAY, 27TH NOVEMBER, 2023 AT 5.00 PM
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors Fowler (Chairman), White (Vice-Chairman), Alexander, Everett, McWilliams, Smith, Sudra and Wiggins
Also Present:	Councillor Scott
In Attendance:	Gary Guiver (Director (Planning)), John Pateman-Gee (Head of Planning & Building Control), Joanne Fisher (Planning Solicitor), Jacob Jaarsma (Planning Team Leader), Bethany Jones (Committee Services Officer) and Emma Haward (Leadership Support Assistant)
Also in attendance:	Keith Simmons (Head of Democratic Services & Elections) (items 58 & 61 only)

58. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies were received from Councillor Placey (with Councillor Smith substituting).

59. DECLARATIONS OF INTEREST

Councillor Wiggins declared for the public record in relation to report **A.1 – Planning Application – 22/02076/FUL – LAND NORTH AND SOUTH OF A133 CLACTON ROAD AT FINCHES LANE, ELMSTEAD, CO7 7FD** that she was a Ward Member. She advised the meeting that she was not pre-determined, and that therefore she would participate in the Committee’s deliberations and decision making for this application.

60. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

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

61. REPORT OF THE DIRECTOR (PLANNING) - A.1 - 22 02076 FUL - LAND NORTH AND SOUTH OF A133 CLACTON ROAD AT FINCHES LANE, ELMSTEAD, CO7 7FD

It was reported that this application was being presented to Members because it constituted a major development proposal on an unallocated site outside the settlement development boundary of nearby Elmstead Market, and therefore it was a departure from the Development Plan. More specifically, the residential aspect of the proposal raised concerns by not aligning with the statutory, plan-led approach for future housing in the District. Additionally, the development on the north side of Clacton Road would result in the permanent loss of good quality agricultural land, as well as causing localised landscape-related issues. The application had also failed to demonstrate that the commercial (outline) element, to include Class E retail floorspace, would not have an unacceptable impact on Elmstead Market Village Centre. Those areas of harm resulted in clear conflict with the relevant policies as set out in the corresponding sections under the ‘Assessment’ heading in the Officer’s report.

Members heard that against the aforementioned harm the scheme offered substantial benefits, most notably in the provision of a much-needed combined Employment and Special Educational Needs (SEN) facility embodied in the Market Field Grows (MFG) element (use Class E/F1), featuring a Multi-Use Building incorporating a publicly accessible library, reception office and workshop areas. Furthermore, the proposal would result in substantial economic benefits, both directly and indirectly, through the provision of the MFG facility and during the construction phases of the development.

The Committee was told that there were some minor shortcomings in locational infrastructure that might discourage sustainable modes of travel, such as walking and cycling from the development site to nearby Elmstead Market and/or other strategic urban settlements such as Clacton-on-Sea and Colchester. However, robust mitigation was proposed in the form of improved footpaths along Clacton Road, a pedestrian crossing over Clacton Road and the implementation of speed restrictions, as well as other necessary environmental and landscape mitigation, all to be secured through conditions and a section 106 agreement. Those factors were considered by Officers to be neutral in the overall planning evaluation.

Officers also informed Members that other third-party representations, including those from technical consultees and members of the public had been thoroughly reviewed and integrated into the Officer's assessment of this proposal. It was deemed by Officers that the significantly revised proposals, subject to the imposition of conditions and section 106 obligations and contributions as outlined in the Officer report, had effectively addressed all remaining technical policy concerns.

Members were finally told that ultimately, after careful consideration of the planning balance and material considerations, the significant benefits outlined and explored in the report were deemed by Officers to marginally outweigh the considerable concerns related to the failure to align with the statutory plan-led approach. It was recognised that in planning law development should be refused that was contrary to the development plan unless material considerations dictated otherwise, and the Officer conclusion was that there was sufficient material benefit and a positive development overall to allow this application to be approved.

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 subject to S106 and consultation/notification of the Secretary of State under paragraph 5(1) of the Town and Country Planning (Consultation) (England) Direction 2021.

