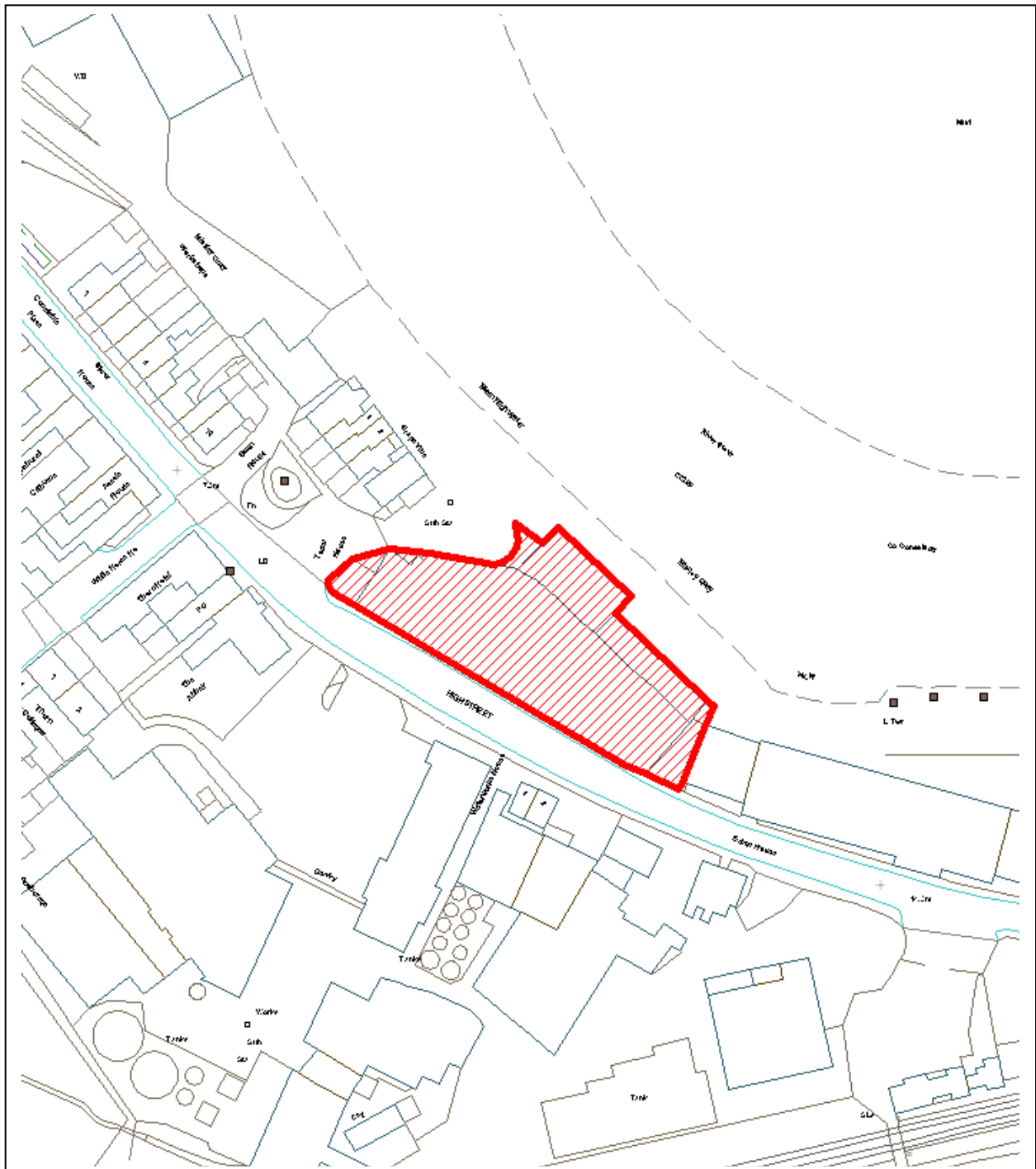


PLANNING COMMITTEE

4 MARCH 2014

REPORT OF THE HEAD OF PLANNING

A.3 PLANNING APPLICATION - 12/00427/FUL - THORN QUAY WAREHOUSE, HIGH STREET, MISTLEY, MANNINGTREE, CO11 1HB



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| Application: | 12/00427/FUL | Town / Parish: Mistley Parish Council |
| Applicant: | Anglia Maltings (Holdings) Ltd and Gladedale Estates Ltd | |
| Address: | Thorn Quay Warehouse High Street Mistley CO11 1HB | |
| Development: | Demolition of existing warehouse and construction of a new building comprising 45 dwellings, quay level warehouse floorspace, office floorspace and car parking provision. | |

1. Executive Summary

- 1.A This application was originally considered at the Planning Committee meeting on 8 October 2013, when Members resolved to authorise the grant of planning permission, subject to conditions and completion of the legal agreement within six months, in accordance with the recommendation below. On 15 November 2013, the Council received by post a pre-action protocol claim letter (also received by e-mail the previous day) relating to a proposed claim for judicial review if the Council did not withdraw its resolutions on 8 October 2013 authorising the grant of planning permission and the associated Conservation Area Consent. A summary of the grounds of challenge is set out in section 7 of this report. Members must therefore ensure that these matters and all other material planning considerations are taken into account when they make their decision on this proposal. The deadline for completion of the legal agreement has been reduced to three months as a draft is already under discussion between the parties. For ease of reference, the whole of Section 7 of this report is new and all other significant amendments and additions to the original report are shown in bold font. In this report, references to the FUL report are to this report relating to application 12/00427/FUL, references to the CON report are to the report relating to Conservation Area Consent application 12/00428/CON and (where the context so admits) references to the reports are to those reports.**
- 1.1 The application proposes demolition of the existing Thorn Quay Warehouse and construction of a new building comprising 45 dwellings (five one-bedroom, 34 two bedroom and 6 three bedroom units), 420 square metres of quay level warehouse, 86 square metres of office floor space, and car and cycle parking provision. The proposed building is two to four stories high fronting the High Street, and two to six stories high fronting the quay with a seven storey tower.
- 1.2 The site is in a prominent riverside location between Mistley Quay and the High Street, on the junction with Swan Corner. The site lies within the defined settlement boundary in a sustainable location in close proximity to the train station and local shops and facilities. The building is vacant but was previously in employment use and lies within the Mistley Urban Regeneration Area under the saved Local Plan but is not allocated for any specific use under the draft Local Plan.
- 1.3 The site lies within the Manningtree and Mistley Conservation Area with a large number of listed buildings in close proximity including the recently listed Quay Wall and the two neighbouring maltings buildings. It also lies within the proposed extension to the Suffolk Coasts and Heaths Area of Outstanding Natural Beauty and partly within Flood Zone 3. The site also abuts the Stour Estuary Site of Special Scientific Interest (SSSI), Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site which are recognised for their importance to nature conservation.

- 1.4 The loss of this existing employment site and its replacement with predominantly residential development, with some office and warehouse floor space, is considered to be in accordance with the provisions of the NPPF and the saved and draft Tendring District Local Plans. The site lies in a sustainable location and represents a significant visual improvement to the character and appearance of the Manningtree and Mistley Conservation Area and surrounding heritage assets. The demolition of the existing building and its proposed redevelopment are therefore considered acceptable subject to conditions to ensure redevelopment of the site following demolition to prevent a long term cleared site which would result in substantial harm to the appearance of the conservation area.
- 1.5 The proposed development would normally contribute towards affordable housing, education and public open space however an independently assessed viability report confirms only highway works can be provided and no other financial contributions or works are viable. On balance, given the reductions in the scale of development in order to achieve an acceptable proposal, approval is recommended subject to a legal agreement to ensure that any future increase in the predicted sale value of the development can be recouped and used for the contributions which should apply to the development.
- 1.6 Subject to the recommended conditions, the proposal is also considered acceptable in terms of flood risk, landscape impact, residential amenity, and highway safety and is recommended for approval as detailed below.
- 1.7 The associated Conservation Area Consent application 12/00428/CON for demolition of the existing building is also on this agenda for consideration.
- 1.8 When determining the FUL application, Members should take into account all planning considerations which are material to the FUL application, including those set out in this report and the CON report.**

Recommendation: That the Head of Planning be authorised to grant planning permission for the development subject to:-

(a) Within **three** months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 **(on such detailed terms as the Head of Planning in their discretion considers appropriate)** dealing with the following matters:

- Clawback clause to ensure that **a fair share of the profit from** any future increase in the predicted sale value of the development can be recouped and used for the contributions which should apply to the development as detailed at paragraphs **6.52-6.54** of this report. If development has not commenced within 18 months the viability will have to be reassessed, and again at 3 years if the development has not been completed.

(b) Planning conditions in accordance with those set out below (but with such amendments and additions, if any, to the detailed wording thereof as the Head of Planning in their discretion considers appropriate

Conditions:

1. Standard 3 year time limit for commencement.
2. Development in accordance with submitted plans.
3. No demolition or preliminary groundworks shall occur until a programme of archaeological work has been submitted and approved.
4. Samples of facing, roofing and surfacing materials.

