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UTT/1539/06/DFO - LITTLE DUNMOW

Details following outline application (planning permission UTT/0302/96/OP & UTT/0023/03/OP) for the proposed construction of 33 dwellings and 20 flats with associated adoptable roads, parking and garages.

Location: Former Sugar Beet Factory Area 5D Oakwood Park. GR/TL 661-206
Applicant: Persimmon Homes Ltd
Agent: FCS Building Design Consultant
Case Officer: Mr H Laird 01799 510464
Expiry Date: 13/12/2006
ODPM Classification: MAJOR

NOTATION: ULP: Outside Development Limits/Part of Oakwood Park Residential site.

DESCRIPTION OF SITE: Oakwood Park is approximately 2.2km to the south of the A120. The Oakwood Park site is irregular in shape, with a total area of 7.49 hectares. The application site measures 1.14ha. To the north of the application site are Phases 1, 2 and 4 together with the land intended for the village centre. To the south lies Phase 3 and the land comprises a mix of reclaimed land, un-reclaimed land with stockpiles of fill material relating to the earlier reclamation phases

DESCRIPTION OF PROPOSAL: This proposal seeks (reserved matters) consent of details following outline approval for the construction of 33 dwellings and 20 flats with associated adoptable roads, footpaths, drives, parking and garages and access paths pursuant to Planning Permissions UTT/0302/96/OP and UTT/0023/03/OP, at The Former Sugar Beet Factory, (Area 5D), Oakwood Park, Little Dunmow.

APPLICANT'S CASE: The applicant's case is made in the plans and supporting documents comprising the application, including a Design and Access Statement. Persimmon Homes states that this Phase currently has approval for 28 detached and semi-detached 5 bed properties. The application seeks approval for a re-plan and provides a mixed development of 2, 3 and 4 bed units, including an appropriate percentage of affordable houses. The House types are from the Persimmon Homes portfolio except for the affordable 2 bed flats, which have been taken from Phase 1 (Areas 5A – 5C), which are now under construction.

The Section 106 Agreement relating to the original Outline consent for the site required 24 of the first 66 units to be affordable housing, as well as 25% of any additional units. For the 122 units proposed it is calculated that 38 are to be affordable. 18 units are under construction in Phase1, leaving 20 to be provided under the re-plan as per this proposal.

The number of Housing Association dwellings included in the application is 20 x 2 bed, 3 person flats. These are shown as Plots 70–80 and 114–122. No Housing Association or other RSL has yet been signed up to take on the affordable housing.

The proposed layout seeks to retain the form of the previously approved scheme providing a linear development with gardens toward the western site boundary. The access road has been retained in a loop as before and retains the connection with the development to the north. The scale of the development proposed is similar to the previous Phase, with buildings generally being of 2.5 storeys high, with the flats at 3 storeys. Houses have been arranged to be either link detached, semi-detached or short terraces of no more than 4 units to retain a degree of separation between buildings and create a development with a different character to the earlier Phase, which is one of a continuous built frontage. The proposals also include landscaping and access details. Each property will be provided with access to

comply with Part M of the Building Regulations. The upper floors of the flats being served by a staircase designed to ambulant disabled standards.

With regard to the infrastructure for roads and drainage surrounding 'Area 5D', these have already been previously approved and constructed, although at present not all of the areas have been adopted.

RELEVANT HISTORY: Outline application for reclamation of despoiled land and demolition of redundant structures approved 1996. Temporary storage of soil reclaimed from settlement lagoons, allowed on appeal 1999. Amendment to condition to allow 250 dwellings to be constructed prior to completion of A120 approved 2000. Erection of 80 dwellings and associated garaging approved 2000. Erection of 85 dwellings and associated roads approved 2000. Reserved matters for 69 dwellings approved 2000. Variation of Condition 12 of UTT/0302/96/OP to allow occupation of not more than 305 dwellings prior to opening of A120 approved 2002. Redevelopment up to 655 dwellings, being a net addition of 170 dismissed on appeal in October 2002 for reason of inadequate affordable housing. Outline planning permission for the reclamation of despoiled land and redevelopment up to 216 dwellings (being a net addition of up to 160 dwellings) approved 2004. Revised Masterplan approved June 2004.

CONSULTATIONS: Local Plans: No policy objections. The extra 25 dwellings would still be within the overall number currently permitted in outline in relation to Phases 1 -6 (838 dwellings). The provision of affordable housing is important in meeting the needs of the District.

Environment Agency: No objection to submitted information.

Anglian Water Services Ltd: No comments received.

Environmental Services: Need to ensure that Bin Storage facilities should meet with the Building Regulations; and, adoptable roads are sufficient in size.

Police Architectural Liaison Officer: To be reported.

ECC Urban Design & Regeneration: Objects, and comments that the proposals do not appear to be in accordance with the agreed Masterplan which included a development framework which indicated that this area of Oakwood Park as extra low density housing. The aim was to not only allow for a greater mix/size of houses on the development, but also to reduce the impact of the development adjacent to the countryside. The amount of building in this area is too great to achieve a lower density appearance and the 3 storey flats are wholly inappropriate in this location.

The development fronting the street running parallel to the western boundary does not meet the criteria contained in the Essex Design Guide – it is neither arcadian nor boulevard nor does it provide the continuity of frontage for an urban edge.

Other points raised relate to the flat elevations – the corner stair tower is incongruous and an unresolved element. The tower element should also be taller than the roof it abuts and the eaves should be of a different height. The rendered base to the flats and the brick dressings in the render over the ground floor windows are not typical of Essex buildings. It would be better if the flats were of one facing material.

With regard to the houses, these are generally acceptable, though soldier course arches should be replaced by flat, gauged brick arches.

ECC Highways: Makes standard comments in relation to road specifications:

- The road at the northern end of the site should tie in properly with the existing junction at the turning head;
- The private drive serving Plots 98-104 should only serve five dwellings;
- Trees planted adjacent to the highway should be no nearer than 2 metres to the channel line of the road so as not to impair street lighting efficiency;
- The footway at Plot 93 should be realigned to take out the corner.

It also recommends conditions to be attached to any consent in the event of an approval being granted.

PARISH COUNCIL COMMENTS: No comments have been received from either Felsted Parish Council or Little Dunmow Parish Council.

REPRESENTATIONS: This application has been advertised and 1 letter of representation has been received. All raise objection to the proposals and these are summarised as follows:

- The erection of an additional 25 dwellings on the site represents profiteering by the developers. The application should be rejected.
- There are no jobs locally for the people occupying the shared ownership homes.
- Felsted does not need or want any further building.
- The planning process favours the developer who has the right of appeal over and over again.
- The proposals breach the Felsted village envelope.
- Light spill from the development is akin to Blackpool Illuminations
- Local services in Felsted are stretched to breaking point with only the Post Office/General store, Butchers and an insufficient local bus service to Braintree and Stansted.
- Further development at Oakwood Park will exacerbate existing parking problems and lead to increased noise pollution and traffic fumes.
- Further development will add to the overall loss of flora and fauna in the Chelmer Valley.
- To refer to the application site as the former sugar beet factory is misleading. The factory is long gone and any further building would be on Greenfield land. This is unacceptable in a village.

PLANNING CONSIDERATIONS: The main issues are

- 1) **whether the proposal is in accordance with Oakwood Park Local Policy 1 and the June 2004 Masterplan;**
- 2) **whether the layout, siting and design of the proposed dwellings is in accordance the Adopted Oakwood Park Design Guide;**
- 3) **whether the numbers and siting of affordable housing units within the development are acceptable; and,**
- 4) **in addition, whether any material considerations exist.**

1) In considering the report of the Planning Inspector, who recommended allowing the appeal for the reclamation of despoiled land and redevelopment for up to 655 dwellings (being a net addition of 170 dwellings to those previously approved, making a total of 820) in October 2002, the Secretary of State identified three main issues:

- Whether it would be unsuitable to grant permission for an additional 170 dwellings bearing in mind the provisions of the Development Plan, the progress towards adoption of the emerging Local Plan and the supply of housing in the district;
- Whether the proposed development would make an appropriate contribution towards meeting the identified need for affordable housing in the area; and
- Whether there would be reasonable prospect of the Sewage Works *cordon sanitaire* being reduced sufficiently to allow the development to proceed within the lifetime of the permission.

