



## PLANNING COMMITTEE

**DATE:** Tuesday, 30 July 2019  
**TIME:** 6.00 pm  
**VENUE:** Council Chamber - Council Offices,  
Thorpe Road, Weeley, CO16 9AJ

### MEMBERSHIP:

Councillor White (Chairman)  
Councillor Bray (Vice-Chairman)  
Councillor Alexander  
Councillor Cawthron  
Councillor Codling

Councillor Fowler  
Councillor Harris  
Councillor McWilliams  
Councillor Placey

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Charlotte Cooper or Ian Ford on 01255686463 or 01255686584

DATE OF PUBLICATION: Tuesday, 23 July 2019

## AGENDA

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

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

### **2 Minutes of the Last Meeting (Pages 1 - 6)**

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on 2 July 2019

### **3 Declarations of Interest**

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

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

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

### **5 A.1 - Planning Application - 19/00524/OUT - Land to the South of Thorpe Road Weeley, CO16 9AJ (Pages 7 - 54)**

Outline planning application with all matters reserved, except for access, for 280 dwellings, a 2 Form of Entry primary school, 56 place early years nursery, up to 3000 sqm of office (B1) buildings on 1 hectare and associated ancillary buildings, drainage systems, boundary treatments and hard surfacing as well as public open space, vehicular access from Thorpe Road a pedestrian footbridge and the closure of existing level crossing and formal diversion of public footpath No 5 - Weeley, over the new railway bridge.

### **6 A.2 - Planning Application - 18/01728/DETAIL - 171 Thorpe Road and Land to the Rear of 121-183 Thorpe Road and 4-20 Chapel Lane Kirby Cross, Frinton-On-Sea, CO13 0NH (Pages 55 - 84)**

Demolition of one dwelling and reserved matters application for 105 no. residential units.

### **7 A.3 - Planning Application- 18-01434-FUL - Maplin Court, Kings Avenue, Holland on Sea, CO15 5EY (Pages 85 - 102)**

Construction of new third floor (fourth storey) to include 4 no. 1 bed units. New parking layout/additional parking spaces and cycle storage.

**8**     **A.4 -Planning Application- 19-00004-OUT - Land to the Rear of Mill House, High Street, Great Oakley, CO12 5AQ (Pages 103 - 122)**

Erection of 5 no. four bedroom dwellings.

**9**     **A.5 - Planning Application- 19-00398-COUNOT - 14A Waddesdon Road, Harwich, CO12 3BA (Pages 123 - 130)**

Change of use from cash office (A2) to accessible 2 bedroom Bungalow (C3).

**Date of the Next Scheduled Meeting**

*The next scheduled meeting of the Planning Committee is to be held in the Council Offices, Thorpe Road, Weeley, CO16 9AJ at 6.00 pm on Wednesday, 28 August 2019.*

## **Information for Visitors**

**FIRE EVACUATION PROCEDURE**

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Please do not re-enter the building until you are advised it is safe to do so by the relevant member of staff.

Your calmness and assistance is greatly appreciated.

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON TUESDAY, 2ND JULY, 2019 AT 6.00 PM  
IN THE COUNCIL CHAMBER - COUNCIL OFFICES, THORPE ROAD, WEELEY,  
CO16 9AJ**

<b>Present:</b>	Councillors White (Chairman), Alexander, Cawthron, Codling, Fowler, V Guglielmi, Harris, McWilliams and Placey
<b>Also Present:</b>	Councillor Gary Scott, Councillor Nick Turner and Councillor Ann Wiggins
<b>In Attendance:</b>	Cath Bicknell (Head of Planning), Lisa Hastings (Head of Governance and Legal Service & Monitoring Officer), Graham Nourse (Planning Manager), Trevor Faulkner (Planning Team Leader (Agency)) and Charlotte Cooper (Committee Services Officer)

**13. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were submitted on behalf of Councillor Bray, with Councillor V. Guglielmi as substitute.

**14. MINUTES OF THE LAST MEETING**

The minutes of the last meeting of the Committee, held on 11 June 2019, were approved as a correct record and signed by the Chairman.

**15. DECLARATIONS OF INTEREST**

There were none on this occasion.

**16. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 37**

There were none on this occasion.

**17. A.1 - PLANNING APPLICATION - 18/01888/FUL - MULLEYS FARM, BENTLEY ROAD, LITTLE BROMLEY, MANNINGTREE, CO11 2PL**

This item had been deferred by the Chairman of the Planning Committee (Councillor White) prior to the commencement of the meeting pending the likely receipt of a further consultation response from the Essex County Council Highways Department.

**18. A.2 - PLANNING APPLICATION - 18/01800/DETAIL - OAKWOOD PARK, LAND TO THE EAST OF THORPE ROAD, CLACTON-ON-SEA, CO15 4TL**

It was reported that this application was before the Committee as at the time that the outline application had been approved a request had been made by Members for the reserved matters application to be brought to the Committee for its determination.

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

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

Martin Robeson, the agent on behalf of the applicant, spoke in support of the application.

Following discussion by the Committee, it was moved by Councillor Fowler, seconded by Councillor Alexander and **RESOLVED** that the Head of Planning (or equivalent authorised officer) be authorised to grant planning permission for the development, subject to:-

- (1) within 6 (six) 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 dealing with the following matter:
  - Financial Contribution of £112.30 per new dwelling towards RAMS; and
- (2) the following conditions and informatives –

Conditions and Reasons

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Drawing numbers:

1232/AL/702 F

6054/1001 B

OPC/101 REV C

PH-144-002 REV C; 003 REV B; 004 REV B; 005 REV B; 006 REV B; 007 REV B; 010 REV B; 011 REV B; 012 REV B; 013 REV B; 014 REV B; 015 REV C; 017 REV B; 018 REV B; 019 REV B; 020 REV B; 021 REV B; 022 REV B; 023 REV B; 025 REV B; 027 REV A; 028 REV B; 029 REV B; 031 REV B; 031 REV B (Alternative External); 032 REV B; 033 REV B; 034 REV C; 035 REV A; 040 REV A; 041 REV A; 050 REV B; 051 REV B; 052 REV B; 053 REV B; 054 REV B; 055 REV B; 056 REV B; 057 REV A; 058 REV A and 059 REV A.

JBA 18/263-SK01 REV B

JBA 18/263-01 REV B; 02 REV B; 03 REV B; 04 REV B; 05 REV B; 06 REV B; 07 REV B; 08 REV B and 09 REV B.

HYBRID 1 – Plan illustrating circular walk

Documents:

Shadow Habitat Regulations Assessment 09/05/2019 ref 3022/HRA/vf

Amenity Space Breakdown dated 15<sup>th</sup> March 2019  
Measured Works Schedule: Detailed Soft Landscape Proposals for Plots JBA  
18/263-03-09  
Aboricultural Implications Assessment: Addendum October 2018  
Utilities Statement October 2018 Version 1.0

Reason: For the avoidance of doubt and in the interests of proper planning.

2. The internal roads and footways shall be delivered in line with the Phasing in Ph-144-050 Rev B. no individual dwelling shall be occupied until such time as the estate road(s) providing means of vehicular and pedestrian access to and from the roundabout in Thorpe Road to that dwelling has been provided in accordance with approved plans.

Reason: to ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety.

3. Prior to the commencement of any above ground works, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: to ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety.

4. No dwelling shall be occupied until such time as its car parking and turning area to serve that dwelling and a means of access to Thorpe Road has been provided in accordance with the approved plans. The car parking and turning area shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

Reason: to ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

5. Prior to occupation details of covered and secure provision for the storage of bicycles for each dwelling without a garage shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be provided before the dwelling to which they relate is occupied and shall thereafter be retained

Reason: to ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

6. Prior to commencement of any above ground works a scheme for the on-site mitigation of the recreational impact of the development on protected Essex Coast European sites shall have been submitted to and approved in writing by the Local Planning Authority. This mitigation scheme shall comprise:

- a) A circular walking route; dog off lead area; dog waste bins; and residents information leaflets as indicated within the Shadow Habitat Regulations Assessment and Plan titled Hybrid 1;
- b) Full details of the long-term maintenance and management of the green space;
- c) A programme for implementation

Development shall be undertaken in strict accordance with the approved mitigation scheme and program and thereafter managed and retained as approved. Any approved information leaflet shall be included within the new residents welcome pack to every dwelling.

