



## PLANNING COMMITTEE

**DATE:** Tuesday, 19 December 2023  
**TIME:** 5.00 pm  
**VENUE:** Committee Room - Town Hall,  
Station Road, Clacton-on-Sea, CO15  
1SE

**MEMBERSHIP:**

**Councillor Fowler (Chairman)**  
**Councillor White (Vice-Chairman)**  
**Councillor Alexander**  
**Councillor M Cossens**  
**Councillor Everett**

**Councillor McWilliams**  
**Councillor Placey**  
**Councillor Sudra**  
**Councillor Wiggins**

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DATE OF PUBLICATION: Monday, 11 December 2023

## AGENDA

### **1 Apologies for Absence and Substitutions**

The Committee is asked to note any apologies for absence and substitutions received from Members.

### **2 Minutes of the Last Meeting (Pages 1 - 28)**

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on Tuesday 21 November 2023 and Monday 27 November 2023.

### **3 Declarations of Interest**

Councillors are invited to declare any Disclosable Pecuniary Interests, Other Registerable Interests of Non-Registerable Interests, and the nature of it, in relation to any item on the agenda.

### **4 Questions on Notice pursuant to Council Procedure Rule 38**

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

### **5 Report of the Director (Planning) - A.1 - 23/01145/FUL - 87 Hungerdown Lane, Lawford, CO11 2LY (Pages 29 - 50)**

Proposed erection of 1 no. dwelling in lieu of Prior Approval of 1 dwelling, subject of application 23/00739/COUNOT.

### **6 Report of the Director (Planning) - A.2 - 23/01514/FUL - 5 Brook Street, Manningtree, CO11 1DJ (Pages 51 - 60)**

Change of use from residential to office with no alternations. This application is before the Planning Committee owing to the fact that the applicant is an elected Member of the Council (Councillor Bensilum).

### **7 Report of the Director (Planning) - A.3 - 23/01312/FUL - Fir Tree House, Plough Road, Great Bentley, CO7 8NA (Pages 61 - 80)**

Proposed erection of detached dwelling with new vehicular access.

### **8 Report of the Director (Planning) - A.4 - Enforcement Report, November 2023 (Pages 81 - 88)**

In accordance with the Council's approved planning enforcement policy the Committee will receive an update report on the following areas:

- Number of complaints received/registered in the quarter;
- Number of cases closed in the quarter;
- Number acknowledgments within 3 working days;
- Number of harm assessment completions within 20 days of complaint receipt;
- Number of site visits within the 20 day complaint period;
- Number of update letters provided on/by day 21;
- Number of live cases presented by category, electoral ward and time period since receipt; and,
- Enforcement-related appeal decisions.

### **Date of the Next Scheduled Meeting**

*The next scheduled meeting of the Planning Committee is to be held in the Committee Room - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE at 5.00 pm on Tuesday, 16 January 2024.*

## **Information for Visitors**

### **FIRE EVACUATION PROCEDURE**

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**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON TUESDAY, 21ST NOVEMBER, 2023 AT 5.00 PM  
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,  
CO15 1SE**

<b>Present:</b>	Councillors Fowler (Chairman), White (Vice-Chairman), Alexander, Everett, Placey, Sudra and Wiggins
<b>In Attendance:</b>	Gary Guiver (Director (Planning)), John Pateman-Gee (Head of Planning & Building Control), Joanne Fisher (Planning Solicitor), Michael Pingram (Planning Officer), Naomi Hart (Planning Officer)(except item 57), Charlotte Cooper (Planning Officer)(except items 55-57), Bethany Jones (Committee Services Officer), Emma Haward (Leadership Support Assistant) and Hattie Dawson-Dragisic (Performance and Business Support Officer)
<b>Also in attendance:</b>	Keith Simmons (Head of Democratic Services and Elections)(except item 57)

**49. PLANNING COMMITTEE MEMBERSHIP**

**The Chairman of the Planning Committee (Councillor Fowler) read out the following statement:-**

*"I have been made aware that during the course of yesterday, Councillors Jeff Bray and Peter Harris, our colleagues on this Committee, informed the Chief Executive by formal notices to that effect, that they were resigning from the Conservative political group on Tendring District Council and that they were forming a new political group, namely the Tendring Residents' Alliance Group.*

*One of the consequences of those actions is that Councillors Bray and Harris have ceased to be members of this Committee and this is why they are absent this evening. The Leader of the Conservative Group, Councillor Carlo Guglielmi, will notify the Chief Executive, as soon as he is able, of the names of their replacements and I look forward to welcoming those Councillors to the Planning Committee in due course. Thank you."*

**50. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were no apologies for absence or substitutions submitted on this occasion.

**51. MINUTES OF THE LAST MEETING**

It was moved by Councillor Alexander, seconded by Councillor Placey and:-

**RESOLVED** that the minutes of the last meeting of the Committee, held on Tuesday 24 October 2023, be approved as a correct record and signed by the Chairman.

**52. DECLARATIONS OF INTEREST**

There were no declarations of interest submitted by Councillors.

**53. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38**

There were no such Questions on Notice submitted by Councillors on this occasion.

**54. REPORT OF THE DIRECTOR (PLANNING) - A.1 - 22.02072.FULHH - 3 DE VERE ESTATE, GREAT BENTLEY, CO7 8QB**

The Committee heard that the application involved the installation of a lowered curb providing vehicular access and a driveway that included a parking space in front of the property. The Officers' opinion was that the proposed development, subject to certain conditions, met acceptable standards in terms of design and aesthetics and was not expected to have any major adverse effects on residential amenities. Essex County Council Highways had been consulted regarding the application and had indicated that it complied with highway safety requirements, subject to the conditions as included in paragraph 8.2 of the officer report.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council's Planning Officer (CC) in respect of the application.

There were no updates circulated to Members on this application.

Steve McClaine, on behalf of the applicant, spoke in support of this application.

<b>Matters raised by Members of the Committee:-</b>	<b>Officer's response thereto:-</b>
<i>What is the view in the terms of the visibility splay and safety?</i>	<i>With the layby in the diagram, the Highways Authority have raised no objections, they have argued that the verge coming out of the property is wide enough for a clear view behind any vehicles that are parked in the layby. They have also said that if this application is approved then the next stage would be that the applicants apply for a Vehicle Crossing Application and then the layby is further assessed at that point and if it needs to be shortened for any reason then it will be assessed at that point.</i>
<i>Could you give us more information about the telegraph pole and if there is a clear vision when a car is coming out?</i>	<i>Again, the Highways Authority have not raised any objections to the telegraph pole and have said it will be further assessed at the Vehicle Crossing Application stage. There is a possibility that the applicant may be required to remove the pole which will be at the applicant's own expense and that will also be dealt with at the Vehicle Crossing Application stage but at the</i>



	<i>moment there have been no objections raised.</i>
<i>What is the latest stage for this application?</i>	<i>This is the application in planning terms to be considered but also the Highways Authority have their own application to consider later because they have to expressly consent to any new access joining their road. So that is separate and not a material consideration to us. The Highways Authority in their consideration will need to be assured of the safety aspects. So even if you do approve this application, they have to be assured themselves that there is a safe access, but safe access is also one of TDC's material considerations too. In respect to the conditions in the report, there are a number of conditions that we can control and one of them is the removal of the hedgerow in order to allow the visibility as the car is coming out of the driveway, the applicant will have a rolling vision and it will vary as there may be cars in the layby or not. Unfortunately, that is a risk here that on occasion the applicant's view is going to be blocked by the cars in the layby.</i>
<i>With regards to Condition 4 in the report, does that mean you can't park there?</i>	<i>The problem with a car is that it is not a permanent object so Officers would suggest that Condition be found fault with in respect of the layby. It's not a permanent feature that can be controlled and say it will be in breach of that. It will be a changeable obstruction that can change minute to minute so Officers don't think it is possible to enforce that in respect of parking but in respect of anything else like telegraph poles and other matters we would.</i>
<i>Can we condition that there is no parking on that new build and dropped kerb?</i>	<i>No one can park there by default as it is not their land, that is Highway land.</i>
<i>Who does the greensward belong to?</i>	<i>The pavement and the greensward are Tendring District Council land but in Highway terms you have the public right of way in any event. So, the control is TDC's and essentially Officers would not allow a car to park there as it would obstruct the public right of way.</i>
<i>Is there any condition that TDC can put on which says you can't park on that greensward or the pavement?</i>	<i>Officers would say it is unlikely, but you can put a condition on that for avoidance of doubt. To clarify,</i>

	<i>Councillors may want to consider the condition would be to ensure no parking at any time on the access to the driveway leading to the parking area.</i>
<i>Is the area in front of the property a permeable surface?</i>	<i>The material of the parking area and it assumed it continues through to the driveway is regarded as block paved and there are two types of that, and some are permeable, and some are not but Officers can condition to that affect that it has to be agreed if you wish.</i>

Following discussion by the Committee, it was moved by Councillor Alexander, seconded by Councillor Everett and unanimously:-

**RESOLVED** that:

- 1) the Head of Planning and Building Control be authorised to grant application 22/02072/FULHH planning permission subject to the conditions as stated at paragraph 8.2 of the Officer report and as added to at the meeting in relation to ensure no parking at any time on the access and driveway leading to the parking area and for its surface material to be permeable, with details to be agreed, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 2) the sending of any informative notes to the applicant as may be deemed necessary.

**55. REPORT OF THE DIRECTOR (PLANNING) - A.2 - 23.01448.FULHH - 42 ELM GROVE, CLACTON-ON-SEA, CO15 4DH**

Members were told that the application had been brought to the Planning Committee as the building was owned by Tendring District Council.

The Committee heard that the application sought retrospective planning permission for the erection of a single storey rear extension measuring 3.8m in depth and 3.1m in height.

Members were made aware that the extension was sited to the rear of the house and was deemed by Officers to be of an acceptable size, scale and appearance with no significant adverse effects on the visual amenities of the area.

Officers also told the Committee that the single storey nature of the extension meant it posed no significant threat to overlooking or loss of privacy to the adjacent neighbouring dwellings. It had no significant impacts on the loss of light, which were so significant as to justify refusing planning permission.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council’s Head of Planning and Building Control (JP-G) in respect of the application.

There were no updates circulated to Members for this application.

There were no public speakers for this application.

<b>Matters raised by Members of the Committee:-</b>	<b>Officer’s response thereto:-</b>
<i>Is this application before us because Tendring District Council own the property?</i>	<i>Yes, that is correct. Under TDC’s constitutional arrangements the application has to come to Committee.</i>
<i>Under normal circumstances, not being TDC property, would this application be dealt with by Officers?</i>	<i>Had this not come to Committee, Officers would have delegated powers to approve the application.</i>
<i>How does a building get built at this stage if the property is TDC’s?</i>	<i>Ultimately, there are two different regimes, and they have to deal with their applications on two different systems and not share information to a degree. Officers also have approved inspectors that don’t have to tell TDC what they’re doing, and they deal with a lot of sites as well. Arguably, because it is TDC land there is a third department involved as well but Officers can only deal with what is presented to them in a planning application.</i>
<i>Would this application be passed under permitted development had it not been TDC property?</i>	<i>No, given the height of the flat roof against the boundary within 2 metres of that boundary it is higher than 2.5 metres. There might be another reason but that is the most obvious reason that Officers can see so it needs planning permission. However, some instances, people are not clear on what is permitted development and what isn’t and have made a natural mistake and that is why retrospective applications come to Committee.</i>
<i>What is the danger of us causing a precedent here?</i>	<i>Unfortunately, the perception of the public of what they can and can’t do is a continuous challenge for the Authority and expressly telling them what is permitted development and what is not allowed and, in some cases, TDC have removed the permitted development rights away from some estates – that is a matter of education and to get the message out in an effective way. There is no punishment for retrospective applications, there are ideas around increased fees but ultimately this applicant has realised they needed planning permission and have put the application in to rectify their mistake and it can serve as a good example to realising what they needed to do for</i>

	<i>TDC to determine. This must be determined on its own individual merits.</i>
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Following discussion by the Committee, it was moved by Councillor White, seconded by Councillor Placey and:-

**RESOLVED** that:

- 1) the Head of Planning and Building Control be authorised to grant planning permission subject to the conditions as stated at paragraph 8.2 of the Officer report, and with the removal of condition 1, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 2) the sending of any informative notes to the applicant as may be deemed necessary.

**56. REPORT OF THE DIRECTOR (PLANNING) - A.3 - 23.00697.FUL - LAND AT 5 HUNTERS CHASE, ARDLEIGH, CO7 7LW**

It was reported that the application had been referred to the Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013 – 2033 and Beyond Section 2 (adopted January 2022) being located outside of any defined settlement boundary and had an Officer recommendation of approval.

Members heard that, although the proposed dwelling would see an increase in height and slight increase in footprint in comparison to the development approved under prior approval 21/00360/COUNOT, due to its location and the existing vegetation and proposed landscaping, it was not considered to cause any harm to the visual or neighbouring amenities.

The Committee was informed that the Council's Tree and Landscape Officer had raised no concerns, whilst sufficient parking and private space was provided, and Officers felt that there would not be significant harm to existing neighbouring amenities or ecology impacts. Essex Highways Authority had also raised no objections.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval subject to Unilateral Undertaking and Conditions.

At the meeting, an oral presentation was made by the Council's Planning Officer (NH) in respect of the application.

An update sheet had been circulated to the Committee prior to the meeting with details on the rewording of the recommendation and replacement of the comparison table which is as follows:

*"Recommendation under the Executive Summary*

Part 2 of the recommendation should refer to the conditions which are 8.2 of the Officers report. The recommendation should read as follows:

**Recommendation:** Approval subject to Unilateral Undertaking and Conditions, as follows:

That the Head of Planning and Building Control be authorised to grant planning permission subject to:

- 1) A completed Unilateral Undertaking securing;
  - Financial contribution of £156.76 (index linked) towards RAMS.
- 2) The conditions stated at paragraph 8.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 3) The informative notes as may be deemed necessary.

Comparison Table

The comparison table below is to replace the comparison table under 6.17 of the Officers report. The changes are to the ridge and eaves height of the prior approval application and the eaves height of the current application. The changes are considered to be minor and do not alter the Officers assessment or recommendation. The table should read as follows:

	<b>22/00360/COUNOT Approval)</b>	<b>(Prior</b>	<b>23/00697/FUL</b>	<b>(Current</b>
			<b>application)</b>	
<b>Siting</b>	To the rear of 5 Hunters Chase, in the northern corner.		To the rear of 5 Hunters Chase, in the northern corner, relocated slightly to the south west.	
<b>Access</b>	Via the existing access serving number 5 Hunters Chase.		Creation of a new access, driveway and parking areas through adjacent field with access from Coggeshall Road.	
<b>Appearance</b>	Minimal changes / no materials details provided.		Single storey barn like appearance constructed from clad the building in natural larch wood with a Marley Eternit slate roof	
<b>Ridge Height</b>	4 metres (Single Storey)		4.9 metres (Single Storey)	
<b>Eaves Height</b>	2.1 metres		2.1 metres	
<b>Identified site / site</b>	239m2 / 0.02ha (Limited amenity)		1864m2 / 0.19ha (Garden area included)	

<b>area</b>		
<b>Floor Area / footprint</b>	114sqm	120sqm
<b>Bedrooms</b>	3 bedroom	3 bedroom

Recommendation

The recommendation under section 8 of the Officer report should refer to a completed legal agreement. 8.1 should read as follows:

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions, informatives and the completed S106 legal agreement accompanying this application with the agreed Heads of Terms, as set out in the table below:

<b>CATEGORY</b>	<b>TERMS</b>
Financial contribution towards RAMS.	£156.76 x 1 dwelling (index linked)

Mollie Foley, on behalf of the applicant, spoke in support of the application.

