



Departments of the Environment and Transport

Eastern Regional Office (Environment)

Heron House 49-51 Goldington Road Bedford MK40 3LL

Telex 82461

Telephone 0234 (Bedford) 83161 ext 675

Facsimile 303

Alan T Wyatt Esq
Solicitor
Collops Farm
Stebbing
DUNMOW
CM6 3SZ

Your reference

Our reference

(A) APP/A1530/A/88/099139
(B) APP/A1530/A/89/103042

Date 6 June 1989

Sir

TOWN AND COUNTRY PLANNING ACT 1971 - SECTIONS 36 AND 37
APPEALS BY WIVENHOE PORT LIMITED
APPLICATION NOS. COL/178/88 AND COL/719/88

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector Mr B E Partridge LLB Solicitor who held a local inquiry into your clients' appeals against the failure of Colchester Borough Council to give notice of their decisions within the prescribed period on applications for planning permission for:

(A) The demolition of an existing building, re-location of storage accommodation within the area permitted for port related uses and the re-construction and re-alignment of a wharf; and

(B) The change of use from port related uses to mixed residential uses;

in both cases on land at Wivenhoe Port, West Street, Wivenhoe, Colchester, Essex.

2. The Inspector, whose conclusions are reproduced in the annex to this letter, recommended that appeal (A) be dismissed and appeal (B) be allowed, subject to conditions.

3. The Secretary of State notes that the port application sought planning permission for the demolition of existing buildings. However planning permission is not required for this, though it is required for the re-location of the storage accommodation and the wharf extension and it is on this basis that he will determine this appeal. As to the residential application which sought a change of use, the definition of 'use' of land in Section 290 of the Town and Country Planning Act 1971 excludes the erection of buildings and it is proposed to treat the application as being an outline application to erect houses.

4. Careful consideration has been given to all the arguments for and against the proposed developments and to the Inspector's conclusions and recommendations. Dealing first with the port proposals, the Secretary of State notes that noise, dust and traffic from the port have created unacceptable living conditions for local residents for some years. He has taken into account your clients' willingness to limit annual tonnage to 450,000 and to prohibit dusty cargoes from the easternmost berth but he agrees with the Inspector that the result of the proposals would be an exacerbation of these problems, particularly in respect of lorry traffic. As to the visual considerations, he agrees with the Inspector's conclusions that the wharf re-alignment would not intrude or cause any visual harm but that the warehouse extension would be clearly seen from Rowhedge and the riverbank footpath, representing a significant intrusion into the view of Wivenhoe Woods. Though this visual objection would not, by itself, warrant a refusal of permission, it is a factor against the proposals



5. Although the wording of Policy T22 in the Structure Plan Alteration is somewhat tighter than that in the approved Plan, both seek to prevent the development of smaller scale port facilities where they would be detrimental to local amenities. Moreover, Policy BP37 of the approved Colchester Borough Local Plan seeks to resist expansion of port facilities at Wivenhoe. The draft Review of the Local Plan proposes no change to this policy pending the results of various studies currently being undertaken. One of these is the Colne Estuary Study, a joint exercise by the County, Tendring and Colchester Councils, which is in its final stages and which advances the notion of the full or partial discontinuance of Wivenhoe Port. In all these circumstances, the Secretary of State considers that there is a weighty policy objection to the port proposals.

6. He concludes that planning permission should not be granted for the port proposals. He notes that the Inspector proposes certain conditions in the event of planning permission being granted but in view of the conclusion he has reached, he does not feel he needs to consider them.

7. Turning now to the residential proposals, the Secretary of State notes that the Council have no objection in principle - in fact, they and local residents generally would welcome the replacement of the port by housing. He also notes that the Council's sewage objection was not pursued at the inquiry in view of the draft agreement with Anglian Water and that the agreement with the highway authority that the highway network could, with the planned improvements, cope with the extra traffic and your clients' promise to provide a pedestrian footbridge over the railway line appears to satisfy the Council on the traffic point.

8. The key issue is, therefore, whether development on the scale proposed would be harmful to visual amenity, the vulnerable area being the western part of the site. The Secretary of State agrees with the Inspector that reversion to marshland is unrealistic and endorses his view that it would be inappropriate to build hard up to the edge of the marsh in a way that would substantially increase the built development as seen from the south and that the western end of the site would be suitable for open space and amenity purposes. He is satisfied that an acceptable layout can be achieved at detailed application stage.