Reason: To encourage the future residents to remain on-site for day to day recreation/dog walking, so as to minimise pressure upon Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries SAC, Hamford Water SPA and Ramsar site, pursuant to the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.

#### Informatives

1. All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to the Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway by the ECC.
2. The temporary bus route shall conform to drawing no. Ph-144-059 Rev a (Temporary bus route) until such time as the eastern development joins up with Oakwood Park in accordance with the bus service obligation from the s106 Agreement.
3. Prior to occupation, the development shall be served by a system of operational street lighting of design approved from the Highway Authority along the Primary route, which shall thereafter be maintained in good repair.
4. The areas directly adjacent to the carriageway(s) in which the trees are to be planted should not be less than 3 metres wide, exclusive of the footway and the trunks of the trees should be no nearer than 2 metres to the channel line of the road. The same dimensions should be used in situations where the footway is located adjacent to the carriageway.
5. In paved areas, whether or not the planted areas are to be adopted highway, trees should be sited no closer than 2 metres to the defined (or undefined) edge of the carriageway. Where the adopted highway is to be an independent path, trees should be planted no closer than 1 metre from the edge of the highway. In all cases, trees should be provided with root barriers to prevent damage to underground services.



6. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to:

SMO1 - Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

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

7. This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

19. **A.3 - PLANNING APPLICATION - 18/02012/FUL - LAND ADJACENT TO 8 THE CRESCENT, FRINTON-ON-SEA, CO13 9AP**

It was reported that this application had been referred to the Committee by Councillor Turner, a local Ward Member, as he considered the proposed development to be "garden grabbing", not in keeping, not maintaining a heritage asset and reducing that heritage asset by changing its setting in the street.

The Committee was aware that a Section 106 Legal Agreement had already been completed to secure a financial contribution towards RAMS of £122.30 for the dwelling proposed and a contribution towards the improvement of the pathways at Crescent Gardens, Frinton-on-Sea.

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

At the meeting, an oral presentation was made by the Council's Planning Manager (GN) in respect of the application;

Councillor Turner, a local Ward Member, spoke against the application.

Peter Le Grys, the agent on behalf of the applicant, spoke in support of the application.

Following discussion by the Committee, it was moved by Councillor V. Guglielmi, seconded by Councillor Cawthron and **RESOLVED** that, contrary to the Officer's recommendation of approval, the Head of Planning (or equivalent authorised officer) be

authorised to refuse planning permission for the development due to the following reason:-

- Design is out of character with the locality and adjoining dwellings

The meeting was declared closed at 7.13 pm

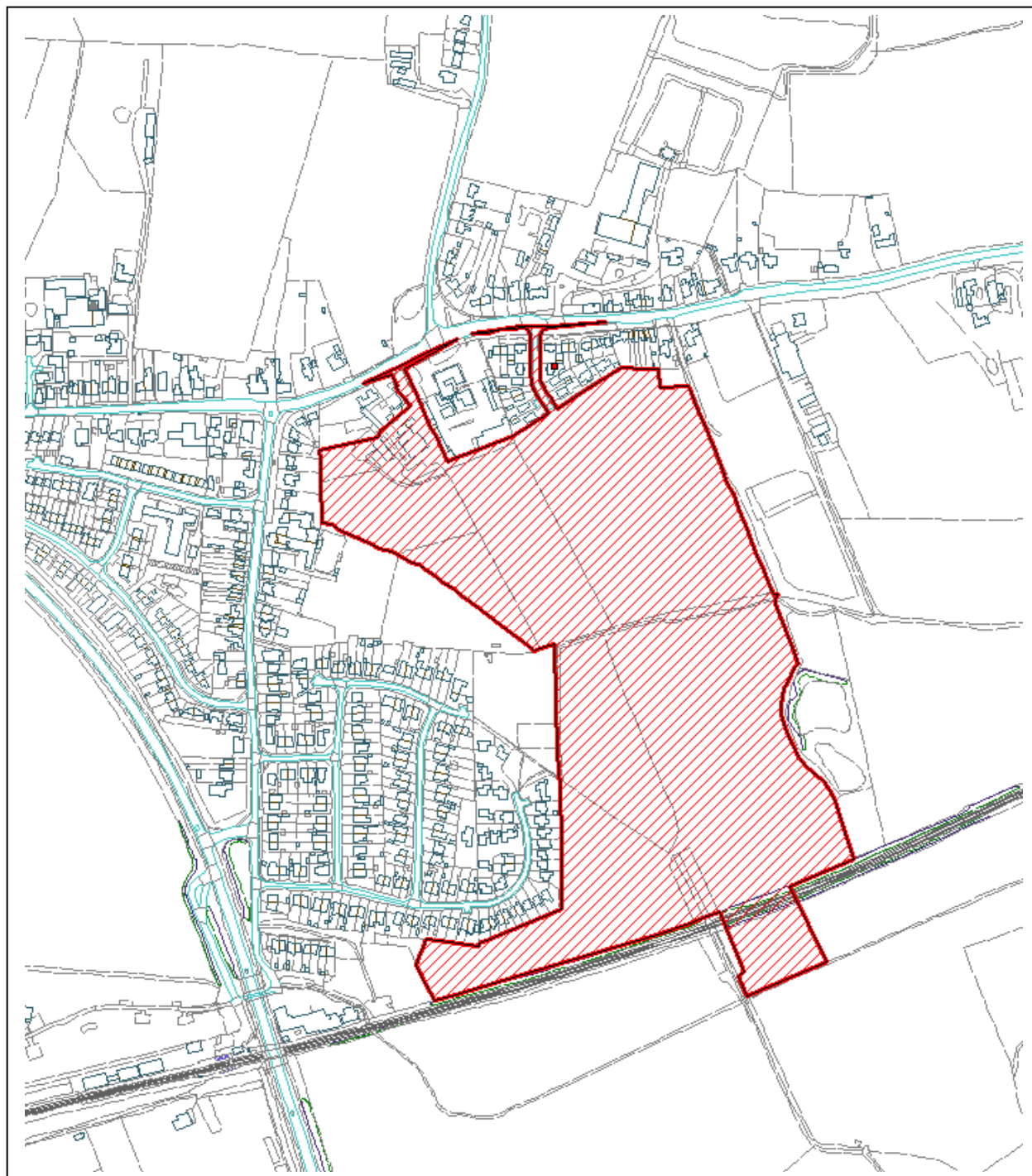
**Chairman**

## PLANNING COMMITTEE

30 July 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.1 PLANNING APPLICATION – 19/00524/OUT – LAND TO THE SOUTH OF THORPE ROAD WEELEY CO16 9AJ**



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**Application:** 19/00524/OUT

**Town / Parish:** Weeley Parish Council

**Applicant:** Mr & Mrs Lumber and Weeley

**Address:** Land to The South of Thorpe Road Weeley CO16 9AJ

**Development:** Outline planning application with all matters reserved, except for access, for 280 dwellings, a 2 Form of Entry primary school, 56 place early years nursery, up to 3000 sqm of office (B1) buildings on 1 hectare and associated ancillary buildings, drainage systems, boundary treatments and hard surfacing as well as public open space, vehicular access from Thorpe Road a pedestrian footbridge and the closure of existing level crossing and formal diversion of public footpath No 5 - Weeley, over the new railway bridge.