<b>Matters raised by Members of the Committee:-</b>	<b>Officer's response thereto:-</b>
Where is the nearest mains drainage to this property?	Officers don't exactly know where the nearest main sewer is as the property is in a rural location. The next best option on the list is the package treatment plant which is what the applicant has gone for and under question 11 of the application form it says it is not intended to connect to a main sewer instead the foul sewage will be disposed in a way of the package treatment plant as the main sewer connection is not possible.
How close are the electric vehicle charging spaces to the charging point?	It can depend on the cable size. However, the applicant could put an underground cable in. For clarity, there is a condition on broadband that can clarify that point as part of that condition to adjust the wording accordingly.
Is number 5 on foul drainage and if so, why are they not connecting to it?	You are right. The priority of PPL5 is to connect to a mains drainage wherever possible. In a location such as this application, the agent has not provided the FDA form so therefore, Officers have to assess the application based on the information provided. A location like this, it is unlikely that there is going to be a mains drainage, but Officers

	<i>cannot guarantee that. In paragraph 6.56 of the Officer report, it outlines why the package plant treatment is the second-best option and that is why Officers have concluded that it is acceptable.</i>
<i>Can we condition that there is no lighting rather than sensitive lighting?</i>	<i>That would be a matter of debate that is necessary to require that. Ultimately, the existing building could have external lighting on it now and TDC have no control over that. Also, this is a residential use that may have night-time activity and therefore control of lighting, such as lighting for a driveway, is hard. A more restrictive condition could be possible such as no external lighting unless agreed and then any scheme that comes forward would be something for Officers to consider as and when.</i>
<i>Are there going to be solar panels put on the roof?</i>	<i>No, they are not going to be put on the roof.</i>
<i>Should there not be solar panels on the roof?</i>	<i>There are air source heat pumps that are part of this proposal, but there are no solar panels</i>
<i>Should solar panels not go on all new properties?</i>	<i>No, there is no requirement for solar panels to be put on new properties.</i>
<i>What are the proposals for that hedgerow and how much would be cut back?</i>	<i>There will be some loss of the hedgerow but there is a condition on the permission to allow for a replacement hedging for the element that is going to be lost so that will come as a discharge condition application. The size of the access is now going to be 6 metres roughly.</i>
<i>What is the driveway going to be made of?</i>	<i>There is a condition for it to be permeable.</i>
<i>Is there any way that we can condition something about the access without having to go through the Highways Authority?</i>	<i>At the moment there is an existing access, it is unlimited in the respect of traffic and can be used 24/7. Unfortunately for TDC that is our starting baseline position that Officers have to then look at materially. If Officers switched this to a residential use, they would ask if there was an improvement to that situation or not. Also, they will use the existing access which is already there and therefore the residential use could be less than what the agricultural state could be. Officers then will look at the improvement of this access and the widening of the access which means that it might be better through use and better through improvement that is being shown on the plan. Further conditions could be argued as being unreasonable as TDC is already gaining a position that is better than what is there already. Another problem is that the hedgerow would then need to be cut off even more.</i>

<p><i>Is it Clause 10 and 6 to the conditions that is being amended? Also, can we condition that the property be connected to a main sewer?</i></p>	<p><i>In terms of condition 10, Officers are asking that we adjust the broadband condition to clarify the points of connection and where they will be on the site. Condition 6 will be changed so that it is no external lighting unless agreed in writing as opposed to the current wording. In respect of the sewer, Officers cannot word a condition that says if it is possible because it is not precise or accurate that would pass the test of conditions and could be unreasonable and would not recommend putting a condition in about the sewer.</i></p>
<p><i>The foul drainage assessment and the binding rules state how many metres away if the mains drainage is within a certain number of metres, then it must be connected to, could we put an informative saying something along those lines?</i></p>	<p><i>Ultimately, the Councillor is correct in respect of the policy. Officers should have made more endeavours to pursue that point and Officers offer their apologies. Officers have assessed that the package sewage treatment is acceptable and planning harm is the key point. You could have an informative put in, but these are not required by the applicant to be done.</i></p>

Following discussion by the Committee, it was moved by Councillor White, seconded by Councillor Alexander and unanimously:-

**RESOLVED** that the Head of Planning and Building Control be authorised to grant planning permission subject to:

- 1) a completed Unilateral Undertaking securing;
  - financial contribution of £156.76 (index linked) towards RAMS
- 2) the conditions stated at paragraph 8.2 of the Officer report with Condition 10 being altered to agree charging point positions and Condition 6 to be replaced with a lighting condition that requires no external lighting unless agreed in writing by the LPA, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 3) the sending out of informative notes, including the addition to ask the applicant to explore the main sewer connection, as may be deemed necessary.

**57. REPORT OF THE DIRECTOR (PLANNING) - A.4 - 21.00386.FUL - 121-123 HIGH STREET, HARWICH, CO12 3AP**

It was reported that this application was before the Planning Committee as it had been called in by Councillor I Henderson.

The Committee heard that the proposal was for the construction of a new part two/part three storey building to provide 8 units of residential accommodation and 1 additional commercial unit (ground floor commercial unit as well as the existing shopfront to be



retained). The site was located within the settlement development boundary of Harwich and Dovercourt and the Dovercourt Conservation Area.

Members were told that the proposed scheme had been amended in line with extensive consultation with ECC Place Services Heritage Officers and was considered by Officers to be of a size, scale and design in keeping with the Conservation Area. Subject to conditions and mitigation there were no Officer concerns raised regarding the impact on the environment, neighbouring residential properties, the recently approved car park, area and the proposal was acceptable to Officers in regard to Highways and Parking impacts.

Members were reminded that the application had been previously before the Planning Committee in April 2022, for the same scheme. The Committee had approved the granting of planning permission subject to the completion of a legal agreement within six months relating to the following matters:

- Financial Contribution towards RAMS
- Open Space
- Highway Contribution towards residents parking

The Committee was told that while the legal agreement had now been completed, the time period had exceeded the six-month deadline, and therefore the application had been returned before Members to renew the authority to issue planning permission. In addition, while the previous recommendation had secured a financial contribution towards Open Space this had since been reviewed and the Council's Open Space team no longer required any such contribution given the local need and available facilities.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

An update sheet had been circulated to the Committee prior to the meeting to show the correct front page which the location of the application A.4 which was as follows:-



There were no public speakers on this application.

<b>Matters raised by Members of the Committee:-</b>	<b>Officer's response thereto:-</b>
<i>Are the self-contained flats self-contained with their own ensuite bathroom, kitchen, etc?</i>	<i>Officers can confirm that this is not an HMO application. These are simply just one-bedroom flats. One studio, then 7 one-bedroom flats.</i>
<i>With condition 3, are there any outside amenities?</i>	<i>We are happy to amend that condition to reflect that.</i>
<i>Could someone who owns a car that lives in one of the flats park their car at the back in the TDC</i>	<i>Officers have assessed the lack of parking provisions, and it is mentioned in the Officer report. If someone did have a car, then there</i>

<p><i>car park or will be there be regulations?</i></p>	<p><i>is no provision on site for it. In terms of the car park next door, Officers understand that there is a permit for all Tendring residents to use in TDC car parks, but this would fall outside of the Planning system.</i></p>
<p><i>Open Spaces are not going to pay any contributions, is that correct?</i></p>	<p><i>Originally on the first time this application was dealt with in April 2022, it was part of the recommendation. However, the Council's Open Space Team did not request a contribution, so it is not reasonable for TDC to request it.</i></p>

It was moved by Councillor White, seconded by Councillor Alexander and unanimously:-

**RESOLVED** that:-

- 1) the Head of Planning and Building Control be authorised to grant planning permission subject to the legal agreement now complete and conditions as stated at paragraph 8.2 of the Officer report, with the removal of Condition 3, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 2) the sending of any informative notes to the applicant as may be deemed necessary.

The meeting was declared closed at 6.44 pm

**Chairman**

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**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON MONDAY, 27TH NOVEMBER, 2023 AT 5.00 PM  
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,  
CO15 1SE**

<b>Present:</b>	Councillors Fowler (Chairman), White (Vice-Chairman), Alexander, Everett, McWilliams, Smith, Sudra and Wiggins
<b>Also Present:</b>	Councillor Scott
<b>In Attendance:</b>	Gary Guiver (Director (Planning)), John Pateman-Gee (Head of Planning & Building Control), Joanne Fisher (Planning Solicitor), Jacob Jaarsma (Planning Team Leader), Bethany Jones (Committee Services Officer) and Emma Haward (Leadership Support Assistant)
<b>Also in attendance:</b>	Keith Simmons (Head of Democratic Services & Elections) (items 58 & 61 only)

**58. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies were received from Councillor Placey (with Councillor Smith substituting).

**59. DECLARATIONS OF INTEREST**

Councillor Wiggins declared for the public record in relation to report **A.1 – Planning Application – 22/02076/FUL – LAND NORTH AND SOUTH OF A133 CLACTON ROAD AT FINCHES LANE, ELMSTEAD, CO7 7FD** that she was a Ward Member. She advised the meeting that she was not pre-determined, and that therefore she would participate in the Committee’s deliberations and decision making for this application.

**60. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38**

There were no such Questions on Notice submitted by Councillors on this occasion.

**61. REPORT OF THE DIRECTOR (PLANNING) - A.1 - 22 02076 FUL - LAND NORTH AND SOUTH OF A133 CLACTON ROAD AT FINCHES LANE, ELMSTEAD, CO7 7FD**

It was reported that this application was being presented to Members because it constituted a major development proposal on an unallocated site outside the settlement development boundary of nearby Elmstead Market, and therefore it was a departure from the Development Plan. More specifically, the residential aspect of the proposal raised concerns by not aligning with the statutory, plan-led approach for future housing in the District. Additionally, the development on the north side of Clacton Road would result in the permanent loss of good quality agricultural land, as well as causing localised landscape-related issues. The application had also failed to demonstrate that the commercial (outline) element, to include Class E retail floorspace, would not have an unacceptable impact on Elmstead Market Village Centre. Those areas of harm resulted in clear conflict with the relevant policies as set out in the corresponding sections under the ‘Assessment’ heading in the Officer’s report.

Members heard that against the aforementioned harm the scheme offered substantial benefits, most notably in the provision of a much-needed combined Employment and Special Educational Needs (SEN) facility embodied in the Market Field Grows (MFG) element (use Class E/F1), featuring a Multi-Use Building incorporating a publicly accessible library, reception office and workshop areas. Furthermore, the proposal would result in substantial economic benefits, both directly and indirectly, through the provision of the MFG facility and during the construction phases of the development.

The Committee was told that there were some minor shortcomings in locational infrastructure that might discourage sustainable modes of travel, such as walking and cycling from the development site to nearby Elmstead Market and/or other strategic urban settlements such as Clacton-on-Sea and Colchester. However, robust mitigation was proposed in the form of improved footpaths along Clacton Road, a pedestrian crossing over Clacton Road and the implementation of speed restrictions, as well as other necessary environmental and landscape mitigation, all to be secured through conditions and a section 106 agreement. Those factors were considered by Officers to be neutral in the overall planning evaluation.

Officers also informed Members that other third-party representations, including those from technical consultees and members of the public had been thoroughly reviewed and integrated into the Officer's assessment of this proposal. It was deemed by Officers that the significantly revised proposals, subject to the imposition of conditions and section 106 obligations and contributions as outlined in the Officer report, had effectively addressed all remaining technical policy concerns.

Members were finally told that ultimately, after careful consideration of the planning balance and material considerations, the significant benefits outlined and explored in the report were deemed by Officers to marginally outweigh the considerable concerns related to the failure to align with the statutory plan-led approach. It was recognised that in planning law development should be refused that was contrary to the development plan unless material considerations dictated otherwise, and the Officer conclusion was that there was sufficient material benefit and a positive development overall to allow this application to be approved.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval subject to S106 and consultation/notification of the Secretary of State under paragraph 5(1) of the Town and Country Planning (Consultation) (England) Direction 2021.

At the meeting, an oral presentation was made by the Council's Planning Team Leader (JJ) in respect of the application.

An update sheet had been circulated to Members before the meeting following the publication of the Committee report, setting out additional information and correspondence that had been received from the Planning Agent (acting on behalf of the applicant) and County Councillor Carlo Guglielmi. That content had been included at the end of the update sheet and for purposes of transparency it had also included the following updates of Time Limit Conditions, an amended recommendation, and changes to Conditions 11 and 32 which were as follows:

**"Time Limit Conditions**

In respect of conditions 1, 3 and 4 (section 7.2 of your committee report) - with additional information provided by the applicant in terms of the extent of the highways works required and the timescales involved - this may impact implementation times - with this in mind officers recommend changes to the timescales in conditions 1, 3 and 4 as follows (all extending timescales in line with the standard time limit conditions):

Condition 1

The development hereby permitted shall be begun before the expiration of **three years** from the date of this permission.

Condition 3

The development hereby permitted shall be begun before the expiration of **two years** from the date of approval of the reserved matters application.

Condition 4

Application for approval of the reserved matter (landscaping) shall be made to the Local Planning Authority before the expiration of **three years** from the date of this permission.

**Recommendation section (page 4) – point 4 (additions indicated in Bold):**

Amend to: That in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months **from the date of the Secretary of State response (assuming that response is to not call the application in for its own determination)** that the Planning Manager be authorised to refuse the application on appropriate grounds at their discretion.

**Renewable Energy and Energy Efficiencies**

Change condition 32 to the following (new additions or amended sections highlighted in bold):

No development shall commence above slab level on any phase until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme such include as a minimum to achieve:-

- Details of, including the location of an electric car charging points per dwelling and electric car charging points for the MFG facility.
- **Agreement of a scheme for water conservation including greywater recycling and rainwater capture/re-use for new dwellings.**
- **Agreement of a scheme to achieve as far as possible a water consumption rate of not more than 110 litres, per person, per day for new dwellings.**
- Details of, including the location of solar panels for each dwelling.
- Agreement of heating of each dwelling/building.
- Agreement of scheme for waste reduction.
- **Provision of a fibre optic broadband connection to the best possible speed installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing. (If the applicant is unable to achieve this standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 30mbps) wireless service will be considered.)**

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*(the above amendments are required to reflect a most recent version of the LPA's condition on Renewable Energy and Energy Efficiencies measures)*

**Landscaping Scheme (condition 11) – amend to include the words in **bold****

*No development above slab level on any of the residential or MFG phase(s) shall take place until there has been submitted to and approved, in writing, by the Local planning authority a precise scheme of hard, soft and boundary treatment landscaping works, **and access gates or (where necessary) security gates** for the relevant phase, which shall include any proposed changes in ground levels.*

## **APPENDIX 1**

*Cllr Carlo Guglielmi document titled 'Market Field Grows Statement*

*Madame Chairman and fellow Members,*

*I am the ECC Division member for the area, and the vice Chairman of the People and Family Scrutiny Committee, which amongst its many topics of all Education Provisions, Children and Adult Social Care, Children Services, Co-Parenting, Safeguarding, Libraries, and Youth Services, it regularly scrutinises Special Educational Needs (SEN) provisions, strategies, and outcomes.*

*In 2019 the Care Quality Commission (CQC) inspected this area of the County Council and commented that not enough post-education employment opportunities were being created. Sadly, this is the case just about everywhere else up and down the country in other authorities who are responsible for SEN Provisions.*

*I write to express my support for this application, and I would like to congratulate Officers in having drafted such a comprehensive report which acknowledges that in this application, the fine balance of material benefits outweighs the fact that under normal circumstances this proposal would have been refused.*

*But these are not normal circumstances. If approved, this Enabling Development will deliver an amazing facility for young people with Special Educational Needs that will provide sustainable employment when they leave school.*

*This will be a national first, as there is nowhere else in the country that offers the kind of skills-building chances that Market Field Grows will be able to provide.*

*Not only young school leavers with Special Educational Needs will have a chance to fully realise their potential, but they will also be able to go through life without the reliance on the benefit system, which ultimately, will save the public purse a staggering amount of money, which I am sure is a subject that will be covered by the public speakers.*

*The range of skills on offer will likewise be amply outlined by others, therefore I will not say much on this, other than those young people leaving education will have the luxury of being able to choose a career pathway, such as food growing, retailing opportunities, food preparation, stock control, hospitality, and so on.*



*The Officer has referred in the report to this particular benefit as “Life Changing Opportunities”; he is absolutely right.*

*It is a game changing prospect for those young people who attend Market Field School and College, a most amazing place for many years under the direction of an equally most amazing Head Teacher, Gary Smith who just cannot be stopped; even after having had a hip replaced, he was back at work much too soon, such was and is, his dedication to all his students; his lifetime ambition is to see this dream become a reality.*

*It has taken many years to develop this proposal, looking at sites, identify locations, search for funding, engaging with and getting buy-in from key stakeholders, and finally, presenting it in front of Members; and tonight, you will have the opportunity to make history if you approve this application.*

*I have to acknowledge Elmstead Parish Council’s neutral and careful response to this proposal as I really do share their feelings of having had more than their fair share of new homes in the village, especially having to deal with all the issues that new development will bring, while at the same time recognising the benefits that Market Field Grows will create. I live in an area in the district, Lawford, Mistley, and Manningtree that by the time all planning applications will be built, the area will have seen a growth of well over 2000 new homes, therefore I am fully aware and share their concerns.*

*But because of the tremendous cost and the complexities of getting it off the ground, an opportunity such as this doesn’t materialise very often, or in fact hardly at all, so therefore, although there are a lot of issues and factors to be considered, the balance of the benefits does outweigh the harm; and please do direct all your thoughts at the scores of young people who in generations to come, and well after us, will benefit from this amazing project, and will be able to lead a normal life as possible, as those young people without Special Educational Needs.*

*Thank you.”*

23<sup>rd</sup> November 2023

By Email

Dear Jacob,

**Application 22/2076, Clacton Road – Response to Hills Residential.**

Further to recent discussion and following the publication of the committee report please accept this letter as our formal response to the report.

Firstly please accept our teams thanks for the efforts of the planning department in processing this application and reporting the matter to planning committee. It is not often in a planning career that the opportunity arises to process such an application with a sound moral case that justifies an exception position; personally I take great pride in such cases and sincerely appreciate the efforts of all staff involved from pre-application through to delivery – thank you.

As a response to the report I would like you to receive the following and report this as such to Members.

- The applicant team are grateful for the Officers time and attention to detail in assembling and reporting of the committee report, it is thorough and has been executed with clarity in a fair manner.
- The applicant team are keen to point out to Members the unique and special circumstances of the application. It is believed this is a one of a kind submission, the housing will be delivered at a reduced profit margin and the contribution from the development will be the provision of an SEN school/college/charity facility that our 'system' cannot provide the infrastructure for. In doing so the process locks the physical development into the actual provision at the developers risk– it delivers a comprehensive solution to a problem using the planning system and a sound land management/planning response.
- This is a unique application and a national first. The application offers young people with SEN needs the opportunity of dedicated skill building, further education and supported employment.
- The application challenges the current statistic of 95% of SEN secondary school leavers going on to long term unemployment.
- The applicant team endorse the approach of the committee report and are in agreement with the proposed resolutions and the principles of the S106 agreement to be secured.