The Secretary of State agreed with the Inspector that no sustainability arguments existed to justify refusal of the proposal, concurred that there was no reason why permission should not be granted in advance of completion of the Local Plan review process and agreed that

allowing the additional dwellings at a higher density would avoid the wasteful use of an existing Brownfield site. The Secretary of State also concluded that there was reasonable prospect of the *cordon sanitaire* being removed within the lifetime of the permission.

In summing up, the Secretary of State made it quite clear that the sole reason for dismissing the appeal related to the proportion of affordable housing proposed by the developer. The permitted scheme would have made a contribution of 17.2%, however the Development Plan states that airport-related housing schemes should provide for up to 25% Affordable Housing. The Secretary of State took the view that the proportion of affordable housing being offered across the whole of the site was less than he would have expected for a development of this size, particularly in respect of the apparent failure of Low Cost Market Housing to meet affordable housing need in the District. In summing up, the Secretary of State considered that the proposed contribution would therefore be inadequate, with no clear reason given as to why a higher level could not be provided, and that the Council's insistence on 25% was not unreasonable. When considered together with the significant need for affordable housing in the area and the recommended contribution of 25% in the ADP, the Secretary of State considered this reason alone, enough to warrant a refusal and dismissed the appeal.

It is considered that the Secretary of State came to the view that if sufficient Affordable housing was provided then there was insufficient justification to refuse the additional 170 dwellings, which would have brought the total number of dwellings on the site to 820. Subsequently, planning application UTT/0023/03/OP was approved in 2003 subject to a Section 106 legal agreement for outline planning permission for the reclamation of despoiled land and redevelopment up to 216 dwellings, (being a net addition of up to 160 dwellings following appeal decision APP/C1570/A/01/1072542 and subsequent dismissal by Secretary of State on 24th October 2002), public house, and associated highway, engineering and landscaping works. This has resulted in total permission for 810 dwellings.

A subsequent proposal UTT/0537/05/OP sought permission for an extra 28 dwellings, to bring the total to 830 and amounted to 18 more than was indicated as being appropriate by the Secretary of State, if the required level of affordable housing were to be provided. The application also proposed that of the 28 additional units, 40% would be affordable and delivered through a Registered Social Landlord in line with the ULP. The reason for this application for additional units was to allow for a higher density of development in Phase 6 and to ensure that the density is not so low as to compromise the design objectives for the estate. Notwithstanding the fact that an area of extra low density housing was proposed in Phase 6, the density of Phase 6 under the 810 dwelling scheme amounts to 22 dwellings per hectare. With the approval of the UTT/0537/05/OP proposal, this would rise to 30.8 dwellings per hectare, which represents a more efficient use of the land.

The application presently before Members ref: UTT/1539/06/DFO proposes 33 dwellings and 20 flats with associated adoptable roads, parking and garages. 20 of the units are to be affordable and delivered through a Registered Social Landlord in line with the ULP. This represents the 25% figure required for affordable housing as indicated above in the applicant's statement of case. Whilst overall, the number of dwellings is important, the Council uses a design led approach on each of the individual phases, which means that the number of dwellings per phase is not critical so long as the layout is satisfactory. In this case the line of the roads proposed accords with that indicated in the previous approval Ref: UTT/0090/05/DFO. It is considered that there is adequate space, good relationship of dwellings and spaces, varied character and visual quality of the street-scene, appropriate design and style of dwellings, adequate parking provision and minimal impact on residential amenity amongst others. This approach allows for a greater flexibility within a phase in order to achieve a mix of house sizes, styles and designs that adds variety and character to an

area, rather than a uniform density and character as per 1980's/1990's developments, which do not create sufficient sense of place or identity and is inappropriate in this rural area.

The comments received from the ECC Urban Design & Regeneration team are noted. The principle objection to the proposal is that this area of Oakwood Park is indicated as extra-low density housing with the aim being to reduce the impact of the development adjacent to the countryside. The 3 –storey flats are considered to be wholly inappropriate in this location. However, the adjoining site to the north features properties with up to five/six bedrooms over three stories, whilst the previously approved layout proposed 28 detached and semi-detached 5 bed properties, again over three stories.

The proposed accommodation schedule indicates:

4 bedroom houses = 17
2 bedroom houses = 16

In addition the affordable housing units comprise:

2 bed apartments = 20

2) The layout of the development is similar to that previously approved for the site under Ref: UTT/0090/05/DFO. The applicants assertion that the proposed layout seeks to retain the form of the previously approved scheme providing a linear development with gardens toward the western site boundary is noted. The access road has been retained in a loop as before and retains the connection with the development to the north. The scale of the development proposed is similar to the previous Phase, with buildings generally being of 2.5 storeys high, with ridge heights of between 9.5m and 10.0m, with the flats at 3 storeys with ridge heights of 11m. It is considered that such a small height difference between the ridge heights of the houses and flats, and the positioning of the flats 38-40m from the western site boundary will result in a minimal visual intrusion in respect of the flats and the adjoining countryside. The flats will be largely screened by the dwellings along the western site boundary which were considered by ECC Urban Design & Regeneration team to be wholly inappropriate in this location. The houses have been arranged to be either link detached, semi-detached or short terraces of no more than 4 units to retain a degree of separation between buildings and create a development with a different character to the earlier Phase, which is one of a continuous built frontage. The proposals also include landscaping and access details. Each property will be provided with access to comply with Part M of the Building Regulations. The upper floors of the flats being served by a staircase designed to ambulant disabled standards.

3) The development proposed whilst incorporating 16 x 4 bedroom houses, comprises a significant proportion (36 x 2 bedroom units) of smaller properties for which there is an identified shortfall in the District (See ULP Policy H10 - Housing Mix). Of these, 20 units are to be 2 bedroom apartments in two blocks to provide affordable housing through a Registered Social Landlord (RSL). No RSL has yet been identified by the applicants, however, discussions are taking place with such bodies and expressions of interest in the scheme are being sought.

The submitted drawings indicate 1 bedroom apartments, whereas the application forms and the supporting documentation refer to 2-bedroom apartments. The applicants have been made aware of this and are to provide revised drawings indicating 2-bedroom apartments. They have also advised that the design, scale and external appearance of the apartment blocks will not differ greatly from the 1 bedroom apartments which were submitted in error. The correct drawings for the 2-bedroomed apartments will be available at the meeting for Members consideration.

4) Two car spaces per dwelling, and per apartment contained in garage court parking areas would be provided to meet the Council's Adopted Car Parking Standards.

Comments regarding the treatment of elevations, and the use of materials to accord with the provisions of The Essex Design Guide 1997, can be covered by conditions.

The proposed development is unaffected by the *cordon sanitaire*.

The comments received from ECC Highways have raised no objections in principle to the proposals. The applicants have been advised of the specific points raised regarding the requirement for a Type 5 road at the northern end of the site; and the re-alignment of the footway to take out the corner at plot 92, and the revised layout plan accompanying the change from 1 bed to 2 bed apartments should cover these items. Further points raised such as the requirement for trees planted adjacent to the highway not to interfere with street lighting efficiency can be specifically conditioned. The comment regarding the Private Drive serving 7 dwellings and not 6 at Plots 98-104 is noted. However, this would not be adopted as part of the public highway, and given the corner location of the parking spaces that the private drive serves it is considered that a reduction in the number of spaces served would not have any material benefit to the overall layout and function of the road network. Nor would it appear to have any adverse implications for highway/pedestrian safety. It is considered that subject to revision of the specific points raised, the application of the safeguarding conditions recommended by the LHA should be sufficient.

The proposal is considered acceptable in terms of the above requirements. Neighbours comments relate mainly to the density of development, traffic generation, impact on local services, and local flora and fauna. The site is not a Greenfield site and already benefits from planning permission for residential development. The Masterplan makes provision for a village centre which should include shops, a Public House and Doctors Surgery. In addition, community facilities such as a hall and playing fields are proposed. The Masterplan also requires a comprehensive landscaping scheme for the Oakwood Park development which should preserve and enhance the wildlife value of the area. There are no other material considerations.

CONCLUSIONS: The proposal provides an acceptable form of development incorporating a 25% mix of affordable housing units. It is considered that the layout and proposed built form is in accord with the surrounding development at Oakwood Park, and that the proposed numbers of units and overall density of development will be in accordance with the approved 838 dwellings. It is considered that the proposal is in accordance with Government guidelines as indicated in PPG3 'Housing', and the Design Guide and Masterplan for Oakwood Park. The proposed development is unaffected by the *cordon sanitaire* and would not preclude the ultimate development of land within the *cordon sanitaire*. It is, therefore, recommended that subject to all previous conditions relating to UT/0023/03/OP being adhered to (plus the requirements of ECC Highways, and conditions relating to 'Lifetime Homes', the use of sustainable materials, and the provision of Bin Stores), including the terms of the S106 Agreement relating to the site overall, that delegated powers of approval be granted to Officers to approve the application subject to the receipt of revised plans for the 20 x 2 bedroom apartments available through a RSL, and the required revisions to the highway layout.