## 1. Executive Summary

- 1.1. This application is essentially a resubmission of planning application ref. 17/02162/OUT which was refused by this Council on 19 November 2018.
- 1.2. That decision is currently subject of a planning appeal which is to be heard by way of a Public Inquiry to be held in October 2019. As Members are aware, this Council sought professional legal and planning advice in preparation for the appeal and on receipt of this legal opinion it was resolved to advise the Planning Inspectorate (by way of the Council's 'Statement of Case' March 2019) that the Council '*...wishes to withdraw its opposition to the Appeal and therefore do not wish to further defend the Appeal at the Public Inquiry.*'
- 1.3. Furthermore, the Council advised that '*This position has been relayed to the Appellant. Following useful discussion with the Appellant the Council have sought to agree a suitable course of action. It has been agreed with the Appellant that a duplicate planning application will be submitted imminently to the Council for consideration and determination. If the application is subsequently approved by the Council the Appellant has then agreed to withdraw the current Appeal.*'
- 1.4. Accordingly, this application concurs with the above agreement with the applicant, and any subsequent approved will trigger the withdrawal of the appeal. However, in the scenario of a further refusal, then the Public Inquiry will proceed and it will then be for the Government appointed Inspector to reach a decision on the planning merits of the case.
- 1.5. The application site comprises 17.71hectares of agricultural land that is situated to the south of the B1033 Thorpe Road, Weeley. This land is allocated for a major residential and mixed-use development in the Council's emerging Local Plan. Outline planning permission is being sought for 280 dwellings, a 2 Form of Entry primary school, 56 place early years nursery, up to 3000 sqm of office (B1) buildings on 1 hectare and associated ancillary buildings, drainage systems, boundary treatments and hard surfacing as well as public open space, vehicular access from Thorpe Road, a pedestrian footbridge and the closure of existing level crossing and formal diversion of public footpath No 5 – Weeley, over the new railway bridge.
- 1.6. The site lies outside of the settlement development boundary for Weeley within the adopted Local Plan, but in the emerging Local Plan it is specifically allocated through Policy SAMU5 for a mixed of residential development, employment land, primary school and public open space. Whilst it is acknowledged that the proposal is for a major form of development which would impact upon the character of Weeley, nonetheless it would constitute part of the settlement's evolution, as is the case with the majority of the larger settlements within the

district where new development is planned. Consequently, Officers consider that by permitting the construction of 280 dwellings (where approximately 11,000 dwellings are required to be built between 2013 and 2033 at 550 dwellings per annum), the proposal would not be so substantial that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging plan. This is particularly due to the fact that the site is allocated within the emerging Local Plan, which is a material consideration that should carry some weight in the decision-making process.

- 1.7 This is an application for outline planning permission with all matters reserved with the exception of access. Other matters including appearance, landscaping, layout and scale are reserved for approval at a later date and therefore this application seeks only to establish the principle of residential and mixed-use development of the site and the arrangements for access. The applicant has provided details of how they propose to access the site off Thorpe Road and the Highways Authority, having modelled the impacts of this development on the highway network as part of the Local Plan process, has accordingly raised no objections in principle to the proposed arrangements, subject to conditions requiring the approval of further details and certain off-site highway improvements.
- 1.8 Officers are content that subject to the imposition of reasonable planning conditions and S106 planning obligations that the general principle of this level of development on the site is acceptable. It is in keeping with both the site's location on the edge of the village and along with the need to facilitate on-site strategic landscaping, open space and the retention of existing landscape features. Furthermore, the proposal would ensure that the living conditions of existing and future residents would be protected from any materially detrimental impacts whilst significantly boosting housing supply within the District in-line with the Council's own emerging Local Plan.
- 1.9 The recommendation is, therefore, to approve outline planning permission subject to the completion of a legal obligation under Section 106 of the Town and Country Planning Act 1990 and a suite of planning conditions.

**Recommendation:**

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

**Within 6 (six) 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 (as amended) dealing with the following matters:**

- **Affordable Housing – specific tenure and mix to be agreed at the reserved matter/s stage/s;**
- **Education – 2.1ha of land to accommodate a 2 form entry primary school and commensurate nursery; along with financial contributions towards: Primary Education for 84 places; Secondary Education for 84 places and secondary school transport;**
- **Healthcare – Financial contribution towards relocation costs for Thorpe Surgery (including its branch surgery at Kirby Cross);**
- **Public Open Space, equipped play areas and Ecology Land (for Slow Worms) – to be transferred to management company and laid out before transfer;**
- **Ecology (off site) – Financial contribution towards off-site ecological mitigation – to improve access within Weeleyhall Wood SSSI;**
- **Financial Contribution towards RAMS;**
- **Highways and Transport – A financial contribution towards off-site highway**

improvements. These improvements relate to the A133/B1033/services and Frating roundabouts as identified in the Tendring Local Plan Highways and Transportation Modelling work;

- Public Rights of Way (PRoW) – Footbridge to be constructed over the railway line and transferred to Network Rail on completion with a commuted sum for future maintenance, PRoW5 to be diverted away from existing level crossing via footbridge on completion.

Subject to the conditions stated in section 8.2.

## 2. Planning Policy

### National Policy

#### *National Planning Policy Framework 2019 (NPPF)*

- 2.1 The NPPF sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.2 Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The NPPF doesn't change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan it should be approved and where it does not it should be refused – unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:
  - an economic role;
  - a social role; and
  - an environmental role.
- 2.3 The NPPF, sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.4 These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.
- 2.5 Section 5 of the NPPF relates to delivering a sufficient supply of homes. It requires Councils to boost significantly the supply of housing informed by a local housing need assessment. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements including a 5%, 10% or 20% buffer: to ensure choice and competition in the market for land; where the LPA wishes to demonstrate a five year supply of deliverable sites through an annual position statement to account for any fluctuations in the market during that year; or where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply respectively. (NPPF para. 73). If this is not possible, housing policies are to be considered out of date and the presumption in favour of sustainable development is engaged with applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.

- 2.6 Paragraph 38 of the NPPF states *“Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available...and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”*
- 2.7 In paragraph 47, the NPPF also states that decisions on applications should be made as quickly as possible, within the statutory timescales unless a longer period has been agreed by the applicant in writing.

*National Planning Practice Guidance (PPG)*

- 2.8 The PPG provides additional planning guidance from Central Government on a range of issues, including, but not limited to: Air Quality; Appeals, Climate Change; Design, Flood risk and coastal change; Light Pollution; Natural Environment; Noise; and Travel Plans, Transport Assessments and Statements.
- 2.9 Paragraph 49 of the NPPF states that in the context of the Framework, and in particular the presumption in favour of sustainable development, arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:
- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
  - b) the emerging plan is at an advanced stage, but is not yet formally part of the development plan for the area.
- 2.10 Furthermore, in paragraph 50, the NPPF states that refusal of planning permission on grounds of prematurity will seldom be justified even where a draft plan has yet to be submitted for examination. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

Local Development Plan Policy

*Adopted Tendring Local Plan 2007 and Tendring District Local Plan 2013-2033 & Beyond Publication Draft*

- 2.11 The ‘development plan’ for Tendring is the 2007 ‘adopted’ Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.12 Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector’s initial findings were published in June 2018. They raise concerns, very specifically, about the three ‘Garden Communities’ proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and

beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

2.13 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

2.14 In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public (EIP) of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

*Tendring District Local Plan (2007) – as 'saved' through a Direction from the Secretary of State*

Relevant policies include:

QL1	Spatial Strategy
QL2	Promoting Transport Choice
QL3	Minimising and Managing Flood Risk
QL9	Design of New Development
QL10	Designing New Development to Meet Functional Needs
QL11	Environmental Impacts and Compatibility of Uses
QL8	Mixed-Uses
ER3	Protection of Employment Land



ER7	Business, Industrial and Warehouse Proposals
ER10	Small Scale Employment Sites in Villages
ER11	Conversion and Reuse of Rural Buildings
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
COM1	Access for All
COM2	Community Safety
COM4	New Community Facilities (Including Built Sports and Recreation Facilities)
COM6	Provision of Recreational Open Space for New Residential Development
COM21	Light Pollution
COM22	Noise Pollution
COM23	General Pollution
COM24	Health Care Provision
COM26	Contributions to Education Provision
COM29	Utilities
COM31A	Sewerage and Sewage Disposal
EN1	Landscape Character
EN4	Protection of the Best and Most Versatile Agricultural Land
EN6	Biodiversity
EN6A	Protected Species
EN6B	Habitat Creation
EN12	Design and Access Statements
ER13	Employment Use in Residential Areas

EN23	Development within the Proximity of a Listed Building
EN29	Archaeology
TR1A	Development Affecting Highways
TR1	Transport Assessment
TR2	Travel Plans
TR3A	Provision for Walking
TR4	Safeguarding and Improving Public Rights of Way
TR5	Provision for Cycling
TR6	Provision for Public Transport Use
TR7	Vehicle Parking at New Development
TR8	Public Car Parking

*Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)*

Relevant policies include:

SP1	Presumption in Favour of Sustainable Development
SP2	Spatial Strategy for North Essex
SP3	Meeting Housing Needs
SP4	Providing for Employment & Retail
SP5	Infrastructure & Connectivity
SP6	Place Shaping Principles
SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
HP1	Improving Health and Wellbeing
HP2	Community Facilities
HP3	Green Infrastructure
HP5	Open Space, Sports & Recreation Facilities
LP1	Housing Supply
LP2	Housing Choice

LP3	Housing Density and Standards
LP4	Housing Layout
LP5	Affordable and Council Housing
PP7	Employment Allocations
PP12	Improving Education and Skills
PPL1	Development and Flood Risk
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL7	Archaeology
PPL9	Listed Buildings
CP1	Sustainable Transport and Accessibility
CP2	Improving the Transport Network
CP3	Improving the Telecommunications Network
SAMU5	Development South of Thorpe Road, Weeley

*Supplementary Guidance*

Essex Design Guide for Mixed Use and Residential Areas (2005)

Essex County Council Car Parking Standards - Design and Good Practice (2009)

**3. Relevant Planning History**

14/00082/OUT	Erection of 20 dwellings with associated garages and single access point to Thorpe Road.	Approved	20.06.2014
14/01841/DETAIL	Erection of 20 dwellings with associated garages and single access point to Thorpe Road.	Approved	14.04.2015
15/01443/DISCON	Discharge of condition 8 (details of estate roads and footways), 12 (vehicular turning) and 13 (construction method statement) of planning permission 14/01841/DETAIL.	Approved	20.11.2015
16/00370/DETAIL	Variation of condition 10 of planning permission 14/01841/DETAIL to change wording, removing	Approved	01.06.2016

requirement of construction of estate roads to base course level prior to commencement of dwellings, to allow construction of houses to commence sooner, reducing the period of disruption to neighbours.

