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Planning Committee

1 September 2022

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,
HELD ON THURSDAY, 1ST SEPTEMBER, 2022 AT 6.00 PM
IN THE COMMITTEE ROOM, TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors White (Chairman), Alexander, Baker, Codling, V Guglielmi, Harris and Wiggins
Also Present:	Councillors Bray (Portfolio Holder for Planning) and P B Honeywood
In Attendance:	Lisa Hastings (Deputy Chief Executive & Monitoring Officer), Gary Guiver (Acting Director (Planning)), Graham Nourse (Assistant Director (Planning)), Joanne Fisher (Planning Solicitor), John Pateman-Gee (Planning Manager), Keith Durran (Committee Services Officer), Hattie Dawson-Dragisic (Performance and Business Support Officer) and Mark Wilson (Development Technician - Technical)

30. DEFERRAL OF A.1 PLANNING APPLICATION 22/00688/FUL

The Chairman informed the meeting that Planning Application 22/00688/FUL would not be considered at this meeting and would be deferred to the next Committee meeting as Members had not been able to access the site due to the fact that the agent for this application had not been made aware of this site visit.

31. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies were received from Councillors Fowler (Vice-Chairman) and Placey with no substitutions.

32. MINUTES OF THE LAST MEETING

It was moved by Councillor Alexander, seconded by Councillor Harris and **RESOLVED** that the minutes of the last meeting of the Committee held on 2 August 2022 be approved as a correct record.

33. DECLARATIONS OF INTEREST

Though this application would not now be considered at this meeting Councillor Wiggins declared an Interest in **A.1 Planning Application 22/00688/FUL** due to being a Ward Member.

Councillor Harris declared Interest in **relation to item B of the Report of the Assistant Director (Planning)** due to his having not taken part in the Committee's previous discussions of application 21/02027/FUL. He considered that therefore he would not participate in the Committee's deliberations and decision making for this Item. The Monitoring Officer explained that although Councillor Harris could not be involved in the Committee's discussion or vote, he could stay for the "Part B" section, if he wished to do so as an elected member of the Council.

Councillor Baker declared an Interest in **Agenda Item 7 (Revised Planning Enforcement Policy)** due to his having been asked to chair the Resources and

Services Overview and Scrutiny Committee’s Task and Finish group on this policy. He confirmed that he was not pre-determined and that therefore he would participate in the Committee’s deliberations and decision making for this Item.

34. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were none on this occasion.

35. A.1 PLANNING APPLICATION 22/00688/FUL - FARM LAND NORTH OF GLENDENNING, TENPENNY HILL, THORRINGTON, CO7 8JB

This item had been deferred by the Chairman for the reason set out in Minute 30 above.

36. A.2 PLANNING APPLICATION 22/10052/FUL - LAND ADJACENT TO THE WILLOWS, LITTLE CLACTON ROAD, GREAT HOLLAND, CO13 0ET

It was report that this application had been referred to 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) as being located outside of any settlement development boundary.

Members were informed that the proposed dwelling was not considered by Officers to be so materially different in regards to siting, height, footprint to the development approved under prior approval 21/00460/COUNOT. In the absence of any material harm resulting from the development in regards to its individual appearance, its impact on the wider streetscene, its impact on the character of the rural landscape, its impact on neighbours in regards to amenity and the parking provision, the application had been recommended for approval by Officers.

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 Manager (John Pateman-Gee) in respect of the application.

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

Bill Marshall, a local resident, spoke in support of the application.