RECOMMENDATION: APPROVAL WITH CONDITIONS

1. C.2.1. Time limit for commencement of development.
2. C.3.2. To be implemented in accordance with revised plans.
3. C.4.1. Scheme of landscaping to be submitted and agreed.
4. C.4.2. Implementation of landscaping.

5. C.6.2. Excluding all rights of permitted development within the cartilage of a dwelling house without further permission.
6. C.5.1. Samples of materials to be submitted agreed and implemented.
7. C.8.29. Details of sustainable construction for new residential or commercial development.
8. C.8.30. Provision of bin storage.
9. C.6.5. Excluding fences and walls without further permission.
10. No development shall take place until a scheme of foul and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme. Surface water from roads and impermeable vehicle parking areas shall be discharged via trapped gullies. Only clean uncontaminated surface water shall be discharged to any soakaway, watercourse or surface water sewer.
REASON: To ensure there is no pollution of the surface water environment.
11. Except in emergencies, no deliveries of materials shall be made to the site and no work shall be carried out on the site during the period of construction of the development:
 - a) Before 07.30 or after 18.00 on weekdays (Mondays to Fridays inclusive)
 - b) before 08.00 or after 13.00 on Saturdays
 - c) On any Sunday or Bank or Public Holiday
 REASON: To safeguard the amenities of nearby residential properties.
12. C.7.1. Details of external ground and internal floor levels to be submitted agreed and implemented – building(s)
13. Any cycleway and independent footpaths shall be laid and constructed in accordance with current policies and practises.
REASON: To ensure a satisfactory standard of development.
14. No gates, windows or doors that form part of the approved development shall open over the highway.
REASON: In the Interests of Highway Safety.
15. Notwithstanding the provisions of Condition C.4.1, where trees are to be planted adjacent to the highway they should be no nearer than 2 metres to the channel line of the road. In all cases, trees should be provided with root barriers to prevent damage to underground services. No part of any tree should overhang the carriageway at a height of less than 6 metres above ground level.
REASON: To avoid compromising street lighting efficiency and to ensure that trees planted adjacent to the carriageway do not obstruct passing vehicular traffic having regard to Policy T8 of the 2001 Essex and Southend-on-Sea Replacement Structure Plan.
16. Prior to the first occupation of each property, each vehicular access shall be provided on both sides with a 1.5 metre x 1.5 metre pedestrian visibility sight splay as measured from the highway boundary. There shall be no obstruction above a height of 600 mm as measured from the finished surface of the access within the area of the visibility splays thereafter.
REASON: To provide adequate inter-visibility between the users of the access and the existing public highway for the safety and convenience of users of the highway and of the access having regard to Policy T8 of the 2001 Essex and Southend-on-Sea Replacement Structure Plan.
17. No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site
REASON: To avoid the displacement of loose material onto the highway in the interests of highway safety and in accordance with Policy T8 of the 2001 Essex and Southend-on-Sea Replacement Structure Plan.
18. C.10.5. Carriageways of estate roads.
19. All electrical and telephone services to the development shall be run underground. All service intakes to dwellings, apart from gas, shall be run internally and not visible on the exterior. All meter cupboards shall be positioned on the dwellings in accordance with

details, which shall have been previously submitted to and approved by the local planning authority. All buildings containing flats shall be equipped with a communal TV and radio aerial and satellite dish in positions, which shall have been previously submitted to and approved by the local planning authority (unless the development is in an area served by cable distribution). On all buildings satellite dishes shall be of dark coloured mesh unless fixed to a light coloured, rendered wall, in which case a white dish should be used. Satellite dishes shall not be fixed to the street elevations of buildings or to roofs. All soil and waste plumbing shall be run internally and shall not be visible on the exterior. Rainwater goods shall be black, and shall be indicated on submitted elevations. All windows and doors in masonry walls shall be inset at least 100mm and shall be fitted with sub-cills. All windows and doors shall be of designs which shall have been submitted to and approved by the local planning authority prior to their installation. Details of all ground surface finishes, including kerbs and manhole covers shall be submitted to and approved by the local planning authority prior to their installation. The rights of utility companies to deemed consent under the General Permitted Development Order to construct electrical substations and gas governors within the development are withdrawn and planning consent will be required.

REASON: To ensure a satisfactory standard of development.

20. Prior to the commencement of the development hereby approved, precise details of the number, type and location of security lighting units to the parking courts shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and the requirements of condition

C.90J attached to this permission unless otherwise agreed in writing with the local planning authority.

REASON: To protect public safety and amenity in accordance with Policy GEN2(e) of the 2005 Uttlesford Local Plan.

21. All security lighting to public parking and garaging courts shall be of white light.
REASON: To protect public safety and amenity in accordance with Policy GEN2(e) of the 2005 Uttlesford Local Plan.

22. C.16.1. Watching archaeological brief.

Background papers: see application file.

UTT/1538/06/FUL - STANSTED

(Referred by Cllr Sell)

Variation of condition C90a of UTT/0714/04/FUL approved 28/07/04 (The floodlighting hereby approved shall only be used when the courts are in use and shall be turned off at 21.00 hours each day. A restricted hours time clock shall be installed and permanently retained and maintained in accordance with the manufacturer's instructions)

Location: Stansted Tennis Club Cambridge Road. GR/TL 510-252

Applicant: Stansted Tennis Club

Agent: Mrs M Bitten

Case Officer: Mr H Laird 01799 510464

Expiry Date: 15/11/2006

ODPM Classification: OTHER

NOTATION: Within Development Limits.

DESCRIPTION OF SITE: The subject site is located adjacent to Cambridge Road, the main road through Stansted. The site comprises two tennis courts and a clubhouse. The surrounding area contains larger football playing fields and associated car parking, open space areas and residential sites. There are further residential sites across Cambridge Road. The tennis courts are bounded by a leylandi hedge and mature chestnut and pine trees. There is a close boarded 1.8m high fence along the road frontage.

DESCRIPTION OF PROPOSAL: The applicant seeks a variation to a condition of a previous planning application, UTT0714/04/FUL. In particular the applicant seeks to vary Condition C90A of that application, which relates to the floodlighting of the tennis courts for night-time games. The applicant has proposed two possible options:

- A) That the time be extended to 10pm.
- B) That the time be extended to 10 pm (i.e. by one additional hour) on five nights per calendar month.

APPLICANT'S CASE: The applicant has stated that the reason for the sought flood lighting time extension is that the Tennis Club is hosting matches as part of the Essex Small Clubs League. This requires the club to hold more home matches. Due to adult players working, many matches cannot be started until later in the evening, allowing for the commuting of these players. The matches are fixed in advance but due to weather conditions they may sometimes require re-scheduling. Accordingly varied days per month are required under proposal B.

RELEVANT HISTORY: Refer to previous application UTT0714/04/FUL. This application approved the original lighting scheme for the courts, which consists of nine 6.7m high columns bearing 12 'Advantage' brand luminaires. The luminaires contain 1000 Watt metal halide lamps. These are described as resulting in a luminance of 400 Lux (in accordance with Tennis Club standards) on the playing courts, reducing to a reading of 50 Lux just beyond the court perimeter fencing and 10 Lux beyond to the adjoining sites and Cambridge Road.

The original condition to be varied by the current application reads as follows:

C.90A *The floodlighting hereby approved shall only be used when the courts are in use and shall be turned off at no later than 21:00 hours each day. A restricted*

hours time clock shall be installed and permanently retained and maintained in accordance with the manufacturers instructions.

CONSULTATIONS: None.

PARISH COUNCIL COMMENTS: Object to the permanent extension to 10pm, but would support the alternative proposal for an extension to 10pm on five nights per calendar month and believes there should be a trial period of one year.

REPRESENTATIONS: Ten representations were received in support of the proposal. Two representations were received objecting to the proposal.

The representations objecting to the proposal may be summarised as follows:

- There is disturbance by headlights flashing across the [Cambridge] road into my room.
- Cars do leave later after the lights have been switched off.
- The first proposal [Proposal A] is totally unacceptable particularly considering that the Club has proved recently to be unable to adhere to the existing limits.
- The alternate proposal [Proposal B] is ambiguous in that it could mean five nights consecutively, or every Saturday night. These ambiguities should be clarified.