16/30341/PREAPP	EIA Screening Opinion request for proposed development of up to 280 dwellings including associated works.		23.03.2017
17/02162/OUT	Outline planning application with all matters reserved, except for access, for 280 dwellings, a 2 Form of Entry primary school, 56 place early years nursery, up to 3000 sqm of office (B1) buildings on 1 hectare and associated ancillary buildings, drainage systems, boundary treatments and hard surfacing as well as public open space, vehicular access from Thorpe Road a pedestrian footbridge and the closure of existing level crossing and formal diversion of public footpath No 5 - Weeley, over the new railway bridge.	Refused	19.11.2018
18/00133/REFUSE	Outline planning application with all matters reserved, except for access, for 280 dwellings, a 2 Form of Entry primary school, 56 place early years nursery, up to 3000 sqm of office (B1) buildings on 1 hectare and associated ancillary buildings, drainage systems, boundary treatments and hard surfacing as well as public open space, vehicular access from Thorpe Road a pedestrian footbridge and the closure of existing level crossing and formal diversion of public footpath No 5 - Weeley, over the new railway bridge.	Appeal in Progress (Public Inquiry to be held from 8 to 11 October 2019)	

#### 4. Consultations

Natural England

No objection.

It has been identified that the site falls within the 'Zone of Influence' (Zol) of one or more of the European designated sites scoped into the Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS).

In the context of the Council's duty as 'competent authority' under the provisions of the Habitats Regulations, it is therefore anticipated that, without mitigation, new residential development in this location is 'likely to have a significant effect on one or more European designated sites through increased recreation pressure, either when considered 'alone' or 'in combination' with other plans or projects.

Natural England understand that the Council has screened the proposed development and consider that it falls within the scope of the Essex Coast RAMS and has therefore carried out a Habitats Regulations Assessment (HRA) (Stage 2 – Appropriate Assessment) in order to secure any necessary recreational disturbance mitigation.

Natural England are satisfied that the mitigation described in the Appropriate Assessment is in-line with their strategic level advice and that it should rule out an 'adverse effect on the integrity' (AEOI) of the European designated sites that are included within the Essex Coast RAMS from increased recreational disturbance.

ECC Highways Dept

ECC Highways raise no objection to the application.

Their assessment of the application and Transport Assessment was undertaken with reference to the National Planning Policy Framework and in particular the following aspects were considered: access and safety; capacity; the opportunities for sustainable transport; and highway mitigation measures.

The Transport Assessment accompanying the planning application has been considered in detail and the Highway Authority is satisfied that, at peak times, the number of trips generated by the proposal would not have a severe impact and could be accommodated safely and efficiently on the local highway network, subject to a number of requirements which could be accommodated safely and efficiently on the local highway network, subject to a number of requirements which could be secured by way of planning conditions and obligations, namely:

- Provision of a Construction Traffic Management Plan;
- Securing of a diversion of the existing definitive right of way;
- Widening of the Barleyfields carriageway;
- Right-turn lane into Barleyfields to be provided;
- A pedestrian refuge island to be provided to the west of Barleyfields access road;
- The existing footpath along the site frontage to be widened;
- Adjustments to carriageway width to the east of

- Crow Lane and removal of the layby;
- Provision of a right-turn lane into Crow Lane approaching from the east;
- Homestead access to be constructed with appropriate kerb radii;
- Right-turn lane into Homestead on approach from the east;
- Provision of a financial contribution towards the proposed improvements at the A133/B1033/services and Frating roundabouts as identified in the Tendring Local Plan Highways and Transportation Modelling work;
- The provision of two new bus stops located to the east of Barleyfield's access on both sides of Thorpe Road;
- Provision of new gateway traffic calming features to be provided on the approaches to Weeley in both directions on the B1033 to enhance the existing 30mph speed limits; and
- Provision and implementation of a Residential Travel Information Pack per dwelling.

Essex Wildlife Trust

No objection, subject to a developer contribution of £55,000, to be secured by way of a S106 agreement, towards mitigation works within Weeleyhall Wood Nature Reserve.

The contribution is required to offset increased recreational impacts on Weeleyhall Wood Site of Special Scientific Interest (SSSI). Weeleyhall Wood is one of the largest ancient woods in the Tendring peninsula. It contains one of the best examples in Essex of base-poor springline alder woodland, a type of woodland which is rare in the county, as well as good examples of lowland hazel-pedunculate oak and some wet ash-maple woodland, and chestnut coppice-with-standards derived from these last two.

The proposed development will result in an additional 280 households within the village of Weeley. This will result in a significant increase in recreational impacts on Weeleyhall Wood, including:

- proliferation of tracks and resultant erosion;
- local trampling of woodland plants;
- ongoing chronic disturbance impacting negatively on species habitat use, foraging opportunities and breeding success;
- relocation or removal of timber, which is a valuable resource for ancient woodland deadwood organisms;
- removal of attractive, uncommon, or rare plant species such as bluebell *Hyacinthoides non-scripta*;
- wildlife casualties as a result of trapping by, or ingestion of, discarded rubbish;

- vandalism of trees

Ultimately, without appropriate mitigation, the combined effect of these disturbance factors will lead to reductions in species diversity and abundance, or even the elimination or absence of particular species from the wood.

ECC SuDS Consultee

No objection - Having reviewed the Flood Risk Assessment, site plans, illustrative masterplan, the desk study and risk assessment, and the associated documents which accompanied the planning application, they raise no objection to the granting of planning permission subject to the imposition of a number of planning conditions to cover such matters as: detailed surface water drainage scheme; scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater; and surface water drainage system maintenance plan.

Anglian Water Services Ltd

The foul drainage from this development is in the catchment of Clacton-Holland Haven Water Recycling Centre that will have available capacity for these flows from the development site.

Development may lead to an unacceptable risk of flooding downstream. Anglian Water will need to plan effectively for the proposed development, if permission is granted. They will need to work with the applicant to ensure any infrastructure improvements are delivered in line with the development. The previous drainage strategy outlining the required underground storage was based on gravity flows from 280 dwellings only; the new proposal includes a school and the possibility of a pumped regime being required to drain portions of the site. Accordingly, they request that conditions be imposed that requires a phasing plan and/or on-site drainage strategy. They also request the inclusion of a number of informatives to cover such matters as connection to the public sewer and works close to existing assets.

ECC Schools Service

Based upon a development of 280 homes - all being 2 or more bedrooms - the proposal would produce the need for 84 additional primary school places and 84 secondary spaces (there are current places available in the area to meet the needs of Early Years and Childcare). In addition to the above, the proposal will generate a secondary school transport contribution as the closest school is in excess of 3 miles statutory walking distance of the site.

2.1ha of land is to be provided for a new primary school and nursery to be delivered and transferred to ECC at no cost.

The likely financial contributions are:

Primary Education: £1,283,604; Secondary Education £1,299,984; and Secondary School Transport Contribution £281,960.

Essex County Council Archaeology A Heritage Assessment submitted with the application recognises the potential of the development area to contain multi-period archaeological remains associated with the findings from the adjacent site at St Andrews Road and from other sources of evidence. The evidence for Palaeological remains within the area is strong and the potential for Pleistocene deposits with Palaeolithic potential to be present within the development site will need to be established through specialist consultation and, if required, fieldwork investigations. The Heritage Assessment notes that no evidence of the Napoleonic barracks known to have been sited at Weeley has been found in the archaeological investigations in the surrounding area, however these were small scale and limited in their extent. Conditions securing a Programme of Archaeological and geo archaeological evaluation are recommended.