- Noting the application is a departure and presents development to fund another much needed use the obligation to deliver any excess profit through a review process is accepted by the applicants. The team looks forward to discussing the detail of this process post resolution.
- The request is made to amended proposed condition 01 within the addendum to allow a standard three year planning permission implementation period. It is believed that there is up to two years of ECC Highways detail/negotiation to be undertaken before works can be officially commenced, a three year commencement condition will support this position.
- The need to refer the application to the Secretary of State is acknowledged.

Again, thank you for all of the effort to date. With a fair wind we look forward to resolving the final details of the application with you.

Yours sincerely,

Chris Board

Ralph Holloway, Head of SEND Strategy and Innovation at Essex County Council, spoke in favour of the application.

Naomi Pudney, one of the applicants, spoke in favour of the application.

Gary Smith OBE, one of the applicants, spoke in favour of the application.

David Bullock, member of the public, spoke in favour of the application.

Alan Goggin, member of the public, spoke in favour of the application.

Joanne Matthias, member of the public, spoke in favour of the application.

Bill Marshall, member of the public, spoken against the application.

Councillor Gary Scott, a Ward Member, spoke in favour of the application.

<b>Matters raised by Members of the Committee:-</b>	<b>Officer's response thereto:-</b>
<p><i>Can you explain what the view is as to whether this is an enabling development under the National Planning Policy Framework (NPPF) or not and how we deal with that conflict?</i></p>	<p><i>In respect to the NPPF, there are 2 parts of the NPPF that refer to the word 'enabling'. It is a very common phrase but in context to the NPPF, it is referred to in two paragraphs, which both refer to a connection to historic assets. Ultimately, the rest of the NPPF is silent on that position. The point of the paragraphs in question referring to 'enabling', it doesn't say you can't employ enabling for anything else. If you were to ask the question of 'is there anything that specifically allows a point of enabling within the NPPF' – the answer is no. What Officers are dealing with though, is in terms of the Planning Act that your position here is to consider your</i></p>

	<p><i>development plan unless other material considerations indicate otherwise. What you have before you are a balance of material considerations. One of which is the Market Fields site. Officers are considering those to be significant material considerations that Officers feel do indicate a departure from the Local Plan which could be lawfully made if that is what Members wish to do.</i></p>
<p><i>So does that mean we're not looking at an enabling development, we're looking at a balanced situation of benefit and harm in the normal planning balance?</i></p>	<p><i>It would be a red herring to continue to use the word 'enabling'. In the context of the NPPF, those two particular paragraphs are in reference to historical context and in this case, we have no historical context, and we have no listed building on site or otherwise to 'enable' so we need to ignore them (the paragraphs), and they are not material considerations on the basis that this particular development does not have a context of a listed building to consider that we know of.</i></p>
<p><i>Who ultimately decides the weight of any of those issues?</i></p>	<p><i>Your Officers have provided the Committee with a planning balance of what weight Officers feel should be applied and that is summed up in the report. The Committee (Members) are the deciders, and that is why it is in front of you and the Committee either agrees or not with the Officer's recommendation or their own applied weight to the development issues.</i></p>
<p><i>Do Officers have anything to add regarding the Essex County Council's (ECC) Ecology objection?</i></p>	<p><i>The ECC Ecology don't actually raise any objections to the content of the Ecology reports provided, they seem to have an issue in respect of the potential of those oak and hawthorn trees along the Northeastern boundary to provide habitat for bats. The trees are going to be retained and the tree planting along that boundary are going to be re-enforced with additional native species. These have been pointed out to ECC Ecology, they have also raised a technical point in terms of whether the development will provide suitable mitigation in terms of the impact of the nearby RAMS. So, the proposal will mitigate against that impact as Officers have secured the RAMS payment for each of the 126 dwellings proposed. The only difference in terms of the trees is that they will now be included into the rear gardens of the properties, which are along the Northeastern boundary. Officers have asked for that change, as previously a long narrow corridor was proposed for a dog walking area but from an overall general design point of view the narrow corridors don't usually work so Officers thought it would be better to include them in the gardens of the properties. The trees are protected and won't be threatened as the</i></p>

	<p><i>gardens are quite long. Members were also reminded of the statutory duty under regulation 63 of the Conservation of Habitats and Species Regulation 2017.</i></p>
<p><i>Did the Head of SEND at ECC request anything special for this type of school?</i></p>	<p><i>Officers didn't receive representations asking for specific sites for inclusion in the Local Plan. However, ECC were participants in the infrastructure evidence that sat alongside the Local Plan. One thing to remind Members is that the consultation on the Local Plan took place in 2015, 2016 and 2017 and there was a very long period where Officers were working with the Planning Inspector before the plan was finally adopted.</i></p>
<p><i>What are TDC doing to resolve the ECC Ecology objections?</i></p>	<p><i>The applicants have provided the required reports and appraisals for this application. As part of the final consultation, Officers have reconsulted the ECC Ecology and they have essentially come back with two issues, one being clarification on the potential of the trees changing position, which Officers have given the clarification and additional drawings and information to demonstrate that the suitable alternative green spaces and the footpaths along that Southeastern part of the site will be the 2.7km wide requirement length and Officers also provided clarity that internally the development will provide footpaths to link up with that area, as well as the improved footpath along Clacton Road. Officers feel that the issues could be down to a misunderstanding from ECC Ecology on what exactly is being proposed and the mitigation package to include the RAMS contribution. Officers have added a condition seeking the Ecological Enhancement Measures to be implemented in spite of the proposal and details include sensitive lighting for bats etc.</i></p>
<p><i>Have Officers reconsulted Place Services with that information that has been provided?</i></p>	<p><i>Yes, Officers have done that. In the Officer's report, Members can see that Place Services have phrased it as not having sufficient ecological information and unfortunately Officers disagree with that point slightly. In terms of ecology on site, in respect of the trees, bats and enhancement, Officers and Place Services Ecology are satisfied that they have got the information necessary, and it passes the test. The part that Officers are not in agreement with is that they feel that the site should have more walking space to allow residents to walk their dogs and move around and enjoy more open space rather than go find somewhere else to do those things which could be part of the site where the RAMS contributions would be going towards – this is an unproven concept with dealing with individual rights with who wish to leave the</i></p>

	<p>site to find somewhere else to walk their dog or have more open space. There is no evidence to show one way or another to argue that point out. Officers have carried out the appropriate consideration against legislation and are satisfied with what is being recommended to Members on this point.</p>
<p><i>Has the information needed for Natural England been provided to them since 21 August 2023?</i></p>	<p>Officers have reconsulted them and the situation of the position with Natural England holding objection is set out in paragraph 6.134 and 6.135 of the Officer report and is similar to what has been said previously with disagreement in terms of the quality of the suitable alternative natural green space within the development. However, from a point-by-point technical point of view, the alternative natural green space complies with all the relevant guidance points such as the total length of footpaths in the development. There is in fact no footpaths around the site for the development to link up with. The nearest footpath is a considerable distance away to the North-East and to the North-West. The applicants will be providing dog waste bins as part of the legal agreement and there is a condition regarding additional tree planting and landscaping. Officers have provided Natural England and ECC Ecology with all this information and with Natural England TDC haven't had a subsequent response back after the last consultation.</p>
<p><i>With regards on broadband, has anyone tested the speed? Will there be a choice of provider or are residents having to stick with the same provider? Who pays for the faster access?</i></p>	<p>As an Authority, Officers don't dictate to residents which provider they can use, that is a market decision and TDC can't be involved with that. That will be influencing competition etc. Ultimately, TDC's position is to ensure that the baseline infrastructure is available, and Officers can only go as far as that in the context of the provision can be made. This doesn't necessarily ensure that it will be connected and maintained for however as it is out of Officer's control.</p>
<p><i>Can we have clarification that all markets can come in for providers of broadband instead of just one provider?</i></p>	<p>It is not a planning condition Officers would impose. Officers don't impose a restriction on who. If it is imposed by the developer, then that is a private legal arrangement between the developer and the occupier of the building.</p>
<p><i>Is the £77,000 of developer contributions going to be made?</i></p>	<p>Yes, that has been secured towards healthcare.</p>
<p><i>What weight do you put on the stance of the Parish Council and particularly their points?</i></p>	<p>Officers see the Parish Council as the voice of the local people, so Officers apply weight accordingly to that status. The Parish Council are an important contributor to the planning system. To the weight that Members apply to the benefits is a matter for Members as the decision maker. The Parish</p>

	<p><i>Council are third-party. All representations are material and that is the reason why Officers consult them but specifically in respect of this Parish Council they have a neutral stance, which means they neither object nor agree with this development which means Officers can only weigh their opinions as neutral in the balance of considerations.</i></p>
<p><i>What weight would TDC give with the conflicts in the neighbouring plan?</i></p>	<p><i>It is an emerging neighbouring plan, so TDC have reached stage 4 in a 6-stage process. So, at this stage, TDC give limited weight to the neighbouring plan as it has not yet been adopted or yet been through examination. The neighbouring plan is seen in the same light as the development plan and therefore we have a conflict in terms of the Local Plan.</i></p>

It was moved by Councillor Alexander, seconded by Councillor McWilliams and:-

**RESOLVED** that:-

- 1) on appropriate terms as summarised below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control to secure the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters:
  - to provide the Market Fields Grow (MFG) facility in full including all buildings, utilities, internet, plastering and decoration, hard surfaces, landscaping and seating prior to occupation of 63<sup>rd</sup> dwelling and to transfer the facility in a freehold manner for £1 to the registered charity. The facility shall be functionally available on transfer. The finish level of the facility shall be agreed in writing by the LPA, and no dwellings shall be occupied beyond the occupation of the 63<sup>rd</sup> dwelling until the MFG is provided in full and thereafter maintained as approved and for this use only.
  - the library in MFG facility to be made accessible to the wider public in perpetuity – detailed arrangements to be agreed in writing by the LPA.
  - the skills training centre element of the MFG facility hereby approved shall remain in use Class F1(a) (provision of education) in perpetuity.
  - a financial contribution of £156.76 per dwelling index linked towards mitigation in accordance with the Recreational disturbance Avoidance and Mitigation Strategy (RAMS).
  - provision of on-site public access open space and play provision.
  - maintenance and management of public access open space and open space on site including the provision of dog waste bins in the POS area including details of maintenance in perpetuity
  - if within 10 years of the decision the Class E business units (proposed under the Outline element) hereby approved fail to be in functional use (in full or part) the land (or as may remain) shall revert to public open space use.

- incorporation of a mechanism to ensure the viability of the scheme is reviewed. Details to be agreed, any monies gained if viability exceeds agreement shall be used for affordable housing provision
- a reduction in the speed limit along Clacton Road in front of the site (currently 60mph) to a lower speed limit, possibly 40mph (subject to a safety audit). This obligation is subject to a series of safety audits that apply to developer delivered schemes to the satisfaction of the Highway Authority.
- the existing 40mph speed limit that terminates approximately 480 metres to the west of the application site to be extended eastwards to incorporate the entire development site fronting Clacton Road, and to include the provision of a gateway feature at the new location (to be agreed with ECC Highways) for the terminal signs.

*Note: in respect of the above two highways mitigation requirements, it should be noted that there is no guarantee that a future reduction in the current speed limit and the extension of an existing 40mph speed limit will actually be realised in the area because the implementation of these measures (or not) are subject to a process completely separate to the planning process, and will be subject to a separate consultation process. The Developer is aware of this and has accepted the risk.*

- a developer contribution of £77,000 towards Healthcare provision in order to mitigate against the impacts of this proposal. This contribution to go towards capital funding to increase capacity within the local GP Catchment Area. That contribution to be held by This Council.
- 2) the Head of Planning and Building Control be authorised to grant planning permission subject to the agreed section 106 agreement and the planning conditions as stated at paragraph 7.2 of the Officer report as amended by the Officer Update Sheet, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained;
  - 3) the sending of the informative notes to the applicant as may be deemed necessary;
  - 4) in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months **from the date of the Secretary of State response (assuming that response is to not call the application in for their own determination)** the Head of Planning and Building Control be authorised to refuse the application on appropriate grounds at their discretion; and,
  - 5) in the event that Secretary of State calls in the application Officers are authorised to present a supporting case in line with Resolutions 1 and 2 above, or on the grounds of refusal should the Section 106 obligations not have been secured.

The meeting was declared closed at 7.07 pm

**Chairman**





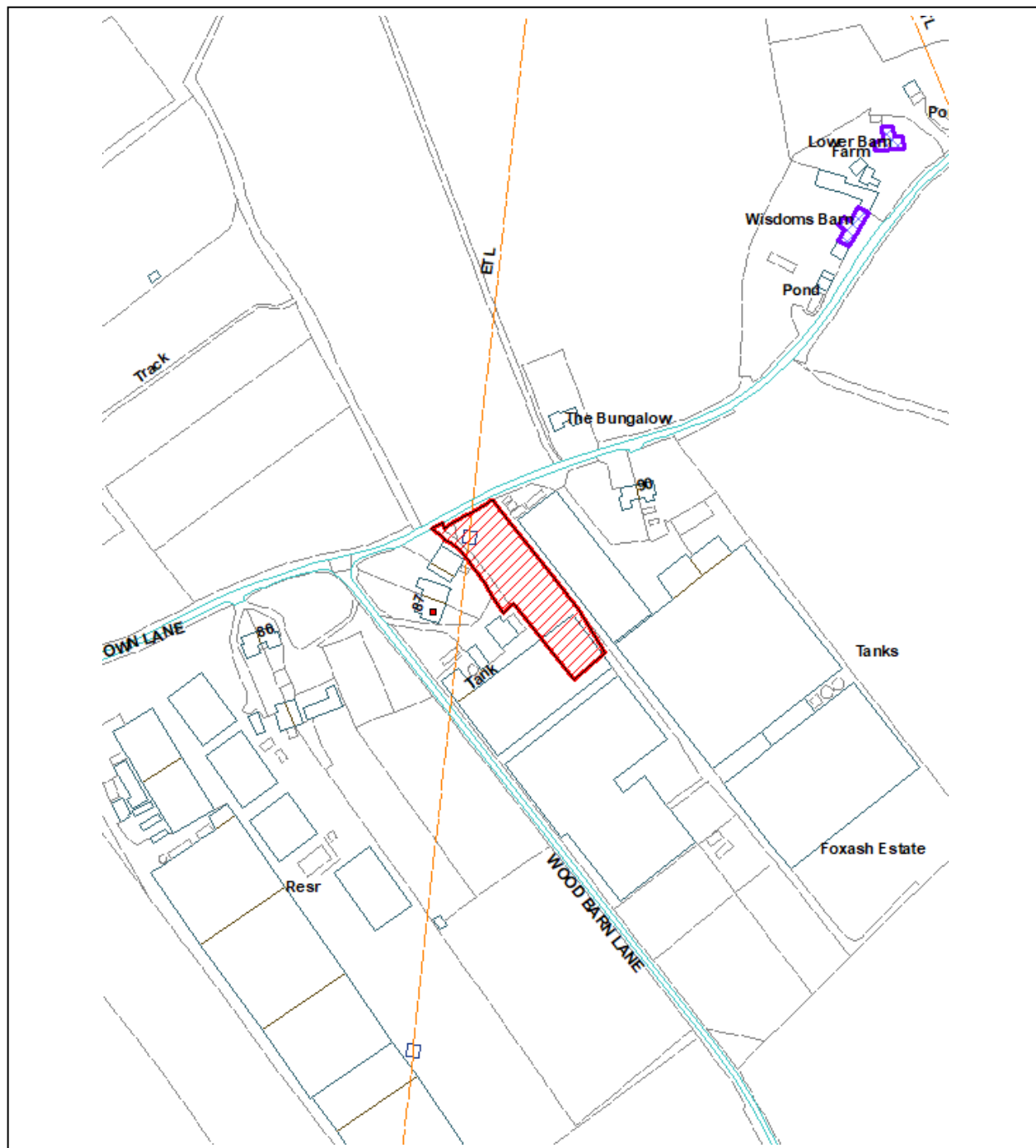
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## PLANNING COMMITTEE

19 DECEMBER 2023

### REPORT OF THE DIRECTOR OF PLANNING

#### A.1. PLANNING APPLICATION – 23/01145/FUL – 87 HUNGERDOWN LANE LAWFORD MANNINGTREE CO11 2LY



DO NOT SCALE

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<b>Application:</b>	23/01145/FUL	<b>Expiry Date:</b>	6th October 2023
<b>Case Officer:</b>	Michael Pingram	<b>EOT Date:</b>	22nd December 2023
<b>Town/ Parish:</b>	Lawford Parish Council		
<b>Applicant:</b>	Mr and Mrs Richardson		
<b>Address:</b>	87 Hungerdown Lane Lawford Manningtree, CO11 2LY		
<b>Development:</b>	Proposed erection of 1 no. dwelling in lieu of Prior Approval for 1 dwelling, subject of application 23/00739/COUNOT.		

## 1. Executive Summary

- 1.1 The application is referred to Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any defined settlement development boundary and has a recommendation of approval.
- 1.2 The proposed dwelling is sited in a different location further along to the east adjacent to the prior approval building, but is of a very similar size, design, and also retains the same number of bedrooms. Officers are content the proposal would not be harmful to the character and appearance of the surrounding area, in part is a desirable improvement over the prior approval 23/00739/COUNOT approved as the new siting reduces impact on neighbouring amenity.
- 1.3 There are no significant issues in respect to neighbouring amenities or harm to trees. Essex Highways Authority have raised no objections and there is sufficient space for parking.