9. Therefore he sees no reason why planning permission should not be granted for the residential proposals and he has gone on to consider which conditions should be imposed. He generally agrees with the Inspector's recommendations in paragraphs 26.2 and 26.3 of his report and has included conditions accordingly. Regarding the pedestrian footbridge, he agrees that its provision must precede occupation of the houses and notes the Council's advice that its construction would first require planning permission. The Secretary of State has taken account of British Rail's agreement in principle to the footbridge and the fact that no objection to it was raised at the inquiry and he considers there is a reasonable prospect that planning permission for, agreement on, and construction of, the footbridge would be forthcoming within a reasonable timescale. Hence he feels he can include a "Grampian" condition to prohibit occupation of the houses until the footbridge is constructed. He agrees with the Inspector that the site should not be used for residential purposes until port activity has ceased; whilst a reasonable run-down period for the port will of course be necessary, this will be a matter for the parties involved which would not, he thinks, be hampered by the imposition of condition 2 suggested by the Council, except that discontinuance for all time is unnecessary. He notes that, since the inquiry, the agreement between your clients and Anglian Water has been finalised and a sewage condition is therefore not necessary.

10. The Secretary of State has noted a letter from Sir Antony Buck QC MP dated 24 February, referring to a letter from Wivenhoe Town Council dated 31 January, but these have not caused him to change the conclusions he has reached on these appeals.

11. All other matters have been taken into account but, for the reasons given above, the Secretary of State accepts the Inspector's recommendations. Accordingly he dismisses appeal (A) and allows appeal (B) and hereby grants outline planning permission for residential development on land at Wivenhoe Port, West Street, Wivenhoe, Colchester, Essex in accordance with application No. COL/178/88 dated 7 April 1988 subject to the following conditions:-

(i) Approval of the details of the siting, design and external appearance of buildings, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority.

(ii) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

(iii) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

(iv) All commercial uses at the site shall be discontinued before occupation of the first of the dwellings hereby permitted.

(v) None of the dwellings hereby approved shall be occupied until the planned improvements to the junction of the B1027 and B1028 and to the Station Road roundabout (B1028) have been carried out and a footbridge over the railway between Chapel Road and Station Road has been provided in accordance with details to be previously submitted to, and approved by, the local planning authority.

(vi) All habitable rooms of the dwellings hereby permitted shall have a minimum floor slab level of 4.75m.

12. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission and for approval of the reserved matters referred to in the permission has a statutory right of appeal to the Secretary of State if agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period. Attention is also drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970.

13. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

14. Separate notes are attached to this letter setting out the circumstances in which the Secretary of State's decisions may be challenged by the making of an application to the High Court.

I am Gentlemen
Your obedient Servant

R W HIRST
Authorised by the Secretary of State
to sign in that behalf

CONCLUSIONS

The port development appeal

24.1 The main considerations in this case are (i) the likely visual impact of the proposed wharf and warehouse extensions, and (ii) the potential environmental effect of the works, bearing in mind policies in Structure and Local Plans controlling port expansion.

24.2 I deal first with the visual considerations. The extension and re-construction of the wharf would be seen from viewpoints on the opposite side of the river. In my opinion however the works would not intrude into or cause any visual harm against the background of the port development. I agree with the council's contention that, seen from the Fingringhoe bank to the south-east, ships moored against the new length of wharf would block part of the view of the rising wooded

land behind, but that part of the south bank is not developed and does not seem to be well frequented, and in any event I do not consider that minor loss of view to be a sound reason for refusing planning permission.

24.3 The warehouse extension would be clearly seen from Rowhedge and from footpath 10 along the riverbank. Doc 11, photos 8J & K were agreed to accurately indicate the extent of the works as seen from the footpath. In my opinion this intrusion into the view of Wivenhoe Woods would be significant, but in the context of the surrounding storage use I do not consider it would be so objectionable as to justify, by itself, dismissing this appeal, if the weight of the other arguments came down in favour of permission. It is nevertheless a factor which in my opinion should go into the balance against the proposal. I agree with the council's opinion that the removal of the former Chelmer Cargoes building would not be a significant balancing planning gain. Seen from Rowhedge the extension would be a more distant feature in the landscape, and therefore a somewhat less significant intrusion into the view of the wooded hill behind the storage area and railway station.

24.4 I turn to the environmental issue. I am in no doubt, from the evidence of the council and the local bodies and residents, and in agreement with previous Inspectors, that the activities in the port and the traffic generated by it have caused most unacceptable living conditions for local people, by reason of dust, noise, and traffic congestion and danger, for several years. I also take the view that the additional wharf facility and the more efficient warehousing provision would enable an expansion of business at the port which would be likely to exacerbate those conditions, particularly by the increase of heavy traffic through the narrow, congested and busy High Street. The appellants put forward an agreement to limit the annual tonnage of cargo crossing the wharf to 450,000, pointing out that this is less than in the peak years of 1984/5, and that the lorry traffic needed to deal with this work-load would be less than the traffic on the roads when Chelmer Cargo Services were operating. It is true that there is no theoretical limitation at present to the extent of business or the weight of lorry traffic which could use the port. Nevertheless the amount of cargo which has passed annually through the port since the peak years of the miners' strike has been significantly less than the limit now sought to be imposed. The improvements in efficiency which these proposed works are designed to bring about could well lift the levels of trade towards the upper limit which the appellants now seek. The result, in my view, would be to increase the problems of the town, particularly in respect of lorry traffic, to a level above which they are suffering now (even though they may be less than they have undergone in the past). In order to minimise those undoubted problems, I consider it right to take the base level as the present situation, rather than the higher levels which existed in the past.