## 5. Representations

- 5.1 Weeley Parish Council objects to the application. Whilst recognising a need in the county for additional homes, this development would totally overwhelm the village. The infrastructure simply could not cope with such a large development, following on from the number of new builds already completed or under way in the village.

A number of residents have submitted objections citing the additional risk of flooding to their properties and this is reinforced by comments made at the monthly parish council meetings.

In addition, the Parish are concerned that any increase in traffic volumes will cause significant inconvenience and delays for local residents and through traffic, not to mention an increased risk of accidents.

Reliance on public transport is simply not sustainable given the poor train service and limited bus services.

Finally, the Parish state that local residents '*are dismayed*' at the way that this application has been allowed to be re-submitted. Local opposition is vehement and unanimous.

- 5.2 Letters of objection have been received from Weeley Residents Association and 21 local households. The letters of objection raise the following concerns:

### Principle of Development

- Weeley has already provided sufficient quota of new houses;
- No need for commercial properties in the area as there are plenty of existing commercial estates;
- Large estate development would alter the balance of the locality and not integrate with existing community;
- Size of development disproportionate with current size of village;
- Council has sufficient Housing Land Supply;



- Scheme 'premature' until such time as Part 2 of the emerging Local Plan is examined;
- Local Housing Needs cited by applicant incorrect and significantly lower;
- Nothing has changed from previous refusal;
- Application is seeking to circumvent and override due Planning process, outside of Examination of the Local Plan;
- Smaller sites are more appropriate;
- Weeley is a rural community and this development is far too excessive for a village of this size;
- There are other more appropriate locations for growth such as Horsley Cross;
- Backland form of development

#### Access (highway, public transport, cycling and walking)

- Chronic volume of traffic already passes through village on the B1033;
- Local transport is already a nightmare and holiday traffic is already finding it difficult to use these local roads;
- Further traffic will increase pollution levels to the detriment of public health/add to global warming;
- One entrance in and out of proposed estate is 'asking for a catastrophic disaster' if there is an emergency;
- Rail service is poor with no parking facilities or disabled access at the station;
- Current local bus service is very poor and limited;
- 'Nonsensical' bridge is not needed and will be an eyesore

#### Landscape and Ecology

- Development will irreparably damage local village landscape beyond recognition;
- Overriding harm to the character and appearance of Weeley Village and rural landscape;
- Site represents a very important area for a diverse collection of birds, mammals and insect species. Loss of farmland and hedgerows will result in a negative impact on already threatened species;
- Glade leading up to Barracks Field from the railway line is a wildlife haven;
- Rural nature and quiet enjoyment of existing public footpaths will be destroyed and cannot be replaced;
- Proposed railway footbridge and any associated floodlighting and ramped access will cause severe visual environmental harm and is not necessary;
- Loss of productive farmland and local farming employment;

#### Living Conditions/Residential Amenities

- Application will impact on air quality and have noise implications from additional road congestion impacting on public health and quality of life;
- Loss of outlook over open countryside enjoyed by existing community

#### Community Infrastructure

- Local facilities already over stretched especially schools, doctors, surgeries and pharmacies;
- Weeley has very limited local services meaning people have to travel by car to main shopping centres;
- Increased pressure on existing local healthcare providers and known shortage of GP's nationwide;

- Provision of new primary school is an ‘empty gesture’ as it will impact on secondary education locally and there is no expansion plans;
- There is little or no real employment locally and no real demand for it;
- Local sewerage system is already a serious issue;
- Poor erratic electricity supply with frequent power failures

#### Heritage/Setting of Listed Buildings

- Views from footpaths towards historic Grade 2 Listed St Andrews Church would be lost;
- Site previously known as ‘Barracks Field’, as used for stationing of soldiers in Napoleonic times. Any development on this site would certainly be of a negative impact and destroy the historic and natural environment permanently;

#### Flooding

- Clay-based soil is not easily drainable and there are current issues with smaller nearby developments;
- Local flooding is already a problem and will be exacerbated by even more hard surfaces/built on ground;
- Land adjacent to railway line is frequently water-logged in the autumn/winter months

## **6. Assessment**

### Site Context

- 6.1 The application site comprises 17.71 hectares of agricultural land that is situated to the south of the B1033 Thorpe Road, Weeley. The northern boundary of the site is shared with a range of land uses, including Ash Farmhouse (a grade II listed building with its farm yard that is in commercial use forming part of the application site), the existing Tendring District Council Offices, the recently completed residential estate of 20 no. dwellings known as Barleyfield Drive and more established dwellings, including nos.1-6 Thorpe Road and a bungalow known as ‘Emma-Dawn’.
- 6.2 To the east of the site is the Tendring Hundred Riding Club showground, a pair of ponds and open farmland beyond; to the south is the railway line, with houses fronting Second Avenue and The Street beyond the western boundary. Halfway along the western boundary is a new development under construction for 14 no. houses, garages, access, public open space and landscaping on land at the end of St Andrews Road, pursuant to 15/01750/FUL.
- 6.3 The site is relatively flat semi-improved grassland, but does slope gently towards the south. The site is surrounded by hedgerows with standard trees, some previously managed as coppice and pollards. To the south of the site is a small copse/woodland (through which a Public Right of Way passes down to the railway line) with evidence of previous coppicing, within the site are occasional aged trees, some with veteran associations.
- 6.4 Weeley benefits from a range of existing local services which include a primary school, a holiday park, the Black Boy pub, a bakery and a convenience shop (including post office). Furthermore, Weeley Heath is located nearby to the south with additional services and facilities. In recognition of these services and other factors, Weeley is designated as a ‘Rural Service Centre’ in the draft Local Plan.
- 6.5 The application site is served by several bus services that link to nearby settlements including service nos. 97 and 105/107 to Colchester, 2/76/X76/100 to Clacton, as well as schools services: 87C to Brightlingsea, 115 Thorpe-le-Soken, and 702 to Frinton, with the village also having a railway station that provides a service from Clacton/Walton to Colchester and beyond to London.

## Proposal

- 6.6 As set out at the head of this report, this application is essentially a duplicate planning application to the one that was refused in December 2018 and subject to a pending planning appeal to be heard by way of a Public Inquiry this coming October. Outline planning permission is sought for 280 dwellings, a 2 Form of Entry primary school, 56 place early years nursery, up to 3000 sqm of office (B1) buildings on 1 hectare and associated ancillary buildings, drainage systems, boundary treatments and hard surfacing as well as public open space, vehicular access from Thorpe Road a pedestrian footbridge and the closure of existing level crossing and formal diversion of public footpath No 5 - Weeley, over the new railway bridge.
- 6.7 This is an application for Outline Planning permission, with all matters reserved with the exception of access. The applicant has provided details of how they propose to access the site off Thorpe Road, via Barley Field Drive with the creation of a footway/cycleway along the existing Ash Farm entrance which itself would be retained for the residential and agricultural use of Ash Farm. All other matters (Appearance; Landscaping; Layout; and Scale) are reserved and it can therefore be said that the application seeks to establish the principle of residential development of the site.
- 6.8 The application is supported by a wide suite of technical drawings and documents, these include:
- Site Location Plan;
  - Existing Site Plan;
  - Land Use Audit/Illustrative Master Plan;
  - Proposed Access Arrangement Plan;
  - Additional Pedestrian/Cycle Access Plan;
  - Footpath Diversion Plan;
  - Proposed Footbridge, General Arrangement Plan;
  - Topographical Survey Plans;
  - Acoustic Assessment;
  - Air Quality Assessment;
  - Barn Owl Mitigation report;
  - Bat Activity Survey;
  - Breeding Bird Survey;
  - Design and Access Statement;
  - Ecological Impact Assessment;
  - Flood Risk Assessment;
  - Heritage Assessment;
  - Junctions report for right turn lane;
  - Landscape and Visual Impact Assessment;
  - Phase 1 Desk Study and Risk Assessment
  - Planning Statement;
  - Preliminary Ecological Appraisal;
  - Reptile Survey and Outline Mitigation Strategy;
  - Road Safety Audit Stage 1;
  - School Land compliance study and Knotweed Survey;
  - Statement of Community Involvement;
  - Transport Assessment;
  - Tree Constraints Assessment; and

