
Tollgate Partnership Ltd

Colchester Borough Council
Local Plan (Part 1) Examination

Hearing Statement

Matter 4 – Employment

December 2017

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1.0 INTRODUCTION

Background

- 1.1 We act on behalf of Tollgate Partnership Ltd (TPL). TPL is a key stakeholder and landowner in Colchester having developed land at Stanway for a range of commercial uses, including retail and employment. TPL also owns land and properties elsewhere in Colchester, including the Town Centre.
- 1.2 This Statement relates to the proposed provision of Employment Land in Colchester under Policy SP4.
- 1.3 In August 2017, the Secretary of State granted planning permission at appeal for a mixed-use development in Stanway, known as Tollgate Village (Ref: APP/A1530/W/16/3147039). The site was partly allocated for employment use and the Council did not object to the loss of employment land.
- 1.4 Section 2 provides our comments in relation to the Inspector's Questions under Matter 4. It then sets out our recommendations for Policy SP4 in order that the Plan can be found sound.

2.0 EXAMINATION ISSUES & POLICY RECOMMENDATIONS

- 2.1 Our case in relation to this Matter is consistent with the submissions made on behalf of TPL to date.
- 2.2 The position of TPL is set out below under the Inspector's Questions in relation to Matter 4. We then outline recommended amendments to Policy SP4 in order for the Plan to achieve soundness.

1) Does the evidence base provide adequate justification for the employment land requirements for each local authority area set out in policy SP4?

- 2.3 It is important that robust and sound employment land requirements are established through Part 1 Policy SP4, as this will have implications for detailed policies and allocations under Part 2.
- 2.4 In the case of Colchester, the range of 22.0ha - 55.8ha is derived from the 2015 Employment Land Needs Assessment, prepared by NLP (ELNA). Table 6.13 of that document is replicated below and summarises the Requirement for B Class Floorspace under each scenario. This shows a requirement ranging from -21ha under Scenario 2, to 55.8ha under Scenario 3.

Employment Land Needs Assessment Table 6.13 – Gross Land Requirement

Table 6.13 Gross Land Requirement by Scenario to 2032 (ha)

	1. Baseline Job Growth (EEFM)	2. Past Completion Rates	3. Higher Past Completion Rates	4. Labour Supply (2012 Based SNPP)
Offices (B1a/B1b)	18.5	12.8	12.8	15.4
Industrial (B1c/B2/B8)	11.3	-33.8	43.0	6.6
All B Uses	29.8	-21.0	55.8	22.0

Source: NLP analysis

Figure 6.3 Gross Land Requirement by Scenario (ha)

- 2.5 Table 6.13 also provides a breakdown between Class B uses, that informs the total requirement under each scenario. This is important in understanding that the wide difference in figures primarily relates to Industrial (i.e. B1c, B2 and B8) land. Under Scenario 3, the requirement for industrial land is almost 4 times the amount of the next highest scenario (Scenario 1) and represents an increase of 31.7ha.

2.6 The ELNA made a number of recommendations in relation to the various scenarios and also raised concerns in relation to the use of Scenario 2 & 3. In particular the ELNA found:

- Scenarios 2 & 3 are very sensitive to the inclusion / exclusion of a one-off relocation (Flakt Woods industrial premises). They are based on a relatively short time period of 6 years and represent a less robust basis for longer term planning. (paragraph 6.71)
- Scenarios 2 & 3 provide a less robust basis for understanding objectively assessed need. (paragraph 6.75)
- In contrast, the two scenarios (1 & 4) implied by the SNPP and EEFM job growth approaches are based on the most up-to-date demographic and macroeconomic assumptions and therefore provide the most objective assessment of needs. (paragraph 6.76)
- The ELNA recommends Scenario 4 as a starting point and then goes on to state that the Council should consider planning to accommodate the higher requirement under Scenario 1 (i.e. 29.8ha). (paragraphs 6.76 and 6.77)
- Scenario 1 would exceed the level of past growth; redress the balance between population and employment growth; and the industrial land requirement of 11.3ha under this Scenario would better reflect local market signals. (paragraph 6.77)

2.7 Arising from the above, we do not consider that the use of Scenario 3 to be robust or represent an objective assessment. It is not justified by the evidence base. Policy SP4 is not therefore sound as it is neither positively prepared nor justified. In order to achieve soundness, the Scenario 1 requirement of 29.8ha should be used as the upper level in the range.

2.8 In terms of the lower level in the range, in determining an appeal on employment land at Stane Park, Colchester in 2016 (**Appendix 1**) the Inspector found that based on the previous 10 years economic cycle, employment land take up equated to circa 1ha per annum (paragraph 19 of the decision). Based on the Plan Period of 2017-2033, this would equate to a requirement of 16ha. This provides a realistic minimum level for Colchester. It should also be noted that the Inspector in referring to the ELNA range to inform the new Local Plan, referred to a requirement for 22-29.8ha, i.e. choosing not to refer to Scenario 3 (paragraph 18 of the decision).

2.9 In determining the Tollgate Village Appeal, the Inspector referred to the Stane Park Appeal at paragraph 12.2.12, which was cited in paragraph 10 of the Secretary of

State's Decision Letter. Extracts are provided at **Appendix 2**. Paragraph 12.2.12 of the Inspector's Report states:

"Policies CE3 and DP5 were found to be inconsistent with the NPPF by both the Stane Park Inspector and the Examining Inspector for the Focused Review. In Stane Park it states that there are approximately 65 hectares of vacant employment land amounting to a 65 year supply. Members were informed that "the Council has been over-cautious in allocating far more employment land than will reasonably be needed... there is no prospect of all this coming forward." These policies are out of date" (Our emphasis)

2.10 Seeking to adopt the unrealistically high level of 55.8ha under Scenario 3 will simply result in the Council continuing to allocate more employment land in Part 2 than would reasonably be needed, which would then not be consistent with Paragraph 22 of the NPPF.

2.11 Arising from the above, it is considered that an appropriate range would be between 16ha (as established through the Stane Park appeal) to 29.8ha (under ELNA Scenario 1).

4) Is it appropriate for the employment land requirements to be expressed as a range?

2.12 A range is considered appropriate but should reflect robust requirements as detailed in respect of Question 1. We comment further on this in relation to Question 6 below.

5) Does the proposed level of employment land provision ensure adequate flexibility to accommodate unanticipated needs and rapid economic change?

2.13 As detailed in respect of Question 1 we recommend a range of 16ha – 29.8ha. This reflects realistic levels and ensures appropriate flexibility. In particular it should be noted that:

- The net increase in jobs under Scenario 1 to 2032 (341 per annum) is considerably higher than achieved in Colchester between 1991-2014 (273 per annum) (ELNA paragraph 6.20). This equates to 25% above previous levels. The ELNA itself recognises that when compared to historic trends, Scenario 1 is a "more optimistic estimate of employment growth".
- The floorspace requirements have an allowance of 10% added in to allow for vacant floorspace (ELNA paragraph 6.23).

- Paragraphs 6.44-6.47 of the ELNA set out that a “safety margin” has been built into the assessment.

2.14 Arising from the above, it is considered that the range of employment land requirements already have a degree of flexibility built-in and therefore the ability to accommodate changes in circumstances.

6) Should policy SP4 specifically require the North Essex Authorities to allocate suitable sites to meet their employment land requirements?

2.15 If the policy sets out that each LPA will be required to allocate suitable and deliverable sites, this should be expressed as a requirement to meet the minimum level of land in the range.

8) Should policy SP4 also set out strategic requirements for retail floorspace? If so, how should these be arrived at?

2.16 Given the focus of SP4 relates to B Class Employment Land (as proposed to be amended through Minor Modifications Document SD002 to remove reference to ‘Retail’ in the title), it is considered preferable that requirements for retail floorspace within each Authority be left to the respective Part 2 Local Plans.

2.17 Further, there is no up-to-date strategic assessment for all the authorities, with outstanding and unresolved objections in relation to the evidence base forecasts for Colchester. If retail floorspace requirements are to be introduced in Part 1, these should be subject to a separate Hearing Session on that matter.