5. Ecological Assessment mitigation to include provision of swift nests and bat roosts.
6. Operating hours of warehouse and office restricted to 8.30am to 6pm Monday to Friday, 9am to 1pm Saturdays and no working on Sundays or public holidays.
7. The hereby approved warehouse shall only be used for B8 (storage and distribution) and for no other purpose including any other purpose in Class B8 or B1.
8. No goods, materials or containers shall be stored, stacked or deposited on the site outside the buildings, nor shall any commercial activities or processes (except for the loading and unloading of vehicles) be carried on outside the buildings.
9. Details of a Flood Evacuation Plan for both businesses and dwellings.
10. Details of water, energy and resource efficiency measures during construction and occupation.
11. No demolition work shall take place outside the hours of 09:00 to 18:00 Monday to Friday, and 09:00 to 13:00 Saturdays, and at no time on Sundays and public holidays.
12. No construction work shall take place outside the hours of 07:00 to 19:00 Monday to Friday, and 08:00 to 13:00 Saturdays, and at no time on Sundays and public holidays.
13. Details of permeable surfacing/surface water drainage.
14. Car, motorcycle and cycle parking as shown on submitted plans to be provided prior to occupation and retained thereafter.
15. Details of on site parking for demolition and construction workers, vehicles, loading and unloading and turning facilities.
16. Details of wheel and underbody cleaning facility.
17. Demolition and Construction Management Plan.
18. Vehicular access alterations and improved pedestrian facilities to be provided prior to occupation.
19. Details of Transport Information and Marketing Scheme for sustainable transport (green travel pack).
20. Prior to commencement of development two bus stops and shelters, level entry kerbing, posts and flags and any accommodation works to the highway shall be provided between the junction of New Road and the High Street and the High Street and School Lane.
21. Monitoring of methane and other hazardous gases.
22. Removal and disposal of contaminated material.
23. Obscure glazing facing No 1 Maltings and third floor privacy screens to balconies to be erected prior to occupation and retained thereafter.
24. Glazing, air brick, trickle vent, and balcony screens and soffits specification as per noise survey.
25. Landscaping details for communal gardens and hard surfacing.
26. Details of existing and proposed site levels and finished floor, eaves and ridge heights in relation to neighbouring property.
27. Details of any external lighting.
28. Remove permitted development rights for solar panels on visible roof slopes.
29. The storage of refuse and/or waste shall be provided within the bin stores shown on the submitted plans and shall be provided before the first occupation of the building and shall thereafter be retained as such at all times.

30. Details of broadband connection

(c) The Head of Planning be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of **three** months, as the requirements necessary to make the development acceptable in planning terms had not been secured through S106 planning obligation, contrary to saved policies COM6, HG4 and QL12 of the Tendring District Local Plan (2007) and draft policies SD7, PEO10 and PEO22 of the Tendring District Local Plan Proposed Submission Draft (2012).

2. Planning Policy

National Policy:

National Planning Policy Framework (2012)

- 2.1 Although this is not an allocated employment site the NPPF says where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.
- 2.2 Housing applications should be considered in the context of the presumption in favour of sustainable development. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, Local Planning Authorities should plan for a mix of housing; identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and where it is identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities.
- 2.3 Local Planning Authorities should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.
- 2.4 Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Planning decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.
- 2.5 The NPPF adds that Local Planning Authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment and should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. Applicants should describe the significance of any heritage assets affected, including any contribution made by their setting. Where a site has the potential to include heritage assets with archaeological interest, developers should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 2.6 Local Planning Authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.
- 2.7 In determining planning applications, Local Planning Authorities should take account of: (i) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; (ii) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and (iii) the desirability of new development making a positive contribution to local character and distinctiveness.

- 2.8 **Paragraph 134 states** Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 2.9 Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.
- 2.10 The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty. The conservation of wildlife and cultural heritage are important.
- 2.11 Planning decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value.

Local Plan Policy:

Tendring District Local Plan (2007)

| | |
|------|----------------------------------------------------------------------|
| QL1 | Spatial Strategy |
| QL2 | Promoting Transport Choice |
| QL3 | Minimising and Managing Flood Risk |
| QL6 | Urban Regeneration Areas |
| QL9 | Design of New Development |
| QL10 | Designing New Development to Meet Functional Needs |
| QL11 | Environmental Impacts and Compatibility of Uses |
| QL12 | Planning Obligations |
| ER3 | Protection of Employment Land |
| HG1 | Housing Provision |
| HG3 | Residential Development within Defined Settlements |
| HG3a | Mixed Communities |
| HG4 | Affordable Housing in new Developments |
| HG6 | Dwelling Size and Type |
| HG7 | Residential Densities |
| HG9 | Private Amenity Space |
| COM6 | Provision of Recreational Open Space for New Residential Development |
| EN5a | Area Proposed as Extension to the Suffolk Coasts and Heaths AONB |

| | |
|-------|------------------------------------------------------------------------------|
| EN11a | Protection of International Sites: European Sites and Ramsar Sites |
| EN11b | Protection of National Sites: Including Sites of Special Scientific Interest |
| EN17 | Conservation Areas |
| EN20 | Demolition within Conservation Areas |
| EN23 | Development within the Proximity of a Listed Building |
| TR1a | Development Affecting Highways |
| TR7 | Vehicle Parking at New Development |
| LMM1 | Mistley Urban Regeneration Area |

Tendring District Local Plan Proposed Submission Draft (2012) as amended by the
Tendring District Local Plan: Pre-Submission Focussed Changes (2014)

| | |
|-------------|--------------------------------------------------|
| SD1 | Presumption in Favour of Sustainable Development |
| SD2 | Urban Settlements |
| SD5 | Managing Growth |
| SD7 | Securing Facilities and Infrastructure |
| SD8 | Transport and Accessibility |
| SD9 | Design of New Development |
| SD10 | Sustainable Construction |
| PRO2 | Improving the Telecommunications Network |
| PRO14 | Employment Sites |
| PEO1 | Housing Supply |
| PEO2 | Housing Trajectory |
| PEO3 | Housing Density |
| PEO4 | Standards for New Housing |
| PEO7 | Housing Choice |
| PEO8 | Aspirational Housing |
| PEO9 | Family Housing |
| PEO10 | Council Housing |
| PEO12 | Flats, Apartments and Maisonettes |

| | |
|-------|-----------------------------------------------------|
| PEO22 | Green Infrastructure in New Residential Development |
| PLA1 | Development and Flood Risk |
| PLA4 | Nature Conservation and Geo-Diversity |
| PLA5 | The Countryside Landscape |
| PLA6 | The Historic Environment |
| PLA7 | Conservation Areas |
| PLA8 | Listed Buildings |

Other guidance:

ECC Parking Standards (2009)

Manningtree and Mistley Conservation Area Management Plan (2010)

3. Relevant Planning History

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|--------------|---------------------------------------------------------------------------------------------------------------------------------|---------|------------|
| 13/00479/FUL | Removal of existing Quay edge safety fence and replacement with reclaimed nineteenth century hand forged wrought iron railings. | Refused | 21.06.2013 |
|--------------|---------------------------------------------------------------------------------------------------------------------------------|---------|------------|

4. Consultations

- 4.1 English Heritage – On balance the latest revisions to the scale, massing and detailed design have satisfactorily addressed the significant concerns originally raised and we therefore consider the scheme to be acceptable. It is imperative that the loss of this highly prominent heritage asset should not occur until all reasonable steps have been taken to ensure the new development will proceed after demolition otherwise it would result in substantial harm to the conservation area. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset such as the conservation area this harm should be weighed against the public benefits of the proposal. Accept that options for retention and re-use of the building have been thoroughly assessed.
- 4.2 Natural England – No objection. Satisfied that mitigation detailed in Ecological Assessment would be sufficient to ensure impact on SSSI/SPA/Ramsar would be kept to a minimum.
- 4.3 Environment Agency – No objection. No changes to the building layout or design within the functional floodplain that could alter it and the residential units are all situated above the 1 in 200 year flood level with the addition of climate change and includes safe access/egress onto the higher ground on the High Street. Recommend a condition be imposed securing details of water, energy and resource efficiency measures during construction and occupation. Not within our remit to comment on surface water drainage on sites under one hectare.
- 4.4 ECC Education – Development will generate a need for just over four additional Secondary Education places and request £63,356.
- 4.5 ECC Highways – No objection subject to 8 conditions relating to: provision of parking areas prior to occupation and retention thereafter; details of motorcycle and bicycle parking; details of onsite parking for demolition and construction workers, vehicles, loading and unloading, and turning facilities; details of wheel and underbody cleaning facility; details of

Demolition and Construction Management Plan; prior to occupation vehicular access arrangements and improved pedestrian facilities (build outs) shall be provided as shown on submitted plans; details of Transport Information and Marketing Scheme for sustainable transport (green travel pack); and prior to commencement of development two bus stops and shelters, level entry kerbing, posts and flags and any accommodation works to the highway shall be provided between the junction of New Road and the High Street, and the High Street and School Lane.