- Underground utilities search report.
- 6.9 With the exception of the formation of the access into the site, details of the appearance, landscaping, layout and scale are all reserved matters. This means that approval is not sought for these at this stage and details are therefore not currently required. If the outline application were to be granted the applicant, or any successors in title, would need to submit reserved matters applications to the Local Planning Authority, in addition to discharging planning conditions before development could commence.
- 6.10 The application proposes one main vehicular access point into the site through Barleyfield Drive. In order to facilitate this, a dedicated right turn lane, with carriageway realignment within the public highway would be carried out as shown on the proposed access arrangement plans. It is also proposed to install a 3.5m wide footway/cycleway along the existing access that serves the dwelling and farm buildings at Ash Farm.
- 6.11 The submitted illustrative Masterplan shows that the principal site access from Barleyfield Drive would likely run in a southerly direction through the heart of the site, thereby creating a central spine road off of which secondary vehicular access routes - including to the employment area and school land - would be created. The illustrative Masterplan also identifies the existing public footpaths that pass through the site, as well as new potential pedestrian and cycle routes. The exact location of the proposed new routes through the site would be refined through the Reserved Matters process.
- 6.12 Whilst a reserved matter, the indicative Masterplan and Land Use Parameter Plan identify the potential layout of the site, which is intended to give some certainty to the general location of development and ultimately be used to inform the Reserved Matters stage/s. This would be a predominantly housing-led scheme for up to 280 units and whilst the precise mix of dwelling types is unknown, the applicant's state that they intend to provide a broad range of residential accommodation and would include both affordable and market housing, likely to be 2-5 bedroom units.
- 6.13 The design of the housing would likely follow the design cues from the adjacent Barleyfield Drive development, which was recently completed by the applicant, and is of a traditional vernacular design with a high level of detailing such as bargeboards, finials, string courses, stone cills, segmented brick lintels and oversized eaves. The proposed residential buildings would likely be a mixture of 1, 1½ and 2 storey homes and would be of a mixture of detached, semi-detached and terraced housing. The roofscape would include a mixture of half dormers and gables that present to the side and/or the front.
- 6.14 The site and policy context gives rise to three main character areas. As the site abuts the countryside, an 'edge' typology/character area would be used to help inform the transition from open countryside to built form. This would likely have a combination of large detached houses as well as some small cottages. The main body of the site would have a more suburban feel based around a broad avenue, lined with street trees. The third of the main character areas would be around the community hub focused on the school, employment land and the existing Council offices (which are outside of the application site). These buildings would have a civic and community focus to create a communal and public space in and around this area.
- 6.15 The main planning considerations are:
- Principle of Development;
  - Transport & Access;
  - Reserved Matters - Appearance, Landscaping, Layout and Scale;
  - Landscape & Visual Impact;
  - Ecology and Nature Conservation;

- Archaeology and Cultural Heritage;
- Hydrology, Flood Risk & Drainage;
- Ground Conditions and Contamination;
- Air quality and Noise;
- Living Conditions; and
- Planning Obligations.

#### Principle of Development

- 6.16 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2014, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework (NPPF) are a significant material consideration in this regard.
- 6.17 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy.
- 6.18 As of 16 June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. Section 1 of the emerging Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is being undertaken to address the Inspector's concerns and the North Essex Authorities are potentially working towards submitting this evidence to facilitate a resumption of the Inquiry in the Autumn.
- 6.19 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices.
- 6.20 The application site is not allocated for development in the adopted Local Plan and it lies outside (albeit adjacent to) the 'settlement development boundary' for Weeley. In the emerging Local Plan, the site is however specifically allocated through Policy SAMU5 for a mix of residential development, employment, a Primary School and public open space. The policy contains specific requirements in relation to housing numbers, educational facilities, healthcare provision, highways and open space.
- 6.21 Draft Policy SAMU5 states: *"Land south of Thorpe Road, Weeley, shown on the Map SAMU5, is allocated for mixed use development as follows:*
- a. at least 280 new homes of a mixed size and type to include affordable housing as per the Council's requirements;*
  - b. 1 hectare of land for employment (potentially utilising buildings at Ash Farm);*
  - c. 1 hectare of public open space;*
  - d. 2.1 hectares of land for a new primary school with co-located 56 place commensurate early years and childcare facility (D1 use) as required by the Local Education Authority through Section 106 Planning Obligations;*

*Proposals must accord with the following:*

- e. the principal point of vehicular access will be off Thorpe Road;*
- f. capacity and/or safety enhancements to the local highway network where necessary;*
- g. where necessary, enhancements to public transport, cycle and pedestrian infrastructure;*
- h. provision of a pedestrian/cycle bridge over the railway line, as a replacement for the existing level crossing prior to the occupation of the one-hundredth dwelling;*
- i. the design and layout of the development must have regard to the surrounding landscape, seeking to minimise visual impacts through the inclusion of mitigation measures;*
- j. delivery of opportunities for the protection and enhancement of the historic environment including the built and archaeological environment;*
- k. early engagement with Anglian Water to secure upgrades to both treatment infrastructure and network and to formulate a water and drainage strategy to serve the new development;*
- l. a financial contribution to early years and childcare, primary and secondary education provision, as required by the Local Education Authority through Section 106 Planning Obligations;*
- m. financial contributions towards other community facilities such as health provision as required by the NHS/CCG either through the Community Infrastructure Levy or Section 106 Planning Obligations.”*

6.22 The application is for 280 dwellings with 1 hectare proposed for both employment and public open space, in addition to 2.1 hectares identified for a new primary school, in accordance with the Council’s requirements. The principal point of vehicular access is shown to be off Thorpe Road; and enhancements to the local highway network and public transport, cycle and pedestrian infrastructure including the provision of a pedestrian/cycle bridge over the railway line, as a replacement for the existing level crossing prior to the occupation, are also proposed, and will be discussed in greater detail below, along with the other requirements of the policy.

6.23 The allocation of this site for residential and mixed use development in the Publication Draft of the emerging Local Plan and the requirements of Policy SAMU5 attracted 26 objections from residents and other stakeholders. The objection comments raised are summarised below, these along with the local objections received in response to this planning application specifically are addressed throughout this report:

- Policy SAMU5 and the formal site allocation on the Policies Map should be deleted; and amendments made to the proposed spatial distribution of housing growth and employment development across the district;
- The development of the site for 280 dwellings would be oversized and spoil the village;
- Would not want to see the public footpath (no5) and the proposed railway footbridge upgraded to a Bridleway due to health and safety concerns and potential conflicts between users and farm machinery;
- The village would have building works for years to come which would lead to residents' lives being disrupted with noise, traffic and unsuitable vehicles on small roads, including HGVs;
- Inadequate social and highway infrastructure to serve the development;
- The land is full of wildlife, including barn owls, bats, grass snakes, hedgehogs and herons;
- There are more suitable areas in Weeley for this development which would not blight so many of the residents;
- Plans for such massive over-development would also be contrary to the requirements of Section 7 of the NPPF as in no way would it be 'contributing to protecting and enhancing Weeley's natural, built and historic environment'.

- 6.24 In applying the guidance within paragraph 48 of the NPPF, the Local Plan has reached a **relatively** advanced stage of the plan-making process; the objections to Policy SAMU5 are noted, although Officers are of the view that the proposal is in line with the policies in the NPPF to boost the supply of housing and achieve a balance between economic, social and environmental factors. On this assessment, Policy SAMU5 and the allocation of the site for mixed-use development can carry a reasonable level of weight in the determination of this planning application.
- 6.25 Furthermore, The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years when calculated using the standard methodology and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public (EIP) of the Local plan. Therefore, the justification for reducing the weight attributed to the adopted Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.
- 6.26 As highlighted above within the executive summary, this application is essentially a resubmission of planning application ref. 17/02162/OUT which was refused by this Council on 19 November 2018. The reasons for refusal in that case were as follows:

Reason 1

*Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require applications for planning permission to be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) (2018) is a material planning consideration in the determination of planning applications and paragraph 15 states that the planning system should be genuinely 'plan-led'.*