9) Should policy SP4 be more clearly focussed, with explanatory material relocated to the reasoned justification?

2.18 It is agreed that SP4 could be more focussed, which can be achieved as suggested by the Inspector.

Summary of Recommended Changes to Policy SP4

2.19 In light of the above, it is recommended that Policy SP4 is amended as follows in order for the Plan to be found sound:

- For Colchester, set out that the “B Use Employment Land Required” is between 16ha and 29.8ha.
- Set out that the LPAs will be required to allocate sites to meet the minimum level of land required.

APPENDIX 1

STANE PARK APPEAL DECISION 2016

Appeal Decisions

Inquiry opened on 7 June 2016

Site visits made on 15 & 16 June 2016

by Clive Hughes BA(Hons) MA DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 September 2016

Appeal A: APP/A1530/W/15/3139492

Land west of Stanway Western Bypass and north of London Road, Stanway, Colchester, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by The Churchmanor Estates Company plc against the decision of Colchester Borough Council.
 - The application Ref 146486, dated 10 December 2014, was refused by notice dated 18 September 2015.
 - The development proposed is one pub/ restaurant (with ancillary residential accommodation) and two restaurant units, with associated car parking, landscaping and "cart lodge".
 - The inquiry sat for 5 days on 7 to 10 and 15 June 2016.
-

Appeal B: APP/A1530/W/15/3139491

Land west of Stanway Western Bypass and north of London Road, Stanway, Colchester, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by The Churchmanor Estates Company plc against the decision of Colchester Borough Council.
 - The application Ref 150945, dated 8 May 2015, was refused by notice dated 18 September 2015.
 - The development proposed is one restaurant unit and two drive through restaurant/café units (which will also facilitate the consumption of food and drink on the premises) with associated car parking, landscaping, access and servicing.
 - The inquiry sat for 5 days on 7 to 10 and 15 June 2016.
-

These decisions are issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersede the decisions issued on 4 July 2016.

Decisions

Appeal A: APP/A1530/W/15/3139492

1. The appeal is allowed and planning permission is granted for one pub/ restaurant (with ancillary residential accommodation) and two restaurant units, with associated car parking, landscaping and "cart lodge" at land west of Stanway Western Bypass and north of London Road, Stanway, Colchester, Essex in accordance with the terms of the application, Ref 146486, dated 10 December 2014 subject to the 25 conditions set out in Annex A.
-

Appeal B: APP/A1530/W/15/3139491

2. The appeal is allowed and planning permission is granted for one restaurant unit and two drive through restaurant/café units (which will also facilitate the consumption of food and drink on the premises) with associated car parking, landscaping, access and servicing at land west of Stanway Western Bypass and north of London Road, Stanway, Colchester, Essex in accordance with the terms of the application, Ref 150945, dated 8 May 2015 subject to the 26 conditions set out in Annex B.

Procedural matters

3. At the Inquiry it was agreed that the address of the appeal sites should be as set out above in the banner headings and not as described on the planning application forms.
4. At the start of the Inquiry, and as set out in the Statement of Common Ground (SoCG), it was agreed by the parties that for the purposes of these appeals both the schemes should be considered together. As the access/ egress arrangements would, to a large extent, be shared, that seems appropriate.

Main issues (both appeals)

5. The main issues are (i) whether the proposals would lead to an unacceptable loss of employment land; and (ii) whether the proposals pass the sequential test in terms of the effect on the vitality and viability of Colchester town centre.

Reasons

Background

6. The appeal sites are located on adjoining parcels of land immediately to the north of London Road, Stanway, and to the west of Stanway Western Bypass. The Appeal A site has an area of 0.97 ha and lies immediately to the south of the Appeal B site (1.63 ha). The combined site (2.6 ha) is undeveloped land that is mostly laid to grass with a scattering of trees. The land to the west, which is accessed from London Road, is currently being developed for housing by Persimmon Homes (Wyvern Farm). To the west, across the road, is a large Sainsbury's store with a petrol filling station. On the southern side of London Road is a modern Costa coffee shop and housing. This housing includes Foakes, a Grade II listed building located adjacent to Costa.
7. The land to the north, between Appeal Site B and the A12, is also undeveloped. This site (6.84 ha) was the subject of an application for outline planning permission in 2006 for a business and incubator Business Development Park (Stane Park Business Park). The Council resolved to approve the development subject to the completion of an agreement under s106 of the Act. This was never completed and the application was withdrawn in 2010. The proposals included 1,828 sq m (A2 uses); 23,764 sq m (B1); 9,140 sq m (B2); and 1,828 sq m (B8). Only the access arrangements for this site, which would be from the roundabout that also serves Sainsbury's, lies within the Appeal B site.
8. The Appeal A proposals include a pub/ restaurant with ancillary residential accommodation (672 sq m) and two restaurants (combined floorspace of 650 sq m) and a cart lodge. There would be 159 parking spaces, servicing and a vehicular access from London Road. The Appeal B proposals include a

restaurant (511 sq m) and two drive-through units of 181 sq m and 282 sq m respectively. There would be 129 parking spaces and new roundabout access to the north to provide access onto the Stanway Western Bypass which would also provide access to the undeveloped land to the north.

9. Prospective occupiers of the six units, who have signed pre-let agreements, are McMullen and Sons (who would occupy the public house/ restaurant); Bella Italia, Coast to Coast and Nando's (who would occupy the restaurant units); and KFC and Starbucks (who would occupy the drive through units).

Development plan

10. The development plan includes the Colchester Borough Council Core Strategy 2008 (CS); the Site Allocations DPD (2010) (SA DPD); and the Development Policies DPD (2010) (DP DPD). The CS and the DP DPD were partially updated in July 2014 as a result of a Focused Review (FR). The principal policies referred to in these appeals were Policies SD1, SD2, CE1, CE2, CE2a, CE3, TA1 of the CS; Policy DP5 of the DP DPD; and Policies SA STA1 and SA STA3 of the SA DPD.
11. As the principal policies relied on by the Council pre-date the publication of the National Planning Policy Framework (2012) (the Framework), it is necessary to determine whether the cited policies are consistent with it so that the weight that can be given to any conflict with the development plan can be identified.
12. Of particular relevance to many of the cited policies is the FR. The Draft Submission Consultation identifies that only those policies that clearly required updating due to non-compliance with the Framework formed part of this stage of the Local Plan review. It identifies which policies were being reviewed, including all those CS policies cited above apart from Policy TA1. With regard to the policies in the SA DPD, the FR says that the relevant revised policies will note that the new policies supersede those aspects of Policy STA3 insofar as they relate to retail and employment. The Examining Inspector concluded that the proposed combination of changes to Policies CE1, CE3 and DP5 in the FR do not create a justified and coherent set of policies in the development plan as a whole to promote economic growth consistent with the Framework.
13. The Inspector did not criticise CS Policy SD1 and this can be given full weight. I have also noted that the Secretary of State has given full weight to Policy TA1 as being consistent with the Framework. The cited Centres and Employment Policies, including Policies CE1, CE2 and CE3 cannot be given full weight given that the Council accepted this by including them in the FR for precisely the reason that it did not consider them to be fully consistent with the Framework. They were not amended by the FR. It follows that the Site Allocations policies that stem from these policies cannot carry full weight.
14. Policy SD1 (Sustainable development locations) of the CS identifies that growth will be located at the most accessible and sustainable locations. Five broad locations are identified in the policy, including the Stanway Growth Area. SA DPD Policy SA STA3 sets out the types of development considered appropriate in the Stanway Growth Area. It limits the amount of office development to that the subject of the 2006 planning application on the land to the north of the appeal sites. It also says that new town centre uses will not be permitted although a limited amount of retailing will be permitted where it is ancillary to another main employment use and may be permitted to meet identified local

need and not compete with the town centre. I see no reason for not giving full weight to this policy as there is no conflict with the Framework, although the reference to the 6.84 ha Stane Park site (in supporting paragraph 5.164) is out of date insofar as the planning application was withdrawn without the s106 Agreement being completed.