- 4.6 ECC Archaeology – The site comprises a series of 20th century buildings on the site of earlier structures associated with the 19th century malting industry. The archaeological assessment submitted acknowledges the potential for earlier below ground archaeological remains associated with post-medieval development of the site. Recommend a condition that no demolition or preliminary groundworks shall occur until a programme of archaeological work has been submitted and approved.
- 4.7 Anglian Water – Surface water disposal directly to a watercourse (not sewer) is outside Anglian Water's jurisdiction (Environment Agency matter). Available capacity for foul drainage and sewerage from the development. Any trade effluent discharge will need to be subject to prior consent. Recommend oil/petrol interceptors be fitted in all car parking facilities.
- 4.8 Suffolk Coast and Heaths AONB Unit – No objection. Welcome applicants wish to reflect local character but express concern that design does not reflect the more intimate character of Mistley as a small port or the current building materials as seen from the nationally protected Suffolk Coasts and Heaths AONB. Decision should also reflect proposal to include the land within proposed extension to the AONB.
- 4.9 Crime Prevention – No objection but provide advice relating to windows, doors, and the access system. Request condition that the development will attain Secured by Design certification prior to occupation to reduce opportunities for crime and anti-social behaviour. During construction CCTV should be installed to deter crime and parking should be in a designated area to prevent traffic problems.
- 4.10 TDC Environmental Health – Consideration should be given to minimum 2 metre high non-climbable security fencing during construction and site should be kept tidy with regular waste removal. Prior to commencement of development a method statement should be submitted to the Council confirming type and location of plant, noise intensity, noise control methods, vehicle noise, skips, piling, etc. Hours of construction should be restricted to 7am to 7pm Monday to Friday, 8am to 1pm Saturday and no Sunday or Bank Holiday working. Dust pollution should be minimised. Wheelwash facilities should be provided at site exits to prevent transfer of mud. May be necessary to monitor the emissions of methane gas and where necessary establish a programme of testing for methane and other hazardous gases. No burning of materials on site. Removal and disposal of contaminated material to be regulated by the Environment Agency and TDC Environmental Services. Any contaminated soil should be analysed and correctly disposed of.
- 4.11 TDC Housing – Proposal should provide 25% affordable housing at 80% of sale value.
- 4.12 TDC Public Experience – Significant deficit in both equipped play and formal open space in the Parish with plans to increase the play area at Furze Hill. A financial contribution towards public open space facilities is therefore justified.
- 4.13 TDC Building Control – Cannot comment at this stage, encourage discussion prior to submission of Building Regulations application.
- 4.14 Mistley Parish Council - Object

- Appreciate the extensive consultation, amendment to design, and reduction in the mass but remain seriously concerned about the vehicular access. The access via the Swan Basin road is inadequate, and potentially dangerous, due to the steep gradient at the junction with High Street and the almost non-existent sight lines at this point. There is traffic survey evidence that cars coming from the Harwich Road direction are travelling at or in excess of 30 m.p.h. Should resolve the issue of adopting the road leading from The Towers as a public highway.
- The apertures in the wall to allow views across the river are welcomed but should be retained by condition to prevent obstruction by flower tubs etc.
- Consideration should be given to the comments from Essex Police regarding public safety and crime prevention.

4.15 In response to the Parish Council's concerns: the Highway Authority is satisfied with the proposed access subject to the recommended conditions as detailed above. Discussions have taken place separately regarding the road leading from the Towers however this is outside the applicant's ownership and the application must be assessed in its current form which, as detailed in the report, is considered acceptable in highway safety terms. The comments in relation to the communal gardens are noted and form a recommended condition. A note will be added in relation to crime prevention measures.

5. Representations

5.1 4 letters of support have been received and are summarised as follows:

- Will improve the quayside and Mistley as a whole.
- Contributes to need for new accommodation in the District.

5.2 14 letters of objection (5 from one objector) have been received and are summarised as follows:

- Traffic calming required in the High Street (this is not considered necessary by the Highway Authority. However works are required to the access onto the High Street as detailed in the Highway Safety section below and this forms a recommended condition).
- Too high out of scale with neighbouring development (this matter is addressed in the design section below and following the amendment is now considered acceptable).
- Design is too modern (the design is considered to strike a balance between reflecting local character and creating a new building of architectural interest to enhance the locality).
- Should not have balconies overlooking Swan Basin (there is adequate separation between the proposed balconies and neighbouring dwellings to prevent any material harm in terms of overlooking).
- Materials should match surrounding listed buildings (the palette of materials reflects neighbouring development through the use of red and buff brick and natural slate but also introduces variety in the use of small areas of zinc and timber weatherboarding to the higher levels which is considered acceptable).
- Concerned over public safety with traffic conflict on quayside (there is already a mixture of commercial and residential uses in the immediate area and this forms part of the character of the quayside. Pedestrian entrances are located along the High Street elevation with one parking entrance from Swan Basin and the other facing the quay. This is considered acceptable in terms of safety for both pedestrians and vehicular traffic).
- Noise and vibration from dock traffic is a problem (these concerns have been professionally assessed and deemed to be acceptable as detailed in the residential amenity section below).

- Possible subsidence issues (appropriate foundations and construction would be controlled at Building Regulations stage).
- Harms important views (This matter is assessed in the heritage impact section below and is deemed acceptable).
- Should be no higher than existing High Street frontage wall (the height of the development has been significantly reduced with the High Street elevation broken up into six linked buildings with the upper floors set back creating a domestic scale reflecting that of the existing brick elevation).
- Large car park entrance onto Swan Basin is ugly (this has been amended with a central brick pier and is set back, underneath the building. This results in an acceptable design which reduces the prominence of this necessary feature of the development).
- Concern over noise, fumes and traffic from proposed warehouse (this is an existing working quayside with various employment uses and the proposed warehouse is not considered likely to result in any material harm in terms of noise, traffic or fumes particularly in relation to the existing commercial use of the building).
- Swan feed store will create problems with rats and pigeon fouling (this matter relates to proper management and could be controlled by environmental health legislation).
- Land ownership issues have prevented completion of car parking for neighbouring units (this is not a material consideration for the current application. Conditions are recommended to secure provision of the parking facilities prior to occupation and there can therefore be no objection on this ground).
- Brick façade on the High Street should be retained (although this is identified as a positive feature the brick façade would be difficult to retain due to different floor levels, requirement for piling etc. Furthermore the current proposal incorporates a strong brick façade which introduces views through to the quay and is considered to be an enhancement on the existing High Street elevation).
- Occupants of other Maltings are professionals or weekend homes so little conflict with port traffic unlike the proposed family accommodation (there is a wide variety of accommodation along the quayside and the application is considered to provide a good mix of residential accommodation in a sustainable location).

5.3 8 letters of comment have been received and are summarised as follows:

- Will exacerbate existing vehicular exit problems at the Swan Basin junction, should be entrance only and development should exit by The Towers (discussions have taken place separately regarding the road leading from the Towers however this is outside the applicant's ownership and the application must be assessed in its current form which, as detailed in the report, is considered acceptable in highway safety terms).
- Street scene drawings don't appear accurate (this is related to the perspective which would vary greatly depending upon the specific viewpoint selected. The street scene drawings appear to be accurate, however the development should be assessed against the elevations which are more precise).
- Revised plans are a considerable improvement.
- Windows on West will overlook Quayside Maltings (addressed in the residential amenity section below, and subject to the recommended conditions will not result in any material harm to residential amenity).
- Quayside fence should be removed (this lies outside the applicant's ownership and control).
- Flood risk issues (fully addressed in the flood risk section below).
- Waste collection near car park will cause conflict at collection time (these are considered to be the most sympathetic locations for the bin stores minimising their visual impact. Traffic conflict would be over a very short time period and would not be materially harmful to highway safety).

5.4 In addition to the comments above, TWL Logistics are the Port Operators and they have submitted historic information and detailed objections to the proposal which are summarised as follows:

Original proposal:

- Non-compliance with NPPF and Local Plan policy for the conservation of the historic environment.
- Impact upon heritage assets has not been properly assessed.
- No consideration of historic port of Mistley and the uses which define Mistley's character.
- Loss of industrial/mercantile use would be damaging to value and significance of heritage assets and would harm the conservation area.
- English Heritage have failed to fully realise the significance of the historic working port and harbour as an essential element of significance and the relationship of the site to that.
- Proposal creates residential units within the heart of an industrial working port which will prevent safe and continuous working and threatens the essential character of the area.
- Design and Access Statement (DAS) and Heritage Impact Assessment (HIA) fail to recognise the existing buildings as non-designated heritage assets.
- This is a viable building, has never been marketed and was in active use until very recently.
- HIA states PPS5 is obsolete however this is the valid national guidance document to be afforded full weight in considering heritage policy matters.
- The historic setting of Mistley Towers, The Grapevine and The Swan Basin would be affected by the development.
- No reference is made to "History in the View" produced by English Heritage in 2011 which sets out a methodology to provide an objective assessment of impact in views where heritage assets are affected.
- No evidence provided that an industrial/mercantile use is not viable as the optimum use for the building.
- The setting of all heritage assets must be examined and the impact of the proposal measured for each and any cumulative affects.
- The Tendring District Council Landscape Character Appraisal identifies the importance of the port of Mistley to the character of the Stour Estuarine Landscape and the principal contributor to its historic significance and emphasises why the historic port should be protected from changes harmful to its viability and successful operation.
- There is no demonstrable public benefit to balance the harm caused by the proposal.
- Archaeological assessment is not comprehensive and expresses some elements of the history inaccurately.
- Thorn Quay Warehouse represents the only means of expanding and diversifying the port's trade in additional premises, is located on the port estate and is directly accessible to port cargos. This site has been in continuous occupation for warehousing and mercantile activities since at least 1778.

Comments received from T W Logistics following April 2013 amendment:

- Mistley Port have not been granted access to the Thorn Quay Warehouse to conduct a full survey following the one day survey undertaken in 2010. The potential for port use has not therefore been properly assessed.
- The one day survey was positive and recommended further survey work taking at least three days. However despite repeated requests further access has been denied and no proposals can be produced until it has been fully assessed.