### **Recommendation:** Approval

- 1) That the Head of Planning and Building Control be authorised to grant planning permission subject to the conditions as stated at paragraph 8.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 2) The informative notes as may be deemed necessary.

## 2. Planning Policy

The following Local and National Planning Policies are relevant to this planning application.

National:

National Planning Policy Framework July 2021 (NPPF)

National Planning Practice Guidance (NPPG)

Local:

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 Plan (adopted January 2021)

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

- SPL1 Managing Growth
- SPL3 Sustainable Design
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL10 Renewable Energy Generation
- HP5 Open Space, Sports & Recreation Facilities
- DI1 Infrastructure Delivery and Impact Mitigation
- CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

### **Status of the Local Plan**

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

### **Neighbourhood Plans**

There is no Neighbourhood Plan that would apply to this site.

### **3. Relevant Planning History**

23/00739/COUNOT	Prior Approval Application under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for proposed conversion of barn rear of 87 Hungerdown Lane, addition of windows to new rooms.	Prior Approval not required.	04.07.2023
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### **4. Consultations**

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

#### **UU Open Spaces - Summary**

**11.09.2023**

No contribution is being requested on this occasion. The current facilities are adequate to cope with this development.

#### **ECC Highways Dept**

**01.09.2023**

The information submitted with the application has been assessed by the Highway Authority and conclusions have been drawn from a desktop study with the observations below based on submitted material. No site visit was undertaken in conjunction with this planning application. It is noted, as with the earlier application, access to the site is via an existing established vehicular access, there was no initial concerns with this under the approval 23/00739/COUNOT. Whilst the site is located in the countryside, it is not considered that the proposal would give rise to a significant increase in vehicle movements to and from the site or result in a material change in the character of the traffic in the vicinity of the site. Given the scale of the proposed development and the area to be available for parking within the site, which complies with Tendring District Council's adopted parking standards, considering these factors:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the road junction / access is first used by the development and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between users of the access and the public highway in the interests of highway safety in accordance with policy DM1.

2. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

3. Prior to the occupation of the dwelling the internal layout and parking shall be provided in principle with drawing number:

o Drawing: P01 Rev. B Amended proposed block plan, floor plan, and elevations.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM1.

4. The proposed dwelling shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, and sealed. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

Reason: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided in accordance with Policy DM8.

5. The powered two-wheeler/cycle parking facilities as shown on the approved plan are to be provided prior to the first occupation of the development and retained at all times.

Reason: To ensure appropriate powered two-wheeler and bicycle parking is provided in accordance with Policy DM8.

6. Any new or replacement boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

**Tree & Landscape Officer**

**18.08.2023**

The existing building to which planning application 23/00739/COUNOT relates is set back into the plot of the host property and is not clearly visible from a public place or from the highway. Its renovation and change of use would not adversely affect the visual appearance of the locality.

The land identified for proposed position of the new dwelling is set to grass and planted with several small fruit trees. The trees do not feature prominently in the public realm and do not merit retention of formal legal protection by means of a Tendring District Council tree preservation order.

The site boundary with the highway is planted with a boundary hedge comprising of hedging conifers. There is a young Sweet Chestnut (*Castanea sativa*) close to this boundary. The conifer hedge and the Sweet Chestnut are shown as retained on the Block Plan.

It is noted that the proposed dwelling would be relatively well screened and that it would not be a prominent feature in its setting, however in terms of the impact of the proposed development on the local landscape character it is considered that a new dwelling in the proposed location is not in keeping with the local settlement pattern and that it would contribute to the gradual erosion of the countryside.

Should planning permission be likely to be granted then details of soft landscaping should be secured by a planning condition. Soft landscaping should aim to soften, screen and enhance the appearance of the development. This is likely to involve the retention of existing boundary vegetation or its replacement if it were considered necessary for it to be removed in order to implement the proposed development.

**Essex County Council Ecology**

**28.11.2023**

No objection subject to securing:

- a) a proportionate financial contribution towards Essex Coast RAMS
- b) biodiversity mitigation and enhancement measures

**Summary**

We have reviewed the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures.

The site falls within the evidenced recreational Zone of Influence (ZOI) of Essex Coast RAMS. Therefore, given the residential element of this development is relevant, we note that the LPA has prepared a project level HRA Appropriate Assessment to secure a per dwelling tariff by a legal agreement for delivery of visitor management measures at the designated sites. This will mitigate for predicted recreational impacts in combination with other plans and projects and avoid Adverse Effect on Integrity of the designated Habitats sites.

We are now satisfied that there is sufficient ecological information available for determination of this application.

This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly Great Crested Newts and nesting birds.

We also support the proposed reasonable biodiversity enhancements of one triple House Sparrow box or three single house sparrow boxes, which have been recommended by the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) to secure net gains for biodiversity, as outlined under Paragraph 174d of the National Planning Policy Framework (2023). The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Strategy and should be secured by a condition of any consent.

In addition, the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) highlights that it is likely bats could be foraging/commuting within and around the site. Therefore, if any external lighting is to be proposed, it is advised that a sensitive lighting scheme is developed to minimise any impacts. This should summarise the following measures will be implemented:



- o Light levels should be as low as possible as required to fulfil the lighting need.
- o Warm White lights should be used at <2700k. This is necessary as lighting which emit an ultraviolet component or that have a blue spectral content have a high attraction effect on insects. This may lead in a reduction in prey availability for some light sensitive bat species.
- o The provision of motion sensors or timers to avoid the amount of 'lit-time' of the proposed lighting.
- o Lights should be designed to prevent horizontal spill e.g. cowls, hoods, reflector skirts or shields.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013.

We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

#### Recommended Conditions

#### 1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

#### 2. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

"A Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter."

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the NPPF 2023 and s40 of the NERC Act 2006 (Priority habitats & species). And if any external lighting is proposed;

#### 3. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

"A lighting design scheme for biodiversity in accordance with GN:08/23 Bats and Artificial External Lighting (ILP) shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show

how and where external lighting will be installed (through the provision of appropriate lighting plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority."

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

**Environmental Protection**

**29.08.2023**

Thank you for your consultation regarding the proposed development above. Please find Environmental Protections comments below:

**Construction Method Statement**

I have reviewed the amended construction method statement and can confirm that this is acceptable. It must be noted that the CMS must be complied with during the development of this site.

\*Comments below consistent with 23/00739/COUNOT  
Asbestos

If there is any asbestos present in the current building or site then adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

**INFORMATIVE - Foul Drainage:**

The submitted application form advises a Sewerage Treatment Plant will be utilised as a way of disposing of foul waste; we would request, should the application be approved, that the Applicant / Agent, ensure the installation is fully compliant with the Environment Agency's Binding Rules and any other relevant Government guidance and British standards, in respect of these systems. Information on this can be found at: Septic tanks and treatment plants: permits and general binding rules: The general binding rules - GOV.UK ([www.gov.uk](http://www.gov.uk)). It is strongly recommended these rules are complied with, as they will minimise any potential nuisance to nearby residential dwellings, assist in preventing a potential Public Health nuisance, and minimise the potential for adverse incidents, of which may result in formal enforcement action.

**REASON:** to protect the health of residents and nearby residential premises.

**5. Representations**

- 5.1 Lawford Parish Council have not provided any comments on the application.
- 5.2 There have been no other letters of representation received.

## 6. Assessment

### Site Description

- 6.1 The application site relates to the land located to the rear of 87 Hungerdown Lane, within the parish of Lawford. The building currently on site is single storey and was formerly used as an agricultural storage and vehicle repair shop, and is currently redundant.
- 6.2 The character of the area is typically rural in nature, with large areas of grassed and agricultural land further out to all sides. However, to the immediate north-west are residential and commercial properties, with sporadic forms of development running along Hungerdown Lane itself.
- 6.3 The site is located outside of a recognised Settlement Development Boundary within the adopted Local Plan 2013-2033.

### Description of Proposal

- 6.4 This application seeks full planning permission for the replacement of the agricultural building with the erection of one dwellings. The proposal would represent an alternative development to the Prior Approval for one dwelling subject of application 23/00739/COUNOT.
- 6.5 The proposed dwelling is to be single storey, with a footprint of 158.4sqm and four bedrooms. Two parking spaces are shown to the front of the dwelling.
- 6.6 The proposed materials are a mix of a red brick plinth, weatherboarding and tin roof.

### Planning History

- 6.7 Under planning reference 23/00739/COUNOT, prior approval permission was granted in June 2023 for the conversion of the agricultural building subject of this planning application into one dwelling. This was allowed as assessed against Class Q of the Town & Country Planning (General Permitted Development) (England) Order (2015). Within the determination of this application the Council did not express any concern on the grounds for consideration of the notification application, namely access, noise, contamination, flooding, location, design or natural light.

### Principle of Development

- 6.8 Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (section 70(2) of the 1990 Town and Country Planning Act and section 38(6) of the Planning and Compulsory Purchase Act 2004). The development plan for Tendring Council comprises of the adopted Tendring District Local Plan 2013-2033 and Beyond Sections 1 and 2.
- 6.9 Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements. The application site lies outside of the defined settlement boundary of Lawford within the adopted 2013-2033 Local Plan. The proposed development would therefore extend outside the area planned to provide growth for this settlement. In view of the housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement.
- 6.10 Policy SPL2 supports new development within defined Settlement Development Boundary's (SDB) which would encourage sustainable patterns of growth and carefully control urban sprawl. Within a defined SDB, there will be a general presumption in favour of new development subject

to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.

- 6.11 The proposal therefore results in conflict with policies SP3 and SPL2. In this case, however, the principle of residential development on this site has been established through the prior approval consent granted under planning permission 23/00739/COUNOT in June 2023. The current proposal represents an alternative design and siting to the previously granted permission, which is considered to form a material consideration in respect of the application and denotes what is considered to be a viable fall-back position as outlined below.

Fallback Position – Material Consideration

- 6.12 It is established in case law that permitted development rights can legitimately represent a fall-back position when considering alternative proposals for development of the same site and this was the case for the previous planning approval.
- 6.13 In summary, the relevant legal principles relating to the fall-back position were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fall-back test:
- 6.14 *“First whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is “yes” a comparison must be made between the proposed development and the fall-back use.”*
- 6.15 The notion of Class Q providing a lawful fall-back position was subsequently and comprehensively dealt with at the landmark Court of Appeal case, Mansell vs Tonbridge and Malling Borough Council [2017], which concluded that a realistic fall-back position in regard to Class Q would amount to a material consideration in the determining of an application.
- 6.16 The table below provides a comparison between the original prior approval and the new dwelling proposed under this application:

	23/00739/COUNOT (Prior Approval)	23/01145/FUL (Current Application)
Siting	Centrally within the site, to the rear of the existing residential properties fronting Hungerdown Lane and Woodbarn Lane.	Similar location, however re-located approximately 20 metres to the east of the existing building.
Access	Via an existing access point to the north of the site from Hungerdown Lane.	Via an existing access point to the north of the site from Hungerdown Lane.
Appearance	Black boarding,	Black boarding, red brick plinth, tin roof, all to match existing building
Floorspace	168sqm	177sqm
Eaves Height	2.5m	2.5m
Ridge Height	5.2m	5.2m
No. Beds	4	4

- 6.17 In conclusion, having regard to the above, the application is considered to meet all three tests set out for a viable fall-back position in terms of the legal position set out earlier. There is a fall-

back use in the form of the prior approval and it is considered that the proposed development, is, in the main, comparable to that approved under the prior approval.

- 6.18 As outlined above in the comparison table, there is an increase in floorspace totalling 9sqm, however this is not considered to be a significant increase, particularly when taking into consideration the height, appearance and number of bedrooms remaining the same.
- 6.19 Therefore, given the circumstances of this case, along with the legal position and the prior approval fall-back position, the principle of development for a new dwelling on this site is considered to be acceptable subject to the detailed consideration against other relevant Local Plan policies.

#### Visual Impacts

- 6.20 Paragraph 126 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 6.21 Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness. The development should relate well to its site and surroundings particularly in relation to its siting, height, scale, massing, form, design and materials and should respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features.
- 6.22 The site is located in a largely rural area, although there are examples of residential development within the immediate vicinity and along Hungerdown Lane, in particular immediately to the north and north-west of the site.
- 6.23 During the lifetime of the planning application, amended drawings have been provided which show the proposed dwelling to now be of a very similar design, and a similar size, to the existing building. Officers had previously raised some concerns that the initial design had material differences to the existing building, both in terms of its height and overall design, but are satisfied that these concerns are addressed through the amended drawings. The proposed dwelling would replace an existing structure in broadly the same location, although relocated approximately 20 metres to the east. While noting a slight increase, the dwelling would result in a similar footprint to the existing building as well as similar form, and there will be no net increase in the number of dwellings. Taken as a whole including the garden proposed, the dwelling remains in context with the built forms to the north/west and is considered to maintain the rural character of the locality.
- 6.24 Policy LP4 requires that new residential developments will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area. The plans show that this is comfortably adhered to.

#### Impact to Neighbouring Amenities

- 6.25 The NPPF, at paragraph 130 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.

6.26 There are residential properties located to the north and north-west of the proposed dwelling, however these are approximately 30 metres apart. Given this significant separation distance, as well as the single storey nature of the proposal and that there is an existing building of a similar size, Officers do not consider that there will be significant harm in respect of overlooking, the dwelling appearing imposing or resulting in loss of sunlight/daylight. Overall this proposal represents an improvement on the relationship as it pulls the active residential use away from existing residential use.

#### Highway Safety Impacts

6.27 Paragraph 108 of the National Planning Policy Framework 2021 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Paragraph 111 of the Framework states that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

6.28 Policy SPL3 (Part B) of the Adopted Local Plan seeks to ensure that access to a new development site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and provision is made for adequate vehicle and cycle parking. Adopted Local Plan Policy CP2 states proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe.

6.29 Essex Highways Authority have been consulted and have stated that from a highway and transportation perspective the impact of the proposal is acceptable subject to conditions relating to visibility splays, the use of no unbound materials, the vehicle parking area, and any replacement planting being set back 1 metre from the highway boundary.

6.30 Furthermore, the Council's Adopted Parking Standards require that for a dwelling with two or more bedrooms that a minimum of two parking spaces are required. Parking spaces should measure 5.5m x 2.9 metres. The submitted plans show that there is sufficient space within the site to provide the necessary parking.

#### Impacts to Trees and Landscape

6.31 Paragraph 174 of the National Planning Policy Framework (2021) states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and should protect and enhance valued landscapes.

6.32 Policy PPL3 of the local plan requires that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted.

6.33 The Council's Tree and Landscape Officer has been consulted on the application, and has provided the following comments:

*"The existing building to which planning application 23/00739/COUNOT relates is set back into the plot of the host property and is not clearly visible from a public place or from the highway. Its renovation and change of use would not adversely affect the visual appearance of the locality.*

*The land identified for proposed position of the new dwelling is set to grass and planted with several small fruit trees. The trees do not feature prominently in the public realm and do not merit retention of formal legal protection by means of a Tendring District Council tree preservation order.*

*The site boundary with the highway is planted with a boundary hedge comprising of hedging conifers. There is a young Sweet Chestnut (Castanea sativa) close to this boundary. The conifer hedge and the Sweet Chestnut are shown as retained on the Block Plan.*

*It is noted that the proposed dwelling would be relatively well screened and that it would not be a prominent feature in its setting, however in terms of the impact of the proposed development on the local landscape character it is considered that a new dwelling in the proposed location is not in keeping with the local settlement pattern and that it would contribute to the gradual erosion of the countryside.*

*Should planning permission be likely to be granted then details of soft landscaping should be secured by a planning condition. Soft landscaping should aim to soften, screen and enhance the appearance of the development. This is likely to involve the retention of existing boundary vegetation or its replacement if it were considered necessary for it to be removed in order to implement the proposed development."*

- 6.34 Given the above comments, a level of harm has been identified in relation to the impact of the development to the rural character of the area. However, on this occasion while these comments are noted it is equally acknowledged that the design provided is also of a rural nature that would be expected in a location such as this, and the scale of the building is comparable to that existing. Therefore, on balance and mindful of the existing prior approval that would have introduced a similar new dwelling in this location if that was to be continued, Officers do not consider the proposal would represent a significant and harmful change to the areas character to the extent it would justify a reason for refusal.

#### Impact on Protected Species

- 6.35 Paragraph 174 of the Framework states planning decisions should contribute to and enhance the natural and local environment, by minimising impacts and providing net gains for biodiversity.
- 6.36 Paragraph 180(a) of the NPPF confirms that in assessing planning applications where significant harm to biodiversity as a result of a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.
- 6.37 Adopted Policy SP7 requires that all new development should incorporate biodiversity creation and enhancement measures. Adopted Policy SPL3 Part A(d) includes that the design and layout of development should maintain or enhance ecological value.
- 6.38 Given that the application site has the potential for hosting protected species, notably bats, Officers requested the submission of a Preliminary Ecological Assessment (PEA). This assessment has since been provided and concludes that there will either be no impact or a negligible impact to amphibians, bats, reptiles, badgers, water voles, dormice and invertebrates.
- 6.39 The report does, however, outline that the building provides limited nesting opportunities for birds, and the disturbance and destruction of an active nest could have a negative effect on some bird species at site level. There will also be a negligible loss of foraging habitat in the context of the surrounding environment. Therefore, it is suggested that demolition works take place during September to February, to avoid the bird nesting season, and that either one triple house sparrow box or three single sparrow boxes are erected to the northern elevation of an outbuilding to the west of the application site.
- 6.40 ECC Place Services (Ecology), upon consultation, initially raised a holding objection due to a lack of ecological information supporting the application. However, following the submission of the PEA, they have removed their objection, confirming there is sufficient ecological information available to determine the application. However, they have recommended that conditions relating to mitigation measures and a biodiversity enhancement strategy be included. A further

condition relating to wildlife sensitive lighting is recommended in the event any external lighting is proposed as part of the application. While no lighting is proposed, Officers recommend a condition requesting future details be provided should this take place in the future.

