

GROUNDS OF APPEAL RELATING TO COUNCIL'S DECISION TO REFUSE PLANNING PERMISSION ON 28 FEBRUARY 2013

Colchester Borough Council Members refused planning permission on 28 February 2013. The following is a fair representation of the reasons stated on 28 February 2013 for the planning refusal:

"Concern that the viability had not been demonstrated to the satisfaction of the Committee. The proposal is large scale and is sited in an unsustainable location and the operation of the proposed development is likely to result in harm to the Dedham Vale & Stour Valley Area of Outstanding Natural Beauty (AONB). Harm to the AONB will also be as a result of excessive traffic"

The Appellant also confirms that on 28 February 2013 Members of the Colchester Borough Council ("the Council") did not refuse planning permission for Application N^o 120965 as being contrary to the Development Plan, National Planning Policy Framework or any other policy.

The Council's Planning Officer's Report to Planning Committee recommended that planning permission be granted subject to completion of a Section 106 agreement and referral to the National Planning Policy Unit as a departure application.

The Appellant has the following grounds of appeal:

1. The application proposals are in accordance with the development plan, the national planning policy framework and other material planning policy. Material considerations would also support the grant of planning permission;
2. The application proposals meet the need for rural tourism in the Stour Valley, Dedham Vale and the East of England. The proposals represent a celebration of the English countryside, its beauty, its farming, its culture and people. It will provide access to the Countryside in an area where there is very limited public access. It will provide opportunities to create economic development, jobs for local people and other socio-economic benefits; it will create lifelong learning opportunities. It will conserve and enhance the AONB. It will enable the preservation and protection of the Suffolk 'Punch' Horse a critically endangered breed;

There will be a regional art gallery displaying works of art of historic and contemporary artists, particularly those with connections to the Stour Valley and surrounding area. A Chinese garden in keeping with those included by the Georgians in their English gardens around the time the Chantry was re-built. The Chinese garden will enable cultural exchange between the County of Essex and the Province of Jiangsu (which are twinned) enhancing links leading to increased trade. Overall, the Stour Valley Visitor Centre at Horkesley Park will be an important new tourism attraction for the East of England;

3. The Council's consultants, Britton McGrath and Associates, assessed the Appellant's Business Plan and confirmed that it would be viable. Council Officers confirmed the scheme would be viable. Members of the Planning Committee had no evidence to the contrary. The Appellant has demonstrated the scheme is viable and that Government Policy is to encourage economic development and job creation;
4. The Council's officers confirmed that the proposals were not major development in the AONB and that it was a sustainable location. No evidence of harm to the AONB was identified by the Council or any third party. The Appellant and the Appellant's Specialist Consultants contend the application proposals will enhance the countryside and AONB;
5. The highway authorities: the Essex County Highway Authority, the Suffolk County Highway Authority and the Highways Agency have raised no objection to the proposals. No evidence of harm arising from traffic has been identified by the Council;

6. No evidence of operational harm to the AONB has been identified by the Council or any third party;
7. The Appellant and the Appellant's Specialist Consultants contend that there is no adverse harm to the AONB and in fact evidence has been /will be provided to demonstrate that the AONB would be enhanced through the development proposals;
8. The Appellant reserves the right to add, amend or alter these grounds of appeal as necessary to deal with any matter raised by the Inspectorate, the Council or third party to the Appeal.

ADDITIONAL GROUNDS OF APPEAL ARISING FROM THE COUNCIL'S DECISION NOTICE ISSUED ON 28 MARCH 2013

1. Taking into account all the relevant policies of the Development Plan the application proposals are in accordance with the Development Plan and therefore in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.
2. The Council has failed to identify that only "due weight" should be afforded to the Development Plan in determining the application in accordance with paragraph 2.15 of the National Planning Policy Framework ("NPPF"). The Council has not correctly identified this in its assessment of the reasons for refusal.
3. Notwithstanding that the proposals are in accordance with the Development Plan, material policy considerations as set out in the NPPF and other policy guidance indicates that the development should be considered favourably and planning permission granted.
4. The proposals represent sustainable tourism that respects the character of the countryside. The proposals represent sustainable growth and expansion appropriate to tourism and the countryside.
5. The Council and statutory consultees, including both Essex County and Suffolk County Highway Authorities and the Highways Agency, accepted the proposals and the proposed levels of car parking for the proposed scheme/re-development. If the Council had been concerned it could have sought to control this by either an amendment to the original application under the Planning Performance Agreement or through a planning condition. The parking is to be provided as a mix of permanent and overflow parking to accommodate variations in visitor numbers particularly at peak periods.
6. The proposed scheme/re-development is not large scale and is situated in a sustainable location to meet the needs of tourists in the region.
7. A Travel Plan package has been offered with the application under a Section 106 agreement as a planning obligation to maximise public transport and other sustainable forms of transport. This was acceptable to the Highway Authorities and the Council itself. Essex County Highway Authority confirmed at the Planning Committee of 28 February 2013 that Horkesley Park would be a sustainable location.
8. Contrary to the Council's assertion the level of activity associated with the proposed development would be acceptable and appropriate for a countryside visitor park situated in the countryside. There is no evidence produced by the Council to support its contention that a countryside visitor centre would be an alien and contextually incompatible development in the countryside.

9. The development is largely outwith the AONB and there are no new buildings in the AONB. The part of the site which is in the AONB is proposed to be principally Country Park. Therefore the approach to the scheme/re-development is appropriate for its setting and context and is able to be assimilated into and improve the character the AONB and wider countryside.
10. The Council has produced no evidence to support its contention that visitors or intensity of use by visitors to the scheme/re-development would have an adverse impact on the AONB. There are already public footpaths across the site which accommodates visitors within the AONB.
11. The Council agreed that no details of the Chinese Garden would be required during the application process. The appellant will submit details of the Chinese Garden at the Inquiry. The Chinese Garden will be wholly contained within the existing garden of The Chantry, much of which is high walled.
12. The Council has not identified what element relates to its statement "*The development would introduce an incongruous and harmful element into the AONB and thereby harming the landscape and scenic beauty contrary to the NPPF*". The proposed scheme/re-development will enhance the AONB and the countryside.
13. The benefits the proposals will bring are significant and in themselves are sufficient material considerations to warrant the grant of planning permission.
14. It is agreed that the Council has now withdrawn its reason for refusal based on viability and financial sustainability. The Council states "*...the Council has considered that the viability and financial sustainability of the proposal is a material planning consideration though its conclusions on these matters do not amount of themselves to a further reason for refusal*". Therefore, no evidence is to be submitted by the Council on these matters and the appellant is not required to address these matters in the appeal.
15. The Appellant will enter into a Section 106 agreement or submit a unilateral undertaking to provide planning obligations to deal with the delivery of the scheme/re-development in its entirety.
16. The Appellant further reserves the right to add, amend or alter these grounds of appeal as necessary to deal with any matter raised by the Inspectorate, the Council or third party to the Appeal.

Collins & Coward – Grounds of Appeal

Dated: 04.03.13