- Wish to consider using the building for port related value added activities and storage but could not provide further detail without access for a full survey to quantify repair and refurbishment costs.
- Thorn Quay Warehouse has never been put on the market unlike no. 2 Maltings which is clearly incompatible with port uses. TWL have expressed an interest in buying the building at its industrial value.
- The warehouse has only been vacant recently with all floors in partial use in 2010 at the time of the survey.
- It is the applicant's objective to pursue demolition and a valuation level reflective of non-industrial uses of the site. The initial survey was only permitted on the basis that the premises were rented but it was TWLs intention to acquire the building.
- Concerns regarding the type of port storage and cross contamination of food products are unfounded due to existing problems with bird fouling and the Thorn Quay Warehouse being remote from the food processing operation on the main EDME site. No 2 Maltings has also been offered and this lies within the centre of the food processing facilities.
- EDME also requested details of area splits for processing and storage (unable to confirm) and the time required to bring it into full utilisation (estimated 3 to 4 years). A full survey is required to quantify refurbishment costs.
- An option agreement to enable TWL to purchase the Thorn Quay Warehouse was offered in 1979 to acquire the site at open market value only if EDME intended to dispose of the building (right of first refusal option). Following the transfer of assets to AMH a new option agreement was produced in February 1997 expiring in October 2000 to cover the remainder of the option period. The right was not exercised because EDME/AMH did not trigger the agreement provisions during the 21 year option agreement period 1979-2000.
- A detailed chronology of communications and meetings between the applicant and TWL between June 2006 and January 2011 is also provided relating to the site and disagreements between the two parties regarding the availability of the building for survey access, port use, and failure to respond to communications.

The full content of these objections can be viewed on public access or via arrangement with the Case Officer prior to the meeting.

5.5 In response to these comments the amendments to the design and HIA have overcome English Heritage's original objections to the proposal and they accept that the HIA is now a more robust document which more thoroughly considers the heritage context of the Thorn Quay site and the significance of the warehouse itself. As detailed in the loss of employment section below there is no requirement under saved Policy LMM1 to market the existing building to demonstrate non-viability for employment use or to compensate for any loss of employment land with a financial contribution. The proposal retains a small element of warehouse accommodation at the quayside and the land to the East is allocated for Mistley Port and Mistley Marine under draft Policy MLM3 as discussed in the policy section below. There is no evidence to suggest that the building in its current form is realistically suitable for port use and it is currently not available for such uses, being in separate ownership. The requirement to "have regard" to port uses under saved Policy LMM1 is discussed in detail in the report below and does not prevent consideration of alternative uses in principle nor is it intended to stifle growth and change. However it is acknowledged that these uses form a key part of the special character and history of Mistley and should be encouraged where possible.

6. Assessment

The main planning considerations are:

- Legislative requirements;

- Policy;
- Loss of employment land;
- Design;
- Heritage impact;
- Landscape impact;
- Financial contributions;
- Highway safety;
- Flood risk;
- Residential amenity; and,
- Amenity space.

Proposal

- 6.1 The application proposes demolition of the existing Thorn Quay Warehouse and construction of a new building comprising 45 dwellings (five one-bedroom, 34 two bedroom and 6 three bedroom units), 420 square metres of quay level warehouse, 86 square metres of office floor space, and car and cycle parking provision. The proposed building is two to four stories high fronting the High Street, and two to six stories high fronting the quay with a seven storey tower.
- 6.2 The proposal forms part of EDME's Masterplan for the area to redevelop their redundant or underused buildings including the approved conversion and residential development of the Abbey building and adjacent land with six dwellings, and an approved warehouse to support the food processing business on the opposite side of the High Street.

Site Location

- 6.3 The site is in a prominent riverside location between Mistley Quay and the High Street, on the junction with Swan Corner. The site lies within the defined settlement boundary in a sustainable location in close proximity to the train station and local shops and facilities. The building is vacant but was previously in employment use and lies within the Mistley Urban Regeneration Area under the saved Local Plan but is not allocated for any specific use under the draft Local Plan.
- 6.4 The site lies within the Manningtree and Mistley Conservation Area with a large number of listed buildings in close proximity including the recently listed Quay Wall and the two neighbouring maltings buildings. It also lies within the proposed extension to the Suffolk Coasts and Heaths Area of Outstanding Natural Beauty and partly within Flood Zone 3.
- 6.5 The site abuts the Stour Estuary Site of Special Scientific Interest (SSSI), Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site which are recognised for their importance to nature conservation.
- 6.6 In April 2012 an Article 4 Direction was served which includes part of the site and the adjacent quayside to remove permitted development rights for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Legislative requirements

- 6.7 A Conservation Area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. The application site lies within the Manningtree and Mistley Conservation Area and is in close proximity to a large number of listed buildings.
- 6.8 Members are reminded that they have statutory duties to discharge in the consideration and determination of this planning application. Section 66(1) of the Planning (Listed Buildings

and Conservation Areas) Act imposes a statutory duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest. This would apply in respect of the setting of the neighbouring listed buildings. Section 72 imposes a statutory duty on the Local Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

Policy

- 6.9 The saved Tendring District Local Plan (2007) remains formally an adopted document of the Council, however since 27th March 2013 the Council is no longer giving significant weight to those sections of the 2007 plan which, in the Council's view, are considered to be out of date and no longer in accordance with the National Planning Policy Framework. Weight is being given to the 2012 draft Local Plan, depending on the number and nature of representations received during the public consultation.
- 6.10 Saved Policy ER3 states that land in employment use will normally be retained for that purpose. Its redevelopment for non-employment purposes will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. The applicant should either: i. submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price; or ii. show that the land (site, or premises) is inherently unsuitable and/or not viable for any form of employment use b. Where the loss of an employment site is permitted, the applicant will normally be expected to provide a suitable alternative site elsewhere in the district, or a financial contribution towards the Council's employment, training or regeneration programmes and initiatives.
- 6.11 Saved Policy LMM1 states new development in the Mistley Urban Regeneration Area will be required to (i) provide for the promotion of a balanced community including protection and enhancement of the historic environment, the provision of new housing, employment, tourist, recreation and leisure facilities; (ii) protect the employment base through provision of alternative employment facilities to replace any potential loss; (iii) protect the port operation; (iv) have regard to the potential for port uses of existing buildings before allowing any change of use; (v) allow for access arrangements which do not increase levels of HGV traffic on the High Street; (vi) provide/allow for public facilities and access to the waterfront; (vii) enable the development of views across the Stour Estuary; and (viii) protect the adjoining nature conservation interests, biodiversity and landscape quality.
- 6.12 A number of representations to the section of the draft Local Plan relating to Mistley Port and Mistley Marine were received. Although the application site does not fall within this allocation it is relevant to the consideration of the application. These objected to:
- Consideration for port-use without evidence to prove its impacts can be suitably mitigated against;
 - No distinction should be made between port uses and other employment uses nor should any priority be afforded to port uses;
 - Obvious potential conflict of open storage/large sheds, noise and HGV traffic with wildlife and landscape conservation objectives;
 - Should promote mixed employment and residential uses as least likely to harm natural resources and residential amenity;
 - All employment land to north of High Street and at Northumberland Wharf (where saved policy LMM1 applies) should be included within a specific site allocation in the draft plan;
 - Draft policy MLM3 needs to make specific reference to Thorn Quay Warehouse as the only opportunity for the port to its expand its covered storage and develop processing;

- Draft policy MLM3 needs to state more clearly its objective to support and deliver port related uses.
- 6.13 There has been much discussion between the Council and various landowners over the future of this part of Mistley, and the need to allow some growth and regeneration whilst preserving the area's sensitive natural and built environment. The approach to Mistley set out in the draft Local Plan advocates greater flexibility and allows proposals to be considered on their merits, which is consistent with the overall thrust of the National Planning Policy Framework.
- 6.14 The Council remains supportive in principle for the growth of Mistley Port and safeguards the existing port as an employment site; however this support must be balanced with the other objectives of the plan. The Thorn Quay Warehouse is not allocated for any specific use within the draft local plan allowing any proposal to be considered on its merits against planning policy (including PRO14 as an existing employment site) and other material considerations.
- 6.15 Saved Policy EN17 states development within a conservation area must preserve or enhance the character or appearance of the conservation area including historic plan form, relationship between buildings, and the height, siting, form, massing, proportions, elevation, design, and materials. Saved Policy EN23 states development that would adversely affect the setting of a listed building, including group value and long distance views will not be permitted.
- 6.16 Saved Policy EN20 (Demolition within Conservation Areas) states proposals must retain buildings that make a positive contribution to the character or appearance of a conservation area and demolition will only be permitted where: a) evidence demonstrates that the building is beyond economic repair (unless caused by deliberate neglect); or b) it is demonstrated viable alternative uses cannot be found; and c) redevelopment would preserve the area's character and produce substantial benefits that outweigh the loss of the building. Demolition will not be approved in the absence of detailed plans for the site's redevelopment and conditions or planning obligations will be imposed to ensure construction within a specified time period and/or satisfactory landscaping of the site.
- 6.17 Draft Policy PLA7 (Conservation Areas) states development will not be permitted unless it is of a design and/or scale that preserves or enhances the special character or appearance of the area and is compatible with neighbouring buildings; uses materials appropriate to the local context; and does not harm important views. Demolition will only be granted if it can be demonstrated that (i) removal of the structure would result in a material visual improvement to the appearance of the area, or (ii) the existing structure is beyond repair, incapable of beneficial use or is itself harmful to the character of the conservation area. This policy received 8 representations with some constructive comments that may result in some minor re-wording but none that bring into question the overall soundness of the policy and it is therefore being applied with confidence.
- 6.18 Draft Policy PLA8 (Listed Buildings) states development affecting the setting of a listed building will only be permitted where the works, materials, scale, and design would respect the setting. This policy received 4 representations none of which challenge the overall soundness of the policy and it is therefore being applied with confidence.
- 6.19 The Council has a statutory duty to protect or enhance the historic environment and has developed a Conservation Area Management Plan (CAMP) for Mistley providing advice on how the character and appearance of the Conservation Area can be protected or enhanced. In particular, it encourages the redevelopment of buildings which have a negative affect on the character or appearance of the Conservation Area as and when they become ready for renewal, but it is accepted that there are mixed views on the industrial

aesthetics of the existing warehouse. The Conservation Area Management Plan does not contain policies but it is recognised in development management terms as guidance.