15. The appeal sites lie within a Strategic Employment Zone (SEZ). CS Policy CE3 says that the Council will support existing office commitments in SEZs but that further office development will be directed towards the town centre. At the Inquiry the Council accepted that office development would be acceptable on these sites. At the time the policy was adopted (2008) there was an expectation that a substantial office development would be provided on the land to the north as there was a resolution to approve the 2006 application as set out above.
16. DP DPD Policy DP5 seeks to protect employment land and identifies appropriate employment uses within designated employment zones. The policy also sets out the circumstances in which the Council will permit land to be lost to employment purposes. These criteria, all of which must be met, include the supply of sufficient available alternative land; evidence concerning viability of employment uses on the land; the likelihood of such uses being found in the foreseeable future; the existence of a substantial planning benefit; and the presence of demonstrable economic benefits to the area.

Employment land

17. The site forms part of a SEZ allocation in the development plan. It appears, and the Council's witness concurred, that Stane Park was allocated for employment use based upon the resolution to grant planning permission for the land to the north in 2006, even though that proposal was withdrawn. It is not clear why the appeal sites were included in that allocation. They were not identified for employment use in the 2007 Atkins Report. The allocation of the sites in the 2008 CS, which are clearly identified in SA DPD Policy SA STA3, specifically refers to 36,500 sq m floorspace (the subject of the 2006 withdrawn application). This is clear from paragraph 5.164 which cites the 6.84 ha (ie Stane Park to the north of the appeal sites and excluding almost all of them) as being undeveloped employment land in Stanway.
18. In quantitative terms, the Atkins requirement was for 30 ha to be provided between 2004 and 2021 while the supply was identified as 67.89 ha. CS Policy CE3 describes this supply as ample capacity to accommodate projected growth during the plan period. The Colchester Employment Land Needs Assessment (Nathaniel Lichfield & Partners 2015) (ELNA) is the basis for the emerging local plan to 2032. This identifies a requirement in the range of 22 to 29.8 ha and a supply of almost 77 ha.
19. The current position, as agreed at the Inquiry (Documents 7 & 8) is that there are about 65 ha of vacant employment land including SEZ and Local Employment Sites. The Council conceded that the appeal sites are not critical to this supply and that in accordance with DP DPD Policy DP5 it is possible to consider alternative uses favourably on such sites, provided certain criteria are all met. It was further agreed at the Inquiry that the take up of employment land, based upon the last 10 years' economic cycle, is in the region of 1 ha per year. The agreed position, therefore, is that there is 65 years' supply which

the Council agreed constituted very substantially more than sufficient land. Based upon the agreed figures, that seems a fair conclusion.

20. In qualitative terms, paragraphs 7.37 & 7.38 of ELNA makes it clear that there is a more limited level of demand at Stanway SEZ compared to Colchester town and the Northern Gateway Growth Area. It says that in both quantitative and qualitative terms the demand would appear insufficient to necessitate retaining the full quantum of employment land identified as available.
21. While Stane Park is ranked 7th by Atkins (2007) in terms of its suitability score in a list of possible sites required to meet future needs, this not only fails to take account of the infrastructure costs but clearly relates solely to the land to the north of the appeal sites. The wider Stane Park site, including the appeal sites, has a ranking of 4th in ELNA (2015). However, this is based on a scoring system in which the site scores highly in respect of development and environmental constraints although it then goes on to identify that potential infrastructure costs could be a barrier to delivery. Perhaps surprisingly it does not identify the nearby new housing as a barrier, although the proximity of a new housing scheme is identified in respect of the Barrack Street site.
22. I have given considerable weight to the viability evidence provided in support of the development. The inputs to this were generally accepted by the Council. All three appraisals demonstrated that schemes for B Class development would not be viable unless the rental levels were very substantially higher than any rents achieved anywhere in Colchester. Realistically, the land is not going to come forward for B Class uses in the foreseeable future.
23. I have had regard to the concerns about the level of marketing for this site. Given the non-viability of developing the site for B Class uses, as demonstrated by the appellants, even extensive marketing would be unlikely to be successful. In any case, there are few SEZs in Colchester and it is inconceivable that any agents would not be aware of the site and its availability. As pointed out by the appellants, the Council is promoting almost 9 ha within another SEZ for town centre uses without having marketed it first. A combination of the amount of employment land available and the non-viability of the sites means that I do not consider that the lack of comprehensive marketing is fatal to the appellant's case.
24. The sites are identified as falling within a SEZ in the development plan and A Class uses are not amongst the uses acceptable in such locations. The proposals are therefore clearly contrary to the development plan. However, the cited Centres and Employment policies are, in the light of the FR, not in full compliance with the Framework. That acceptance is clear from the various documents concerning the FR, and in particular pages 2 and 3 of the Draft Submission Document and the Summary of Responses. Nonetheless, the overall conflict with adopted policies carries weight against the proposals.

The Sequential Test

25. Paragraph 26 of the Framework says that when assessing applications for leisure development outside town centres, which are not in accordance with an up-to-date local plan, the authority should require an impact assessment if the development is over a locally set floorspace threshold. In this case there is no such threshold so the default figure of 2,500 sq m applies. The combined

- schemes have a total floorspace below this figure so no impact assessment is required.
26. Paragraph 24 of the Framework says that authorities should apply a sequential test to applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. In this case the development would not be in a town centre. In Framework terms, it would be an out of centre site. The catchment area for the proposed scheme is not easily defined. Some customers to the new development would inevitably be drawn from trips linked to a visit to the Tollgate retail area, which is a defined Urban District Centre (UDC). Others, as evidenced by the many letters of support from nearby residents, would be drawn from housing in the vicinity of the appeal sites. There is currently a residential catchment of around 20,000 residents within 2.5 km of the sites and this figure is set to grow.
 27. Colchester town centre is some 5 km away. Three of the identified occupiers of the new units already have a presence in the town centre. Due to a combination of the relatively small scale of the proposed development on the appeal sites and their distance from the town centre, I consider it highly unlikely that there would be any significant overlap in any catchment areas between the town centre and Stanway. The reasons for refusal do not refer to any harmful impact on trading in the town centre; the only harm identified in respect of its non-town centre location being that this out of centre destination is more likely to attract car-borne traffic and so it is not in a sustainable location.
 28. Concerning the Council's contention that the site is in a less sustainable location than the town centre, it is not disputed that the site is in a highly accessible position. It is well served by public transport as shown in Document 1. The schemes would enable the proposed bus link and pedestrian links to the adjoining Wyvern Farm housing to be provided. Its proximity to a large and growing residential population would enable pedestrian access. Nonetheless, the schemes provide for a total of 288 car parking spaces which is a clear indication that the operators anticipate a heavy reliance on the private car.
 29. CS Policy TA1, which carries full weight, says that future development will be focused on highly accessible locations, such as centres, to reduce the need to travel. While the appeal sites are not in a centre it is acknowledged in the development plan that Stanway is a highly accessible location. The schemes would assist in the provision of sustainable modes of travel and there is a large, and growing, residential population in the vicinity. However, the scheme would be largely car-dependent and so there would be conflict with this policy.
 30. The developer, rightly, draws attention to the fact that the Council is disposing of 8.88 ha of land in the North Colchester SEZ to a commercial developer for town centre uses. Indeed, it is jointly promoting the development. The scheme seems to include a cinema as well as restaurants. In cross examination the Council accepted that the proposals for this land would not comply with the development plan. While there is a park and ride facility nearby, the Council's approach to the two sites appears to be significantly different in that town centre uses are being sought at one site and refused on the appeal sites.
 31. Concerning the Sequential Test, the Council identified four sites that it regarded as being sequentially preferable to the appeal sites. All four are