The representations supporting the proposal may be summarised as follows:

- We have lived opposite the tennis club for 11 years. We have never had any problems.
- The proposal would allow players that commute to work and who do not get back to Stansted until early evening to have the opportunity to play later in the evening.
- Other clubs in the local area are allowed to have their lights on until 10pm, and this club being allowed the same would allow it to partake in the local league.
- The proposal would benefit junior/youth players to use the courts over the winter period and to grow the sport.
- The lights are seen as a deterrent to petty crime in the local vicinity.
- Extended use of the courts during week night evenings would take pressure off the courts on Saturday mornings, a time which is already heavily over-used for casual play and practice.
- We live in the area and observe that the lights are so directional to the courts that they are hardly noticeable in the surrounding area in comparison to the lights on the nearby football field, which are sometimes left on until after 22.00hrs.

COMMENTS ON REPRESENTATIONS: It is noted that the representations objecting to the proposal relate principally to the fact that the proposed alternative conditions appear somewhat ambiguous. The wording of the proposed variation to the condition is reconsidered below.

A valid point of objection is the potential disturbance caused by headlights. Presumably this would occur when players leave the site from the car park adjacent to the courts after the end of matches. However, although this might occur later at night if this application were approved, the additional effect would be negligible, given that there is already continuous disturbance from headlights along Cambridge Road, which is a busy road. The additional headlight disturbance caused by tennis club members would not be of such a scale as to warrant refusal of the application.

PLANNING CONSIDERATIONS: The main issues are whether the additional amount of light emitted, and the associated noise from extended time of play, would cause material disturbance or nuisance to occupiers of surrounding properties ; whether the level of lighting and its period of use is the minimum necessary to achieve its

purpose; and whether glare and light spillage from the site is minimised (Policy BE6 and ULP Policies GEN4 & GEN5).

Other material planning considerations:

1) The tennis courts are bounded by open space and adjoining car parking and playing fields to the north and west, and by the main road to the east. There is one residential site immediately to the south-west. This site would seem to be the most affected by the proposal. However it is noted that there is dense existing vegetation along the boundary between the courts and this site. There would be some light spill to the road, but this would not be uncharacteristic for a central town area. It is considered that the additional effect above what was approved by the previous application is not material in terms of the extended time of lighting.

2) It is quite clear that the level and timing of lighting proposed is necessary to achieve its purpose, i.e. to cater for the match play envisaged by the applicant over the winter months. Glare and light spillage were considered as part of the original application and were considered acceptable. The lighting system chosen was considered preferable over alternatives as it results in only minimum light spill to adjoining sites.

3) The noise associated with extended use of the tennis courts could be of nuisance to adjoining property owners. The noises ensuing from tennis include the hitting of tennis balls, the voices of the players and spectators as well as the later egress of vehicles from the nearby car park as players head home at the end of their game. Upon a site visit it was found that the noise of traffic from Cambridge Road is very noticeable, and it is considered that this would drown out and obscure any noise from the tennis courts. Subsequently, any extended playing time would have only a minimal effect on surrounding property owners in terms of noise.

4) In any case the timing and duration of additional flood lighting is minimal when considering that, for Proposal B, it would amount to only 5 additional hours per calendar month. However the scenario that, subject to this proposed condition, the club could have the lights switched on late on five consecutive nights within one week has been raised in one representation, is a valid concern. The problem could be overcome by limiting the extended hours firstly to be on working week nights (i.e. between Monday and Friday) and to allow for extended lighting on no more than two nights per working week, up to a maximum of five late events in any calendar month.

5) Given that the lighting is already in place, it would not be unreasonable to impose a temporary time limit in order to assess the impact. This is in line with the suggestion of the Parish Council.

CONCLUSIONS: I recommend that the original condition be varied as suggested in Proposal B, subject to suitable conditions which specify the times for the extended lighting and on the basis that the extended lighting occur on a trial basis for the duration of one calendar year.

RECOMMENDATION: APPROVAL WITH CONDITIONS

1. The floodlighting shall only be used when the tennis courts are in use and shall be turned off in accordance with the following:
No later than 2100 hours each day, with the following exception
No later than 2200 hours for up to two days in any one week, excluding Saturdays and Sundays, which shall be limited to 2100 hours.

In any event, the limit of 2200 hours shall occur on no more than five evenings in any calendar month, and subject to the above limitation.

A restricted hours time clock shall be installed and permanently retained and maintained in accordance with the manufacturer's instructions.

REASON: In the interests of residential amenity.

2. C.13.1. Limited permission.

Background papers: see application file.

UTT/1621/06/DC - THAXTED
(Uttlesford District Council Application)

Erection of new Day Centre to replace existing
Location: Thaxted Day Centre Vicarage Mead. GR/TL 610-311.
Applicant: Uttlesford District Council
Agent: David Osborn
Case Officer: Miss G Perkins 01799 510467
Expiry Date: 01/12/2006
ODPM Classification: MINOR

NOTATION: Inside Development Limits.

DESCRIPTION OF SITE: The site is located in Vicarage Mead adjacent to the Telephone Exchange and is currently developed with the existing Thaxted Day Care Centre that was constructed in 1972. This has undergone remodeling following planning permission last year. The facility is used to serve hot meals to people within the district and serves as a meeting point for local senior citizens. There is a communal car parking area at the front of the site, which serves the elderly persons home to the north of the site, which is also operated by Council. To the south and west of the site are residential dwellings, with a brick wall and paling fence running along the common boundary with the Day Care Centre. To the north east of the site are single storey dwellings that are of quite a low scale. The site is accessed via a drive that runs from Margaret Street and there is also a footpath from Vicarage Lane. The Margaret Street public car park is also within close walking distance of the site.

DESCRIPTION OF PROPOSAL: It is proposed to demolish the existing day care centre and replace it with a new day care centre in a similar location. The new building will be arranged in an 'L' shape on the site and will comprise a main hall, kitchen, lobby, amenity facilities and storage areas. The centre will be approximately 200m² larger than the existing building.

The building would have a reasonably modern appearance with a mono pitched roof with commercial style fenestration and doors. The maximum wall height of the building will be 4.75m. The existing car parking area at the front of the site is not proposed to be altered. The footpath around the front of the site is proposed to be retained, however access into the building is proposed to be improved with the installation of a ramped access and automatic doors.

APPLICANT'S CASE including Design & Access statement: A supporting design and access statement has been provided with the application. This explains the impetus for the application and the benefits that will be provided to the community. It also makes references to a wind turbine on the site, which does not form part of this revised plans were also submitted on 31 October 2006 that removed an image of a wind turbine from the model view.

RELEVANT HISTORY: There are no relevant applications on the site other than the permission for remodeling the adjacent elderly person's home. The applicant indicated that the existing Day Care Centre was constructed in 1972.

CONSULTATIONS: Anglian Water Services- To be reported (due 30 October 2006).
Environment Agency- Responded with standard letter 11 that relates to residential development. They did not recommend any specific conditions. Officers do not consider this

response to be particularly useful as this is not a residential use however their letter is attached to the file.

Natural England (includes English Nature) - Advised that they had no objection to the proposed in respect of legally protected species.

Essex Wildlife Trust- Period for comments expired on 8 November 2006. Given this date is later than when this report was prepared, any comments will be forwarded to the Committee if they are received.

Building Surveyor (internal) - Advised that they had not comments.

PARISH COUNCIL COMMENTS: Thaxted Parish Council- Period for comments expired on 8 November 2006. Given this date is later than when this report was prepared, any comments will be forwarded to the Committee if they are received.

REPRESENTATIONS: None. Notification period expired 31 October 2006.

PLANNING CONSIDERATIONS including Design & Access statement:

The main issues are:

- 1) **whether design of the new day care centre is in keeping with the character of the area and will protect the amenity of the area (ERSP Policy BE1 & ULP Policies S3, GEN2 and GEN8) and**
- 2) **whether the proposal is consistent with Council's policies for provision of services (ULP Policies LC2 and RS1).**

1) ERSP Policy BE1 relates to urban intensification and encourages the appropriate redevelopment of sites within existing urban areas. ULP Policy S3 allows for development within development limits that is compatible with character of the area. ULP Policy GEN2 relates to design and requires the form of buildings to be compatible with the scale, form, layout and appearance of the surrounding area. It also requires the design of new buildings to minimise amenity impacts on neighbouring properties. ULP Policy GEN8 specifies parking standards for various forms of development.