- 6.20 Draft Policy PRO14 (Employment Sites) states proposals for redevelopment for residential use may be allowed if it can be demonstrated to the Council's satisfaction that the land or premises is no longer economically viable for B1(b & c), B2, B8 or any alternative permanent employment use that might be permitted; or that it is inherently unsuitable for any form of alternative employment use that might be permitted in accordance with the policies in the draft plan; or that the employment activity will be relocated to one of the district's identified employment sites.
- 6.21 Draft policy SD1 presumes in favour of sustainable development and states that the Council will take a positive and proactive approach in determining applications that reflect the NPPF requirements. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires Local Planning Authorities to determine planning applications in accordance with the development plan unless other material considerations indicate otherwise.
- 6.22 The site lies within the saved and draft Mistley Settlement Development Boundary and so the principle of development generally is acceptable, in accordance with draft Policy SD5 (Managing Growth). There is no site specific policy within the draft plan equivalent to LMM1 and the site is not allocated for any specific use.
- 6.23 The development proposes 45 dwellings comprising five one-bedroom, 34 two bedroom and 6 three bedroom units. This represents a density of approximately 187 dwellings per hectare. The type of dwellings provided is heavily influenced by the ground levels on the site and the height of the development. 41 of the units are flats and four town house style dwellings are proposed fronting the High Street. The proposal does not therefore provide any Aspirational Housing as encouraged under draft Policy PEO8 or 40% Family Housing as encouraged under draft Policy PE09. However, the development results in an efficient use of this brownfield site in a sustainable location within an identified urban settlement. It is therefore considered that the proposal for 45 dwellings with warehousing and office floor space is acceptable in principle.

Loss of employment land

- 6.24 The application proposes demolition of the existing warehouse and redevelopment for 45 dwellings with warehousing and office floor space. The site lies within the area covered by saved Policy LMM1, but is not allocated for any specific use within the draft Plan.
- 6.24A In 2010, TWL brought proceedings in the High Court seeking by way of judicial review to challenge the Council's adoption of the Mistley and Manningtree Conservation Area Management Plan (CAMP) on the basis that the CAMP was in part unlawful. On 9 May 2012, the High Court held in favour of the Council. TWL appealed and on 24 January 2013 the Court of Appeal upheld the High Court's decision.**
- 6.25 The final judgement made in January 2013 as part of the recent judicial review process against the Council's decision to adopt the Manningtree and Mistley Conservation Area Management Plan (CAMP) highlights clearly how policies of the saved Local Plan should be interpreted. It confirms saved Policy ER3 (Protection of Employment Land) is a general employment policy that applies across the whole District and which is of very limited relevance in this case given the site specific policy LMM1. Policy LMM1 is the site specific policy balancing the disparate interests of the Mistley Urban Regeneration Area. It states under LMM1(iv) the Council is required to "have regard" to the potential for port use before permitting changes of use. This means that at some stage in the decision making process, the Council should conscientiously consider this factor on the clear understanding that it is

a factor relevant to the decision. The judgement considered that this obligation does not go further than “taking it into account”. Saved Policy QL6 states mixed use development will be encouraged over the whole of the Urban Regeneration Area. The judgement states the saved Local Plan is neutral on the question of port re-organisation and specifically envisages that Thorn Quay Warehouse can be redeveloped provided that policy LMM1 is complied with. Unlike saved Policy ER3, saved Policy LMM1 has no requirement to demonstrate non-viability for employment use or to compensate for any loss of employment land with a financial contribution.

- 6.26 The proposal is assessed below against the criteria of saved Policy LMM1 as the site specific policy most relevant to consideration of this planning application. LMM1 is considered to be consistent with the overall thrust of the National Planning Policy Framework in its aim to promote housing and employment opportunities whilst conserving and enhancing the natural and built environment.
- 6.27 Saved Policy LMM1 states new development in the Mistley Urban Regeneration Area will be required to *(i) provide for the promotion of a balanced community including protection and enhancement of the historic environment, the provision of new housing, employment, tourist, recreation and leisure facilities*. The proposal includes 45 dwellings, and office and warehouse accommodation with an enhancement to the surrounding conservation area and heritage assets as detailed in the paragraph below titled Heritage Impact. The proposal also provides the opportunity for people to live in a sustainable location in close proximity to local services and the train station. Criteria (i) is therefore satisfied.
- 6.28 LMM1 *(ii) protect the employment base through provision of alternative employment facilities to replace any potential loss*. The proposal results in a very large loss of employment floor space (approximately 5700 square metres) with the provision of 420 square metres of quay level warehouse and 86 square metres of office floor space. The building has not been used to full capacity for a significant number of years. Although it is not claimed by the applicant that the building is beyond economic repair, Officers accept that the form and condition of the building would require substantial investment and works to bring it up to current standards. It is not therefore realistically likely to be used for employment purposes in its current state. On balance, given the provision of some employment space within the proposed redevelopment, and the limited viability of the development it is considered that criteria (ii) of LMM1 is satisfied.
- 6.29 LMM1 *(iii) protect the port operation*. The land is outside the Port’s ownership and the redevelopment on the existing footprint will not affect current access to and from the Port and its warehouses. It is therefore considered that criteria (iii) is satisfied.
- 6.30 LMM1 *(iv) have regard to the potential for port uses of existing buildings before allowing any change of use*. As detailed in the loss of employment section above this means that at some stage in the decision making process, the Council should conscientiously consider this factor on the clear understanding that it is a factor relevant to the decision. The Planning Statement submitted with the application states that the quay level warehousing will be made available to the port operator. The applicant offers to enter into a legal agreement or appropriately worded planning conditions to secure this. In imposing conditions or requiring legal agreements the Council must, amongst other considerations, ensure that those matters are necessary to make the development acceptable and reasonable in relation to the development proposed. Although a condition has been recommended to retain the warehouse for B8 (storage and distribution) to prevent any permitted change of use to B1 (business and light industrial), it is not considered reasonable to require it is retained specifically for port use. The retention for general B8 use in this quayside location is considered reasonable given the wording of saved Policy LMM1 as detailed at paragraph 6.25 above. Criteria (iv) is therefore satisfied.

- 6.31 LMM1 (v) *allow for access arrangements which do not increase levels of HGV traffic on the High Street.* The proposal will significantly reduce the potential number of HGVs through the large reduction in employment floor space. The majority of traffic visiting the site will be from residents and staff with a small amount of commercial traffic from the 420 square metres of warehouse floor space. Criteria (v) is therefore satisfied.
- 6.32 LMM1 (vi) *provide/allow for public facilities and access to the waterfront.* The proposal includes resident and visitor cycle parking and a swan feed store for the Parish Council adjacent to the quay and will enhance the current appearance and setting of the quayside. The design of the building incorporates new views from the High Street, through the communal gardens, overlooking the quayside providing greater public access than the current commercial use. Criteria (vi) is therefore satisfied.
- 6.33 LMM1 (vii) *enable the development of views across the Stour Estuary.* The design of the building preserves the existing principle views (as detailed in the Manningtree and Mistley Conservation Area Management Plan) and incorporates new views from the High Street, through the communal gardens, overlooking the quayside. Criteria (vii) is therefore satisfied.
- 6.34 LMM1 (viii) *protect the adjoining nature conservation interests, biodiversity and landscape quality.* As addressed in the landscape impact section below the proposal, subject to the recommended conditions, will ensure impacts to the SPA, SSSI and Ramsar site will be kept to a minimum; and reflects the overall mass and height of the existing building whilst resulting in an improvement to the appearance of the area. Criteria (viii) is therefore satisfied. To conclude, the proposal is considered to be in accordance with saved policy LMM1 which forms part of the Development Plan and is consistent with the provisions of the National Planning Policy Framework.
- 6.35 Draft Policy PRO14 (Employment Sites) states proposals for redevelopment for residential use may be allowed if it can be demonstrated to the Council's satisfaction that the land or premises is no longer economically viable for B1(b & c), B2, B8 or any alternative permanent employment use that might be permitted; **or** that it is inherently unsuitable for any form of alternative employment use that might be permitted in accordance with the policies in the draft plan; or that the employment activity will be relocated to one of the district's identified employment sites. The scheme is predominantly residential-led but will offer some warehousing and office floorspace, this mix of uses is considered to be broadly compatible with surrounding development and would introduce further housing at the heart of Mistley village, close to existing shops, services and the train station.
- 6.36 The Council is satisfied that on viewing the existing building; assessing information provided with the application relating to the condition of the building; the provision of office and warehouse accommodation within the proposed redevelopment; and the material planning considerations addressed in the report below including the viability considerations, that the principle of redeveloping the site for a mixed use development is acceptable and is in accordance with the development plan.