- within Colchester town centre and in more sustainable locations. I have had regard to the need for the developers to be flexible in terms of their requirements but, at the same time, an alternative site must be suitable for the proposed development. This means that the site should be able to accommodate a public house/ restaurant; 3 restaurants and 2 drive-through restaurants. The schemes also include surface car parking, a play area and outdoor seating. These cannot reasonably be disaggregated as they comprise "the development". Further, the Council agreed in the SoCG that the two appeals should be considered together.
32. Concerning the four identified sites, the largest site is at Vinyard Gate. The Vinyard Gate shopping centre is identified as a "flagship" project in the SA DPD. In evidence the Council accepted that it is not currently available for development. One of the criteria set out in paragraph 24 is that suitable sites should be available. This site is in multiple ownerships and there may need to be a CPO to enable a comprehensive redevelopment of the land. Due to the lack of evidence concerning its availability I am not convinced that this is a realistic alternative site for this development.
33. Concerning Greytown House, this has a site area of only 0.06 ha. It is far too small for the proposed development. It has planning permission for a scheme of some 600 sq m; the appeal proposals are for 2,296 sq m. This site is not a suitable alternative site.
34. The Council, in an email dated 5 May 2016 (Document 12) confirmed that only the ground floor of the former Co-Operative site was to be considered. This site is also much too small to accommodate the proposed development and so it, too, can be discounted.
35. The fourth and final site is described as land at St Botolph's. The corrected site boundaries give it a site area of about 0.77 ha, well below the size of the combined appeal sites (2.6 ha) and also well below the "flexible" compromise site area of 1.50 ha that might be acceptable to the appellant provided viability could be assured. This further reduction from 1.50 ha to 0.77 ha would be unacceptable to the appellant and it would clearly be too small to fully accommodate the development, even at an acceptably reduced scale. In addition it appears that the site is not available on the market. The 2014 scheme for its redevelopment included some A3 units and also an hotel and student accommodation. The details of these elements are uncertain. I consider that it has been demonstrated that this site is neither suitable nor available for the proposed development.
36. None of the four sites, therefore, can be considered to be sequentially preferable in terms of the appeal proposals. The sequential test is passed.

Other material considerations

37. The proposed development would result in a number of benefits that weigh in favour of the proposals. The six prospective occupiers have signed up to the development and so the likely employment opportunities are known. The units would provide 115 full-time and 125 part-time jobs. Those operators who have already got a presence in the town centre have indicated that the new units would be in addition to, and not in place of, existing outlets. The provision of a significant number of jobs is in accordance with development plan employment objectives. Due to the likely evening operation of all the units, the probability

- is that many of the jobs would be taken by local residents. The length of the leases (5 units at 15-25 years; one unit at 150 years) is much better than is normal for, say B Class uses, where 5 year terms are more usual.
38. The scheme would result in the provision of the road infrastructure necessary to access the land to the north. This would be likely to provide access to both the 6.84 ha the subject of the 2006 planning application and also the allocated employment land between the Wyvern Farm housing and the A12. In addition, the proposals would facilitate bus and pedestrian access between the appeal sites and Wyvern Farm.
39. I have had regard to my statutory duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, and in particular section 66(1). This requires that I have special regard to the desirability of preserving a listed building or its setting when considering whether to grant a planning permission which affects it or its setting. In this case the scheme on the southern part of the Appeal A site would clearly affect the setting of Foakes, a detached dwelling on the southern side of London Road immediately opposite the site.
40. Foakes is a Grade II listed building. It is an early C19 timber framed weather boarded cottage with a slate roof. It adjoins two-storey houses to the west while to the east and south are the building and car park of a new Costa drive-through coffee shop. Opposite Foakes is the open and undeveloped land within the site of Appeal A. Foakes' significance as a heritage asset is based upon its design, age and appearance. The setting, which is mixed and of no historic interest, contributes little to its significance.
41. The proposals include the erection of a cart lodge on the southern boundary of the Appeal A site, almost directly opposite the asset. The car parking would be screened by a wall and the proposed public house building is of an interesting, traditional style in keeping with its prominent corner location. The new access to the sites would also be within Foakes' setting but any harm arising from this would be very slight. In accordance with paragraph 134 of the Framework this very limited harm would be less than substantial and so would need to be balanced against the public benefits of the development.

Conditions

42. The main parties put forward lists of suggested conditions and these were discussed in some detail at the Inquiry. I have identified the approved plans for the avoidance of doubt. I have included Drawing No 13-0134/0-638 in the list of Appeal A plans as this provides details of the plans and elevations of the cart lodge. I have imposed conditions in respect of external materials, landscaping and the use of outdoor spaces in the interests of the visual amenities of the area. The access and egress arrangements specified in the application need to be provided in the interests of highway safety and the living conditions of London Road residents. The bus gate to the Wyvern Farm housing site need to be provided to ensure a co-ordinated approach to public transport provision.
43. A code of construction statement; limitations on the hours of working, operation and times for deliveries; the provision of self closing doors; measures to control fumes; limitations on noise at the site boundaries; the provision of details and subsequent implementation of a litter management scheme; details of the use of outdoor spaces; and details of external lighting are necessary to

protect the living conditions of nearby residents. An archaeological watching brief is necessary to safeguard archaeological assets in the area. Drainage details need to be submitted and approved as no such details have been provided and to minimise the risk of flooding.

44. I have imposed conditions restricting permitted development rights and the provision of additional commercial floor space in order that the Council may consider the implications, including highway and parking implications, of increasing the density of the development. For the same reasons I have imposed a condition prohibiting the sub-division of the units. I have imposed a condition removing permitted development rights in respect of changes of use. This condition limits the use of each of the individual units to the use applied for. This ensures that the development accords with the terms of the planning applications and prevents the units being used for other purposes, such as for retail use, which could impact adversely on the town centre. I have amended the Appeal B suggested condition to reflect the uses sought and now permitted.
45. I have imposed the reduced condition concerning contaminated land as suggested by the appellants as the lengthier conditions contain much advice on the types of information that may be necessary in such a scheme. The highway works, although specified on the plans, need to be the subject of conditions to ensure that they are carried out before trading commences.

The planning balance

46. The starting point has to be my conclusion that the proposed development is contrary to the provisions of the adopted development plan. Some of the cited policies, and in particular those that relate to Centres and Employment, carry less than full weight as they are not fully consistent with the Framework. Nonetheless, the conflict with the development plan carries weight against the proposals.
47. Paragraph 22 of the Framework says that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. In Colchester it is agreed that there is a 65 year supply of employment land based on current take-up rates. The viability assessments carried out by the appellant, and which were not significantly challenged by the Council, demonstrate that the appeal sites are not currently viable for employment uses. Indeed, the commercial rents in the area would have to rise very substantially for them to become viable. Due to this and to the significant infrastructure costs I consider that the sites have no reasonable prospect of being used for employment purposes in the foreseeable future. This weighs in favour of the development.
48. The proposals involve the provision of infrastructure including a new access from the roundabout which would increase the potential viability of the land to the north and thus the likelihood of it being attractive to employment uses. It would remove a barrier to development identified in Appendix 4 of ELNA and thus be likely to have a beneficial impact on the delivery of other employment land in the immediate area. ELNA says that it would be difficult to justify retaining the full extent of employment land at Stanway from a qualitative and quantitative market perspective. Given the identified supply and current up-take that is a fair conclusion. The gateway location of Stane Park is a positive factor and the removal of a substantial infrastructure barrier to development would make the residue of the land in the SEZ (including all the site of the

2006 application) more attractive to developers. This also weighs in favour of the proposals.