The replacement day care centre is a contemporary design however it is very similar in scale to the existing day care centre. It is single storey building with a mono pitched roof that is fairly low key. The building is proposed to be constructed within 1m of the southern and western boundary of the site, however given it is a single storey structure and there are existing brick walls along those boundaries it is not considered that there will be an unreasonable amenity impacts. The windows on the southern and western boundaries are positioned so that there will not be potential for overlooking into neighbouring properties rear gardens. The proposed increase in floor area of 200m² from the existing building is considered to represent an acceptable change to the building.

The entry to the centre is easily visible from the public area and there are also windows facing onto the footpath to the west which will make pedestrian movements around the centre safer.

There are parking standards stipulated in Appendix 1 of the local plan and referred to in ULP Policy GEN8. The standards require a maximum number of spaces for a day care centre i.e. 1 space per full time staff member plus 1 space per 4 persons attending the centre plus an area for collection and delivery of clients to the centre. The car parking requirements for the centre are currently catered for in the car parking area at the front of the site. Given the additional floor area proposed is modest it is considered that current parking provision is adequate. The current parking arrangement is proposed to continue and given the use it is not considered that there is a high demand for parking. The site is also in close proximity to the Margaret Street car park which can be utilised if there is a high demand time.

Overall it is considered that the revised design is acceptable and will not have any unreasonable amenity impacts on the neighbouring properties. It is not considered necessary or appropriate to impose conditions restricting the use of the building. The use already operates and the replacement building is similar to the existing building, therefore the proposal is acceptable.

2) Paragraph 7.5 in the ULP relates to access to leisure and cultural facilities. This part of the ULP states that development for cultural facilities (which is considered to include community facilities) should be promoted and should be accessible to all members of the society. ULP Policy RS1 is also considered to be relevant and requires that service buildings, where there is public access need to be accessible to all to ensure social inclusion.

This application is seeking to rebuild the existing community facility that services the needs of older members of the community. The facility is used to serve food to senior citizen and also acts as a meeting point for these members of the community. The slightly enlarged facility with more modern kitchen facilities is considered to be a benefit to the community. In addition to that the design allows for better access for people with limited mobility.

CONCLUSIONS: There is a need to provide services for older people within the community. The reconstruction of the existing facility that serves as a meeting point and place where people can have meals is considered to be consistent with Development Plan Policy.

The design of the building is considered to be compatible with the surrounding area and the existing car parking arrangements will continue. Physical access into the building will be improved by the installation of a ramp and automatic doors. It is not considered that the building will have an unreasonable impact on the neighbouring properties.

RECOMMENDATION: APPROVAL WITH CONDITIONS

1. C.2.1. Time limit for commencement of development.
2. C.3.1. To be implemented in accordance with approved plans.
3. C.5.2. Details of materials to be submitted agreed and implemented.
4. C.8.29. Details of sustainable construction for new residential or commercial development.

Background papers: see application file.

UTT/1437/06/FUL - SAFFRON WALDEN

(Referred by Cllr Freeman)

Change of use from A1 (newsagents) to A5 (hot food takeaway).

Location: 2-4 George Street. GR/TL 537-389.

Applicant: Ismail Yildrim

Agent: Cladpro Ltd

Case Officer: Mr H Laird 01799 510464

Expiry Date: 03/11/2006

ODPM Classification: OTHER

NOTATION: Within Town Centre / Development Limits / Conservation Area. Adjacent to Grade II Listed Building. Archaeological Site.

DESCRIPTION OF SITE: The existing building is located on George Street and has until recently been occupied by a newsagents shop. The shop is located at ground floor level while the first floor level contains office space. The site lies adjacent to a Grade II listed building on the corner of George Street and High Street.

DESCRIPTION OF PROPOSAL: The applicant is seeking permission for a change in use from a newsagent shop to a hot food take-away. The proposal would entail internal refurbishments including the installation of a customer counter and a kitchen, including a pizza oven with associated extractor fan and ducting. The external changes include a roof vent on the roof at the rear of the building and new advertisements on the fascia above the shop windows at the front of the building.

APPLICANT'S CASE: The applicant has provided a Design and Access Statement which outlines that the proposed use would be consistent with the mixed use character of the area and that there would be no great external changes in terms of appearance, with the exception of the advertising to be affixed to the shop frontage (this may be subject of a separate application for advertisement consent, but does not form part of this application).

RELEVANT HISTORY: The original takeaway business is situated at No.10 George Street. A change of use from a pet shop to a takeaway was then applied for at the adjoining premises at No.8 George Street (See UTT/0033/99/FUL). This site was used to accommodate a seating area and toilets for customers to use. There was a subsequent application (UTT/1095/99/FUL) which sought a change in condition regarding the proposed opening times. Subject to this current application being approved there would be three shops along George Street occupied by the same business.

CONSULTATIONS: Environmental Services: Plans submitted in relation to the ventilation system are insufficient to comment. Further details as to type, location of fans, filter/odour abatement technologies, anticipated maintenance schedules etc. subsequently requested and provided. On review of this further information there are no objections to the proposal.

TOWN COUNCIL COMMENTS: Unhappy at having yet another takeaway shop so close to an existing unit and regret the possible loss of a retail shop.

REPRESENTATIONS: Period expired 2 October 2006. Two letters of objection were received. These may be summarised as follows:

- An increase in people outside the takeaways would naturally congregate in front of the Flower Shop.

- The ease of approach and access to the Flower Shop would be compromised due to takeaway customers on the footpath.
- The profile of the Flower Shop would be reduced as a result.
- Security at the Flower Shop would be compromised.
- Elderly customers of the Flower Shop would be intimidated by customers of the takeaway.
- Increased takeaway customer traffic using the lay-by, thus blocking in other users of the lay-by.
- Increased litter and associated vermin problem.
- Concern that existing problems of littering, bottles and food thrown against windows and urination on surrounding shop fronts would only get worse with the proposed expansion of the kebab shop.
- By the nature of what is sold and the opening hours, it encourages people loitering and there is not enough policing or CCTV surveillance in the area.

COMMENTS ON REPRESENTATIONS: The objections received raise concerns about the number of people that might congregate outside the building subject to this application and the associated business at 8-10 George Street. While public safety is a material consideration the alleged loitering around, and abuse of surrounding property is a matter for the police to deal with.

The Council also cannot take into account the economic impact that the proposal might have on the adjacent shops as that also is outside the ambit of its control under the relevant planning statutes.

The Saffron Walden Town Council has stated it is unhappy that there would be another takeaway shop so close to an existing unit. However, the District Council cannot place restrictions on what is a free market economy unless there are sound planning reasons. The Town Council has also expressed regret at the loss of the existing retail shop.

The Council's policies seek to retain retail units encourages restaurant developments in appropriate locations.

PLANNING CONSIDERATIONS: The main issues are whether the proposal would:

- 1) **Preserve or enhance the character and appearance of the essential features of the Conservation Area within which it is located, including open plan form, relationship between buildings, the arrangement of open areas and their enclosure, grain or significant natural or heritage features. (ERSP Policy HC2 & ULP Policy ENV 1),**
 - 2) **Maintain and enhance the role of the Saffron Walden town centre as a retail and service centre; whether it would harm the historic or architectural character of the Town Centre; whether it would contribute to the diversity of retail and commercial activity; whether it would result in a significant loss of houses or flats in the town centre; whether it prejudices the effective use of upper floors as living or business accommodation. (ULP Policy RS2) and**
 - 3) **Other material planning considerations.**
- 1) The proposal is not considered to have a materially adverse effect on the character and appearance of the Conservation Area within which it is located. This is because the only externally visible changes to the building would be the placement of advertisements. It is further noted that separate advertisement consent will be required prior to the placement of any advertisements upon the building.

- 2) The proposed change in use from a newsagent to a takeaway is not considered to harm the historical or architectural character of the town centre. The proposed use is not considered to lead to a loss of housing within the town centre, nor would it prejudice the use of the upstairs area of the building. It is considered that the town centre would be the most suitable area to locate the proposed use.
- 3) It is noted that the only residence in the vicinity to the subject site is an upstairs flat within the adjacent listed building at 44A High Street. There are no other adjoining residential buildings. At the rear of the site is a courtyard leading to Wilbur's Gym. The proposed venting within the building is considered to be of a specification that would minimise any noise and odours to be emitted from the building, and due to the fact that the part of the extraction system (the fan) emitting most of the noise will be located inside the building. Sufficient information has been provided from the applicant for Council's Environmental Health Officer to be satisfied of this.
- 4) While public safety is a material consideration there is no ambit of planning control over the nuisances described in the representations, i.e. over the 'loitering' of people outside the proposed business in the public realm. There are no local planning policies that seek to prevent the types of nuisances described in this case other than through the imposition of a condition controlling hours of use, which shows to be the same as the adjacent take-aways. Such a condition is proposed.