Design

- 6.37 The proposed building occupies the existing footprint and has been designed to break up its bulk by creating six linked buildings providing small views through to the estuary from the High Street. The building also reduces in scale to address the Swan Basin and the High Street using appropriate materials and detailing to reflect the more domestic scale of these two elevations. The quayside elevation reflects the industrial scale and vertical balance between brickwork and openings of the neighbouring Maltings No. 1. The upper floors of the building are set back to reduce the bulk and add interest to the roofline. The existing

tower is a prominent landmark feature and has been reflected in the design of the replacement building.

- 6.38 The proposed materials incorporate predominantly red brick and slate to the High Street and Swan Basin facades, with timber weatherboarding and zinc cladding at higher level. To the quayside a mixture of red and buff brick is used to add interest and break up the bulk of the building. To the lower levels the brick incorporates courses of red and blue brick to reflect the industrial uses and character of the quayside. The top floors are finished in zinc cladding and roofing with areas of timber weatherboarding. The tower is also finished in zinc. It is considered that this palette of materials represents a balance between the traditional local vernacular and contemporary architecture resulting in a building which will respect the character and scale of surrounding development while creating a building of architectural interest to replace the currently dilapidated warehouse. Samples of the proposed materials will be required by condition and it is recommended permitted development rights for solar panels on the visible roof slopes are removed so the Council can control these in the interests of preserving the character and appearance of the Manningtree and Mistley Conservation Area.

Heritage impact

- 6.39 The site lies within the Manningtree and Mistley Conservation Area with a large number of listed buildings in close proximity including the recently listed Quay Wall and the two neighbouring maltings buildings. It is also close to a number of undesignated assets that make positive contributions to the conservation area such as The Abbey. A Heritage Impact Assessment has been provided to justify the proposal. The Council is satisfied that the application satisfactorily assesses the significance of all affected heritage assets. The appropriate archaeological assessments have also been undertaken.
- 6.40 The Thorn Quay Building appears to date from 1953, and its construction appears to have retained little from the 1930s building which was destroyed in 1941. There are three main locations from which the site can be viewed which incorporate heritage assets: from the High Street, from the River Stour, and from the quay. The Thorn Quay building occupies a prominent position on the junction of High Street with the Swan Basin however when approached from the east and west it is screened by neighbouring buildings and the bends in the road and is not therefore prominent in longer views except from the river and quayside. This includes views of the Grade I listed Scheduled Ancient Monument Mistley Towers which will not be affected by the proposal.
- 6.41 There is little mention of the Thorn Quay Warehouse within the Manningtree and Mistley Conservation Area Review (2006) stating "Across the road, a considerable brick wall hides the unused maltings down by the quay". The Manningtree and Mistley Conservation Area Management Plan (CAMP) 2010 identifies the existing building and surrounding quayside as an area in need of enhancement. The existing red brick wall fronting the High Street is identified as a positive feature. There are also three principle views in the immediate vicinity: from the Mistley Thorn Hotel across Thorn Quay to the Baltic Wharf; panoramic views from the quayside across the Stour estuary between Thorn Quay and No. 1 Maltings; and looking east along High Street past Thorn Quay and the maltings.
- 6.42 The demolition of the existing building is discussed in full in the associated Conservation Area Consent application 12/00428/CON.
- 6.43 Saved Policy EN17 states development within a conservation area must preserve or enhance the character or appearance of the conservation area including historic plan form, relationship between buildings, and the height, siting, form, massing, proportions, elevation, design, and materials. The proposal has been designed to reflect the bulk of the existing Thorn Quay building, and follows the reduction in height and scale that the present building

makes at the side of Swan Basin therefore preserving the setting and significance of the buildings facing the Swan Basin. The principle views detailed above are also maintained with the introduction of small views through the openings into the communal gardens from the High Street. The proposal is therefore considered to be in accordance with saved Policy EN17.

- 6.44 The existing building is accepted to be no longer suitable for food production or storage due to the low weight bearing floors and low ceilings. The existing building is in poor condition and unsuitable for employment use without major investment and refurbishment. The building also contains a very large silo which is part of the building fabric and cannot be easily removed. The balance of commercial and residential use forms part of Mistley's character, although it is accepted that only a small amount of commercial floorspace is proposed within the development, the site occupies a sustainable location in close proximity to local facilities and the train station. Viability considerations are also addressed in the financial contributions section below.
- 6.45 The applicants claim that the existing warehouse and its frontage wall make no more than a minor contribution to the conservation area relating only to its bulk and location on the quay. English Heritage disagree and believe the warehouse complex has landmark quality, individually and as part of a group, and illustrates the development of Mistley reflecting the traditional functional character and former uses of the area. The amendments to the design and scale of the proposal have now overcome English Heritage's original objections, provided conditions are imposed to prevent the loss of the existing building without the new development proceeding as a long term cleared site would result in substantial harm to the appearance of the conservation area.
- 6.46 Saved Policy EN23 states development that would adversely affect the setting of a listed building, including group value and long distance views will not be permitted. The site is in close proximity to a large number of listed buildings including the recently listed Quay Wall and the two neighbouring maltings buildings. The proposed redevelopment has been designed to reflect the bulk of the existing Thorn Quay building, and follows the reduction in height and scale that the present building makes at the side of Swan Basin therefore preserving the setting and significance of the buildings facing the Swan Basin. The amendments to the scale and detailed design have overcome previous concerns in relation to the impact upon the significance and setting of the listed maltings buildings and the proposal is now considered to be in accordance with saved Policy EN23.
- 6.47 The Mistley Quay Wall (also known as Thorn or Allen's Quay) was listed at Grade II in May 2013. The background to that listing decision refers to this current planning application but confirms there are no plans to alter the quay. The proposed building occupies the existing footprint and would preserve the setting of the recently listed quay wall. The proposal includes cycle parking and a swan feed store for the Parish Council adjacent to the quay and will enhance the current appearance and setting of the quayside.
- 6.48 The demolition of the existing building and its redevelopment proposed under 12/00427/FUL are therefore considered acceptable in terms of impact upon both the character and appearance of the Manningtree and Mistley Conservation Area and the setting of neighbouring listed buildings and other important undesignated heritage assets.
- 6.49 Justification for this demolition requires the proposed redevelopment to actually take place and therefore it is necessary to impose a condition requiring that no demolition can occur until a contract has been let for the carrying out of the building works for the redevelopment. This will ensure that redevelopment of the site is tied to, and would follow, demolition therefore preventing the creation of a long term cleared site which would be seriously detrimental to both the appearance of the Manningtree and Mistley Conservation Area and the setting of neighbouring listed buildings and the Quay Wall.

Landscape Impact

- 6.50 The site abuts the Stour Estuary Site of Special Scientific Interest (SSSI), Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site which are recognised for their importance to nature conservation. The Council has confirmed that the proposal does not represent Environmental Impact Assessment or Appropriate Assessment development. An Ecology Statement has been provided which concludes the development will not directly affect features of the SPA, SSSI or Ramsar site. The footprint of the development is entirely on built land of very low ecological interest. The buildings do not support bat roosts, but breeding birds are present. The estuary is a high quality foraging habitat for aerial feeding birds such as swift and for at least four bat species. The height and aspect of the new building provides opportunities for incorporating artificial, maintenance-free swift nests and bat roosts into the fabric of the building. A condition has been recommended to secure details of such features in the interests of increased biodiversity. Natural England are satisfied that the mitigation proposed is sufficient to ensure impacts to the SPA, SSSI and Ramsar site will be kept to a minimum.
- 6.51 The proposed development would clearly have an impact on the character and appearance of the AONB when viewed from the northern bank of the Stour and also when viewed from within the proposed extension to the AONB on the southern bank of the Stour. Given the dilapidated condition of the existing building it considered that the sensitively designed replacement building which reflects the overall mass and height of the existing building will result in an improvement to the appearance of the area.

Financial contributions

- 6.52 The application has been subject to numerous amendments to improve its design and reduce its scale and impact upon the Manningtree and Mistley Conservation Area. This has resulted in a reduction to 45 units accompanied by a viability assessment stating that only the essential highway works can be provided and no other financial contributions or works are viable. The viability appraisal has been independently assessed and is deemed to be acceptable subject to a legal agreement to ensure that **a fair share of the profit from** any future increase in the predicted sale value of the development can be recouped and used for the contributions which should apply to the development as detailed below.
- 6.53 In accordance with local plan policy and the development creating additional pressure on existing infrastructure the proposed development should provide: 1) a financial contribution of £63,356 towards additional secondary education places as requested by Essex County Council. 2) 25% affordable housing (contribution of £406,207.20 against the current sale value) in accordance with draft Policy PEO10 (Council Housing). 3) Public Open Space financial contribution of £75,203.00 (5 no. 1 beds at £845 each, 34 no. 2 beds at £1690 each, and 6 no. 3 beds at £2253 each) in accordance with saved Policy COM6 and draft Policy PEO22 as there is an identified deficit in both equipped play and formal open space in the Parish. 4) Highway works comprising two bus stops and shelter, level entry kerbing, posts and flags and accommodation works to the highway. These works are being provided at the applicant's expense and a condition will be imposed to secure them prior to occupation of the development.
- 6.54 On balance, given the reductions in the scale of development in order to achieve a proposal which will preserve, if not enhance, the character and appearance of the Manningtree and Mistley Conservation Area, and the findings of the independent financial assessment, the proposal is considered acceptable subject to a legal agreement to ensure that any future increase in the predicted sale value of the development can be recouped.