49. The Council has put forward four sites that it considers are sequentially preferable to the appeal sites for this development. However, for the reasons set out above, either the sites are not available or could not reasonably accommodate the scheme, even in a significantly reduced form. No other sites have been put forward and so the sequential test is passed. This weighs in favour of the development.
50. The proposals would bring a vacant site into beneficial use. The design of the buildings, which evolved through discussions between the developer and the Council, is such that it would enhance the appearance of the area. The details of the landscaped areas can be required by condition and can further benefit the appearance of the area. The development would provide a substantial number of jobs close to residential areas in the near future. All these issues weigh in favour of the scheme.
51. The proposed development would be likely to result in a high level of car use by customers. I have taken account of the substantial population within a 2.5 km catchment and agree that some trips would be linked with trips to the nearby retail facilities. I also agree that some trips to the facilities would be likely to be on foot or by public transport, but the probability is that the overwhelming majority of customers would arrive by car. This seems to be accepted by the developers in the high number of on-site car parking spaces to be provided. This would be contrary to development plan objectives and weighs against the scheme.
52. There would also be some harm caused to the setting of Foakes, the Grade II listed building opposite the site in London Road. This is a designated heritage asset. As identified above, due to the design, layout and form of the development, the harm to its setting would be very limited.

Conclusions

53. I have had regard to all the other representations made in writing and at the Inquiry. There is a strong level of local support for the proposals from residents. The Stanway Parish Council has objected to Appeal A solely on ground of traffic arising from the access onto London Road; it suggests that an alternative access could be from a spur off the Sainsbury's roundabout. It raises no objections to Appeal B which proposes just such an access. Traffic from all the restaurant units and drive-through units in both appeals would egress via that roundabout. The local highway authority has commented that the impact of the proposals is acceptable subject to conditions. I have found nothing in these matters that outweigh my conclusions on the main issues.
54. Overall, therefore, I conclude that there would be no unacceptable loss of employment land, either in quantitative or qualitative terms and that the proposals pass the sequential test. There would be some harm arising from conflict with the development plan, from the significant level of car-borne customers and to the setting of a listed building. However, the totality of that harm is limited and is significantly outweighed by the benefits of the schemes as identified above. There is conflict with the development plan but in respect of both appeals this is outweighed by the other material considerations. I conclude that both appeals should succeed.

Clive Hughes

Inspector

APPEARANCES

FOR THE APPELLANT:

Christopher Lockhart-Mummery QC	Instructed by MRPP
He called	
John Stephenson FRICS	Senior Director, Grant Mills Wood
MCIARB	
Martin Robeson BA FRTPI	Managing Director, MRPP
FRICS FRSA	

FOR THE LOCAL PLANNING AUTHORITY:

Sasha White QC	Instructed by the Council's Solicitor
He called	
Simon Parfitt BA MSc MIT	Director, David Tucker Associates
MILT MIHT	
Jim Leask BA(Hons) MPhil	Senior Economic Development Officer
Dip LED	
Chris Watts MTCP MRTPI	Senior Consultant, Cushman & Wakefield
Karen Syrett BTP (Hons)	Place Strategy Manager, Colchester Borough
MRTPI	Council

INTERESTED PERSONS:

Cllr Jackie Maclean	Borough Councillor
Josephine Hayes	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Schedule of bus services/ frequency etc; plan showing bus stops near appeal site; diagram showing bus routes
- 2 Masterplan of Stane Park Leisure Quarter
- 3 Extract from "News" 28 January 2016 – Statement by Jeremy Newman
- 4 Letter dated 3 June 2016 from Building Partnerships
- 5 Opening submissions on behalf of the appellant
- 6 Opening submissions on behalf of the Local Planning Authority
- 7 Vacant employment land – GMW
- 8 Vacant employment land – ELNA/ Whybrow/ GMW
- 9 Objectively Assessed Housing Need Survey – Peter Brett Associates 2015
- 10 Summary of dates from Robeson Appendix 6/ Stephenson para 3.13
- 11 Letter dated 3 March 2015 MRPP to Major Development Manager, CBC
- 12 Email exchange 3/5 May 2016 re sequential candidate sites
- 13 Extract from Essex County Standard 11 September 2015 pp 9 & 11
- 14 Letter dated 26 May 2016 from JP Newman to Grant Mills Wood
- 15 Statement by Cllr Jackie Maclean
- 16 CBC's Economic Growth: Strategy Evidence Base (November 2015)
- 17 Environmental Statement – Volume 3 Non Technical Summary (December 2015)
- 18 Letter from Historic England to CBC 16 May 2016

- 19 Cheshire East BC v SoSCLG, Renew Land Developments Ltd [2016] EWHC 571 (Admin) 16 March 2016
- 20 Stane Park: Rationale for allocation of whole site as part of SEZ
- 21 North Colchester Strategic Employment Zone and plans
- 22 Draft conditions with track changes
- 23 Closing submissions on behalf of the Local Planning Authority
- 24 Closing submissions on behalf of the Appellant

Annex A: Conditions Appeal A (25 conditions)

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the details shown on the submitted drawings, except where they are required to be amended as required by conditions 15 (Landscaping) 23 & 25 (Highway Improvements) of this permission.

Location Plan	13-0134/0-600 Rev A
Design Brief	13-0134/0-601 Rev E
Proposed Site Plan	13-0134/0-605 Rev F
Proposed Site Elevations	13-0134/0-603 Rev A
Public House – Proposed Ground Floor	13-0134/0-630 Rev A
Public House – Proposed First Floor	13-0134/0-631 Rev B
Public House – Proposed Elevations	13-0134/0-634 Rev B
Public House – Proposed Roof Plan	13-0134/00632
Public House – Proposed Sections	13-0134/0-636
Cart Lodge – proposed plans and elevations	13-0134/0-638
Unit 1 – Proposed Ground Floor and Roof Plan	13-0134/0-610 Rev A
Unit 1 – Proposed Elevations	13-0134/0-611 Rev C
Unit 1 – Proposed Section	13-0134/0-612 Rev A
Unit 2 – Proposed Ground Floor and Roof Plan	13-0134/0-620 Rev A
Unit 2 – Proposed Elevations	13-0134/0-621 Rev C
Unit 2 – Proposed Section	13-0134/0-622 Rev A
London Road Widening	F171/SK/302 Rev A
Chameleon Material Samples	20150213DJ001
3. Notwithstanding such detail as has been previously provided to support the planning application no works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials; joinery details and external hard landscaping materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.
4. No part of the development hereby permitted shall open for trade until the highway and access works, signage, uni- directional barrier and parking spaces shown on Drawing Numbers 13-0134/0-605 Rev F and F171/SK/302 Rev A have been provided and are fully operational. Such

facilities shall thereafter be retained for as long as the development, or any part of it, remains unless agreed in writing by the local planning authority.

5. Prior to commencement of the development the developer shall submit a code of construction statement for approval to the local planning authority. That statement shall include details of the following:-

- Pre- and post-opening maintenance arrangements at the developer's expense for roads, kerbs, paths, lights, dog and litter bins, public realm, landscaping and the public realm generally.
- Arrangements for the prominent display in a publicly accessible location of the following:

- Site manager contact details. (email and telephone)

- Out of hours contact details for the reporting of problems during construction

- The display of the planning permission and all associated conditions and an approved layout drawing

- Summarised build programme

- Compound location
- Overall build programme
- Site parking arrangements
- Routing plan arrangements for construction and construction related traffic
- Dust suppression
- Tyre washing
- Concrete plant location
- Noise suppression (vehicles reversing alarms)
- Site manager contact details for residents
- Top soil mound positions
- Local newsletter arrangements and catchment
- Floodlighting
- Fuel storage arrangements

Development shall not proceed until such details have been agreed in writing by the local planning authority and thereafter the developer shall comply with such detail as shall have been agreed.

6. No construction work other than of internal works to a completed shell with windows and doors in place shall take place outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Public Holidays: No working.