*The development plan for this area is the Tendring District Local Plan 2007 (the 'adopted Local Plan') which is 'saved' beyond its intended timescale of 2011 under a direction from the Secretary of State. The application site lies outside of the settlement development boundary as depicted on the Local Plan's proposals maps. Policy QL1 in the adopted Local Plan states that development will be concentrated with the settlement development boundaries and that outside of the defined boundary and other specific land allocations in the plan, only development which is consistent with countryside policies will be permitted. Whilst the adopted Local Plan was only intended to cover the period to 2011, the NPPF in paragraph 213 allows Councils to give weight to existing policies according to their degree of consistency with the NPPF. As confirmed in recent appeal decisions, Policy QL1 whilst dated is broadly consistent with the NPPF and can reasonably be afforded a moderate level of weight in determining planning applications.*

*The application site is however the subject of a specific allocation for housing and mixed use development through Policy SAMU5 in the Tendring District Local Plan 2013-2033 and Beyond - Publication Draft 2017 (the 'emerging Local Plan') and is shown within a proposed revision to the settlement development boundary. Paragraph 48 in the NPPF allows Councils to give weight to emerging plans according to their stage of preparation, the extent of unresolved objections and the degree of consistency with the NPPF. As confirmed in recent appeal decisions, the examination of the emerging Local Plan is yet to be concluded and relevant policies within it can only be afforded limited weight. The weight that can reasonably be applied to Policy SAMU5 is further reduced by the fact that there are a large number of public objections to the allocation which are yet to be resolved through the examination process. This allocation is by far the most publicly contentious proposal in the emerging Local Plan and many of the unresolved objections relate to the principle of the development and its scale in relation to the existing settlement of Weeley.*

*In the time that has passed since the emerging Local Plan was submitted to the Secretary of State to begin the examination process, a significant number of sites have obtained planning permission for residential development and the Council can now comfortably demonstrate both a five-year supply of deliverable housing sites and a notable surplus of land to deliver housing requirements over the full plan period to 2033. Housing delivery within the next five years and over the plan period is no longer dependent on the 280 dwellings proposed for the application site and therefore any argument that the development should be granted planning permission on housing supply grounds in advance of the conclusion of the Local Plan examination and the Inspector's consideration of the unresolved objections can only be given limited weight.*

*In this case, the policies in the adopted Local Plan should prevail and the application site is outside of the settlement development boundary for Weeley and therefore contrary to Policy QL1 in the Council's adopted Local Plan and in a location where countryside policies apply, such as Policy EN1 'Landscape Character', which aims to protect and where possible enhance the district's landscape and its distinctive local character.*

## Reason 2

*A number of public objections to this application, and to the corresponding housing and mixed use allocation in Policy SAMU5 of the Tendring District Local Plan 2013-2033 and Beyond - Publication Draft 2017 (the 'emerging Local Plan'), raise concern about the scale of the development being disproportionate to the size and character of the existing settlement of Weeley - representing in excess of a 60% increase in the village's dwelling stock. Weeley is categorised as a 'Rural Service Centre' in Policy SPL1 of the emerging Local Plan where housing development is envisaged to be at a level that is fair, achievable and sustainable. The other settlements that fall into the Rural Service Centre category are Alresford, Elmstead Market, Great Bentley, Little Clacton, St. Osyth and Thorpe-le-Soken where the percentage increase in dwellings range between 20% and 40%.*

*Since the emerging Local Plan was submitted to the Secretary of State to begin the examination process, the Council can now comfortably demonstrate both a five-year supply of deliverable housing sites and a notable surplus of land to deliver housing requirements over the full plan period to 2033. Housing delivery within the next five years and over the plan period is no longer dependent on the 280 dwellings proposed for the application site and therefore in advance of the conclusion of the Local Plan examination and the Inspector's consideration of the unresolved objections Policy SAMU5 of the Emerging Plan can only be given limited weight.*

*In light of the above, it is considered that the proposed development represents a disproportionate scale of growth in relation to the size and character of the existing settlement of Weeley. The development is contrary to policies in the Tendring District Local*



*Plan 2007 (the 'adopted Local Plan'); Policy QL9 which requires new development to maintain or enhance local character and distinctiveness, and Policy QL11 which requires the scale and nature of development to be appropriate to the locality.*

- 6.27 That decision is subject of a current planning appeal which is to be heard by way of a Public Inquiry to be held in October 2019. As Members are aware, this Council sought professional legal and planning advice in preparation for the appeal and the following conclusions were subsequently reached by the Planning Committee on 13 March 2019 and conveyed to the Planning Inspectorate by way of the Council's 'Statement of Case' March 2019:

*"The Council has promptly, following in particular the publication of the revised National Planning Policy Framework (February 2019), given further consideration to the Councils adopted and emerging Local Plan policies in the context of the appeal proposal. It has concluded that the refusal reasons provided by the Council should not be defended further in light of this revised policy position and that in principle the proposed development is compliant with national, adopted and emerging policy.*

*In these circumstances and to enable a pragmatic and proportionate way forward, the Council wishes to withdraw its opposition to the Appeal and therefore do not wish to further defend the Appeal at the Public Inquiry.*

*This position has been relayed to the Appellant. Following useful discussion with the Appellant the Council have sought to agree a suitable course of action. It has been agreed with the Appellant that a duplicate planning application will be submitted imminently to the Council for consideration and determination. If the application is subsequently approved by the Council the Appellant has then agreed to withdraw the current Appeal."*

- 6.28 Accordingly, if the Public Inquiry proceeds then it will be for the Government appointed Inspector to reach a decision on the planning merits of the case.
- 6.29 It is also considered pertinent to remind Members of the previous debate on 'prematurity' which was an issue of discussion on the previous application (Planning Committee 21 August 2018) and resulted in a resolution to defer determination of that application until the outcome of the Part 2 examination of the Council's emerging Local Plan. Following that resolution, the applicant sought legal advice and requested that the Council proceed to determine the application on the grounds that to defer for an indeterminate period of time would amount to unreasonable behaviour, which would potentially have a significant financial implications for the public purse through the costs regime of the appeal process.
- 6.30 The applicant's Solicitor highlighted that Parliament, through the Town & Country Planning Act 1990 has given the Council the legal right to determine planning applications. An applicant for planning permission can therefore expect their application to be determined which must be approved or rejected, and if the latter, good planning reasons given ie. the Council must act, and pursuant to NPPF paragraph 47 the decision should be made as quickly as possible.
- 6.31 Paragraphs 2.1.9 and 2.1.10 of this report above, stipulate that Paragraph 49 of the NPPF state that in the context of the Framework, and in particular the presumption in favour of sustainable development, arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:
- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and

b) the emerging plan is at an advanced stage, but is not yet formally part of the development plan for the area.

In addition, the NPPF in paragraph 50 states that refusal of planning permission on grounds of prematurity will seldom be justified even where a draft plan has yet to be submitted for examination. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

- 6.32 Whilst it is acknowledged that the proposal the subject of this outline application is for a major form of development which would impact upon the character of Weeley, nonetheless it would constitute part of the settlement's evolution, as is the case with the majority of the larger settlements within the district where new development is planned. Consequently, Officers consider that by permitting the construction of 280 dwellings (where approximately 11,000 dwellings are required to be built between 2013 and 2033 at 550 dwellings per annum), the proposal would not be so substantial that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging plan. This is particularly due to the fact that the site is allocated within the emerging Local Plan, which is a material consideration that should be given some weight in itself in the determination of this application.
- 6.33 Therefore, pursuant to NPPF paragraph 50, refusal of planning permission on grounds of prematurity will seldom be justified and it is quite likely that the Council would be deemed to have acted unreasonably at appeal should either the application fail to be determined, or is refused on grounds that are difficult to support with robust evidence.
- 6.34 In addition, the applicant's Solicitor has previously highlighted that a Local Planning Authority has a legal duty to apply consistency when determining similar planning applications (*North Wiltshire District Council v Secretary of State for the Environment and others [1992] 3plr 113*). The Council has approved or resolved to approve planning permission on the following sites which are also included within the emerging Local Plan: Rouses Farm, Clacton (17/01229/OUT) for 950 dwellings; Brook Park West, Clacton (16/01250/OUT) for 200 dwellings; Robinson Road, Brightlingsea (17/01318/FUL) for 115 dwellings; and Low Road, Dovercourt (17/02168/OUT) for 300 dwellings.
- 6.35 Consequently, having considered the application site's status within the emerging Local Plan, the imperative to deliver new homes and to maintain a five year supply of deliverable housing sites, as well as the need to make planning decisions in a consistent manner, Officers consider that the principle of a major residential and mixed-use development on the site is acceptable, subject to its consideration against other relevant policies, including draft Policy SAMU5.