Highway Safety

- 6.55 A Transport Statement has been provided to justify the proposed development. It states (given the current limited use of the building) reviewing the proposed traffic in isolation, in the peak hours the proposed development would generate an additional one vehicle on the local road network every four minutes. This increase in traffic is not considered material particularly given the lawful use of the site for warehousing with the associated potential heavy goods traffic.
- 6.56 Vehicular access to the car parking under the building will be via the existing Swan Basin junction which will be altered to improve access. A kerbed build out is proposed to the west of the access to allow greater visibility, more formalised on street parking and cycle stands. To the south of the access the existing pedestrian footway would also be built out. The warehouse unit would be accessed from the Quayside.
- 6.57 The Highway Authority has no objection subject to 8 conditions as detailed at paragraph 4 above. This includes the provision of two bus stops, shelters and associated works between the junction of New Road and the High Street, and the High Street and School Lane at the developer's expense.
- 6.58 The adopted parking standards require a minimum of 85 parking spaces (3 disabled) and 45 cycle spaces, plus 12 visitor spaces, 6 visitor cycle spaces and 3 motorcycle spaces to serve the residential element of the proposal. The office and warehouse element would each require maximum of 3 parking spaces, 1 cycle space and 1 motorcycle space.
- 6.59 82 car parking spaces in total are proposed (including 5 disabled bays), 6 motorcycle spaces, and 49 cycle parking spaces for residents plus 14 visitor spaces. The site lies in a sustainable location in very close proximity to the train station and local shops and facilities. The proposed parking provision is therefore considered adequate.

Flood Risk

- 6.60 A Flood Risk Assessment has been provided as part of the site lies within Flood Zone 3 (high risk) and part of the car park lies within the functional flood plain. The proposals involve replacement of the existing building across the same footprint with car parking and warehousing on the lower ground floor with residential development above. The Environment Agency has no objection as the design of the building will enable the tidal floodplain to continue to flow as it does at present through the proposed car park. All residential units are situated above the 1 in 200 year flood level with the addition of climate change and there is safe access/egress onto the higher ground on the High Street.
- 6.61 A condition is recommended to secure the details and implementation of a Flood Evacuation Plan for both residents and businesses as detailed in the Flood Risk Assessment to ensure people are removed from the area at times of flood risk and the car park gates are secured to contain any potential debris. A condition is also recommended securing details of water, energy and resource efficiency measures during construction and occupation as requested by the Environment Agency.

Residential Amenity

- 6.62 There are dwellings around Swan Basin to the north west, permission has been granted for residential conversion of The Abbey and a terrace of three dwellings alongside it to the south west, Number 1 Maltings converted to predominantly residential use to the east, with EDME commercial buildings to the south on the opposite side of the High Street. The siting and scale of the proposed development will prevent any material loss of light to neighbouring properties at Swan Basin and The Abbey and there is adequate separation between the buildings to prevent any material harm in terms of overlooking.

- 6.63 The proposal increases the height of the building by three stories adjacent to Number 1 Maltings which has windows on the facing flank serving flats on the first, second and third floor level with a large terrace on the fourth floor level (from quayside). All proposed windows on the facing flank are obscure glazed with the third floor terrace (sixth floor from quayside and above roof height of neighbouring Number 1 Maltings) having a 1.7m high screen closer to the building and 1.4m high screen beyond and above the neighbouring terrace. There would therefore be no overlooking towards Number 1 Maltings subject to the recommended conditions to secure the obscure glazing and balcony screens prior to occupation and to be retained thereafter. By virtue of the increased height of the proposed building and its siting some loss of afternoon sunlight will occur to the bedroom and bathroom window on the third floor level (from quayside) and the fourth floor terrace of Number 1 Maltings, however this is not considered to be so significant as to justify an objection on residential amenity grounds.
- 6.64 Conditions are recommended to restrict the hours of demolition and construction and to secure details of the method of demolition in order to minimise dust pollution and disturbance from construction traffic in the interests of preserving residential amenity.
- 6.65 An acoustic assessment has been provided in relation to noise and vibration from port vehicles on the quay and traffic on the High Street affecting the proposed dwellings. The building has been designed to minimise the number of habitable rooms affected by traffic noise from the High Street (being the louder of the two noise sources). Vibration levels were below minimum thresholds. Noise levels are acceptable subject to the recommendations in the report relating to specification of glazing, air bricks, trickle vents, and glazed screens and acoustically absorbent soffits to balconies. These details form a recommended condition in the interests of the amenities of future occupants of the development.

Amenity Space

- 6.66 The majority of units have access to at least one private balcony or terrace of varying size (minimum 2.9 sq m up to maximum 76.5 sq m). Eight of the 45 units have no private amenity space. There are two large communal landscaped gardens at High Street level comprising approximately 273 square metres in total.
- 6.67 Saved Policy HG9 requires a minimum of 25 sq m per flat provided communally, or 50 square metres private garden for a ground floor flat and minimum balcony of 5 sq m for units above. Draft Policy PEO4 is being applied with caution following various objections to its prescriptive nature, and requires private amenity space (including communal space for flats) at least equal to the total internal floor area of the dwelling. Given the varying ground levels on the site, and the need to promote efficient use of this brown field site it is considered that the proposed provision of amenity space is acceptable subject to a condition requiring details of the communal landscaped gardens.

7. Proposed Claim for Judicial Review

- 7.1 **The pre-action claim letter was received through the post on 15 November 2013, following Members' resolution authorising the grant of planning permission for the proposal (and associated Conservation Area Consent) at Planning Committee on 8 October 2013. The claimant is TW Logistics Limited (TWL) who are the port operator. The challenge has five grounds which, are summarised below in normal text with underscore with extracts from the NPPF and Policy set out in italic text and the Council's response in bold.**
- 7.2 Ground A. The Council acted unlawfully in ignoring a clear and concrete interest in TWL acquiring a heritage asset and positive contributor which would have conserved it. This

ground refers to the case of Gibson v Waverley Borough Council [2012]. The Council's statement at paragraph 5.5 is also contested: 'There is no evidence to suggest that the building in its current form is realistically suitable for port use and it is currently not available for such uses, being in separate ownership.' TWL requested access to the building and confirmed their interest to the Council in acquiring the building.

7.3 The Council encouraged dialogue between the applicant and TWL who have been in discussion with each other over this building for a number of years. The Planning Committee were also informed of TWL's desire to survey and acquire the building at paragraph 5.4 of both committee reports for the committee meeting on 8 October 2013. Although the Council has encouraged re-use of the building for port-related activities in accordance with the character of Mistle, as detailed in the report above, there is no requirement in planning policy terms for the building to be marketed for alternative uses. Unlike the Gibson v Waverley case referred to above, Thorn Quay Warehouse (TQW) is not a listed building, nor is it a designated heritage asset. Therefore, the requirement to secure the optimum viable use does not apply. Hence the Gibson case is not comparable with this planning application. The statement at paragraph 5.5 relates to the fact that the form and condition of the building would require substantial investment and works to bring it up to current standards. It is also not being offered for sale/let and the fact that there is no requirement in planning policy terms for the building to be marketed for alternative uses is clearly explained as detailed in the report.

7.2 Ground B. The Council acted unlawfully in failing to apply paragraph 133 of the NPPF (relating to substantial harm to/total loss of a designated heritage asset).

7.3 The NPPF defines a designated heritage asset as:

"Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protect Wreck Site, registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.

TQW is not a designated heritage asset. The Conservation Area is a designated heritage asset. Within the Conservation Area there are a number of listed buildings which are therefore also designated heritage assets.

7.4 Paragraph 133 of the NPPF begins with the following paragraph:

"133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss or all of the following apply.

Paragraph 133 then sets out 4 criteria.

It is accepted by both the Council and English Heritage that the demolition of TQW would result in less than substantial harm to the significance of a designated heritage asset (the Conservation Area and the heritage assets within it). There are a large number of listed buildings (heritage assets) in close proximity to TQW including the recently listed Quay Wall, the two neighbouring maltings buildings, the Thorn Hotel, and buildings surrounding the Swan Basin. A Heritage Impact Assessment has been provided to justify the proposal. The Council is satisfied that the application satisfactorily assesses the significance of all affected heritage assets. The appropriate archaeological assessments have also been undertaken. In

the light of the above, neither paragraph 133 of the NPPF nor any of its criteria requires the application to be refused.

7.5 Paragraph 134 of the NPPF states:

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

7.6 This is correctly explained in section 2 of both the reports. As the proposal would lead to less than substantial harm to the significance of the Conservation Area (and the designated heritage assets within it) the harm should be weighed against the public benefits of the proposal (i.e. housing provision, visual improvement, and the planning obligation to ensure a fair share of any additional profit to be spent on education, affordable housing and public open space). The reference to securing optimum viable use within the meaning of this paragraph applies in relation to the designated heritage asset (the Conservation Area and its heritage assets) and not TQW. The proposal is therefore in full accordance with paragraph 134 of the NPPF.