7. The uses hereby permitted shall not operate outside of the following times:

Weekdays: 08:00-23:30

Saturdays: 08:00- 23:30

Sundays: 08:00-23:00

8. No deliveries shall be received at, or despatched from, the site outside of the following times:
Weekdays: 07:00-23:00
Saturdays: 07:00-23:00
Sundays: 07:00-23:00
9. Prior to occupation of the development hereby permitted, all doors allowing access and egress to the premises shall be self-closing and shall be maintained as such, and kept free from obstruction, at all times thereafter.
10. Prior to the occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 5dB(A) above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.
11. Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.
12. Prior to the first occupation of the development hereby permitted, equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development shall be provided in accordance with details that shall have previously been submitted to, and agreed in writing by, the Local Planning Authority. Any such equipment, facilities and arrangements as shall have been agreed shall thereafter be retained and maintained in good order unless otherwise subsequently agreed, in writing, by the Local Planning Authority.
13. Beyond that described in the supporting lighting strategy and provided as so described no additional external lighting shall be installed unless it has first been agreed in writing by the local planning authority. The development shall thereafter be carried out and maintained in accordance with the approved details.
14. Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority. This scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public and the environment when the site is developed. Development shall not commence until the measures approved in the scheme have been implemented.

15. Notwithstanding such landscaping details as have been submitted, further details of proposed landscaping shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The approved details shall be carried out in full prior to the end of the first planting season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.
16. Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved for as long as the development, or any part of it, remains unless otherwise agreed in writing by the local planning authority.
17. The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, provide ten working days notice of any excavations and allow him to observe those excavations and record items of interest and finds.
18. Notwithstanding the definition of development provided by s55 of the Town & Country Planning Act 1990 no additional floorspace shall be created within any part of any voidspace within any building or buildings without the prior written approval of the local planning authority.
19. No works shall take place until details of surface water and foul water drainage have been submitted to and approved, in writing, by the Local Planning Authority. No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage has been fully installed and is available for use.
20. No outdoor space or spaces shall be used for the purpose hereby permitted within the buildings unless and until an outdoor area management plan has been submitted to and agreed in writing by the local planning authority. This plan shall include details of
 - physical extent of such areas as defined on a site plan
 - intended use of such areasThe defined outdoor space shall only be used for the prescribed purposes between the hours of 08:00-23:00.
21. The permission hereby granted is for the use stated below within the unit specified only and no other use; including any use which may currently or at any future date constitute a permitted development change of use as described in the Town & Country Planning (General Permitted

Development) (England) Order 2015 (as amended) or in any Order or Instrument amending, revoking or replacing that Order:

Unit 1: A3 (restaurants & cafes) as a restaurant;

Unit 2: A3 (restaurants & cafes) as a restaurant; and

Pub unit: A4 (drinking establishments) as a Public House.

22. The permission hereby granted is for the units specified in the approved plans. There shall be no sub-division or intensification of any units without prior planning approval; including any alterations which may at a future date constitute permitted development as described in the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) or in any Order or Instrument amending, revoking or replacing that Order.
23. Prior to commencement of the development revised details shall be submitted to and approved in writing by the Local Planning Authority to show the following:
The link located off London Road adjacent the bus shelter and cycle parking and the link off the Stanway Western Bypass immediately north of Unit 2 as minimum 3 metre wide shared footpath/cyclepaths. The development shall be carried out in accordance with the approved plans.
24. No part of the development shall open for trading until the following have been provided or completed:
- a) A bell mouth access as shown in principle on the application drawings. Access to include but not limited to a minimum 70 x 2.4 x 70 metre visibility splay
 - b) Widening of the London Road carriageway west of its roundabout junction with the Stanway Western Bypass as shown in principle on the planning application drawings, specifically Cannon Consulting Engineers drawing number F171/SK/302 Rev A
 - c) Upgrading (and possible relocation) of the two bus stops located west of the Stanway Western Bypass/London Road roundabout to current Essex County Council specification to include but not limited to real time passenger information (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - d) A minimum 3 metre wide shared footway/cycleway along the length of the proposal site's southern frontage onto London Road (to link with the 3 metre wide shared footway/cycleway attached to the Wyvern Farm planning permission (ref. 145494) and the 3.5 metre wide shared footway/cycleway alongside the Stanway Western Bypass
 - e) An employee travel plan
25. Notwithstanding the submitted drawings, prior to commencement of the development revised drawings shall be submitted to and approved in writing by the Local Planning Authority to show the following:

- a) The footways on all sides of the site access infrastructure, including new roundabout and arms off, from the Stanway Western Bypass onwards as minimum 3 metre wide shared footway/cycleways.
- b) The splitter islands at the new roundabout being wide enough to accommodate a cyclist
- c) The link located off the Stanway Western Bypass immediately north of Unit 2 being a minimum 3 metre wide shared footpath/cyclepath
- d) The link to the adjacent Wyvern Farm planning permission (ref. 145494) being a minimum 3 metre wide shared footpath/cyclepath

No occupation of any part of the development shall take place until the works described above have been provided or completed.

Annex B: Conditions Appeal B (26 conditions)

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the details shown on the submitted drawings, except where they are required to be amended as required by conditions 16 (Landscaping) and 24 & 26 (Highway Improvements) of this permission.

Location Plan	14-0262/0-600
Design Brief	14-0262/0-601 Rev A
Proposed Site Plan	14-0262/0-602 Rev D
Proposed Site Elevations	14-0262/0-604 Rev A
Unit 3 – GA Plans	14-0262/0-610 Rev B
Unit 3 – GA Elevations	14-0262/0-611 Rev C
Unit 4 – GA Plans	14-0262/0-620 Rev A
Unit 4 – GA Elevations	14-0262/0-621 Rev A
Unit 4 – Proposed Sections	14-0262/0-622 Rev A
Unit 5 – GA Plans	14-0262/0-630 Rev C
Unit 5 – GA Elevations	14-0262/0-631 Rev B
Unit 5 – Proposed Section	14-0262/0-632 Rev C
London Road Widening	F171/SK/302 Rev A
Chameleon Material Samples	20150213DJ001
3. Notwithstanding such detail as has been previously provided to support the planning application no works shall take place until precise details of the manufacturer and types and colours of the external facing and roofing materials; joinery details and external hard landscaping materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.
4. No part of the development hereby permitted shall open for trade until the highway and access works, signage, uni- directional barrier and parking spaces shown on Drawing Numbers 13-0134/0-605 Rev F and F171/SK/302 Rev A have been provided and are fully operational. Such facilities shall

thereafter be retained for as long as the development, or any part of it, remains unless agreed in writing by the local planning authority.

5. No part of the development hereby permitted shall open for trade until:
 - a) Detailed drawing/s of the bus gate design and arrangements shown in preliminary detail on submitted Drawing Number 14-0262/0-602 Rev D have been submitted to and approved by the local planning authority, and
 - b) The bus gate access arrangements have been provided to the boundary of the site so as to be co-terminus with the equivalent section of bus-gate being provided by the relevant developer of the Wyvern Farm development. Once connection is made the bus-gate access shall remain freely available for use for the intended purpose unless otherwise agreed in writing by the local planning authority.

6. Prior to commencement of the development the developer shall submit a code of construction statement for approval to the local planning authority. That statement shall include details of the following:-
 - Pre- and post-opening maintenance arrangements at the developer's expense for roads, kerbs, paths, lights, dog and litter bins, public realm, landscaping and the public realm generally.
 - Arrangements for the prominent display in a publicly accessible location of the following:
 - Site manager contact details. (email and telephone)
 - Out of hours contact details for the reporting of problems during construction
 - The display of the planning permission and all associated conditions and an approved layout drawing
 - Summarised build programme
 - Compound location
 - Overall build programme
 - Site parking arrangements
 - Routing plan arrangements for construction and construction related traffic
 - Dust suppression
 - Tyre washing
 - Concrete plant location
 - Noise suppression (vehicles reversing alarms)
 - Site manager contact details for residents
 - Top soil mound positions
 - Local newsletter arrangements and catchment
 - Floodlighting
 - Fuel storage arrangements

Development shall not proceed until such details have been agreed in writing by the local planning authority and thereafter the developer shall comply with such detail as shall have been agreed.

7. No construction work other than of internal works to a completed shell with windows and doors in place shall take place outside of the following times;
Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Public Holidays: No working.