### Foul Drainage

- 6.41 Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Furthermore, Paragraph 185 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.
- 6.42 Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010. A completed Foul Drainage Assessment Form 1 (FDA1) form, or equivalent information, should accompany all planning applications where use of a non-mains system is proposed for foul drainage. The operation of small sewage discharges such as those from septic tanks or package treatment plants is regulated under the Environmental Permitting Regulations 2016 (EPR).
- 6.43 Adopted Policy PPL5 of Section 2 of the Adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour.
- 6.44 The application form accompanying the application has stated that the development would be connected to a package water treatment plant. This does not adhere to the above local and national policy requirements which seek to connect new development to an existing public foul sewer.
- 6.45 Given the above, a completed Foul Drainage Assessment Form 1 (FDA1) form has been completed and received on 11<sup>th</sup> August 2023. The FDA1 form confirms that it is not feasible to connect to the public foul sewer as at the shortest point is over 30 metres Therefore, consideration can be given to a package treatment plant. The drainage system proposal can be summarised as follows:
- System will be at least 10m from a watercourse, permeable drain and land drain;
  - System will be located at least 7m from the habitable part of a building;
  - Vehicular access for emptying within 30m is possible;
  - The system can be maintained or emptied without the contents being taken through a dwelling;
  - Maintenance of the system will be via a contract;
  - Estimated total flow in litres per day is 1100.
- 6.46 Following this the information provided is acceptable on this occasion, and therefore notwithstanding the lack of connection to a public foul sewer there is no objection raised.

### Financial Contributions – Recreational Disturbance



- 6.47 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.
- 6.48 The application scheme proposes a residential use on a site that lies within the Zone of Influence (Zoi) being approximately 3.1 kilometres from the Stour and Orwell Estuaries SPA and RAMSAR. New housing development within the Zoi would be likely to increase the number of recreational visitors to these sites and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.
- 6.49 A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

#### Financial Contributions – Open Space and Play Space

- 6.50 Paragraph 54 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.
- 6.51 In line with the requirements of Section 2 Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space, no contribution is requested on this occasion.

#### Renewable and Energy Conservation Measures

- 6.52 Paragraph 112 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.
- 6.53 Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.
- 6.54 The application is supported by a Design and Access Statement, which outlines renewable energy provisions, including free standing EV charging point next to the parking spaces, water butts, an air source heat pump, solar panels and a recycling area. Officers are content this meets the requirements of the above policies.

## **7. Conclusion**

- 7.1 The proposed demolition of an existing agricultural building and its replacement with a four bedroom dwelling is acceptable in principle following the previous prior approval granted on the site for a dwelling under planning reference 23/00739/COUNOT.

- 7.2 Whilst the dwelling has been located further east than the existing building, it is of a very similar size and design, will retain the same access and number of bedrooms. Therefore, Officers are content that the proposal would not be harmful to the character and appearance of the surrounding area.
- 7.3 There are no significant issues in respect to neighbouring amenities or harm to trees. Essex Highways Authority have raised no objections and there is sufficient space for parking. Accordingly, the application is considered to be policy compliant and is recommended for approval.

## **8. Recommendation**

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives.

### 8.2 Conditions and Reasons

#### 1 COMPLIANCE REQUIRED: COMMENCEMENT TIME LIMIT

CONDITION: The development hereby permitted shall be begun not later the expiration of three years from the date of this permission.

REASON: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### NOTE/S FOR CONDITION:

The development needs to commence within the timeframe provided. Failure to comply with this condition will result in the permission becoming lapsed and unable to be carried out. If commencement takes place after the time lapses this may result in unlawful works at risk Enforcement Action proceedings. You should only commence works when all other conditions requiring agreement prior to commencement have been complied with.

2 CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

Drawing Numbers P01c received dated 2 November 2023, P03b received dated 23 August 2023, P04b received dated 23 August 2023, and document titled 'Preliminary Ecological Appraisal'.

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

#### NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second

role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

- 3 **CONDITION:** No development above slab level shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard, soft and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels.

**REASON:** In the interests of visual amenity and the character and appearance of the area.

**NOTE/S FOR CONDITION:**

Slab level is normally refers to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visually above ground level or seek confirmation from the Local Planning Authority for your development.

Should the landscape works include any new hedgerow, please consider the following planting for a native hedge. Native hedge: 50% hawthorn, 25% blackthorn (but beware – this can spread into adjacent fields), 15% field maple, 2% holly, 2% wild privet, 2% guelder rose, 2% dog rose, 2% buckthorn.

- 4 **CONDITION:** All changes in ground levels, soft/hard landscaping shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October – March inclusive) following the commencement of the development, or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the Local Planning Authority.

**REASON:** To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

- 5 **CONDITION:** Prior to first use of the access, visibility splays shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres across the entire site frontage, as measured from and along the nearside edge of the carriageway, and shall then be retained in its approved form. Notwithstanding the provisions of Part 2 Class A of the Town & Country

Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

REASON: To ensure vehicles exiting the access would have sufficient visibility to enter the public highway safely and vehicles on the public highway would have sufficient warning of a vehicle emerging in order to take avoiding action.

NOTE/S FOR CONDITION:

It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the ECC Highway Authority. Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by Essex County Council or its agents at the applicant's expense.

- 6 CONDITION: The access hereby approved shall have a bound material surface and shall be laid out for a minimum distance of 5 metres from the edge of the carriageway prior to first use. The bound material as implemented shall then be retained thereafter.

REASON: In the interests of highway safety to prevent hazards caused by loose materials on the highway.

NOTE/S FOR CONDITION:

Carriageway is the part of a road intended for vehicles rather than pedestrians normally define by kerb if available or edge of a bound surface. It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the ECC Highway Authority. Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by Essex County Council or its agents at the applicant's expense.

- 7 CONDITION: Prior to first occupation of the hereby approved development, the vehicle parking area indicated on the approved plans shall be hard surfaced and sealed. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed in writing with the Local Planning Authority.

REASON: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety.

- 8 CONDITION: Any new or replacement boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

REASON: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety.

- 9 CONDITION: Prior to the first occupation of the hereby approved development, all mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) and thereafter maintained as approved.

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations.

10 **CONDITION:** Notwithstanding details received, prior to first occupation of the hereby approved development, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

**REASON:** To enhance protected and Priority species and habitats.

11 **CONDITION:** Prior to the erection/installation of any floodlighting or other means of external lighting at the site, details to include position, height, aiming points, lighting levels and a polar luminance diagram shall be submitted to and approved, in writing, by the Local Planning Authority. The lighting shall be carried out and retained as may be approved. There shall be no other means of external lighting installed and/or operated on/at the site except that approved.

**REASON:** In the interests of amenity to reduce the impact of night time illumination on the character of the area and in the interests of biodiversity.

### 8.3 Informatives

Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

## 9. Additional Considerations

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

- 9.5 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 9.6 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

- 9.7 The proposal overall shall have a neutral impact.
- 9.8 Consultations undertaken with the affected communities or groups have not been required in this case.
- 9.9 No mitigation measures required.

#### Human Rights

- 9.10 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.

- 9.11 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.12 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### Finance Implications

- 9.13 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 9.14 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

#### **10. Background Papers**

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

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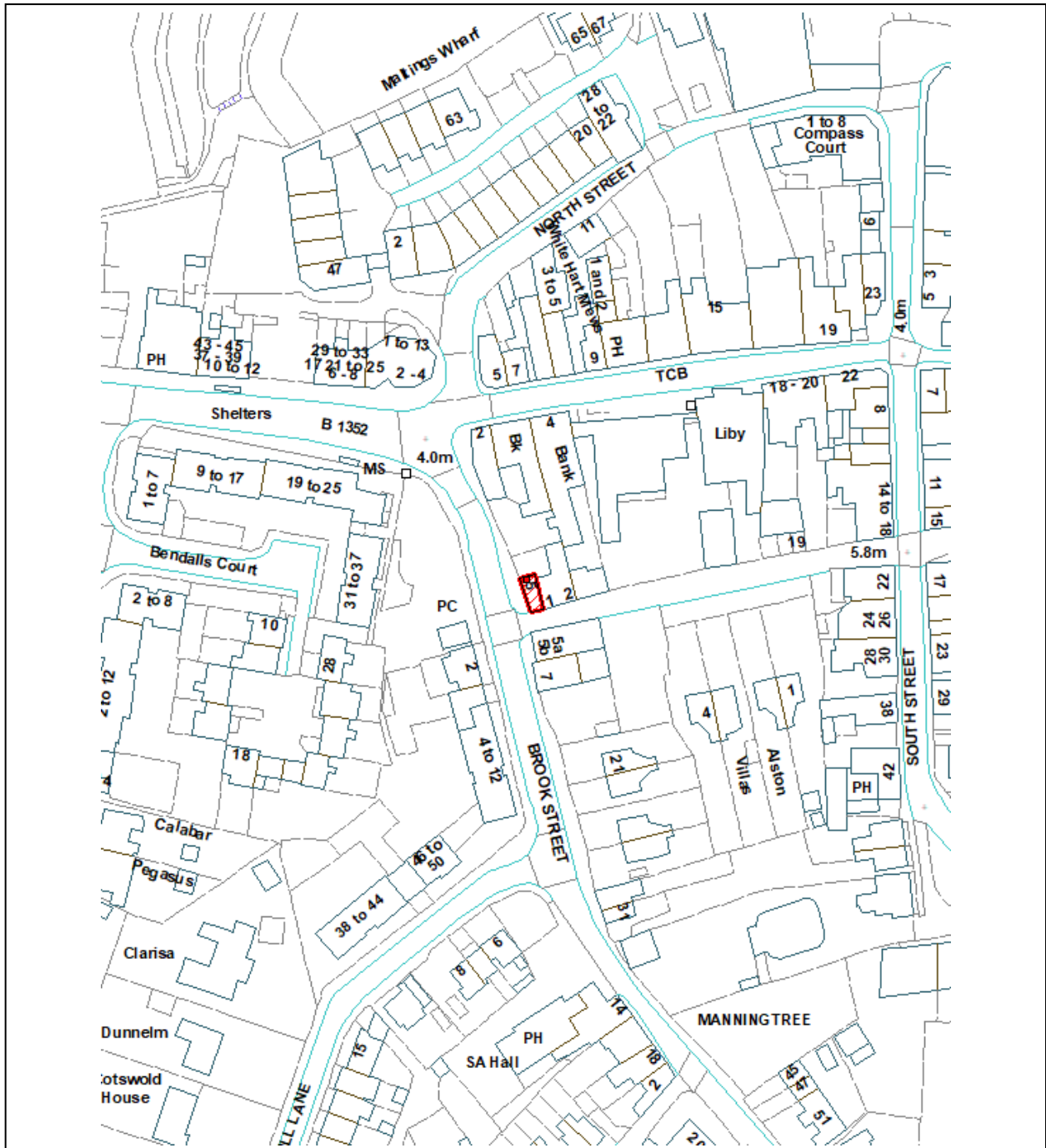


## PLANNING COMMITTEE

19 DECEMBER 2023

### REPORT OF THE DIRECTOR OF PLANNING

#### A.2. PLANNING APPLICATION – 23/01514/FUL – 5 BROOK STREET MANNINGTREE CO11 1DJ



DO NOT SCALE

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<b>Application:</b>	23/01514/FUL	<b>Expiry Date:</b>	9th January 2024
<b>Case Officer:</b>	Michael Pingram		
<b>Town/ Parish:</b>	Manningtree Town Council		
<b>Applicant:</b>	Mr Matthew Bensilum		
<b>Address:</b>	5 Brook Street, Manningtree, CO11 1DJ		
<b>Development:</b>	Change of use from residential to office with no alterations.		

## 1. Executive Summary

- 1.1 This application is before the Planning Committee owing to the fact that the application is an elected Member of the Council and the application is being recommended for approval.
- 1.2 The proposal is for the change of use of a residential dwelling into office use, and given the site falls within the Manningtree Town Centre such a use is supported in this location.
- 1.3 While the building is Grade II Listed and located within the Mistley and Manningtree Conservation Area, it is concluded that there is no harm to these heritage assets, given no alterations are proposed and the nature of the use. Furthermore, there will be no harmful impacts to neighbouring amenities sufficient to warrant refusal.
- 1.4 Officers note, there is no proposal to include parking provision, however also acknowledge the sites highly sustainable location within the Manningtree Town Centre and therefore do not consider this matter to be significantly harmful to result in a refusal.

### **Recommendation:** Approval

- 1) That the Head of Planning and Building Control be authorised to grant planning permission subject to the conditions as stated at paragraph 8.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 1) The informative notes as may be deemed necessary.

## 2. Planning Policy

The following Local and National Planning Policies are relevant to this planning application.

National:

National Planning Policy Framework July 2021 (NPPF)  
National Planning Practice Guidance (NPPG)

Local:

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 Plan (adopted January 2021)

SP1 Presumption in Favour of Sustainable Development  
SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)

SP3 Spatial Strategy for North Essex  
SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

SPL1 Managing Growth  
SPL3 Sustainable Design  
PP3 Village and Neighbourhood Centres  
PPL8 Conservation Areas  
PPL9 Listed Buildings  
PPL10 Renewable Energy Generation  
CP1 Sustainable Transport and Accessibility

Local Planning Guidance:

Essex County Council Car Parking Standards - Design and Good Practice  
Essex Design Guide

### **Status of the Local Plan**

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

### **3. Relevant Planning History**

99/01087/FUL	Demolish existing extension. Rebuild new extension	Current	26.07.1999
99/01088/LBC	Demolish existing extension and rebuild new extension	Refused	24.11.1999
10/01003/LBC	Construction of an external plastic boiler flue.	Approved	07.12.2010

### **4. Consultations**

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

#### **Essex County Council Heritage 04.12.2023**

The proposal site is part of a group of three 19th century Grade II listed cottages (List Entry Number:

1254251) within the Mistley and Manningtree Conservation Area.

The proposal is overall considered to preserve the special interest of the listed building and the character and appearance of the Conservation Area as the Planning (Listed Buildings and Conservation Areas) Act 1990 and the NPPF 2023, providing that no works affecting the historic fabric would be required to allow for the proposed change of use.

**ECC Highways Dept**

**29.11.2023**

The information that was submitted in association with the application has been fully considered by the Highway Authority. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material and google earth image.

Having considered the information submitted with the planning application, the Highway Authority has no comments to make on this proposal.

## **5. Representations**

- 5.1 Lawford Parish Council have raised no objections.
- 5.2 There have been no other letters of representation received.

## **6. Assessment**

### Site Description

- 6.1 The application site is 5 Brook Street, which is located on the corner of Brook Street and Stour Street, within the parish of Manningtree. The building is currently a two storey property in residential use and is accessed via Brook Street.
- 6.2 The property is a Grade II Listed Building and sited within the Manningtree and Mistley Conservation Area. In addition, the site falls within the Settlement Development Boundary for Manningtree within the adopted Local Plan 2013-2033, and is also within Manningtree Town Centre boundary.
- 6.3 The character of the area is heavily urbanised, with commercial and residential built form to all sides, including the main hub of Manningtree Town Centre which is approximately 50 metres to the north.

### Description of Proposal

- 6.4 This application seeks full planning permission for the change of use of the property from Class C3 (dwellinghouse) to Class E(g)(i) (Office) use.
- 6.5 The application involves no internal or external alterations, and purely seeks to convert the existing living room and two bedrooms into three offices, with the existing kitchen to convert into a small reception area.
- 6.6 The application form confirms there will be two full time employees and one part time, with the opening hours to be 9am to 5pm Monday to Friday only, and no opening hours on Saturdays, Sundays or Bank Holidays.

### Principle of Development

- 6.7 Adopted Policy PP3 states that the Council will work with its partners, including local businesses, to protect and enhance the village and local neighbourhood centres.

- 6.8 The application proposes the conversion of an existing residential property into a Class E(g)(i) use that will allow for a total of three offices, with an ancillary reception area. Given the site is located within the Manningtree Town Centre, and the proposed use is what is defined within the National Planning Policy Framework (2023) as a main town centre use, the principle of such a use in this location is acceptable in principle.

#### Heritage Impacts

- 6.9 Adopted Policy PPL8 highlights that new development within a designated Conservation Area, or which affects its setting, will only be permitted where it has regard to the desirability of preserving or enhancing the special character and appearance of the area. Furthermore, Policy PPL9 adds that proposals for new development affecting a listed building, or its setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric.
- 6.10 The application site is a Grade II Listed Building and also falls within the Mistley and Manningtree Conservation Area. As such, ECC Place Services (Heritage) have been consulted on the application, and they have provided the following comments:

*“The proposal site is part of a group of three 19th century Grade II listed cottages (List Entry Number: 1254251) within the Mistley and Manningtree Conservation Area.*

*The proposal is overall considered to preserve the special interest of the listed building and the character and appearance of the Conservation Area as the Planning (Listed Buildings and Conservation Areas) Act 1990 and the NPPF 2023, providing that no works affecting the historic fabric would be required to allow for the proposed change of use.”*

- 6.11 Given the above comments, it is clear that given there are no internal or external alterations proposed and with consideration of the proposed use, there is no harm to the heritage assets, and therefore Officers are not minded to object on these grounds.