Matters raised by Members of the Committee:-	Officer’s response thereto:-
A Member of the Committee raised the question when granting permission with the initial application with the two trees at the access path, how can they gain access to that plot of land while they are there?	In terms of the trees we don’t know their status, we assume they are not protected in terms of tree preservation orders and they are not in a conservation area. Therefore unfortunately they potentially could be removed without having to gain consent. In terms of the access arrangements by prior approval it is not

	necessarily part of that approval, to consider the access arrangements in the context of the change of use which is the prior approval element that you are considering.
The Committee also asked if a tree survey been done?	No, there is not a tree survey with this application to consider.
Do you think as there are two very mature trees in the vicinity where the vehicle access point will take place a tree survey should be done?	The tree is sat behind the garage, essentially the way around it is to go across the field, around the garages and then to use the existing access to access the road.
In response to the answer above a Member of the Committee stated: "that is not what we saw today."	We can only see what the application says but ultimately this is all the information I have with the application and as a matter of debate if you feel that's insufficient that may be a part of your debate.
The Committee asked the Officer where did you see that access road? Was it coming in between the trees or the other side of it, presumably where the garages are? Will the garages be demolished?	You would go round the garage, round to the back and then out to the field. The trees are within that vicinity so, it is very likely that the driveway would either pass underneath or possibly need the removal of the tree to be achievable.
In Paragraph 6.7 can we explore this fallback position in terms of the three tests that are necessary to apply. Could we have clarity on the second test which is "whether there is a likelihood or real prospect of such occurring." Does "such" apply to the lawful ability or does that word apply to the fact that the conversion is going to go ahead?	If there is a realistic and realisable prospect that the "fallback" position could be implemented under existing development rights it should be given weight in respect of an alternative development proposal.
Could we have confirmation that the length of the site that we saw is the same of the length of the proposed building in the application?	By eye, the picture of the site in the presentation, looks as though it has a similar number of bays to what that original proposal shows. Although I would say that appears to have no windows and there are windows on the plans.
The prior approval they have provides the go ahead for that building, in that design, with that roof height at 3.1 Meters not at 5.9 which is what is on this application. So it's doubling in height.	Prior approval actually is quite flexible in the context of it does allow quite significant works to take place. It doesn't allow for increase in height of the building or extension of the building. But it does allow for rebuilding in part some walls and necessary for the purpose of conversion.
Just to confirm the trees are unprotected and could be cut down?	Unfortunately because I cannot see from the pictures exactly where the trees are I do not know if they are at risk of being removed, in the context of its route system, the way the driveway might pass by it. We will look to see if there is any further information we can provide on that

	issue.
Further clarification on the fall-back position by the Legal Officer.	What the Officer has explained about the fall-back position is correct, so effectively what the Court of Appeal decided was that if there is a position where there is a permission or right to develop, in this case Class Q, it can be a material planning consideration for the decision maker to take into consideration when determining whether or not to grant a full permission. The Judge in that case said that the basic principle is that for the prospect to be a real prospect you have to decide based on the facts in this particular case whether or not you feel there is a fall-back position i.e. is there a permission or ability for that land owner to develop this site and that has been explained by Officers and that there is a class Q in place so you can see what they are entitled to develop. So there is a fall-back position. As you know as decision makers you are required to have regard to material planning considerations, but you are required by law to make the decision in accordance with the Local Development Plan unless material considerations indicate otherwise.
That from what we have seen today in order to access the dwelling you would have to drive directly to where that tree is.	Recognising the issue in respect of lack of information available for Members to consider the impact on the tree, it might be desirable to defer to find out further information and get a clear and accurate access plan in respect of the impact on the tree.
Logically if we refuse this application, they can go back and convert what is there to a bungalow for instance?	We have given the possibility of conversion material weight however, Members may decide not to give it significant weight that there is a possibility of that conversion despite prior approval given you may consider that the condition of the building has deteriorated to such an extent that the permitted right by prior approval could not be implemented in accordance within the General Permitted Development Order.
Has the usage or the potential usage of that waste system been evaluated or have we just accepted that report? And if it is into a water course which one is it?	I don't have information on which water course it would be. In terms of the evaluation the only evaluation available is per the report.