8. The uses hereby permitted shall not operate outside of the following times:
Weekdays: 08:00-23:30
Saturdays: 08:00- 23:30
Sundays: 08:00-23:00
9. No deliveries shall be received at, or despatched from, the site outside of the following times:
Weekdays: 07:00-23:00
Saturdays: 07:00-23:00
Sundays: 07:00-23:00
10. Prior to occupation of the development hereby permitted, all doors allowing access and egress to the premises shall be self-closing and shall be maintained as such, and kept free from obstruction, at all times thereafter.
11. Prior to the occupation of the development as hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 5dB(A) above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.
12. Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.
13. Prior to the first occupation of the development hereby permitted, equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development shall be provided in accordance with details that shall have previously been submitted to, and agreed in writing by, the Local Planning Authority. Any such equipment, facilities and arrangements as shall have been agreed shall thereafter be retained and maintained in good order unless otherwise subsequently agreed, in writing, by the Local Planning Authority.
14. Beyond that described in the supporting lighting strategy and provided as so described no additional external lighting shall be installed unless it has first been agreed in writing by the local planning authority. The development shall thereafter be carried out and maintained in accordance with the approved details.
15. Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority. This scheme shall include an investigation and assessment to

identify the extent of contamination and the measures to be taken to avoid risk to the public and the environment when the site is developed. Development shall not commence until the measures approved in the scheme have been implemented.

16. Notwithstanding such landscaping details as have been submitted, further details of proposed landscaping shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The approved details shall be carried out in full prior to the end of the first planting season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed, in writing, by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.
17. Prior to the first occupation of the development, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved for as long as the development, or any part of it, remains unless otherwise agreed in writing by the local planning authority.
18. The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, provide ten working days notice of any excavations and allow him to observe those excavations and record items of interest and finds.
19. Notwithstanding the definition of development provided by s55 of the Town & Country Planning Act 1990 no additional floorspace shall be created within any part of any voidspace within any building or buildings without the prior written approval of the local planning authority.
20. No works shall take place until details of surface water and foul water drainage have been submitted to and approved, in writing, by the Local Planning Authority. No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage has been fully installed and is available for use.
21. No outdoor space or spaces shall be used for the purpose hereby permitted within the buildings unless and until an outdoor area management plan has been submitted to and agreed in writing by the local planning authority. This plan shall include details of
 - physical extent of such areas as defined on a site plan
 - intended use of such areasThe defined outdoor space shall only be used for the prescribed purposes between the hours of 08:00-23:00.
22. The permission hereby granted is for the use stated below within the unit specified only and no other use; including any use which may currently or at

any future date constitute a permitted development change of use as described in the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) or in any Order or Instrument amending, revoking or replacing that Order:

Unit 3: A3 (restaurants & cafes) as a restaurant;

Unit 4: Mixed A5 (hot food takeaway) /A3 (restaurants & cafes) as a drive through restaurant with seating; and

Unit 5: Mixed A5 (hot food takeaway) /A3 (restaurants & cafes) as a drive through restaurant with seating.

23. The permission hereby granted is for the units specified in the approved plans. There shall be no sub-division or intensification of any units without prior planning approval; including any alterations which may at a future date constitute permitted development as described in the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) or in any Order or Instrument amending, revoking or replacing that Order.
24. Prior to commencement of the development revised details shall be submitted to and approved in writing by the Local Planning Authority to show the following:
The link located off London Road adjacent the bus shelter and cycle parking and the link off the Stanway Western Bypass immediately north of Unit 2 as minimum 3 metre wide shared footpath/cyclepaths. The development shall be carried out in accordance with the approved plans.
25. No part of the development shall open for trading until the following have been provided or completed:
- a) A bell mouth access as shown in principle on the application drawings. Access to include but not limited to a minimum 70 x 2.4 x 70 metre visibility splay
 - b) Widening of the London Road carriageway west of its roundabout junction with the Stanway Western Bypass as shown in principle on the planning application drawings, specifically Cannon Consulting Engineers drawing number F171/SK/302 Rev A
 - c) Upgrading (and possible relocation) of the two bus stops located west of the Stanway Western Bypass/London Road roundabout to current Essex County Council specification to include but not limited to real time passenger information (details shall be agreed with the Local Planning Authority prior to commencement of the development)
 - d) A minimum 3 metre wide shared footway/cycleway along the length of the proposal site's southern frontage onto London Road (to link with the 3 metre wide shared footway/cycleway attached to the Wyvern Farm planning permission (ref. 145494) and the 3.5 metre wide shared footway/cycleway alongside the Stanway Western Bypass
 - e) An employee travel plan
26. Notwithstanding the submitted drawings, prior to commencement of the development revised drawings shall be submitted to and approved in writing by the Local Planning Authority to show the following:
-

- a)The footways on all sides of the site access infrastructure, including new roundabout and arms off, from the Stanway Western Bypass onwards as minimum 3 metre wide shared footway/cycleways.
- b)The splitter islands at the new roundabout being wide enough to accommodate a cyclist
- c)The link to the adjacent Wyvern Farm planning permission [ref. 145494] being a minimum 3 metre wide shared footpath/cyclepath

No occupation of any part of the development shall take place until the works described above have been provided or completed.

APPENDIX 2

**EXTRACTS FROM TOLLGATE VILLAGE APPEAL DECISION &
INSPECTOR'S REPORT 2017**



Department for
Communities and
Local Government

Mr Alistair Ingram
Barton Willmore LLP
7 Soho Square
London
W1D 3QB

Our ref: APP/A1530/W/16/3147039
Your ref: 20638/A3/PN

04 August 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY TOLLGATE PARTNERSHIP LTD
LAND AT TOLLGATE VILLAGE, TOLLGATE WEST, STANWAY, ESSEX CO3 8RG
APPLICATION REF: 150239**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Ken Barton BSc(Hons) DipArch DipArb RIBA FCIArb, who held a public local inquiry for 10 days between 10 January and 17 February 2017 into your client's appeal against the decision of Colchester Borough Council ("the Council") to refuse planning permission for a mixed use development comprising leisure uses (Use class D2) including a cinema, and retail (Use classes A1, A2, A3, A4 and A5), with associated parking including multi-storey car park, public realm improvements, access, highways, landscaping and associated works, in accordance with application ref: 150239, dated 4 February 2015.
2. On 4 August 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals which involve a town centre use or uses where that use or uses comprise(s) over 9,000m² gross floor space (either as a single proposal or as part of or in combination with other current proposals) and which are proposed on a site in an edge-of-centre or out-of-centre location that is not in accordance with an up-to-date development plan.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. He has decided to allow the appeal and grant planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

4. The Secretary of State has had regard to correspondence submitted to him after the Inquiry, as set out in Annex A to this letter. He has carefully considered and taken into account these representations but he does not consider that they raise new planning issues that would affect his decision or require him to refer back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case the development plan consists of the Core Strategy Development Plan document (DPD) (CS), adopted December 2008; the Development Policies DPD (DP), adopted October 2010; the Site Allocations DPD (SA), adopted October 2010; and the Proposals Maps, adopted October 2010. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR5.5.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Emerging plan

8. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes (IR5.2) that the current form of the emerging Local Plan 2017-2033 has yet to be examined and adopted. Consultation on the Publication Draft Local Plan runs from 16 June to 11 August 2017. The target for adoption is September 2018. Given that the emerging plan is at such an early stage, the Secretary of State considers that it can only be afforded limited weight.

Main issues

9. The Secretary of State agrees with the Inspector that the main issues are those set out at IR12.1.3.

The Development Plan

10. The Secretary of State has carefully considered the Inspector's analysis at IR12.2.1-12.2.16. For the reasons given at IR12.2.3-12.2.7 the Secretary of State agrees with the Inspector that Policy SD1 is up to date and attracts full weight. However, for the reasons given at IR12.2.8-12.2.13, he agrees with the Inspector that Policies CE1, CE2, CE3, STA3, DP5, UR1 and SA TC1 are out of date. He agrees with the Inspector at IR12.2.14 that all the policies that are out of date due to inconsistency with the NPPF should be given little weight.