#### Highway Safety

- 6.12 Policy SPL3 (Part B) of the Adopted Local Plan seeks to ensure that access to a new development site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate, and provision is made for adequate vehicle and cycle parking. Adopted Local Plan Policy CP2 states proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe.
- 6.13 ECC Highways have been consulted on the application and have confirmed they wish to make no comments.
- 6.14 Furthermore, Essex Parking Standards (2009) guidance states that for an Office use there should be provision for one parking space per 20 square metres of floor space. Officers note that there will be a total of 50 square metres of Office space and therefore a guidance for three spaces, however no parking spaces are provided. On this occasion, consideration is also given to the sites highly sustainable location within the Manningtree Town Centre, access to a host of public transport options, and acknowledgement that the existing residential use of the building also has no parking provision. The combination of these factors lead Officers to conclude that the provision of no associated parking provision is not likely to be harmful given the surrounding uses and parking available, and a refusal on this point alone would be unlikely to be defensible at appeal.

### Impact to Neighbouring Amenities

- 6.15 The NPPF, at paragraph 130 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.
- 6.16 It is acknowledged that there are a number of residential properties located either immediately adjacent or within proximity to the application site. However, Officers note the opening hours of 9am to 5pm Mondays to Fridays only, and also acknowledge the overall proposal is a low-key use that does not have the potential to generate noise disturbances. Furthermore, no external alterations are proposed.
- 6.17 Given the above, there is not considered to be any harmful impacts to the amenities of neighbouring residents as a result of the proposed change of use.

### Renewable and Energy Conservation Measures

- 6.18 Paragraph 112 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.
- 6.19 Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.
- 6.20 The proposal has the potential to incorporate renewable energy features, but Officers note that the development is purely a change of use with no external alterations proposed. Furthermore, some concerns would be raised that such features could result in a negative impact to the Grade II Listed Building. Taking the above into account, Officers conclude that on this occasion it would not be necessary to include a condition recommending water, energy and resource efficiency measures.

## **7. Conclusion**

- 7.1 The application proposed an office use within the Manningtree Town Centre, and is supported in principle. Whilst the building is Grade II Listed and located within the Mistley and Manningtree Conservation Area, there is no impact to these heritage assets given no alterations are proposed and the nature of the use. Furthermore, despite a lack of parking provision, Officers note the sites highly sustainable location within the Manningtree Town Centre and therefore do not consider this to be significantly harmful, whilst there will also be a no negative impacts to the amenities of neighbouring residents.
- 7.2 Taking the above into consideration, the application is considered to comply with local and national planning policies and is therefore recommended for approval.

## **8. Recommendation**

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives.

## 8.2 Conditions and Reasons

- 1 CONDITION: The development hereby permitted shall be begun not later the expiration of three years from the date of this permission.

REASON: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

### NOTE/S FOR CONDITION:

The development needs to commence within the timeframe provided. Failure to comply with this condition will result in the permission becoming lapsed and unable to be carried out. If commencement takes place after the time lapses this may result in unlawful works at risk Enforcement Action proceedings. You should only commence works when all other conditions requiring agreement prior to commencement have been complied with.

- 2 CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

The untitled Site Location Plan received 14th November 2023, the untitled Block Plan received 14th November 2023, the untitled existing/proposed elevation drawings received 14th November 2023 and the untitled existing/proposed floor plan drawings received 14th November 2023.

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

### NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar,

will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

- 3 CONDITION: The hereby permitted use shall only operate between the hours of 9am to 5pm Mondays to Saturdays. There shall be no working and/or use operated on Sundays and Bank Holidays. There shall be no deliveries to the development/use arranged for outside of these approved hours.

REASON: To enable the Local Planning Authority to retain control over the development in the interests of residential amenity within close proximity.

NOTE/S FOR CONDITION:

1) This condition shall engage and restricts the operation of the development from the first commencement of the use. This condition is imposed to ensure the development avoid unreasonable impact on the residential amenity of neighbouring dwellings, especially given the location of the development with considerations to the prevailing character and amenity currently enjoyed in this location. Without the imposing of this condition, the development would be refused due to the risk of harm and this condition is considered necessary, enforceable and reasonable in all other respects. This condition as detailed will apply to the development at all times unless varied or removed legally.

2) If the development operates outside of the hours stated this may result in unlawful development/use at risk of Enforcement Action. You are encouraged to discuss any concerns with this condition with the Local Planning Authority.

### 8.3 Informatives

Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Listed Building Consent:

Please note that while the application submission is clear that the proposal is purely for a change of use, with no internal or external works, should any works be required at a later stage there would be a requirement to submit a Listed Building Consent application.

### **Additional Considerations**

#### Public Sector Equality Duty (PSED)

- 8.4 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 8.5 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 8.6 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging



participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and

- 8.7 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 8.8 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 8.9 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

- 8.10 The proposal overall shall have a neutral impact.
- 8.11 Consultations undertaken with the affected communities or groups have not been required in this case.
- 8.12 No mitigation measures required.

Human Rights

- 8.13 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 8.14 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 8.15 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### Finance Implications

- 8.16 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 8.17 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

#### **9. Background Papers**

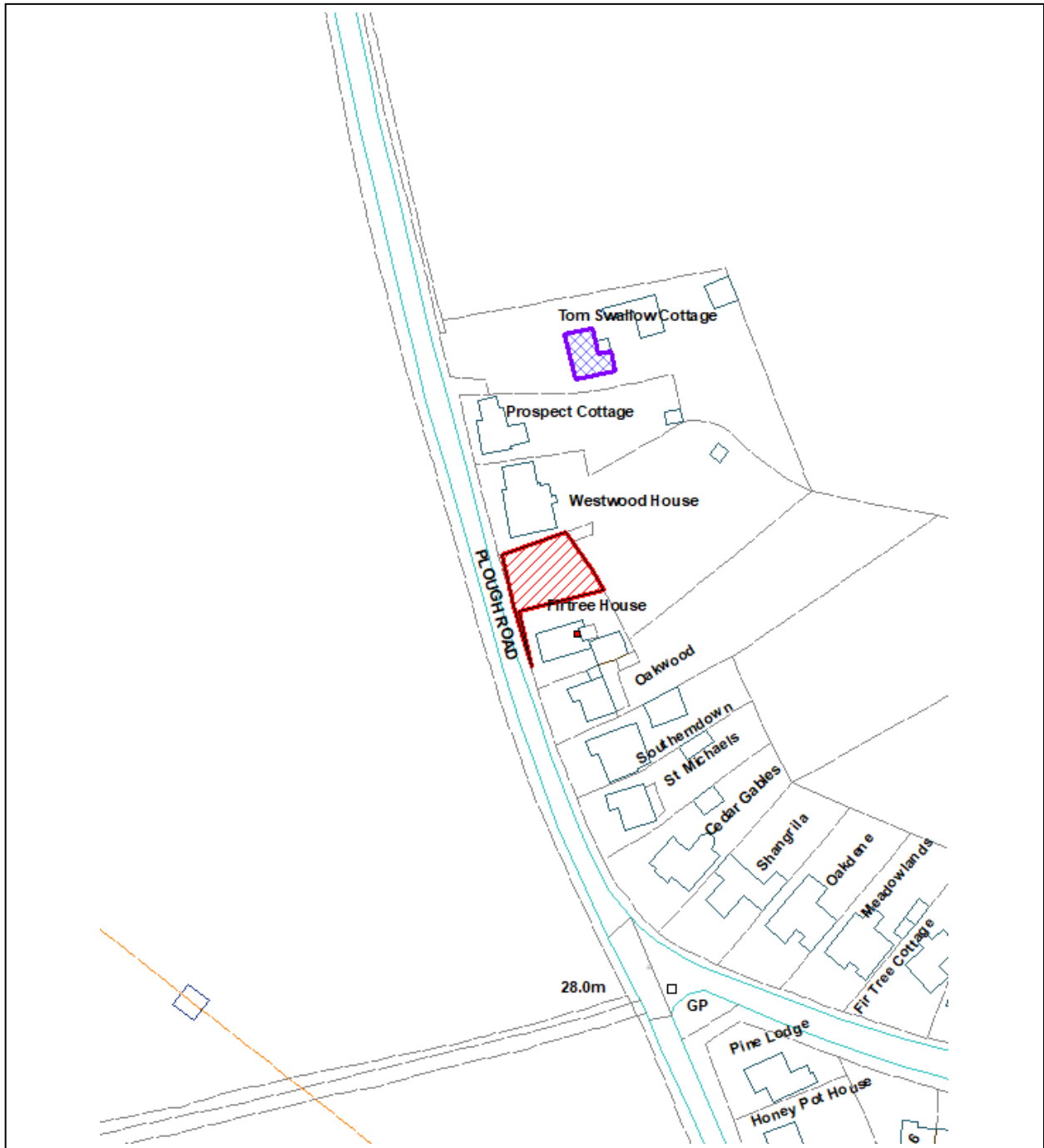
- 9.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

## PLANNING COMMITTEE

19 DECEMBER 2023

### REPORT OF THE DIRECTOR OF PLANNING

#### A.3. PLANNING APPLICATION – 23/01312/FUL – FIR TREE HOUSE PLOUGH ROAD GREAT BENTLEY COLCHESTER



DO NOT SCALE

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<b>Application:</b>	23/01312/FUL	<b>Expiry Date:</b>	28th November 2023
<b>Case Officer:</b>	Charlotte Cooper	<b>EOT Date:</b>	
<b>Town/ Parish:</b>	Great Bentley Parish Council		
<b>Applicant:</b>	Mrs M Fox		
<b>Address:</b>	Fir Tree House Plough Road Great Bentley Colchester CO7 8NA		
<b>Development:</b>	Proposed erection of detached dwelling with new vehicular access.		

## 1. Executive Summary

- 1.1 The application is before members as officers are recommending approval for a proposal that represents a departure from the Local Plan. The application seeks planning approval for a new residential development outside of the Great Bentley Settlement Development Boundary (SDB) as defined currently within the adopted Tendring District Local Plan 2013 to 2033 and Beyond.
- 1.2 The application site serves a vacant piece of land, currently in use as part of the side garden for Fir Tree House, located amongst established residential development to the eastern side of Plough Road.
- 1.3 The application seeks full planning permission for the erection of a detached two-storey dwelling with vehicular access from Plough Road.
- 1.4 The site currently benefits from previous, and currently still extant planning approval 20/01618/FUL for the erection of a detached dwelling with new vehicular access. This approval is extant and will expire on 23<sup>rd</sup> February 2024. It is important to note this approval was granted under a previous Tendring district local Plan (2007), whereby the site was included in the settlement development boundary of Aingers Green. The current application is essentially looking to extend the timeframe of this approval.
- 1.5 The site lies approximately 0.63 Km (629.5 metres) outside of the settlement development boundary of Great Bentley and is therefore contrary to the spatial strategy set out within the Tendring District Local Plan Policy SP3 and Policy SPL2. Whilst Policy SPL2 does not explicitly preclude residential development outside of the defined boundary, it nevertheless requires decision makers to carefully consider the scale of development in relation to the settlement hierarchy category, site-specific characteristics, and sustainability of the site.
- 1.6 The site benefits from a bus stop directly to the front of the site providing services to nearby Great Bentley and Colchester, the site is therefore considered to be reasonably accessible to a range of services and facilities.
- 1.7 As briefly alluded to above, another key material consideration lies in the existence of an extant planning permission for the construction of a detached dwelling with vehicular access at the site. Officers believe that this significantly tips the planning balance in favour of approval despite the high-level policy conflict in regard to the location of the site outside of the defined settlement development. Moreover, the development would not result in any material harm in terms of design, impact, residential amenities, or highway safety over and above the extant approval, and is also considered to be acceptable in all other regards.

**Recommendation:** Approval subject to Unilateral Undertaking and Conditions set out in section 8.2

- 1) On appropriate terms as summarised below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control, and subject to a Unilateral Undertaking securing:
  - A financial contribution of £156.76 towards RAMS
- 2) That the Head of Planning and Building Control be authorised to grant planning permission subject to the Unilateral Undertaking and conditions as stated at paragraph 8.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 3) The informative notes as may be deemed necessary.

## 2. Planning Policy

### **National:**

National Planning Policy Framework July 2023 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

### **Local:**

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 (adopted January 2021)

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP6 Infrastructure and Connectivity
- SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- HP5 Open Space, Sports and Recreation Facilities
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- PPL5 Water Conservation, Drainage and Sewerage
- PPL10 Renewable Energy Generation and Energy efficiency Measures
- CP1 Sustainable Transport and Accessibility
- CP2 Improving the Transport Network
- DI1 Infrastructure Delivery and Impact Mitigation

Supplementary Planning Documents

Essex Design Guide

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

Provision of Recreational Open Space for New Development May 2008 (under review) Technical housing standards – nationally described space standard (DCLG March 2015)

### Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

### **Status of the Local Plan**

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

### **Neighbourhood Plans**

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

At the time of writing, there are no adopted or draft neighbourhood plans relevant to this site.

### **3. Relevant Planning History**

99/01687/TPO	Lop branches of Eucalyptus tree which are touching house and growing through power lines	Approved	10.12.1999
12/01350/TPO	Eucalyptus - fell due to decay in base of trunk. No replacement planned.	Approved	04.01.2013
19/01773/FUL	Erection of detached dwelling with new Vehicular Driveway Access.	Withdrawn	06.04.2020
20/01618/FUL	Erection of detached dwelling with new vehicular driveway access.	Approved	23.02.2021
23/01687/DISCON	Discharge of condition 13 (Landscaping) of application 20/01618/FUL.	Pending	

#### 4. **Consultations**

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

#### **UU Open Spaces**

**02.11.2023**

Play Space - current deficit:

- Deficit of 1.78 hectares of equipped play in Great Bentley

Formal Play - current deficit:

- Adequate formal open space in the area to cope with some future development

Settlement provision:

- Heckford Road/Forge Lane Play Area LEAP 0.6mils from development

Officer Conclusions and Recommendations

Contribution necessary, related, and reasonable?

to comply with CIL Regs\*

- No contribution is being requested from this development.
- Further to other applications at this site there has been some recent improvements to the only play area in the village, these facilities are adequate to cope with some development.

Identified project:

(In consultation with Town / Parish Council on upcoming projects or needs for maintenance)

- N/a

#### **Tree & Landscape Officer**

**16.10.2023**

The application site currently forms part of the residential curtilage of the host property. The boundary with the highway is demarcated by an established Hawthorn hedge that encloses

the garden and ties in well with nearby field boundary hedgerows. Nevertheless, it does not fall within the scope of any legislation under which it could be afforded legal protection.

The garden is well planted with established shrubs and small trees.

In order to show the extent of the constraint that the trees are on the development potential of the land the applicant has provided an Arboricultural Impact Assessment (AIA). This shows how retained trees will be physically protected for the duration of the construction phase of any development for which planning permission may be granted. This information is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations.

The proposed layout and position of the dwelling makes provision for the most visually prominent trees on the application site: a Cedar (T1), a Cherry (T2) and a False Cypress (T3). This is desirable and would ensure that trees that currently make a reasonable contribution to the appearance of the area are retained. However, if planning permission were likely to be granted then the new dwelling would screen the trees from view and their amenity value would be significantly diminished.

The size, position and amenity value of the trees is such that they do not meet the criteria under which they merit formal legal protection by means of a tree preservation order.

The tree report suggests that it may be prudent to fell the Cedar and to replace with a more appropriate species. This would be likely to be a species with a smaller ultimate height.

If it were possible, it would be desirable for the proposed dwelling to be 'set back' further into the plot to provide room for small trees to be planted between the front elevation of the proposed dwelling and the highway. Trees in this position would feature prominently in the street scene and make a positive contribution to the appearance of the public realm.

Should planning permission be likely to be granted then details of soft landscaping should be secured by a planning condition. Soft landscaping should aim to soften, screen and enhance the appearance of the development.

**ECC Highways Dept**

**24.10.2023**

The information that was submitted in association with the application has been fully considered by the Highway Authority. The conclusions have been drawn from a desktop study with the observations below based on submitted material and google earth image dated April 2019. The site is located off Plough Road which is subject to a 30-mph speed limit and the proposed site offers adequate parking and turning within the confines of the site.

Given the previous approval under application no. 20/01618/FUL, from a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. Prior to commencement of development, areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.



2. Prior to occupation of the development, the access at its centre line shall be provided with a visibility splay with dimensions as shown on submitted drawing no. FTC/AG/2A, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of obstruction above 600mm at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

3. Prior to occupation of the development the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 3.6 metres (equivalent to 4 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety in accordance with policy DM1.

4. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

5. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

6. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

i. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

ii. On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area, it covers, and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

iii. The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision,

commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

## 5. **Representations**

5.1 Great Bentley Parish council have submitted no comments on this application.

5.2 No individual letters of representation or objection have been received.

## 6. **Assessment**

### Site Context

6.1 The application site consists of the side garden for Fir Tree House, located on the eastern side of Plough Road. The site is situated between established residential dwellings along the eastern side of Plough Road, with large vacant fields located to the west and further north.