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor V E Guglielmi and **RESOLVED** that, contrary to the Officer's recommendation

of approval, the Assistant Director (Planning) (or equivalent authorised officer) be authorised to refuse planning permission for the development due to the following reasons:-

- Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements. The application site lies outside of any defined settlement boundary in the 2013-2033 Local Plan. The proposed development would therefore extend beyond the area planned to provide growth.
In view of the 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 policy gives rise to a significant degree of harm. The spatial strategy of Policy SP3 and place shaping principles of Policy SP7 reflect the National Planning Policy Framework (2021) sustainable development objectives and the proposal's conflict with both is given full weight. The principle of development is therefore not acceptable in this location.
The availability of a building subject to an approved Prior Approval for Class Q is acknowledged and given weight, but given the poor condition of the building since the approval is no longer considered to be a possibility of compliance with the general permitted development order and not given such weight as to set aside the development plan.
- Policy PPL 3 - THE RURAL LANDSCAPE provides that the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance. Further protection of landscape and good design requirements are required by Policy SPL 3
- The proposal failed to demonstrate that the development and associated layout to allow access and drive can be achieved without harm to trees considered to be either within the site or closely associated. The exact location of trees (identified through site visit and photos) and their associated root systems are not clear on plans to enable judgement of likely harm and the application fails to give protection of landscape asset due consideration. Furthermore, by reason of increased height, and size, the proposed development would have a detrimental visual impact on the rural landscape in this location. The material consideration of the prior approval Class Q on site is a material consideration, but the impact and harm of the proposed development is considered to be in excess of the prior approved development by reason of its design. On this basis, the proposal is considered contrary to policies PPL3 and SPL3 as well as NPPF section 12 Achieving well-designed places.

37. A.3 REPORT OF THE ASSISTANT DIRECTOR PLANNING - REVISED (PLANNING) ENFORCEMENT POLICY

The Committee was reminded that the National Planning Policy Framework 2021 required local planning authorities to consider publishing a local planning enforcement policy or plan which described how the Council would manage planning enforcement in

a way which was appropriate to their specific area. The NPPF also made clear that planning enforcement was discretionary and local authorities should act proportionately in responding to breaches of planning control.

Attached to the agenda was the Planning Enforcement Policy document which was a revision to the original version published in 2010 and which followed the adoption of the Tendring District Local Plan 2013 -2033 and Beyond in January 2022. The purpose of the Enforcement Policy was to provide elected Members and the wider public with a clear understanding of how planning enforcement would be delivered by this Council and the criteria used in making assessment of potential breaches of planning law.

Members were aware that the Council also had a Corporate Enforcement Plan (adopted in 2017) which identified on a corporate level how the local authority would implement its enforcement responsibilities.

The Committee had before it the published Officer report containing the Policy details for Planning Enforcement with the recommendation to adopt the revised version of the Planning Enforcement Policy document 2022 and note the content of the Harm Assessment Form.

At the meeting, an oral presentation was made by the Council’s Assistant Director (Planning) (Graham Nourse) in respect of the Policy.

Matters raised by Members of the Committee:-	Officer’s response thereto:-
<p>The Committee requested that the following items be considered for the Policy:</p> <ul style="list-style-type: none"> - Traffic light system - Quarterly form to report on cases - Harm Assessment to be reviewed 6 monthly and relevant performance - Direction signs to sites to be added - Enforcement Officers to make themselves known to the landowner. - Resource to carry out obligations under the Policy to be considered by the Service in conjunction with the Portfolio Holder for Planning - Policy to reference working unsocial hours and weekends maybe required sometimes, otherwise breaches could be left unmonitored during those times - Danger to public safety considerations and to other groups, animals and horses - Officers must work with others across the Council - Overall policy review every four 	<p>The Officers agreed to consider these points and confirmed that some had already been agreed but had not yet been implemented.</p>