24.5 The provision in the proposed section 52 agreement for dusty cargoes not to be loaded or unloaded over the easternmost 70 m of the wharf would not to my mind contribute significantly to an alleviation of this problem in Wivenhoe, in view of the evidence as to the widespread nature of this nuisance. The principal parties were not in a position to agree on the details of an agreement, in particular the definition of dusty materials, and the limitation of the handling of goods in the port to goods passing over the wharf, but in any event I would not consider it appropriate to grant permission for this proposal even if an agreement along these lines had been imminent. It is my basic opinion that the port is inappropriately sited so close to a pleasant country town through which all its traffic must travel, and these proposals, in making it more efficient, would also effectively establish it more firmly, increase its business, and be likely to increase the problems which are symptoms of its unsuitable location. I think that they would conflict with policy T22 in the Essex Structure Plan First Alteration (to which I would give more weight than to the existing Structure Plan in view of its advanced progress) and

with policy BP37 of the Colchester Borough Local Plan, to which I would also give substantial weight in the light of the evidence that the Plan review is unlikely to weaken this policy. I consider these environmental and policy objections to be so compelling as to outweigh all arguments for the proposals, including the general presumption in favour of granting planning permission and the general encouragement of business development.

The residential development appeal.

25.1 The main consideration in this case is the likely impact of the scheme, having regard to its scale, on (i) traffic conditions in the town, and (ii) visual amenity.

25.2 There was basic agreement between all parties that some residential development on the site was acceptable and was certainly preferable to the port. There were no Development Plan provisions which weighed significantly either in favour of or against the proposal, except insofar as the principal parties agreed that it would be an acceptable "windfall" site to help meet Structure Plan housing requirements. The only real issue was the geographical extent of the development. It was argued by local residents that housing over the whole 7.2 ha would impose too great a burden on the roads through the town because of the numbers of vehicles involved. On this issue however the appellants and the highway authority took an agreed view (Doc 15) that with the improvements mentioned the highway network could cope with the traffic generated, and the local planning authority did not dissent from this. I concur with that view.

25.3 The local bodies and residents were generally agreed that housing should be restricted to the original area of the port, east of footpath 10. The council were not so precise as to the limitation, and their witness gave his personal view that the site of the new warehouse should reasonably be included, with the remainder of the site to the west being left as an open amenity area. From my inspection of the site I was satisfied that the character of the western part of the site had changed from its original marshland nature, consisting basically of stacks of timber on concrete pads and with hard accesses, standing amidst roughly grassed areas. There was little or no physical delineation of the western boundary, however, the site merging with the wilder marsh area to the west. In my opinion it would be unrealistic to expect the whole of this area, which has been extensively concrete surfaced and used for visually evident storage uses since permission was given in 1966/7, to revert to marshland. On the other hand I consider that a residential estate would have significantly more visual impact than the existing scattered stacks of timber, and I think that it would be inappropriate to build hard up to the edge of the marsh in a way which would substantially increase the built development as seen from the south. The significance of the intrusion into that view would be considerably more than the sight of the warehouse extension I discussed in paragraph 24.3. It would be suitable for the area towards the western end of the site to be left undeveloped, for open space or amenity purposes. Since this is an outline application, however, this is a matter which would more appropriately be considered at detailed application stage.

Suggested conditions (Docs 25 & 26)

26.1 The conditions suggested to be attached to any permission for the port development seem to me to be acceptable, except for No 3. It appears to me that it would not be appropriate, and probably impracticable, to confine the use of the extension to the warehouse to goods passing over the wharf when a similar restriction does not apply to other storage buildings.

26.2 With regard to the conditions suggested for a residential permission, the first should I consider follow the usual form attached to outline permissions. No 2 seems in principle reasonable, in order to prevent two incompatible uses running side by side. I consider however that it should be worded so as to allow a reasonable "run-down" period for the port, and that it should not be phrased "for all time" since, once discontinued, any commercial use would in any event require fresh planning permission. No 3 is the proposed "Grampian" condition. I think a condition of this type is clearly appropriate so far as the B.1027/B.1028 junction and Station Road roundabout improvements are concerned, because these are both within the highway authority's control and agreed by them. The footbridge over the railway is not so certain of construction, since British Railways have only agreed it in principle, and, as the note at the foot of Doc 25 indicates, further planning permission may well be required. No form of objection was raised to this at the inquiry however, and I consider it to be certain enough to be included as part of the condition. If a contrary view is taken, I think the provision of the bridge is so important to safe pedestrian facilities as to justify withholding the issue of any permission until completion of an appropriate highways agreement.

26.3 The condition requested by the Water Authority appears acceptable.