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

An update sheet had been circulated to Members before the meeting following the publication of the Committee report, setting out additional information and correspondence that had been received from the Planning Agent (acting on behalf of the applicant) and County Councillor Carlo Guglielmi. That content had been included at the end of the update sheet and for purposes of transparency it had also included the following updates of Time Limit Conditions, an amended recommendation, and changes to Conditions 11 and 32 which were as follows:

"Time Limit Conditions

In respect of conditions 1, 3 and 4 (section 7.2 of your committee report) - with additional information provided by the applicant in terms of the extent of the highways works required and the timescales involved - this may impact implementation times - with this in mind officers recommend changes to the timescales in conditions 1, 3 and 4 as follows (all extending timescales in line with the standard time limit conditions):

Condition 1

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

Condition 3

The development hereby permitted shall be begun before the expiration of **two years** from the date of approval of the reserved matters application.

Condition 4

Application for approval of the reserved matter (landscaping) shall be made to the Local Planning Authority before the expiration of **three years** from the date of this permission.

Recommendation section (page 4) – point 4 (additions indicated in Bold):

Amend to: That in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months **from the date of the Secretary of State response (assuming that response is to not call the application in for its own determination)** that the Planning Manager be authorised to refuse the application on appropriate grounds at their discretion.

Renewable Energy and Energy Efficiencies

Change condition 32 to the following (new additions or amended sections highlighted in bold):

No development shall commence above slab level on any phase until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme such include as a minimum to achieve:-

- Details of, including the location of an electric car charging points per dwelling and electric car charging points for the MFG facility.
- **Agreement of a scheme for water conservation including greywater recycling and rainwater capture/re-use for new dwellings.**
- **Agreement of a scheme to achieve as far as possible a water consumption rate of not more than 110 litres, per person, per day for new dwellings.**
- Details of, including the location of solar panels for each dwelling.
- Agreement of heating of each dwelling/building.
- Agreement of scheme for waste reduction.
- **Provision of a fibre optic broadband connection to the best possible speed installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing. (If the applicant is unable to achieve this standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 30mbps) wireless service will be considered.)**

(the above amendments are required to reflect a most recent version of the LPA's condition on Renewable Energy and Energy Efficiencies measures)

Landscaping Scheme (condition 11) – amend to include the words in **bold**

*No development above slab level on any of the residential or MFG phase(s) shall take place until there has been submitted to and approved, in writing, by the Local planning authority a precise scheme of hard, soft and boundary treatment landscaping works, **and access gates or (where necessary) security gates** for the relevant phase, which shall include any proposed changes in ground levels.*

APPENDIX 1

Cllr Carlo Guglielmi document titled 'Market Field Grows Statement

Madame Chairman and fellow Members,

I am the ECC Division member for the area, and the vice Chairman of the People and Family Scrutiny Committee, which amongst its many topics of all Education Provisions, Children and Adult Social Care, Children Services, Co-Parenting, Safeguarding, Libraries, and Youth Services, it regularly scrutinises Special Educational Needs (SEN) provisions, strategies, and outcomes.

In 2019 the Care Quality Commission (CQC) inspected this area of the County Council and commented that not enough post-education employment opportunities were being created. Sadly, this is the case just about everywhere else up and down the country in other authorities who are responsible for SEN Provisions.

I write to express my support for this application, and I would like to congratulate Officers in having drafted such a comprehensive report which acknowledges that in this application, the fine balance of material benefits outweighs the fact that under normal circumstances this proposal would have been refused.

But these are not normal circumstances. If approved, this Enabling Development will deliver an amazing facility for young people with Special Educational Needs that will provide sustainable employment when they leave school.

This will be a national first, as there is nowhere else in the country that offers the kind of skills-building chances that Market Field Grows will be able to provide.

Not only young school leavers with Special Educational Needs will have a chance to fully realise their potential, but they will also be able to go through life without the reliance on the benefit system, which ultimately, will save the public purse a staggering amount of money, which I am sure is a subject that will be covered by the public speakers.