CONCLUSIONS: The proposed change of use would be consistent with the relevant policies of the Local Plan. Consequently it is recommended that the application be granted, subject to suitable conditions.

RECOMMENDATION: APPROVAL WITH CONDITIONS

1. C.2.1. Time limit for commencement of development.
2. C.3.1. To be implemented in accordance with approved plans.
3. C.13.7. Hours of use.
4. C.8.29. Details of sustainable construction for new commercial development
5. Prior to the first use of the building for A5 purposes, the ventilation and filtration equipment included in the application details shall be installed and in full working order. The equipment shall be effectively operated and maintained in accordance with the manufacturer's instructions for as long as the building is in use for the approved purpose.

REASON: To protect the amenities of the occupiers of adjoining properties.

Background papers: see application file.

UTT/1589/06/CLP - LITTLE DUNMOW

Application for Certificate of Lawfulness of proposed use as a dwelling house for not more than 6 residents living together as a single household, albeit with an element of care, falling within Class C3 (Dwelling House) use

Location: 6 Worrin Road. GR/TL 664-208.
Applicant: Mr & Mrs R Benyu
Agent: Leith Planning Ltd
Case Officer: Miss G Perkins 01799 510467
Expiry Date: 17/11/2006
ODPM Classification: OTHER

NOTATION: Within Development Limits.

DESCRIPTION OF SITE: The site is located within the Oakwood Park development at Little Dunmow approximately 290m to the southwest of the main entrance to the development.

The site itself covers an area of 235m² and consists of a semi-detached property with a detached garage with room above on a corner plot.

The building on the property is currently used as a dwelling and the use defined by the Town & Country Planning (Use Classes) Order 1987 falls within Class C3 (Dwelling House).

DESCRIPTION OF PROPOSAL: This application for a certificate of lawfulness to 'Use of 6 Worrin Road, Little Dunmow, Essex, CM6 3FX as a dwelling house for not more than 6 residents living together as a single household, albeit with an element of care, falling within Class C3 (Dwelling House) use.

Note: For avoidance of doubt:

- 1) *The intended use of the property is outlined in the supporting statement prepared by Lucia Benyu included at Appendix 1 which explains that the dwelling will be operated as a 'small group home' for mentally disordered people living in the community.*
- 2) *Application Reference UTT/0921/06/FUL was submitted previously for a change of use of the premises; this application was misconceived and withdrawn.*
- 3) *The local planning authority are obliged under Section 192(2) of the 1990 Act (as amended) to issue a certificate if, on the information provided to them, they find the use or operations described in the application lawful if instituted or begun at the time of the application.*
- 4) *The date of the application is the 15th September 2006.'*

Appendix 1 which was submitted with the application provides more detailed use about the intended use of the land, however the parameters outlined in the supporting information are not included in the description on the application.

APPLICANT'S CASE: The applicant's case comprises two sections, the first part is the description on the application form and the second part is Appendix 1 (supporting statement) that outlines the more detailed aspects of the proposed use.

The applicant's supporting statement includes details of the proposed use, relevant planning history and extracts of case law that relate to the proposed use.

Officers have summarised the main arguments in the supporting statement as follows:

- This certificate of lawfulness application has been lodged after planning application UTT/0921/06/FUL was withdrawn. The applicant has advised that they reviewed the use and considered that it fell into a Class C3 (Dwelling house) use and therefore did not require an application for change of use.

- In relation to the use the applicant has outlined that the dwelling would be operated as a 'small group home' for mentally disordered people living in the community. The residents of the dwelling would be free to come and go as they please and will have a key to the main entrance to the dwelling. One of the rooms in the house will be used as a home office and a communal bathroom will serve the dwelling. Therapy will be provided to the residents by specialists who may well visit the premises however this will depend on the needs of the residents. The therapy could involve a visit from an occupational therapist once or twice a week, psychologist once a week, consult psychiatrist once a week and counselling once a week.
- A carer will be available at night and there will be a manager on call 24 hours per day. They are proposed to park in front of the garage and the residents will not have cars. The applicant has outlined that they do not consider parking arrangements to be material to the consideration to the certificate of lawfulness application.
- The Encyclopedia of Planning Law states in commenting on the history behind Class C3 that '*this will include, say, students or other young people sharing a dwelling house, as well as small group homes for disabled and mentally disordered people living in the community rather than in institutions.*' The applicant has argued that Class C3 is intended and apt to include small community care homes consisting of up to six people (Circular 13/87, para 27).

RELEVANT HISTORY: The following applications are considered relevant to the consideration of this application:

- Outline permission for residential development 1998.
- Details following outline application for development of estate conditionally approved 2002.
- Application for change of use of dwelling to residential accommodation for those living with a mental health condition and/or learning disability withdrawn by applicant June 2006.

CONSULTATIONS: Legal Services: Several discussions were held with Council's Legal Department in regard to the procedural issues associated with the application. Legal advice is that the Council cannot refuse to certify that the '*Use of 6 Worrin Road, Little Dunmow, Essex, CM6 3FX as a dwelling house for not more than 6 residents living together as a single household, albeit with an element of care, fall within Class C3 (Dwelling House) use*'...could be lawfully undertaken in the dwelling. However planning officers are of the view that the proposed method of operation would fall outside of that use.

The Council's legal advice is that a certificate of lawful use should be issued for use of the property as a dwelling house for not more than six could be lawfully undertaken in the dwelling residents living together as a single household but to write to the applicant separately explaining that in the event they operate in the way set out in the accompanying statement planners remain of the view that this would constitute a material change of use and that enforcement action may be taken. Officers have sent such a letter to the applicant and no response has been received at the time of drafting this report.

PARISH COUNCIL COMMENTS: Although the Parish Council appreciate that a decision on the above certificate must be a factual decision, the Parish Council would like to state that it does not think the proposed use of the dwelling is appropriate for up to six residents living together as one household, albeit it with an element of care, in such an overdeveloped residential area.

REPRESENTATIONS: This application has been advertised and 72 letters including 2 petitions have been received that relate to the application. Notification period expired on 17 October 2006.

The full details of all the representations can be viewed on the file, however the concerns raised in the representations can be summarised as follows:

- Having dealt with this issue previously [under previous planning application UTT/0921/06/FUL for a change of use] the applicant appears to be using a different route [i.e. applying for a certificate of lawfulness]. The applicants are trying to achieve what they applied for last year, i.e. to introduce mental health patients and drug addicts back into the community.
- Would be shocked if this did not require permission as they are still proposing to house mentally ill patients in a residential area.
- Strongly opposed to this as then any person with a house could do this use and the people running the facility would not be vetted or screened.
- Do not consider that residents that need care are suitable for this development, depending on their care. There is nothing to offer them in the area; until there are some form of communal facilities established there is not enough to offer them in the area.
- What level of care do the people require?
- Unsuitable location for housing people with special needs are there are no amenities (e.g. shops and amenities)
- It is unsafe to place unstable individuals (due to drink and drug problems and mental health problems) in the middle of a housing estate with young families. Also concerned that they have been seeking safe play areas for children in the area for almost 4 years and this is likely to result in further danger to children.
- It appears from the details given that it is intended to change the use from a normal residence to a commercial business that would clearly require planning permission.
- The circumstances have not changed, these are relatively large residential houses on small plots and it seems inappropriate to allow a recently built dwelling to be converted into a business.
- The applicants will profit from the use of the land and therefore would be running a business from the premises.
- Should this application proceed it would open up the opportunity for all owners to rent out rooms in their dwelling for profit, e.g. shared houses.
- The applicants will be in breach of the terms and conditions of their mortgage, their mortgage would be for one family to reside in the property and renting out part of the house would breach the agreement.
- The property would not be regulated
- The applicant has stated that care would occur through the night, therefore it cannot be run as a unit for supported living and would not fit the criteria for C3 use. The level of care has not been specified.
- A carer who parks in front of the garage will breach Highway Law as this will block the footpath. The garage cannot be used as living area without planning permission
- There is insufficient detail about the gender of the residents and the occupants could pose a threat and as a consequence would be a nuisance
- References in the ODPM Circular 03/2005 part 67 states that small residential care homes will probably not live as a single household and the use therefore regardless of the size would be classified as a C2 use.
- The carers are not proposed to be living on the property and therefore it should be classified as a residential institution
- This proposal is clearly a commercial endeavour which contravenes the deeds set forth on the estate, which states that the property shall not be used for any trade or business nor other than the use as a single private dwelling and domestic garage.
- Information supplied with the application is inaccurate, the dwelling is attached to 4 Worrin Road and is not detached as described in the application.