11. The Secretary of State agrees with the Inspector at IR12.2.15 that Policy TA1 is consistent with the NPPF and should carry full weight. However he agrees with the Inspector that in this case the local area is recognised as being sustainable.
12. The Secretary of State agrees with the Inspector at IR12.2.16 that overall, some aspects of the proposal are not consistent with the development plan, in particular the retail policies; and that on balance the proposal is contrary to the development plan. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

The Sequential Test

13. The Secretary of State has carefully considered the Inspector's analysis at IR12.3.1-12.3.30. For the reasons given at IR12.3.23-12.3.26 he agrees with the Inspector that the propositions put forward by the Council and the Rule 6 parties in relation to the Vineyard Gate site would not be closely similar to the appeal scheme and cannot be considered available.
14. For the reasons given at IR12.3.27, the Secretary of State agrees with the Inspector that the St Botolph's is not sequentially preferable and does not need to be considered.
15. With regard to the Priory Walk site, the Secretary of State notes that both the Council and the Rule 6 Parties agreed that this site is not currently available. He agrees with the Inspector at IR12.3.28 that there is no evidence of anyone trying to assemble this site and no evidence that it would be viable to do so.
16. Overall, the Secretary of State agrees with the Inspector at IR12.3.29 that all the above sites have been found to be not suitable, not available, or not viable and that the sequential test has been passed.

The Impact Test

17. The Secretary of State has carefully considered the Inspector's analysis at IR12.4.1-12.4.38. For the reasons given at IR12.4.5-12.4.25, he agrees with the Inspector that, given the current health of the Town Centre and the projected growth, the proposal would not cause a significant adverse impact on the vitality and viability of the Town Centre.
18. For the reasons given at IR12.4.26-12.4.37, the Secretary of State agrees with the Inspector at IR12.4.38 that, although the proposal would have some impact, it cannot be concluded that there would be significant adverse impacts upon existing, committed and planned public and private investment. He considers that the impact test is passed.

Prematurity

19. For the reasons given at IR12.5.1-12.5.10, the Secretary of State agrees with the Inspector that in the absence of a published, draft plan, it is impossible to test whether the proposed development would pre-determine decisions that are central to it. He agrees that the proposal would not be premature (IR12.5.10).

Accessibility/Sustainability

20. For the reasons given at IR12.6.1-12.6.10, the Secretary of State agrees with the Inspector that the site is identified as being in a sustainable location and measures are proposed that would benefit the pedestrian and cycling environment and encourage

travel by modes other than the car. Like the Inspector at IR12.6.10, he concludes that the Council's third reason for refusal is not justified.

Impact on the Highway Network

21. The Secretary of State has carefully considered the Inspector's analysis at IR12.7.1-12.7.8. He notes at IR12.7.1 that only the Rule 6 Party and not the Council, Essex County Council (ECC), or Highways England consider that the residual impact would be severe. For the reasons given at IR12.7.5-12.7.8 he agrees with the Inspector that, although there would be some impact on the highway network, this residual impact would fall short of the severe impact required by paragraph 32 of the Framework.

Benefits

22. For the reasons given at IR12.8.1-12.8.3, the Secretary of State agrees with the Inspector that the benefits of the scheme would include provision of construction and operational employment; £16.9m p.a. gross value added to the local economy; promotion of the Town Centre through the contributions provided for in the s106 Agreement; provision of local employment opportunities for nearby residents; enhancement of retail choice and competition for local residents; provision of substantial public realm improvements; increase of pedestrian, cycle and public transport links; and, provision for the linkage of the disparate parts of the district centre by creating a permeable and pedestrian friendly development.

Planning conditions

23. The Secretary of State has given consideration to the Inspector's analysis at IR12.9.1-12.9.13, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

24. Having had regard to the Inspector's analysis at IR11.1.1-11.1.4, the planning obligation dated 17 February 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12.9.14-12.9.20 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies CE1, CE2, CE3 and STA3 of the development plan, and is not in accordance with the development plan overall. However, these policies are not consistent with the Framework, are out of date and attract limited weight. The Secretary of State has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

26. The Secretary of State considers that both the sequential and impact tests set out in the Framework have been passed. The proposal would not be premature and the location is accessible. The retail scheme would have a slight impact on the vitality and viability of the Town Centre but not the severe adverse impact required by paragraph 27 of the Framework. Whilst there would be some impact on the highway network it would also fall short of the severe impact required by the third bullet point in paragraph 32 of the Framework to prevent development. In addition, the proposal would provide a number of social, economic and environmental benefits, as set out above, to which the Secretary of State gives significant weight. These benefits and the fact that the proposal does not conflict with national policy on ensuring the vitality of town centres and promoting sustainable transport, amount to material considerations that would justify a decision other than in accordance with the development plan in this case.

27. The Secretary of State therefore concludes that the appeal be allowed and planning permission granted.

Formal decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for a mixed use development comprising leisure uses (Use class D2) including a cinema, and retail (Use classes A1, A2, A3, A4 and A5), with associated parking including multi-storey car park, public realm improvements, access, highways, landscaping and associated works., in accordance with application ref: 150239, dated 4 February 2015.

29. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

32. A copy of this letter has been sent to Colchester Borough Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Merita Lumley

Authorised by Secretary of State to sign in that behalf

policies are consistent with the NPPF and can be given full weight whilst the Rule 6 Parties accept that there is inconsistency between CE1 and CE2 and the NPPF. There is little evidence to justify an alternative conclusion to that of the previous Inspectors.^[6.2.2,6.2.7, 8.2.14, 8.2.15]

- 12.2.9 A retail hierarchy is provided for in Policy CE1 but it inserts urban gateways and town centre fringe above district centres. As these are town centres in NPPF terms they should stand above the gateways and fringe. The policy is, therefore, out of date.^[8.2.17]
- 12.2.10 Policy CE2(b) restricts urban district centres from providing new in-centre retail uses, unless those uses meet identified local needs and do not compete with Colchester town centre, and from expanding. The NPPF does not restrict retail development in district centres as to do so would be inconsistent with its own "town centres first" approach. The requirement to not compete with Colchester town centre does not reflect the NPPF's impact test, which has a threshold of significant adverse impact, rather than simply competition. In any event, Tollgate district centre and Colchester town centre are both town centres in NPPF terms and so one should not be prevented from competing with the other. These inconsistencies are sufficient to render Policy CE2 out of date.^[8.2.18]
- 12.2.11 Policy STA3 is also out of date as it states that no new town centre uses will be permitted in the Tollgate district centre, despite this being a town centre in NPPF terms. The Stane Park Inspector determined that this policy should have full weight, but he was dealing with different circumstances. The Council agrees that policy STA3 is materially out of date and disagrees with the Stane Park Inspector's decision to accord this policy full weight. I agree with the Council.^[8.2.19]
- 12.2.12 Policies CE3 and DP5 were found to be inconsistent with the NPPF by both the Stane Park Inspector and the Examining Inspector for the Focused Review. In Stane Park it states that there are approximately 65 hectares of vacant employment land amounting to a 65 year supply. Members were informed that "the Council has been over-cautious in allocating far more employment land than will reasonably be needed... there is no prospect of all this coming forward." These policies are out of date.^[8.2.20]
- 12.2.13 Core Strategy policy UR1 and site allocations policy SA TC1 were not relied on in the Council's reason for refusal nor in the Council's or the Rule 6 Parties' written evidence and are not directly relevant to this appeal. In any event, these policies are inconsistent with the NPPF and out of date by reason of their failure to provide for a sequential or impact test in assessing the appropriateness of the proposed development.^[6.2.3, 8.2.21]
- 12.2.14 All the policies that are out of date due to inconsistency with the NPPF should be given little weight.
- 12.2.15 Policy TA1 is accepted by the Appellant to be consistent with the NPPF and should carry full statutory weight. It states that "developments that are car dependent...will not be supported". The proposal is car dependant and would conflict with policy. I note that the Stane Park Inspector reached the same conclusion in that case, which had far less parking. However in this case the local area is recognised as being sustainable.^[7.2.21]