<p>years.</p> <ul style="list-style-type: none"> - Wording around publishing of decision – decisions would be published (but remove reference to details) - Acknowledge next to include case reference number - The context of information published on the Council’s website. 	
<p>On page 50, priority 3 include directional signs to new developments. Page 51, add a new 8.9 Harm Assessment must be reviewed 6 monthly on its performance. On page 57 10.5 Enforcement Officers “will” make themselves known to landowners rather than “try to”.</p>	<p>No problem with either of those however we may have to give some thought on how we are going to review the Harm Assessment form on a 6 monthly basis. It is important that we review that as accurately as we can. In terms of directional signs, sometimes under permitted developments developers are permitted to put directional signs up. The signs are normally on their sites not in the middle of nowhere. So if they are in the middle of nowhere we can take action on that.</p>
<p>What is the policy in terms of recruitment? Looking at page 65 the Harm Assessment form item number 3 which is public safety. There are dangers to public safety which are indirect for example somebody who is riding a horse who then gets thrown from the horse because something is happening at a site next door – will you give reassurance that that will be included within that part or whether that requires a separate question as whether there are any possible effects relating to animals?</p>	<p><u>Answered by the Portfolio Holder for Planning.</u> My understanding is the resource is not about money, it is very difficult to recruit people we want. We are looking various different ways of what we can do when we are recruiting. You mention danger to public safety it is really difficult when you have a situation where something is happening that effects someone next door and the legal side of it. If there is third parties being affected by developments there will probably be other reasons aside from public safety to look at.</p> <p><u>Officer response</u> With regards to the point about other groups, it’s important for any enforcement policy on a specific area to reflect that something may have been reported to Planning Services that is not a planning issue but the Council Services would work together to find a solution if possible to a problem. That is the benefit of the Corporate Enforcement Group that the Council has set up.</p>
<p>Page 46, 4.4 second paragraph needs a tweak to the words to say “we will” rather than “we aim”. On 47 4.7 proportionality</p>	<p>Officer agreed that they were happy with these points.</p>

those who choose to deliberately go against laws and regulations these should go into priority one.	
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Following discussion by the Committee, it was moved by Councillor Alexander, seconded by Councillor Baker and **RESOLVED** that:-

1. the revised version of the Planning Enforcement Policy document 2022, be adopted, subject to the amendments being made as discussed within the meeting which will be agreed by the Assistant Director for Planning, in consultation with the Chairman of the Planning Committee, who will in turn have consulted with the members of the Committee;
2. the Policy be reviewed every 4 years at the latest and earlier if national policy or legislation changes or an internal review requires further consideration; and
3. performance against the Planning Enforcement Policy be reported to the Planning Committee regularly.

38. EXCLUSION OF PRESS AND PUBLIC

It was moved by Councillor Alexander, seconded by Council Baker and **RESOLVED**:-

That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during the consideration of Agenda Item 9 on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act.

39. REPORT OF ASSISTANT DIRECTOR (PLANNING) - B.1 - APPEAL BY CHURCHILL RETIREMENT LIVING LTD. AGAINST TENDRING DISTRICT COUNCIL'S FAILURE TO DETERMINE A PLANNING APPLICATION (REF. 21/02027/FUL) FOR THE DEMOLITION OF EXISTING BUILDING AND REDEVELOPMENT OF THE SITE TO FORM 61 NO. RETIREMENT APARTMENTS FOR OLDER PERSONS WITH ASSOCIATED COMMUNAL FACILITIES, CAR PARKING AND LANDSCAPING - LAND AT CHURCH ROAD (FORMER COLCHESTER INSTITUTE), CLACTON-ON-SEA

RESOLVED that:

1. The Planning Committee notes the summary legal advice received from external Counsel;
2. In light of the clear legal advice the Planning Committee confirms that it does not wish to continue defending ground 1
3. That Officers are instructed to work with Counsel to defend the planning appeal on the ground of reason 2; and
4. That Officers are instructed to enter into a Section 106 Agreement to secure financial contributions for RAMS, NHS and open space and if such deed is completed the ground of reason 4 will also not be defended.

The meeting was declared closed at 9.52 pm
Chairman