The range of skills on offer will likewise be amply outlined by others, therefore I will not say much on this, other than those young people leaving education will have the luxury of being able to choose a career pathway, such as food growing, retailing opportunities, food preparation, stock control, hospitality, and so on.

The Officer has referred in the report to this particular benefit as “Life Changing Opportunities”; he is absolutely right.

It is a game changing prospect for those young people who attend Market Field School and College, a most amazing place for many years under the direction of an equally most amazing Head Teacher, Gary Smith who just cannot be stopped; even after having had a hip replaced, he was back at work much too soon, such was and is, his dedication to all his students; his lifetime ambition is to see this dream become a reality.

It has taken many years to develop this proposal, looking at sites, identify locations, search for funding, engaging with and getting buy-in from key stakeholders, and finally, presenting it in front of Members; and tonight, you will have the opportunity to make history if you approve this application.

I have to acknowledge Elmstead Parish Council’s neutral and careful response to this proposal as I really do share their feelings of having had more than their fair share of new homes in the village, especially having to deal with all the issues that new development will bring, while at the same time recognising the benefits that Market Field Grows will create. I live in an area in the district, Lawford, Mistley, and Manningtree that by the time all planning applications will be built, the area will have seen a growth of well over 2000 new homes, therefore I am fully aware and share their concerns.

But because of the tremendous cost and the complexities of getting it off the ground, an opportunity such as this doesn’t materialise very often, or in fact hardly at all, so therefore, although there are a lot of issues and factors to be considered, the balance of the benefits does outweigh the harm; and please do direct all your thoughts at the scores of young people who in generations to come, and well after us, will benefit from this amazing project, and will be able to lead a normal life as possible, as those young people without Special Educational Needs.

Thank you.”

23rd November 2023

By Email

Dear Jacob,

Application 22/2076, Clacton Road – Response to Hills Residential.

Further to recent discussion and following the publication of the committee report please accept this letter as our formal response to the report.

Firstly please accept our teams thanks for the efforts of the planning department in processing this application and reporting the matter to planning committee. It is not often in a planning career that the opportunity arises to process such an application with a sound moral case that justifies an exception position; personally I take great pride in such cases and sincerely appreciate the efforts of all staff involved from pre-application through to delivery – thank you.

As a response to the report I would like you to receive the following and report this as such to Members.

- The applicant team are grateful for the Officers time and attention to detail in assembling and reporting of the committee report, it is thorough and has been executed with clarity in a fair manner.
- The applicant team are keen to point out to Members the unique and special circumstances of the application. It is believed this is a one of a kind submission, the housing will be delivered at a reduced profit margin and the contribution from the development will be the provision of an SEN school/college/charity facility that our 'system' cannot provide the infrastructure for. In doing so the process locks the physical development into the actual provision at the developers risk– it delivers a comprehensive solution to a problem using the planning system and a sound land management/planning response.
- This is a unique application and a national first. The application offers young people with SEN needs the opportunity of dedicated skill building, further education and supported employment.
- The application challenges the current statistic of 95% of SEN secondary school leavers going on to long term unemployment.
- The applicant team endorse the approach of the committee report and are in agreement with the proposed resolutions and the principles of the S106 agreement to be secured.

- Noting the application is a departure and presents development to fund another much needed use the obligation to deliver any excess profit through a review process is accepted by the applicants. The team looks forward to discussing the detail of this process post resolution.
- The request is made to amended proposed condition 01 within the addendum to allow a standard three year planning permission implementation period. It is believed that there is up to two years of ECC Highways detail/negotiation to be undertaken before works can be officially commenced, a three year commencement condition will support this position.
- The need to refer the application to the Secretary of State is acknowledged.

Again, thank you for all of the effort to date. With a fair wind we look forward to resolving the final details of the application with you.

Yours sincerely,

Chris Board

Ralph Holloway, Head of SEND Strategy and Innovation at Essex County Council, spoke in favour of the application.