6.2 The site lies approximately 0.63 Km (629.5 metres) outside of the settlement development boundary of Great Bentley however the site benefits from the provision of a decent footpath which runs along the entirety of Plough Road, providing good connection to Great Bentley station, located further north of the application site. The site also benefits from the provision of a bus stop located directly to the front of the site, providing services to St Osyth and Colchester via Great Bentley. The site is also considered to be reasonably well connected to other local facilities such as the Teso Express in Great Bentley and the Barn Café and Fusilier restaurant in Aingers Green.

### Site History

6.3 Permission for the erection of a detached dwelling with vehicular access was granted at this site under planning approval 20/01618/FUL, this permission remains live until the 23<sup>rd</sup> February 2024 and is therefore extant. The current proposal is seeking permission for the same development and is effectively increasing the timeframe for this approval.

6.4 It is important to note that the previous development was approved under the Tendring District Local Plan 2007, when the application site was located within the settlement development boundary of Aingers Green. The adopted Tendring District Local Plan 2013 to 2033 and beyond has removed this settlement development boundary following a settlement hierarchy review and because of the lack of local amenities. In light of the above this latest planning application therefore constitutes a departure from the Local Plan.

### Principle of Development

6.5 Policy SP1 of the Tendring District Local Plan 2013-2033 and beyond states that when considering development proposals, the Local Planning Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

6.6 Policy SP3 describes the overarching spatial strategy for growth across North Essex up to 2033. It provides that existing settlements will be the principal focus for additional growth and that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area. It states that future growth will be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting.

6.7 Policy SP3 in Section 1 of the Local Plan also provides that the Section 2 Local Plan for each local planning authority will identify a hierarchy of settlements where new development will be

accommodated according to the role of the settlement, sustainability, its physical capacity and local needs. It is the Tendring district Local Plan Section 2 that subsequently gives effect to the overarching spatial strategy through Policy SPL1 which defines the settlement hierarchy in Tendring and Policy SPL2 that determines how sustainable development will be achieved. Policy SPL2 thus states that to encourage sustainable patterns of growth and to carefully control urban sprawl, each settlement listed in Policy SPL1 is defined within a 'Settlement Development Boundary' as shown on the relevant Policies Map and Local Map. It goes on to state that within the Settlement Development Boundaries, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.

6.8 Policy SPL2 of the TDLP indicates that outside of settlement development boundaries, the Council will consider proposals in relation to the pattern and scales of growth promoted through Policy SPL1 and other relevant development plan policies.

6.9 As such, by virtue of its location outside the settlement boundary, the proposal is contrary to the strategy set out in Policies SP3 and SPL2.

#### Other Site Specific Considerations (Principle of Development)

6.10 The existing planning permission for the erection of a detached dwelling with vehicular access, under planning application reference 20/01618/FUL, remains live until the 23<sup>rd</sup> February 2024. This live permission serves as a material planning consideration of some weight because it is reasonable to assume that the above mentioned planning permission can still be implemented within the next month and a half regardless of the outcome of this application.

6.11 Furthermore, within the determination period of this application, the applicant has submitted a Discharge of Condition Application for condition 13 (Landscaping) linked to the previous approval 20/01618/FUL. Condition 13 is the only pre-commencement condition attached to planning permission 20/01618/FUL. With the submission of this pre-commencement condition, it is deemed that the considerations outlined in the preceding paragraph carry very significant weight because there is now an increased likelihood, or a tangible prospect, for the implementation of the existing permission mentioned above.

6.12 As such, insofar as the principle of development is concerned, and having regard to the site specific considerations set out above, officers consider that the site is a suitable one for new residential development. Due to the specific merits of the application as set out above the proposal would not set a harmful precedent for further development outside defined settlement boundary and would not prejudice the overall spatial strategy of the District.

#### Design and Appearance

6.13 Paragraph 130 of the National Planning Policy Framework (NPPF) requires that developments are visually attractive as a result of good architecture, are sympathetic to local character and establish or maintain a strong sense of place.

6.14 Policy SP7 of the Tendring District Local Plan seeks high standards of urban and architectural design, which responds positively to local character and context. Policies SPL3 and LP4 of the Local Plan also require that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout that relates well to its site and surroundings, create a unique sense of place.

6.15 The proposed dwelling will front the new access road and will be sited between the established residential units of Fir Tree House to the south and Westwood house to the north. The dwelling will measure approximately 10.2 metres wide by 8.1 metres deep, with an overall height of 7.8 metres.

- 6.16 The proposed dwelling will be constructed approximately 8.3 metres from Fir Tree House and 3.8 metres from Westwood House. This leaves sufficient space between the proposed development and the neighbouring dwellings so that the proposal does not appear overly cramped within its plot. The proposed application site offers adequate private amenity space to accommodate for future residents.
- 6.17 The exterior walls of the dwelling will be finished in a cream render over a red brick plinth, with a pitched roof design finished in natural slate.
- 6.18 The proposed dwelling is considered to be of an acceptable size, scale and design, in keeping with the character of the locality. The application therefore has no significant harmful impacts on the visual amenities of the area and is consistent with the above-mentioned national and local planning policies.

#### Impact on Neighbouring amenities

- 6.19 Paragraph 130 of the NPPF confirms planning policies and decisions should create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users.
- 6.20 Policy SP7 of the Tendring District Local Plan requires that the amenity of existing and future residents is protected. Policy SPL3 seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.
- 6.21 The proposed dwelling does not extend past the rear elevation of either adjacent neighbouring property and is located an adequate enough distance for it to have no significant harmful impact on the loss of daylight/sunlight, as indicated by the 45 degree rule highlighted within the Essex Design Guide.
- 6.22 There are no side facing windows located at first floor level to impact upon the loss of privacy to the adjacent neighbouring dwellings. The proposal does however include the installation of three facing rear windows which will provide the dwelling with views overlooking into the residential amenity areas of Fir Tree House and Westwood House. It is the duty of the Local Planning Authority to protect the amenities of all existing and future residents. Whilst the rear facing windows will provide views overlooking into the private amenity areas of the adjacent sites, two of these windows will be serving an en-suite and a bathroom, with the third serving a bedroom. None of these areas are considered to be primary living spaces and therefore pose no significant threat to the loss of privacy.

#### Highway Safety

- 6.23 Essex County Council highways have been consulted on this application. Their comments can be viewed in full above. Highways have confirmed they have no objection and deem the proposal to be acceptable in terms of highway safety, subject to mitigation and conditions. These conditions will be included on any subsequent approval of this application.
- 6.24 Whilst there is no proposed garage to provide parking at the site, a driveway and turning area has been provided to the front of the site. This hardstanding area provides adequate parking spaces for two vehicles and is deemed appropriate for a dwelling of this size and scale.

#### Landscape

- 6.25 The application site currently forms part of the residential curtilage of the host property. A well-established Hawthorn hedge is situated along the front boundary enclosing the garden. The Council's landscape officer does not believe this hedge falls within the scope of any legislation under which it could be afforded legal protection.

- 6.26 The garden is well planted with established trees and small shrubs. The applicant has provided an Arboricultural Impact Assessment (AIA) to show how the retained trees will be physically protected for the duration of the construction phase of any development for which planning permission may be granted
- 6.27 The proposed layout and position of the dwelling makes provision for the most visually prominent trees on the application site: a Cedar (T1), a Cherry (T2) and a False Cypress (T3). The Landscape Officer sees this as desirable and would ensure that trees that currently make a reasonable contribution to the appearance of the area are retained. However, if planning permission were likely to be granted then the new dwelling would screen the trees from view and their amenity value would be significantly diminished. However, the size, position and amenity value of the trees is such that they do not meet the criteria under which they merit formal legal protection by means of a tree preservation order.
- 6.28 The landscape officer has also stated that it would be desirable for the proposed dwelling to be set back further into the plot to provide room for small trees to be planted between the front elevation of the proposed dwelling and the highway. Trees in this position would feature prominently in the street scene and make a positive contribution to the appearance of the public realm. However, officers have not deemed it necessary to negotiate on this point as the application is identical to previously approved planning application 20/01618/FUL (of which the permission is still live and therefore forms a material consideration of very significant weight as set out above).
- 6.29 The Landscape Officer has suggested that details of soft landscaping should be secured by a planning condition on any subsequent approval. Officers will include this condition on approval of this application.

#### Drainage and Sewerage

- 6.30 Policy PPL 5 states that all new development must make adequate provision for drainage and sewerage.
- 6.31 The sewerage from the proposed dwelling will be connected to the mains sewer, this is considered the preferred approach and is acceptable.
- 6.32 The proposal is considered a minor development where there is no requirement to consult Essex County Council for sustainable drainage planning advice. Sustainable Drainage Systems (SuDS) are designed to replicate natural drainage systems, to drain surface water run-off, and in this case infiltration within the site, which will need to meet building regulation standards will be installed and is considered acceptable

#### Renewable Energy

- 6.33 Chapter 14 of the National Planning Policy Framework supports the transition to a low carbon future in a changing climate while Policy PPL10 of the Local Plan supports renewable energy generation and energy efficiency measures for residential development.
- 6.34 No energy efficiency measures have been submitted with the planning application and therefore a condition to secure minimum measures of a water-butts and compost bin, agreement of heating for the dwelling and a scheme for waste reduction will be secured on the grant of planning permission to reduce the demand for fossil fuels which are a finite resource and release carbon into the atmosphere and accelerate global warming contributing to climate change.

#### Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

6.35 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.

6.36 The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 2.2 KM from the Colne Estuary. New housing development within the Zol would be likely to increase the number of recreational visitors to the Colne Estuary; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site.

6.37 Mitigation measures must therefore be secured prior to occupation. A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017

#### Financial Contribution – Open Space

6.38 Policy DI1 states that all new development should be supported by, and have good access to, all necessary infrastructure. Local Plan Section 2 Policy HP5 states that the Council will work with partners and sports providers across the district to maintain, expand, and improve the quality and accessibility of public open space, sports and recreational facilities of different types and will aim to achieve and exceed standards set out in the Council's 2017 Open Spaces Strategy (or any future update).

6.39 In line with the requirements of Local Plan Policy HP 5 the Council's Open Spaces Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution towards public open or play space. Whilst they advise that there is a deficit of Open Space within Great Bentley no contribution is sought on this occasion, stating that there has been come recent improvements to the only play area in the village and these facilities are adequate to cope with some development.

#### Other Considerations

6.40 Great Bentley Parish Council have not provided any comments on this application.

6.41 No other letters of representation have been received.

### **7. Conclusion**

7.1 Officers are satisfied that the existing services and facilities within Great Bently would be capable of supporting the development of 1 dwelling, and that these are easily accessible due to the location of the bus stop to the front of the site.

7.2 The proposed dwelling is of an acceptable size, scale and design that will appear in keeping with the existing character of Plough Road and its locality.

7.3 Other than the high-level policy conflict in regard to the location of the site outside the defined settlement development boundary, the development would not result in any material harm in terms of design, impact, residential amenities or highway safety and is acceptable in all other regards. Furthermore, significant weight must be given to the existing approval at the site under planning application reference 20/01618/FUL, this permission remains live until the 23rd

February 2024. The current proposal is seeking permission for the same development and is effectively increasing the timeframe for this approval.

## 8. Recommendation

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section106 legal agreement with the agreed Heads of Terms, as set out in the table below:

CATEGORY	TERMS
Financial contribution towards RAMS.	£156.76 x 1 dwelling

## 8.2 Conditions and Reasons

### 1 COMPLIANCE REQUIRED: COMMENCEMENT TIME LIMIT

CONDITION: The development hereby permitted shall be begun not later the expiration of one year from the date of this permission.

REASON: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and in light of the weight given to the existing approval at the site under planning application reference 20/01618/FUL

NOTE/S FOR CONDITION:

The development needs to commence within the timeframe provided. Failure to comply with this condition will result in the permission becoming lapsed and unable to be carried out. If commencement takes place after the time lapses this may result in unlawful works at risk Enforcement Action proceedings. You should only commence works when all other conditions requiring agreement prior to commencement have been complied with.

### 2 APPROVED PLANS & DOCUMENTS

CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

Drawing No. FTC/AG/1  
Drawing No. FTC/AG/2A  
Design and Access Statement

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved,

unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

### 3 ACTION REQUIRED PRIOR TO COMMENCEMENT - HARD AND SOFT LANDSCAPING

CONDITION; No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard (including boundary treatments) and soft landscaping which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction."

Reason - In the interest of visual amenity and the character of the area.

### 4 COMPLIANCE WITH DETAILS AND TIMESCALE REQUIRED - LANDSCAPING SCHEME

CONDITION: All changes in ground levels, soft/hard landscaping shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development, or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

### 5 COMPLIANCE REQUIRED PRIOR TO COMMENCEMENT



CONDITION; Prior to commencement of development, areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety

6 COMPLIANCE REQUIRED - VISIBILITY SPLAY

CONDITION; Prior to occupation of the development hereby approved, the access at its centre line shall be provided with a visibility splay with dimensions as shown on submitted drawing no. FTC/AG/2A, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of obstruction above 600mm at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety

7 COMPLIANCE REQUIRED - ACCESS

CONDITION; Prior to occupation of the development hereby approved the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 3.6 metres (equivalent to 4 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety

8 COMPLIANCE REQUIRED - MATERIALS

No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety

9 COMPLIANCE REQUIRED - BOUNDARY PLANTING

CONDITION; Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety

10 ACTION REQUIRED - RESIDENTIAL TRAVEL INFORMATION PACK

CONDITION: Prior to occupation of the dwelling hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport

#### 11 AGREEMENT OF MEASURES TO IMPROVE SUSTAINABILITY OF DEVELOPMENT

CONDITION: No development shall commence above slab level until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include as a minimum to achieve:-

- A Water-butt per dwelling
- Compost bin per dwelling
- Agreement of heating of each dwelling/building
- Agreement of scheme for waste reduction

The scheme shall be fully implemented prior to the first occupancy of the development unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

REASON: To enhance the sustainability of the development through better use of water, energy and resources reduce harm to the environment and result in wider public benefit in accordance with the NPPF.

#### NOTE/S FOR CONDITION:

Slab level is normally refers to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visually above ground level or seek confirmation from the Local Planning Authority for your development.

The greatest threat to our planet is the belief that someone else will save it and also forgetting that small acts, when multiplied by millions of people, can transform the world. Developments will provide buildings/homes to thousands/millions of people over their lifetime. A well designed sustainable development in the beginning will restrict the contribution each person makes to that threat and help enable them to transform the world.

REASON: To enhance the sustainability of the development through better use of water, energy and resources reduce harm to the environment and result in wider public benefit in accordance with the NPPF.

### 8.3 Informatives

#### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

#### Highways Informative:

i. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

ii. On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area, it covers, and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

iii. The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

**9. Additional Considerations**

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 9.6 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

9.7 The proposal overall shall have a neutral impact.

9.8 Consultations undertaken with the affected communities or groups have not been required in this case.

9.9 No mitigation measures required.

#### Human Rights

9.10 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.

9.11 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).

9.12 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### Finance Implications

9.13 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.

9.14 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by

Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

**10. Background Papers**

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

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## PLANNING COMMITTEE

6<sup>th</sup> December 2023

### REPORT OF THE DIRECTOR OF PLANNING

#### Planning Enforcement Report

No information in this report is considered to be confidential. Personal and site information that may allow identification of the site and/or persons is not provided given the confidential nature of enforcement activities and consideration of data protection requirements.

Live Information was taken on **6<sup>th</sup> December 2023**.

The enforcement policy seeks to report the following areas.

- number of complaints received/registered in the quarter;
- number of cases closed in the quarter;
- number of acknowledgements within 3 working days
- number of harm assessment completions within 20 days of complaint receipt.
- number of site visits within the 20 day complaint receipt period.
- number of update letters provided on/by day 21
- number of live cases presented by category, electoral ward and time period since receipt;
- enforcement-related appeal decisions.

Please note that some areas continue not to be available given the available resource to export information from the available system or as addressed directly below. Replacement of Microsoft Access as the main reporting tool are being explored, including the introduction of Power BI that would allow instant ability to seek information on live and historic cases.