- Insufficient parking provision has been made to comply with the Uttlesford Parking Standards.
- The application would breach Article 8 of the Human Rights Act (a right to respect for private and family life) as there would be a lot of noise and disturbance
- The patients are meant to be integrated into the community however there are no facilities to offer.
- There would be a lack of regulation at the site and when will risk assessments and vetting of residents occur?
- If the facility includes provision for overnight care it would not fit the criteria of C3 use.
- Intend to sue for damage for the loss of equity in their properties as a result of the proposed use.
- No evidence of the RMN status of the nurse who has applied for the application
- How will patients be referred to the facility and by whom
- If there are 6 residents plus carers there are more than 6 persons living as a family
- The nearest mental health establishment is 30 minutes away
- Advice from the Commission for Social Care Inspectorate states that this will not be regulated if it is run as supported living. However it does not meet the definition of supported living as there is a live in carer.
- The fact that there is a live in carer means that this cannot constitute a C3 use.
- The proposal conflicts with Council policy relating to the provision of infrastructure within Oakwood Park.

COMMENTS ON REPRESENTATIONS: There are several matters that have been raised in the representation letters that are not material to the consideration of this application. The application is seeking a factual determination as to whether the use proposed falls within the definition of a Class C3 use in the Use Class Order 1987. If Council determines that the proposed use constitutes a change of use then planning permission would be required when the merits of the use would be considered.

The main themes that appear in the letters can be summarised as follows. Officers have provided a response to each theme in italics under each point:

- Concern regarding the planning process followed (e.g. applying for a Certificate of Lawfulness versus a Planning Application for a change of use).
The applicant has the opportunity to lodge an Application for Certificate of Lawfulness for a proposed use under Section 192 of the Town and Country Planning Act 1990. This is a valid planning process that can be undertaken even though the applicant had previously withdrawn an application for a change of use on the site.
- Unsuitable location for care of residents due to lack of community facilities within Oakwood Park.
This concern goes to the merits of the proposed use and the merits are not under consideration in this Certificate of Lawfulness application.
- The future residents pose a potential threat to the safety of residents and amenity of the neighbourhood.
This concern goes to the merits of the proposed use and the merits are not under consideration in this Certificate of Lawfulness application.
- The fact that there will be non-resident carers permanently on the site means that the proposal cannot constitute a C3 use.
This relates to the definition of the proposed use and this will be discussed in detail in the planning considerations section of this report. Officers will need to consider the implications of the carers being a resident or non-resident within the premises.

- The facility will be unregulated and there is concern about the suitability and monitoring of staff and carers. This is based on advice received from the Commission for Social Care Inspectorate.
Council officers have contacted the Commission for Social Care Inspectorate and have reviewed their requirements for registration set out in their legislation. This will be discussed in detail in the planning considerations section of this report.
- The fact that the applicants will gain a profit from the proposed use means that it will constitute a business, and this will contravene the title deeds.
The assessment of whether the use constitutes a lawful use in a dwelling house will be discussed in the planning consideration section of this report. Any breach of covenant is a civil law matter between the person(s) with the benefit of the covenant and the property owner and is not a planning consideration.
- There are inaccuracies in the information submitted with the application.
Officers have inspected the site as part of their assessment of the application. They are aware of the physical characteristics of the dwelling and surrounding area. The information regarding the physical form of the dwelling is not material to whether the proposed use requires planning permission.
- There will be insufficient parking provision on the site and many people sought clarification as to whether the garages would be used for living purposes.
In relation to the conversion of the garage, Council officers are able to confirm that there is no restriction on the permission for the dwelling which would preclude the applicant from using the garage as ancillary living area. Accordingly no planning permission would be required for such a change in the garage that is already part of the residential use. Provision of parking relates to the merits of the application, which are not relevant to this Certificate of Lawfulness application.
- The level of information about the level of care is vague.
As outlined in the Applicant's Case section of the report some detail has been provided about the level of care. It is acknowledged that without details of the personal requirements of the residents the level of care required is difficult to predict. The applicant has provided an indication of the possible level of care.

PLANNING CONSIDERATIONS: The main issues are whether the proposed use (as described on the application form) would fall within the Class C3 (dwelling house) use of the Town and Country Planning (Use Classes) Order 1987; and if we can grant the certificate for the use described.

INTRODUCTION

This is not an application for planning permission and therefore it is not possible to consider the merits of the proposed use when determining this application. It is an application for a certificate of lawfulness for a proposed use and the only consideration is whether the proposed use falls within the existing use class of the property (Class C3). If it does fall within this use then the certificate of lawfulness must be granted. If it does not fall within this use then planning permission would be required for a change of use and the certificate must be refused.

Officers need to consider whether the activities described in the application could be lawfully carried out in the dwelling. The information has been provided in two parts, the first the description on the application form and the second part is the more details supporting statement provided (Appendix 1).

Officers are concerned that the two parts of the application are contradictory. The description effectively requests confirmation that the activities that fall within Class C3 (Dwelling House) use can lawfully be carried out within a C3 Dwelling House, which is lawful. However the second part of the application describes the proposed use of the land in more detail and appears to be more consistent with a C2 use (Residential Institutions – e.g. Hospital, nursing home etc). This means that Council is unable to grant a certificate of lawfulness where the information is contradictory, accordingly Council need to be more specific about what use would be lawful.

Therefore in the 'Consideration of Supporting Information' section of this report officers outline the reasons why they consider the supporting information does not reflect a C3 use. In the 'Consideration of Description on Application Form' officers describe the consideration of a more specific proposed use, and whether a certificate of lawfulness could be granted for that.

CONSIDERATION OF SUPPORTING INFORMATION

Definitions and Relevant Legislation

Under the Planning legislation a Class C2 use is defined as:

'Use for the provision of residential accommodation and care to people in need of care*.'*
Care is defined as personal care of people in need of such care by reason of age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2 also includes the personal care of children and medical care and treatment'

Under the Planning legislation a Class C3 use is defined as:

'Use as a dwelling house (whether or not as sole or main residence)

- *By a single person or by people living together as a family; or*
- *By not more than 6 residents living together as a single household (including a household where care is provided to the residents).*

There is also relevant case law and below is an extract from *Development Control Practice* that outlines some relevant legislation:

Residential care and nursing homes clearly fall within Use Class C2 (Residential Institutions). Use Class C3 covers use of a dwelling house by not more than 6 residents living together as a single household (including a household where care is provided for residents) and thus may seem to apply to small homes for the elderly or nursing homes. However, Circular 13/87 para.27 states that "In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall within the residential institutions class, regardless of the size of the home". Thus the only likely circumstance where a change of use to a residential or nursing home would not require planning permission is where the previous use was a hospital or a residential school, college or training centre, these being the other components of Use Class C2.

In (N.E. Derbyshire D.C. 17/9/91) a residential care use in three separate houses in a village was claimed to be within the C3 Use Class. However, an inspector found that whilst there were only three residents in each house, caring staff were non-residential being shared amongst the three houses, and there was some movement between the houses in terms of the use of shared facilities. He found that the use of the properties was within the C2 Class. The appeal was, however, allowed on planning grounds.'

The Commission for Social Care Inspectorate (CSCI) work under legislation relating to the regulation of social services, including supported living and care homes. The CSCI legislation makes a distinction between 'supported living' and 'care homes'. In summary 'supported living' is defined as a dwelling where residents are assisted with their personal care and a 'care home' is a facility where residents are supported physically and/or emotionally on a 24 hour per day basis.

More specifically *The Care Standards Act 2000* defines a Care Home as:

'3 (1) For the purposes of this Act, an establishment is a care home if it provides accommodation, together with nursing or personal care, for any of the following persons:

2They are-

- a) Persons who are or have been ill;*
- b) Persons who have or have had a mental disorder;*
- c) Persons who are disabled or infirm;*
- d) Persons who are or have been dependent on alcohol or drugs*

3) But an establishment is not a care home if it is-

- a) A hospital*
- b) An independent clinic; or*
- c) A children's home*

Or if it is a description excepted by regulations'

The CSCI do not regulate 'supported living' premises, however Care Home (as defined above) are required to be registered with CSCI under the *National Care Standards Commission (Registrations) Regulations 2001*.