Naomi Pudney, one of the applicants, spoke in favour of the application.

Gary Smith OBE, one of the applicants, spoke in favour of the application.

David Bullock, member of the public, spoke in favour of the application.

Alan Goggin, member of the public, spoke in favour of the application.

Joanne Matthias, member of the public, spoke in favour of the application.

Bill Marshall, member of the public, spoken against the application.

Councillor Gary Scott, a Ward Member, spoke in favour of the application.

Matters raised by Members of the Committee:-	Officer's response thereto:-
<p><i>Can you explain what the view is as to whether this is an enabling development under the National Planning Policy Framework (NPPF) or not and how we deal with that conflict?</i></p>	<p><i>In respect to the NPPF, there are 2 parts of the NPPF that refer to the word 'enabling'. It is a very common phrase but in context to the NPPF, it is referred to in two paragraphs, which both refer to a connection to historic assets. Ultimately, the rest of the NPPF is silent on that position. The point of the paragraphs in question referring to 'enabling', it doesn't say you can't employ enabling for anything else. If you were to ask the question of 'is there anything that specifically allows a point of enabling within the NPPF' – the answer is no. What Officers are dealing with though, is in terms of the Planning Act that your position here is to consider your</i></p>

	<p><i>development plan unless other material considerations indicate otherwise. What you have before you are a balance of material considerations. One of which is the Market Fields site. Officers are considering those to be significant material considerations that Officers feel do indicate a departure from the Local Plan which could be lawfully made if that is what Members wish to do.</i></p>
<p><i>So does that mean we're not looking at an enabling development, we're looking at a balanced situation of benefit and harm in the normal planning balance?</i></p>	<p><i>It would be a red herring to continue to use the word 'enabling'. In the context of the NPPF, those two particular paragraphs are in reference to historical context and in this case, we have no historical context, and we have no listed building on site or otherwise to 'enable' so we need to ignore them (the paragraphs), and they are not material considerations on the basis that this particular development does not have a context of a listed building to consider that we know of.</i></p>
<p><i>Who ultimately decides the weight of any of those issues?</i></p>	<p><i>Your Officers have provided the Committee with a planning balance of what weight Officers feel should be applied and that is summed up in the report. The Committee (Members) are the deciders, and that is why it is in front of you and the Committee either agrees or not with the Officer's recommendation or their own applied weight to the development issues.</i></p>
<p><i>Do Officers have anything to add regarding the Essex County Council's (ECC) Ecology objection?</i></p>	<p><i>The ECC Ecology don't actually raise any objections to the content of the Ecology reports provided, they seem to have an issue in respect of the potential of those oak and hawthorn trees along the Northeastern boundary to provide habitat for bats. The trees are going to be retained and the tree planting along that boundary are going to be re-enforced with additional native species. These have been pointed out to ECC Ecology, they have also raised a technical point in terms of whether the development will provide suitable mitigation in terms of the impact of the nearby RAMS. So, the proposal will mitigate against that impact as Officers have secured the RAMS payment for each of the 126 dwellings proposed. The only difference in terms of the trees is that they will now be included into the rear gardens of the properties, which are along the Northeastern boundary. Officers have asked for that change, as previously a long narrow corridor was proposed for a dog walking area but from an overall general design point of view the narrow corridors don't usually work so Officers thought it would be better to include them in the gardens of the properties. The trees are protected and won't be threatened as the</i></p>