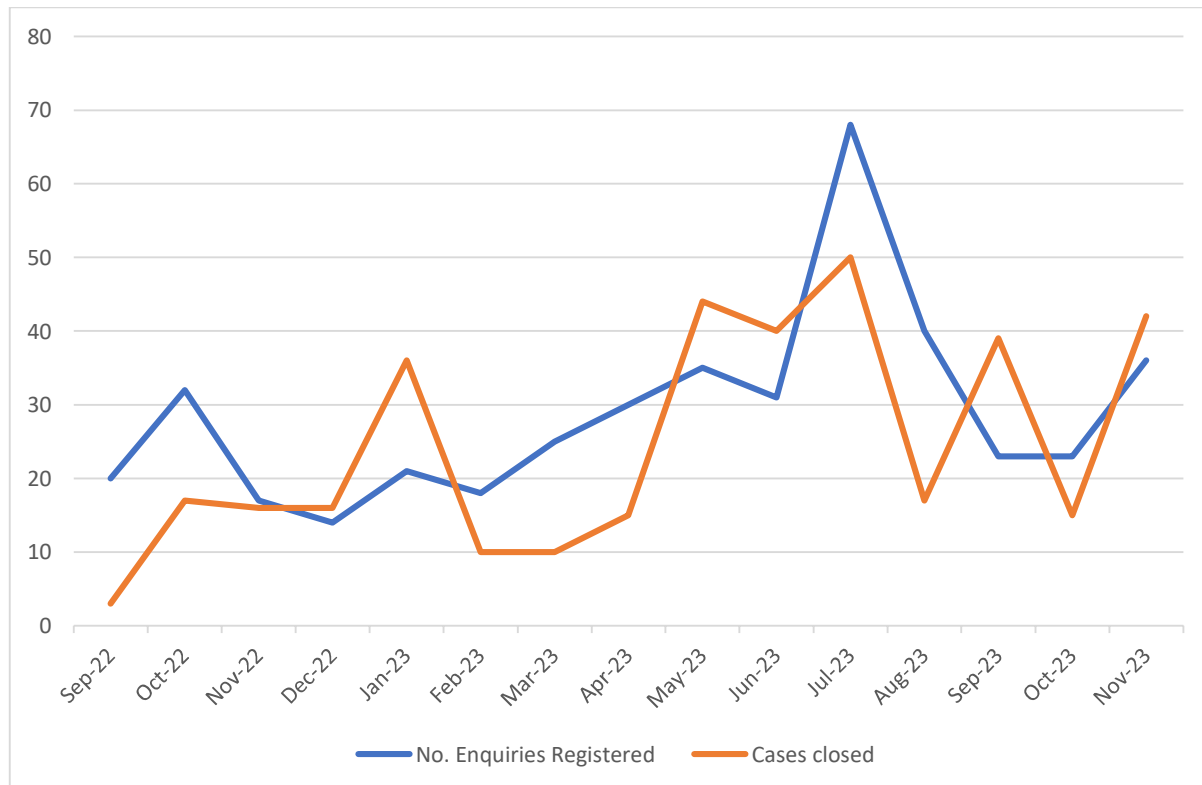
**Number of enforcement complaints received/registered in the quarter +, number of cases closed in the quarter + and number of acknowledgements within 3 working days.**

Month	Year	No. Enquiries Registered	No. Enquiries Registered in 3 Working Days	Cases closed
Jan-23	2023	21	21	36
Feb-23	2023	18	18	10
Mar-23	2023	25	25	10
Apr-23	2023	30	30	15
May-23	2023	35	35	44
Jun-23	2023	31	31	40
Jul-23	2023	68	68	50

Aug-23	2023	40	40	17
Sep-23	2023	23	23	39
Oct-23	2023	23	23	15
Nov-23	2023	36	36	42

**New Enquiries and Cases Closed (Graph of information above).**

Graph includes earlier data not shown on the table above.



**1. Enquiries Registered:**

- The number of inquiries registered varies each month, ranging from 18 to 68.
- Overall, there is an observable increase in the number of inquiries from the beginning to the middle of the year, with a peak in July due to the Jaywick project for untidy sites.

**2. Enquiries Registered within 3 Working Days:**

- The data shows that all inquiries were registered within 3 working days across all months, indicating a timely response to new cases.

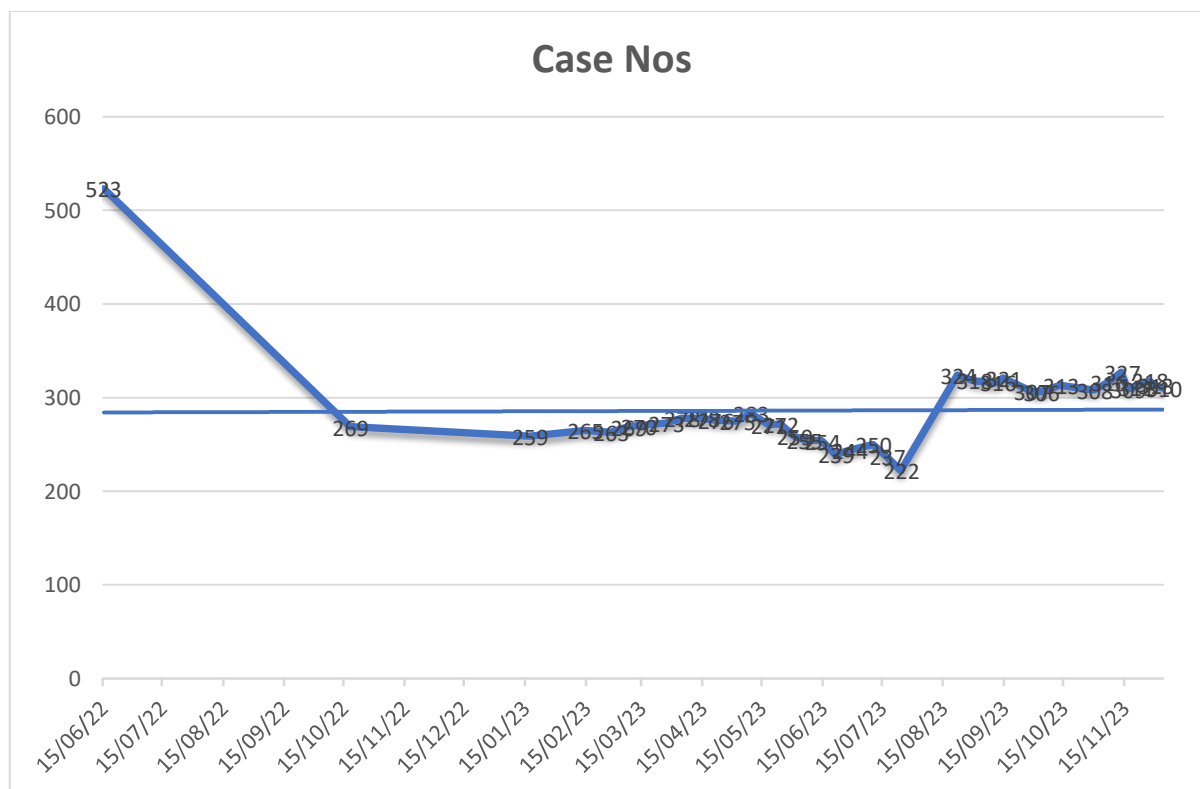
**3. Cases Closed:**

- The number of cases closed ranges from 10 to 50 per month.
- Notably, there is an increase in cases closed from July onwards, with the highest number of cases closed in July. This may in part due to early success within the Jaywick project.

Overall:



The team consistently meets the target of registering inquiries within 3 working days, reflecting a commitment to timely responsiveness. It is noted that despite record closures we also have continued increases in new alleged enforcement enquiries. These do significantly exceed the numbers being closed during the summer, but that is mostly explained by the Jaywick Enforcement project that added around an average of 60 new cases over a few weeks to the workload. However, if you average out this year to date it is around 28 cases closed and 31 new cases each month. This jump of the Jaywick project also reflects and influences the ongoing total case numbers and other stats considered below.



As demonstrated above there was a significant decline in numbers of enforcement cases until August and with the addition of Jaywick cases the numbers jumped and remained steady since around 310 to 320. At the time of writing the number of cases is 310.

**Number of harm assessment completions within 20 days of complaint receipt.**

At this time harm assessments are used twice for new cases when first created and updated or created for the conclusion of all cases. Harm assessments are stored in Idox and need to be manually counted. It is understood these are all completed within 20 days and the updated harm assessment through Member review has been implemented.

It is further noted that the Enforcement Policy sought a traffic light and priority system, and this has been implemented for new cases and all historic cases have been reviewed.

Priority 1 (P1) This category includes development which could cause irreversible or serious harm if the Council does not act immediately.

Priority 2 (P2) This category includes likely significant public concern or where there is significant immediate harm to the amenity of the area.

Priority 3 (P3) Minor breaches which do not result in significant immediate or irreversible harm or public concern.

There is a Priority 4, but these are non breaches of planning and so are closed within a couple of days. On this occasion one of these has been captured in the data taken for this report.

Overlaying the priorities is the Red, Amber and Green traffic lights and together this results in the following table. For example P2AMD is Priority 2 and Amber. N/a means not assessed yet as these are new cases.

<b>P2AMB</b>	<b>11</b>
<b>P2RED</b>	<b>2</b>
<b>P3AMB</b>	<b>45</b>
<b>P3GRE</b>	<b>226</b>
<b>P4GRE</b>	<b>1</b>
<b>P1AMB</b>	<b>2</b>
<b>N/A</b>	<b>2</b>
<b>P2GRE</b>	<b>15</b>
<b>P1GRE</b>	<b>6</b>
<b>Grand Total</b>	<b>310</b>

#### **Number of site visits within the 20 day complaint receipt period.**

While site visits are recorded, there is not yet a report designed to pull out this information and would require a manual count. There is limited skilled technical officers available to design this report at this time. A new reporting tool has been requested that may assist, but not yet installed or set up. It can be established that 281 initial visits that took place since January 2023, but the total number of visits as there would be subsequent visits can not be counted without manual checks. Also from random sampling all initial visits were within 20 days of the complaint.

#### **Number of update letters provided on/by day 21**

It remains the case that there is also no report designed to pull this information from the system at this time and this needs expert help to create from the Uniform system in place. We have instead developed a way to track all future update dates for all Enforcement Cases to ensure updates to complainants are not missed. Taken a sample of cases in writing this report, all cases reviewed have achieved an update before day 21.

The average number of update letters/emails required given a 21 day cycle is 105 update letters/emails per week (and never less than a hundred). This significant requirement is not considered likely to be met as a target as it currently applies to all cases. Instead, officers are prioritising the active cases for updates only.

Updates may include:

- Writing to say no update is available.
- Writing to provide an update on the stage of investigation and may vary in level of detail
- Writing to close/conclude the investigation and explaining why.

It is realised that should the Council seek to meet the entire requirement of the policy that over a hundred updates a week need to be issued. In the next review of the Enforcement policy this will be sought to be amended, for example to require update letters for the first two months only (every 21days) and thereafter only if significant change in the investigation and closure.

Related to this requirement, two suggestions have been made to the task and finish group and are being taken forward now. The engagement of regular updates to Members (a weekly list of enforcement cases) and Public Access online to be engaged to enable the public to self-serve. This matter will be explored further and reported back to Members.

**Number of live cases presented by category, electoral ward and time period since receipt.**

There are 310 Live Cases at the time of writing this report.

Time Period since receipt.

Age	No of Cases (14 <sup>th</sup> June)	No of Cases 6 <sup>th</sup> December
Year 1	73	167
Year 2	69	40
Year 3	21	12
Year 4	5	5
Year 5	4	4
Year 6	4	4
Year 7	49	49
Year 8	4	4
Year 9	1	1
Year 10	1	1
Year 11	2	2
Year 12	20	20
Year 13	1	1

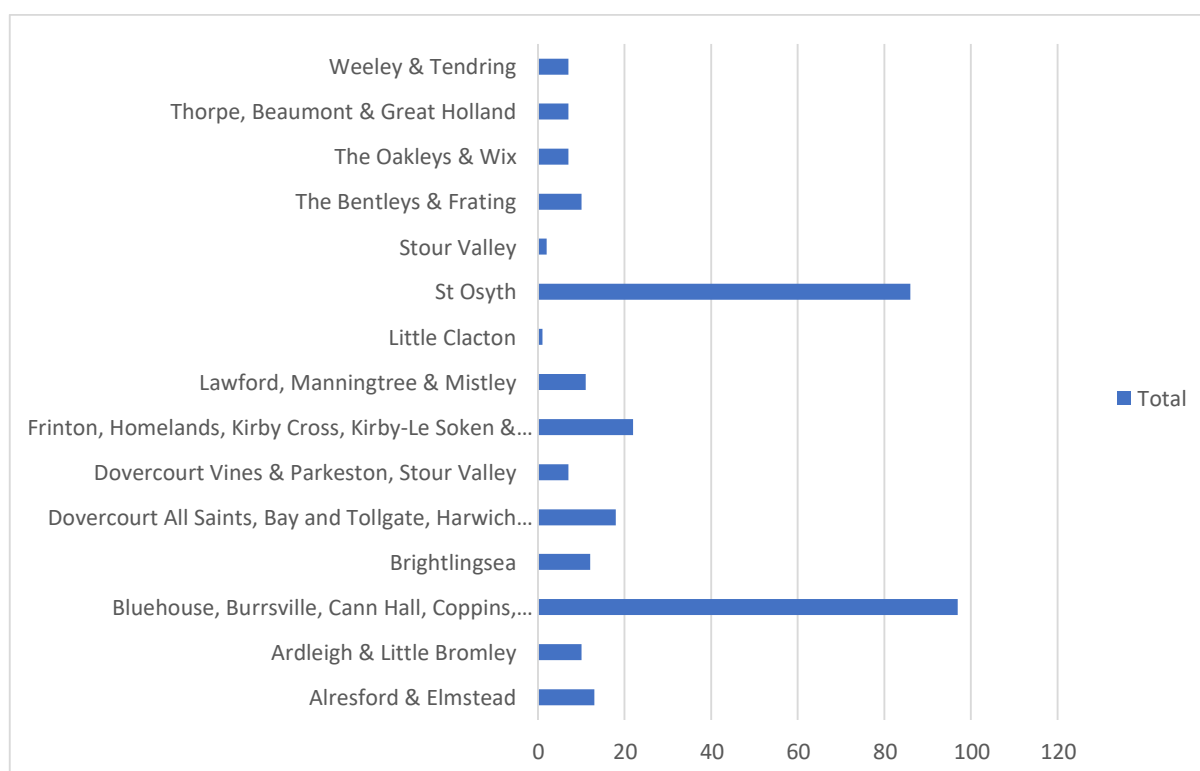
Category

Alleged breach of condition	70
Alleged breach of occupation condition	53
Alleged building works	38
Alleged change of use	45
Alleged Non-Compliance with approved plans	13
Alleged unauthorised advert	5
Alleged Unauthorised Engineering Works	2
Alleged Untidy Site Jaywick S215	58
Alleged Untidy Site S215	10
Alleged works to a protected tree	3
Alleged works to Listed Building	5
Alleged Non-Compliance with Section 106	3
Old Type Reference	1
Alleged change of use to HMO	4

## Electoral ward

The following is the number of current enforcement cases divided by Ward. This is translated into a graph further down.

Alresford & Elmstead	13
Ardleigh & Little Bromley	10
Bluehouse, Burrsville, Cann Hall, Coppins, Eastcliff, Pier, St Batholomews, St James, St Johns, St Pauls, West Clacton & Jaywick Sands	97
Brightlingsea	12
Dovercourt All Saints, Bay and Tollgate, Harwich & Kingsway	18
Dovercourt Vines & Parkeston, Stour Valley	7
Frinton, Homelands, Kirby Cross, Kirby-Le Soken & Hamford, Thorpe, Beaumont & Gt Holland, Walton	22
Lawford, Manningtree & Mistley	11
Little Clacton	1
St Osyth	86
Stour Valley	2
The Bentleys & Frating	10
The Oakleys & Wix	7
Thorpe, Beaumont & Great Holland	7
Weeley & Tendring	7



## Parish

The following is the number of enforcement cases divided by Parish.

Ardleigh	10
Beaumont-cum-Moze	1
Brightlingsea	12

Clacton-on-Sea	97
Elmstead Market	2
Frating	3
Frinton-on-Sea	22
Great Bentley	6
Great Bromley	5
Harwich	18
Lawford	7
Little Bentley	1
Little Clacton	1
Manningtree	2
Mistley	2
Parkeston, Essex	7
St Osyth	86
Tendring	5
Thorpe-le-Soken	6
Weeley	2
Wrabness	1
Alresford, Essex	6
Wix, Essex	3
Bradfield, Essex	1
Little Oakley, Essex	3
Great Oakley, Essex	1

### Enforcement-related appeal decisions.

We have 8 live enforcement appeals at the time writing this report

Appeal Reference	Parish	Nature	Appeal	Current status
22/00034/ENFORC	Jaywick	Extension on the front and a large extension on the rear of building.	01/08/2022	SITE VISIT DATE ARRANGED BY PINS
22/00037/ENFORC	JAYWICK	Stationing of Caravan water and sewage connected to caravan illegally. Being used as main residence.	31/08/2022	SITE VISIT DATE ARRANGED BY PINS
22/00043/ENFORC	Ardleigh	Storage/plant construction yard at Goodhall Farm continuing to be used by TG RAM. The owner of the land was required to seek planning	15/09/2022	No further updates, still awaiting case progression

		permission for this activity, which he failed to do.		
22/00048/ENFORC (joint appeal 3309012 / 3308415)	St Osyth	Change of use for residential caravans and possible building of new dwelling.	06/10/2022	No further updates, still awaiting case progression
22/00054/ENFORC	Tesco Express, Manningtree	Installation of an air conditioning unit without planning permission.	18/10/2022	No further updates, still awaiting case progression
23/00001/ENFORC	Clacton on Sea	Alleged change of use from residential care home (C2) to hostel for asylum seekers (sui generis), also possible building works. (Includes 42-46 Old Road)	13/01/2023	Public Inquiry to be held at the townhall on the 9 <sup>th</sup> May 2024
23/00015/ENFORC	Weeley	Unauthorised traveller/gypsy and further operational development	21/03/2023	No further updates, still awaiting case progression

It should be noted that we have been in contact with PINS regarding all appeals and they have stated that currently there is still a large back log with planning enforcement appeals as they have to prioritise cases, this is now meaning that appeals are currently running between 18 month to 2 years potentially before an appeal decision could be issued.