Carers Vs Residents

Officers are required to rely upon Planning legislation rather than the Care Standards legislation, however this report have provided both in order to identify the similarities that exist between the two.

Officers consider the key issues under planning legislation is where care is provided within a dwelling, whether the care is provided by a resident of that dwelling and the level of care that is available. Furthermore if the carers are resident within the premises then they must be counted towards the number of 6, which cannot exceed 6 persons for a dwelling house (Class C3 use).

In this case the applicant has advised that carers would attend the premises during the day and there would be one carer in the dwelling overnight.

More specifically in the statement provided with the application in relation to staffing the applicant has advised:

'Roshan House provides care for residents with at least 1 or 2 experienced staff members during the day (individual need may warrant extra members as required, i.e. 1 to 1, as situations demand). One member of staff will be on duty during the night. Support and on-call staff will also be available 24 hours a day. The home is managed by an experienced RMN with additional support from various mental health professionals.'

Officers are of the opinion that the proposed use would be most appropriately classified as C2 use (Residential Institution) under the Use Classes Order. The references in the application to 'staff' indicate that the care staff are not permanently residing in the premises therefore cannot be considered as part of the household. As a comparison in a supported living situation (which could be Class C3 use), carers and/or medical health professions may attend the premises on a daily basis, however the carers are not residents within that dwelling or available 24 hours a day.

For the proposed use at 6 Worrin Road care staff would stay at the premises but would not be a resident. The carer's primary reason for staying at the premises is to provide 24 hour support to the residents within the premises. The carer does not stay at the premises primarily because they need accommodation.

This proposal is also considered to be distinguishable from a situation where one family member within a household required 24 hour care. In that instance a carer (could be a spouse, partner, child or parent) may provide care on a 24 hour basis but their primary reason for staying in the dwelling is not just to provide care for another person in the dwelling, but they also stay as they need accommodation.

Level of Care

The applicant has provided an indication of the possible level of care required in the premises, however this will ultimately be dependant on the needs of the residents. In addition to whether the carers would be resident within the dwelling, Council must also consider the intensity and level of care and whether this constitutes a material change of use. It is important to note that in the definition of Class C2 use, reference is made to the provision of medical care within the premises.

The level of care is proposed to include on site carers (24 hours a day) and there will be visits from counsellors, psychiatrists, psychologist and occupational therapist on a regular basis i.e. medical professionals.

Under the *Care Standards Act 2000* premises can be defined as supported living where people provide personal care to the patients, however importantly this does not extend to 24 hour per day support. It is considered that the fact that there will be carers available 24 hours per day and medical support provided that the proposed use is not a 'supported living' facility within Class C3 use (Use Class Order 1987). It is considered that this level of care is akin to a Class C2 use rather than a Class C3 use.

Recent Planning Inspectorate Decision

A similar application was recently considered by the Planning Inspectorate in Wolverhampton (appeal reference APP/D4635/X/06/2013826). This was an application for a care home which was much more clearly defined on the application form. [A copy of this Planning Inspectorate decision is attached to this report.](#)

In summary the Inspectorate found that the people within the 'Residential Care Home' would not be living together as a household and therefore the use would fall outside the definition of a C3. Based on the level of care the Inspectorate found that it would be more appropriate to describe the use as Class C2 use. Nevertheless the Inspectorate also considered whether the use described on the application form represented a material change of use compared with the existing residential dwelling. Ultimately the Inspectorate granted the certificate of lawfulness on the basis that the use did not represent a material change of use, however they did conclude that the use described would be C2. In order to come to this conclusion the Inspectorate put very specific parameters around the proposed use.

Paragraph 5 and 6 of decision are relevant to the current application as they relate to the description of the use:

'...Children residing at the property would expressly require care, and could not on their own be regarded in the true sense as a household without the presence of a carer. The concept of 'living together as household' would require proper functioning household to exist, and in the context of this appeal this would mean that the 2 children and a carer of 2 carers must reside in the premises. Although 24 hour care was to be provided with 2 adult carers present at all times, they would not be resident as such. They would be staff working a shift pattern

and then leaving the premises at the end of each shift. They could not therefore be regarded as living together with the children in the household.

The use would therefore not fall within Class C3(b). Having regard to the working of Class C2 Residential Institutions, and the interpretation of 'Care' at Article 2 of the UCO 1987, it is clear that the proposed use would be one for the provision of residential accommodation and care of 2 children within Use Class C2. They would of course not be the end of matter, as it is necessary to assess whether in terms of its detailed operation it would amount to a material change of use of the property from that of a C3 dwelling, last used as a family house by 2 parents and 2 children.'

While there are some differences between the Inspectorate's decision and the current application the principles relating to the notion of a 'household' are the same. Both cases dealt with a situation where people would reside in the same dwelling, however care would be provided by carers who were not resident in the dwelling. Based on this principle it is considered that the use described in the supporting information falls within the category of C2.

Furthermore if Council wishes to proceed, as the Inspectorate did on the case at Wolverhampton, to determine whether the proposed use represented a material change of use from the existing dwelling, more information would have to be provided regarding the existing dwelling use and specifics of the proposed use.

CONSIDERATION OF DESCRIPTION ON THE APPLICATION FORM

As outlined in some detail above, the use described in the supporting information would best be described as a C2 use. Council have insufficient information to determine whether the use described represents a material change of use and therefore will not grant a certificate that states that the use described in the supporting information is lawful.

The details on the application describe the proposed use as '*Use as a dwelling house for not more than 6 residents living together as a single household, albeit with an element of care, falling within Class C3 (Dwelling House) use defined within the Use Class Order.*'

This description effectively repeats the Use Class Order definition of a Class C3 use. Therefore this description could be used lawfully in an existing Dwelling House.

Council are in a position where it could grant a certificate of lawfulness of part of the use described in the application, however it would only relate to the description in the first part of the application. In granting such a certificate it would provide no assurance that the use described in the supporting information is lawful.

Accordingly an informative would need to be included if such a Certificate was granted, to explain that the certificate only relates to the use described on the certificate does not related to the use outlined in the applicant's supporting information. This would not be a very helpful or useful decision, however from a legal perspective Council do not have any alternative. A letter was sent to the application on 1 November 2006 outlining that this would be the likely outcome and suggested that they consider revising the description on the application. This would enable Council to make a more useful decision on the application that could specify exactly which use was or was not lawful. The applicant had not responded to this letter at the time when this report was drafted however any responses will be provided to the Committee if they are received prior to the meeting date.

CONCLUSIONS: Council are obliged to consider which use Class order under the planning legislation is most suitable for the proposed use. Council officers do not consider that application as described in the supporting information constitutes Class C3 use, rather the use better reflects a C2 use and therefore could not be lawfully carried would within a Dwelling House, without planning permission.

However Council are able to grant a certificate of lawfulness for the 'Use of 6 Worrin Road, Little Dunmow, Essex, CM6 3FX as a dwelling house for not more than 6 residents living together as a single household, albeit with an element of care, falling within Class C3 (Dwelling House) use.' This is because this definition in itself described a C3 use.

In granting a certificate for the above mentioned use this will provide the applicant with no assurances that the activities described in the supporting information are lawful.

RECOMMENDATION: A CERTIFICATE OF LAWFULNESS BE GRANTED WITH AN INFORMATIVE

Decision:

It is hereby certified that on 15 September 2006 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use only as described in the first schedule would not constitute a material change of the land from its lawful use as a dwelling house within Use Class 3.

First Schedule

Use as a dwelling house for not more than 6 residents living together as a single household, albeit with an element of care, falling within Class C3 (Dwelling House) use defined within the Use Class Order.

Second Schedule

Land at 6 Worrin Road, Little Dunmow, Essex, CM6 3FX.

Informative Note to be attached to decision:

This certificate relates only to the use described in the First Schedule. Council have considered the supporting information provided with the application made on 15 September 2006, and hold the view that the intended use as described in the supporting information would best be classified as a C2 use class and is therefore not lawful without planning permission. This certificate therefore only gives an assurance that the use as described on this certificate is lawful and does not relate to the use outlined in the supporting statement prepared by Lucia Benyu included at Appendix 1: '*in the Application for of certificate of lawfulness*' which explains that the dwelling will be operated as a 'small group home' for mentally disordered people living in the community.

Background papers: see application file.