	<p><i>gardens are quite long. Members were also reminded of the statutory duty under regulation 63 of the Conservation of Habitats and Species Regulation 2017.</i></p>
<p><i>Did the Head of SEND at ECC request anything special for this type of school?</i></p>	<p><i>Officers didn't receive representations asking for specific sites for inclusion in the Local Plan. However, ECC were participants in the infrastructure evidence that sat alongside the Local Plan. One thing to remind Members is that the consultation on the Local Plan took place in 2015, 2016 and 2017 and there was a very long period where Officers were working with the Planning Inspector before the plan was finally adopted.</i></p>
<p><i>What are TDC doing to resolve the ECC Ecology objections?</i></p>	<p><i>The applicants have provided the required reports and appraisals for this application. As part of the final consultation, Officers have reconsulted the ECC Ecology and they have essentially come back with two issues, one being clarification on the potential of the trees changing position, which Officers have given the clarification and additional drawings and information to demonstrate that the suitable alternative green spaces and the footpaths along that Southeastern part of the site will be the 2.7km wide requirement length and Officers also provided clarity that internally the development will provide footpaths to link up with that area, as well as the improved footpath along Clacton Road. Officers feel that the issues could be down to a misunderstanding from ECC Ecology on what exactly is being proposed and the mitigation package to include the RAMS contribution. Officers have added a condition seeking the Ecological Enhancement Measures to be implemented in spite of the proposal and details include sensitive lighting for bats etc.</i></p>
<p><i>Have Officers reconsulted Place Services with that information that has been provided?</i></p>	<p><i>Yes, Officers have done that. In the Officer's report, Members can see that Place Services have phrased it as not having sufficient ecological information and unfortunately Officers disagree with that point slightly. In terms of ecology on site, in respect of the trees, bats and enhancement, Officers and Place Services Ecology are satisfied that they have got the information necessary, and it passes the test. The part that Officers are not in agreement with is that they feel that the site should have more walking space to allow residents to walk their dogs and move around and enjoy more open space rather than go find somewhere else to do those things which could be part of the site where the RAMS contributions would be going towards – this is an unproven concept with dealing with individual rights with who wish to leave the</i></p>

	<p>site to find somewhere else to walk their dog or have more open space. There is no evidence to show one way or another to argue that point out. Officers have carried out the appropriate consideration against legislation and are satisfied with what is being recommended to Members on this point.</p>
<p><i>Has the information needed for Natural England been provided to them since 21 August 2023?</i></p>	<p>Officers have reconsulted them and the situation of the position with Natural England holding objection is set out in paragraph 6.134 and 6.135 of the Officer report and is similar to what has been said previously with disagreement in terms of the quality of the suitable alternative natural green space within the development. However, from a point-by-point technical point of view, the alternative natural green space complies with all the relevant guidance points such as the total length of footpaths in the development. There is in fact no footpaths around the site for the development to link up with. The nearest footpath is a considerable distance away to the North-East and to the North-West. The applicants will be providing dog waste bins as part of the legal agreement and there is a condition regarding additional tree planting and landscaping. Officers have provided Natural England and ECC Ecology with all this information and with Natural England TDC haven't had a subsequent response back after the last consultation.</p>
<p><i>With regards on broadband, has anyone tested the speed? Will there be a choice of provider or are residents having to stick with the same provider? Who pays for the faster access?</i></p>	<p>As an Authority, Officers don't dictate to residents which provider they can use, that is a market decision and TDC can't be involved with that. That will be influencing competition etc. Ultimately, TDC's position is to ensure that the baseline infrastructure is available, and Officers can only go as far as that in the context of the provision can be made. This doesn't necessarily ensure that it will be connected and maintained for however as it is out of Officer's control.</p>
<p><i>Can we have clarification that all markets can come in for providers of broadband instead of just one provider?</i></p>	<p>It is not a planning condition Officers would impose. Officers don't impose a restriction on who. If it is imposed by the developer, then that is a private legal arrangement between the developer and the occupier of the building.</p>
<p><i>Is the £77,000 of developer contributions going to be made?</i></p>	<p>Yes, that has been secured towards healthcare.</p>
<p><i>What weight do you put on the stance of the Parish Council and particularly their points?</i></p>	<p>Officers see the Parish Council as the voice of the local people, so Officers apply weight accordingly to that status. The Parish Council are an important contributor to the planning system. To the weight that Members apply to the benefits is a matter for Members as the decision maker. The Parish</p>