7.7 Paragraph 135 of the NPPF states:

135. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

TQW is a building which positively contributes to the Conservation Area and is therefore a non-designated heritage asset within the meaning of paragraph 135 of the NPPF. Other non-designated heritage assets include The Abbey, detached office buildings on the EDME site fronting the High Street, and Mistley Quay Workshops within Swan Basin. The Council is satisfied that the application satisfactorily assesses the significance of all affected non-designated heritage assets. The proposal will result in a significant visual improvement to the surrounding area while maintaining key views. The proposal is not considered to result in any harm to, or loss of, other non-designated heritage assets and their significance will be preserved.

7.8 *Ground C. The Council failed to apply/properly apply Local Plan heritage policies EN17, EN20, PLA6 and PLA7. The CON report fails to mention policy EN17. The FUL report fails to mention policy EN17(e). Policy EN20 is not discussed in the FUL report and is applied improperly in the CON report as EN20(a) is not satisfied as TQW is not beyond economic repair. Policy PLA6 is not discussed in either report. Policy PLA7 has been misapplied due to TWL's outstanding objection to the policy and is non-compliant with the NPPF so should have been afforded no weight.*

7.9 Saved policy EN17 is listed in paragraph 2 of the CON report but is not referred to or set out in detail in that report because saved policy EN20 is the specific policy relating to demolition within Conservation Areas and is therefore the most relevant saved Local Plan policy. Saved policy EN17 states:

"Development within a Conservation Area must preserve or enhance the character or appearance of the Conservation Area"

and then goes on to state that development will be refused where one or more of 5 criteria apply, one of which is where *“It would involve the demolition of a building or structure positively contributing to the character or appearance of the area.”*

7.10 Saved Policy EN20 is summarised in paragraph 6.15 of the FUL report and states:

“Proposals must retain buildings, structures and features that make a positive contribution to the character or appearance of a Conservation Area”

and then goes on to state that demolition of such a building or structure will only be permitted if certain criteria and requirements are satisfied. The material considerations regarding the demolition of TQW are explained and rehearsed in the CON report. Criterion a) of saved policy EN20 requires *“supporting evidence with the application which demonstrates that the building is beyond economic repair (unless caused by the deliberate neglect of the owner”*. Whilst this saved policy and its criteria are material considerations, they are outweighed by relevant provisions and policies (and material considerations weighing in their favour) in the NPPF and draft local plan. Para 6.14 of the CON report explains what weight should be given to criterion a) of policy EN20 and concludes that given the works required to bring the building back into commercial use; the overall enhancement that the proposed redevelopment would make to the Conservation Area; and the significant benefit of providing housing and potential planning gain through the legal agreement, EN20a should be given little weight. This is consistent with the fact that saved policy EN20 is dated and that draft policy PLA7 is more consistent with relevant provisions of the NPPF. The proposal is in full accordance with policy PLA7 as detailed at paragraphs 6.17-6.19 of the CON report.

7.11 Draft Policy PLA6 is listed in the policy section of both reports but not discussed in detail because it is the general historic environment policy with relatively little weight in the context of the proposed demolition and development by comparison with draft policy PLA7. The key points from PLA6 are referred to in the reports in the NPPF paragraphs (paragraphs 2.5-2.7 of FUL report and 2.1-2.2 of CON report) and in relation to the improved Heritage Impact Assessment and archaeological considerations (paragraph 6.39 of FUL report and 6.10 of CON report).

7.12 TWL have robustly objected to draft policy PLA7. These objections have not resulted in alterations to the policy under the 2014 Focussed Changes as Officers strongly reject the view that PLA7 does not comply with the NPPF. Officers are confident that there have been no representations of any significant weight which bring into question the overall soundness of PLA7, and it is being applied with confidence by the Council.

7.13 Ground D. The Council failed to pass on relevant information to English Heritage which led to them being misled. They were not informed of TWLs interest in acquiring the property or of any information concerning the potential for the reuse of the building.

7.14 This allegation is not relevant because, as explained above, there is no requirement to demonstrate that alternative uses of the building have been explored. Nonetheless, this and TWL’s objections are and have been in the public domain and fully viewable in full by English Heritage. The applicant’s Planning Statement also refers to the initial survey and discussions with TWL. The Council therefore strongly disputes that English Heritage has been misled as alleged or at all.

7.15 Ground E. The Council failed to properly apply LMM1 (in not considering the potential for port uses of existing buildings before allowing any change of use) as required by the

previous court case. TDC failed to consider LMM1 in relation to the CON application which was unlawful.

7.16 This issue is explored, discussed and explained extensively as set out in various parts of the FUL report, particularly paragraph 6.30. Paragraph 6.25 discusses the court judgments which confirm that under LMM1(iv) the Council is required to “have regard” to the potential for port use before permitting changes of use. This means that, in reaching their decision, Members must conscientiously consider this factor on the clear understanding that it is a factor relevant to the decision. The judgments are good authority that this obligation does not go further than “taking it into account”. In evaluating the application, preparing this report and reaching their recommendation, officers have taken this factor into account, whilst assessing the poor form and condition of the existing building for modern standards, and the provision of office and portside warehouse accommodation within the redevelopment, and concluding that the principle of redeveloping the site for a mixed use development is acceptable. The CON application is solely for demolition of the existing building, with clear reference to consideration of the redevelopment proposal under the FUL application. Saved policy LMM1 relates to new development. Demolition of the existing building does not therefore fall to be assessed under this policy. Although LMM1 is considered to be consistent with the overall thrust of the National Planning Policy Framework in its aim to promote housing and employment opportunities whilst conserving and enhancing the natural and built environment, it is considered to be out of date in its less flexible approach to development and there is no equivalent policy in the draft local plan.

7.17 Ground F. The Council failed to take into account as a material consideration the public benefits of TQW’s employment use.

7.18 Loss of employment land is listed as a main planning consideration and is discussed at paragraphs 6.24 to 6.36 of the FUL report. TQW is currently vacant and is stated not to have been used meaningfully for a significant number of years, due to the serious operational restraints of the current building with low ceiling heights, wall support obstructions, and problems with fork lift access and manoeuvrability between the ground and floor levels. The proposed redevelopment includes new employment in the office and warehouse, which will contribute towards local employment provision. This is not an allocated employment site and Officers are satisfied that due to the condition of the existing building; the provision of new office and warehouse accommodation; and the viability considerations, the principle of redeveloping the site for a mixed use development is acceptable and in accordance with the relevant policies of the saved and draft Local Plans and the NPPF.

7.19 All points of challenge are therefore strongly contested by Officers and the Planning Committee is recommended to reconsider the application afresh on its merits when reaching their decision. Members are reminded that all material planning considerations must be taken into account, including those in the CON report.

8. Conclusion

8.1 The loss of this existing employment site and its replacement with predominantly residential development, with some office and warehouse floor space, is considered to be in accordance with the provisions of the NPPF and the draft Tendring District Local Plan which advocate greater flexibility when considering development proposals. Regard has been had for the potential for port uses as an important part of the character of Mistle, however as detailed in the report this does not prevent consideration of alternative proposals. The site lies in a sustainable location and represents a significant visual improvement to the character and appearance of the Manningtree and Mistle

Conservation Area and the surrounding heritage assets, **meaning the listed buildings and non-designated heritage assets within close proximity of the site.**

- 8.2 The existing building has landmark quality and illustrates the development of Mistley reflecting the traditional functional character and former uses of the area. The revisions to the design and scale of the proposed development have reduced the level of harm that would be incurred to the significance of the Manningtree and Mistley Conservation Area and surrounding heritage assets by the loss of the Thorn Quay Warehouse. The demolition of the existing building and its proposed redevelopment are therefore considered acceptable subject to conditions to ensure redevelopment of the site following demolition to prevent a long term cleared site which would result in substantial harm to the appearance of the conservation area.
- 8.3 The site abuts the SSSI, SPA and Ramsar site which are recognised for their importance to nature conservation. A condition has been recommended to secure details of swift nests and bat roosts to enhance biodiversity as the estuary is a high quality foraging habitat for aerial feeding birds and for at least four bat species. This mitigation is sufficient to ensure impacts to the SPA, SSSI and Ramsar site will be kept to a minimum.
- 8.4 The proposed development would clearly have an impact on the character and appearance of the AONB when viewed from the northern bank of the Stour and also when viewed from within the proposed extension to the AONB on the southern bank of the Stour. Given the dilapidated condition of the existing building it considered that the sensitively designed replacement building which reflects the overall mass and height of the existing building will result in an improvement to the appearance of the area.
- 8.5 The proposed development would normally contribute towards affordable housing, education and public open space however an independently assessed viability report confirms only highway works can be provided and no other financial contributions or works are viable. On balance, given the reductions in the scale of development in order to achieve an acceptable proposal, approval is recommended subject to a legal agreement to ensure that **a fair share of the profit from** any future increase in the predicted sale value of the development can be recouped and used for the contributions which should apply to the development.
- 8.6 Subject to the recommended conditions, the proposal is also considered acceptable in terms of flood risk, residential amenity, and highway safety.

Background Papers

None