	<p><i>Council are third-party. All representations are material and that is the reason why Officers consult them but specifically in respect of this Parish Council they have a neutral stance, which means they neither object nor agree with this development which means Officers can only weigh their opinions as neutral in the balance of considerations.</i></p>
<p><i>What weight would TDC give with the conflicts in the neighbouring plan?</i></p>	<p><i>It is an emerging neighbouring plan, so TDC have reached stage 4 in a 6-stage process. So, at this stage, TDC give limited weight to the neighbouring plan as it has not yet been adopted or yet been through examination. The neighbouring plan is seen in the same light as the development plan and therefore we have a conflict in terms of the Local Plan.</i></p>

It was moved by Councillor Alexander, seconded by Councillor McWilliams and:-

RESOLVED that:-

- 1) on appropriate terms as summarised below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control to secure 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:
 - to provide the Market Fields Grow (MFG) facility in full including all buildings, utilities, internet, plastering and decoration, hard surfaces, landscaping and seating prior to occupation of 63rd dwelling and to transfer the facility in a freehold manner for £1 to the registered charity. The facility shall be functionally available on transfer. The finish level of the facility shall be agreed in writing by the LPA, and no dwellings shall be occupied beyond the occupation of the 63rd dwelling until the MFG is provided in full and thereafter maintained as approved and for this use only.
 - the library in MFG facility to be made accessible to the wider public in perpetuity – detailed arrangements to be agreed in writing by the LPA.
 - the skills training centre element of the MFG facility hereby approved shall remain in use Class F1(a) (provision of education) in perpetuity.
 - a financial contribution of £156.76 per dwelling index linked towards mitigation in accordance with the Recreational disturbance Avoidance and Mitigation Strategy (RAMS).
 - provision of on-site public access open space and play provision.
 - maintenance and management of public access open space and open space on site including the provision of dog waste bins in the POS area including details of maintenance in perpetuity
 - if within 10 years of the decision the Class E business units (proposed under the Outline element) hereby approved fail to be in functional use (in full or part) the land (or as may remain) shall revert to public open space use.

- incorporation of a mechanism to ensure the viability of the scheme is reviewed. Details to be agreed, any monies gained if viability exceeds agreement shall be used for affordable housing provision
- a reduction in the speed limit along Clacton Road in front of the site (currently 60mph) to a lower speed limit, possibly 40mph (subject to a safety audit). This obligation is subject to a series of safety audits that apply to developer delivered schemes to the satisfaction of the Highway Authority.
- the existing 40mph speed limit that terminates approximately 480 metres to the west of the application site to be extended eastwards to incorporate the entire development site fronting Clacton Road, and to include the provision of a gateway feature at the new location (to be agreed with ECC Highways) for the terminal signs.

Note: in respect of the above two highways mitigation requirements, it should be noted that there is no guarantee that a future reduction in the current speed limit and the extension of an existing 40mph speed limit will actually be realised in the area because the implementation of these measures (or not) are subject to a process completely separate to the planning process, and will be subject to a separate consultation process. The Developer is aware of this and has accepted the risk.

- a developer contribution of £77,000 towards Healthcare provision in order to mitigate against the impacts of this proposal. This contribution to go towards capital funding to increase capacity within the local GP Catchment Area. That contribution to be held by This Council.
- 2) the Head of Planning and Building Control be authorised to grant planning permission subject to the agreed section 106 agreement and the planning conditions as stated at paragraph 7.2 of the Officer report as amended by the Officer Update Sheet, 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;
 - 3) the sending of the informative notes to the applicant as may be deemed necessary;
 - 4) in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months **from the date of the Secretary of State response (assuming that response is to not call the application in for their own determination)** the Head of Planning and Building Control be authorised to refuse the application on appropriate grounds at their discretion; and,
 - 5) in the event that Secretary of State calls in the application Officers are authorised to present a supporting case in line with Resolutions 1 and 2 above, or on the grounds of refusal should the Section 106 obligations not have been secured.

The meeting was declared closed at 7.07 pm

Chairman