#### Highways, Transport & Access

- 6.36 Where concerning the promotion of sustainable transport, the NPPF in para. 103 states that the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Para. 111 of the NPPF stipulates that all development that could generate significant amounts of vehicle movements should be supported by a Transport Assessment, this is to ensure, amongst other things, that suitable access to the site can be achieved and that opportunities for sustainable transport modes are explored to reduce the need for major transport infrastructure. Development should only be prevented where the residual cumulative impacts are likely to be severe.
- 6.37 On this subject, the PPG goes into more detail into the overarching principles on Transport Assessments, with Requirements (e) to (h) of Policy SAMU5 requiring the principal point of vehicular access into the site off Thorpe Road; with capacity and/or safety enhancements to

the local highway network and to public transport, cycle and pedestrian infrastructure, where necessary; as well as the provision of a pedestrian/cycle bridge over the railway line, as a replacement for the existing level crossing.

- 6.38 A full audit of the highway network surrounding the application site has been undertaken by the applicant, with the proposal fulfilling the above requirements. ECC Highways have assessed the highway and transportation impact of the proposal, including full assessment of the Transport Assessment, examination of all documents submitted, and undertaken a site visit and have raised no objection subject to the imposition of reasonable planning conditions and obligations. A meeting has been held between representatives of ECC Highways, TDC and the applicant to further consider an appropriate proportionate scale of financial contribution towards off-site highway mitigation at and between the A133/B1033/services and Frating roundabout and a contribution of circa £150,000 has been agreed to be included in the S106 Agreement.
- 6.39 Therefore it is considered that the proposal, during either the construction or operational phases would not have a detrimental effect upon the highway network or the general accessibility of the surrounding area with sustainable mitigation measures proposed and to be secured by the appropriate means.

#### Reserved Matters - Appearance, Landscaping, Layout and Scale

- 6.40 Paragraph 124 of the NPPF states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.
- 6.41 The current application is an outline application with all matters reserved except access. The applicant has submitted an indicative masterplan drawing, setting out their vision for developing the site, which along with the Design and Access Statement demonstrate one way in which the site could be developed. As referred to above, detailed access drawings have also been submitted which identify the proposed main vehicular and pedestrian/cycle access points onto Thorpe Road.
- 6.42 The applicant states that it is intended that the proposal would take cues from the adjacent Barleyfield Drive and the Essex Design Guide, and Officers consider that the proposal has the potential to respond positively to local character, provide buildings that exhibit individual architectural quality and a mix of densities and house-types with well-defined public and private spaces. The public realm through additional landscaping, street furniture and other distinctive features would assist in creating a sense of place, and provide streets and spaces that are overlooked and active, promoting natural surveillance and inclusive access, as well as including parking facilities that are well integrated as part of the overall design.
- 6.43 Although appearance, landscaping, layout and scale are reserved matters, the general principle of this level of development on the site is considered acceptable; and is in keeping with both the site's location on the edge of the village and along with the need to facilitate on site strategic landscaping, open space and the retention of existing landscape features.
- 6.44 Due to the scale of the development proposed, and in order to minimise disturbance to existing residents, as well as ensuring that the mix of housing meets the requirements of the Council's Strategic Market Housing Assessment, it is recommended that by way of the imposition of a condition, a Layout and phasing plan/programme be submitted for approval prior to the submission of the first Reserved Matters application. This should also include details of market and affordable housing provision; and a phasing plan.

## Landscape & Visual Impact

- 6.45 NPPF para. 170 stipulates that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. The Planning Practice Guidance (PPG) states where appropriate, Landscape Character Assessments should be prepared to complement Natural England's National Character Area profiles. Landscape Character Assessment is a tool to help understand the character and local distinctiveness of the landscape and identify the features that give it a sense of place.
- 6.46 In response to this, the applicant has submitted a Landscape and Visual Impact Assessment (LVIA) which highlights that the application site is situated within two character areas, 8B, Clacton and The Sokens Clay Plateau and 6D Holland Valley System. In this respect the development of the land has the potential to cause harm to a wider landscape area, although the site is not covered by any specific landscape designation and it is acknowledged that the information submitted in support of the application provides a genuine and accurate description of the landscape and visual effects.
- 6.47 The application site comprises relatively flat (albeit sloping towards to the railway line on the southern end) agricultural land with landscape features within the site and to its boundaries which include mature and established hedgerows and small tree groups. As it lies on the eastern edge of Weeley, with existing development situated along the northern and western boundary, the locality is therefore already partly residential in character.
- 6.48 Quite clearly, the proposed development would see a permanent change of land use (and therefore character) from farmland to residential/mixed use, and would inevitably result in a permanent significant effect upon the landscape. However, whilst only in outline, the planning application demonstrates that the scheme could be designed to minimise landscape and visual effects, through the creation of a positively designed settlement edge to Weeley.
- 6.49 As part of the landscape design it is proposed that existing trees and hedgerows on the site would be retained and enhanced by new native planting and a substantial landscape buffer to the southern boundary created which would incorporate the public open space and land to be designated for ecological purposes/the translocation of Slow Worms from elsewhere on the site.
- 6.50 The successful integration of the development into the local landscape character can be secured through strong soft landscaping on the complete boundary of the application site and new soft landscaping forming an integral part of the residential part of the development.
- 6.51 As the application is in outline form it is not possible to assess the direct impact of the development on specific trees, hedgerows or other vegetation as the site layout has yet to be determined. Within the Design and Access Statement Figure 2 entitled Land Use Layout gives an indication of the shape of the development, but without sufficient detail to gauge the potential impact on existing trees and other vegetation. The tree report identifies the most important trees and hedgerows and should be used to shape the development layout, which has been carried out in accordance with BS5837: 2012 Trees in relation to design, demolition and construction - Recommendations.
- 6.52 In conclusion on this matter, and pursuant to requirement (i) of Policy SAMU5, it is considered that the proposal would not give rise to significant adverse effects upon the surrounding landscape, subject to mitigation measures which could be secured through the submission of reserved matters and the imposition of appropriate conditions.

## Ecology and Nature Conservation

- 6.53 One aim of sustainable development should be to conserve and enhance the habitats and species on site. This is reflected within NPPF paragraph 170 which recognises that the planning system should contribute to and enhance the natural and local environment by, amongst other things: protecting and enhancing sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); recognising the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; and minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 6.54 The PPG highlights that section 40 of the Natural Environment and Rural Communities Act 2006, which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by government in its Biodiversity 2020 strategy.
- 6.55 With respect to Green infrastructure, the PPG defines this as a network of multifunctional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities. Green infrastructure is not simply an alternative description for conventional open space. As a network it includes parks, open spaces, playing fields, woodlands, but also street trees, allotments and private gardens. It can also include streams, canals and other water bodies and features such as green roofs and walls.
- 6.56 The Preliminary Ecological Appraisal (PEA) submitted with the application recommended that Barn Owl, Bat, Bird and Reptile surveys be carried out, consequently the following reports have been submitted: Barn Owl Mitigation report; Bat Activity Survey; Breeding Bird Survey; and Reptile Survey and Outline Mitigation Strategy, with an Ecological Impact Assessment (EclA), the aim of which is to set out mitigation measures required to ensure compliance with nature conservation legislation and to address any potentially significant ecological effects.
- 6.57 Building 4 (a hay barn) located on Ash Farm has confirmed breeding Barn Owls in a Barn Owl box located within this building, with the presence of 3 Barn Owl chicks at the time that the survey was carried out.
- 6.58 With regard to Bats, the majority of the foraging activity was noted in the southern arable field, along the external boundary hedgerows, the hedgerow east to west across the centre of the site and in the small areas of woodland to the south of the site adjacent the railway line. These features were confirmed to be mainly in use by common species of bat, including Common Pipistrelle and Soprano Pipistrelle. Two passes of a Nathusius' Pipistrelle and Leisler's bat were recorded during the first period of static monitoring close to the railway line.
- 6.59 The site was found to support 24 species of bird, 17 of which are thought to be using the site for breeding. Most of the species encountered are common and widespread in Essex and the UK in general. The majority of the species using the site are not listed as birds of conservation concern, (BoCC), or are UK Biodiversity Action Plan (UKBAP) or Local Biodiversity Action Plan (LBAP) or listed as Species of Principal Importance under NERC s41 with the exception of: Skylark (Red/UKBAP/LBAP/NERC), Tree Sparrow, and Yellowhammer, (red status/UK BAP/NERC). Mallard, Dunnock and Common Gull are listed as Amber, of which only Tree Sparrow, Skylark, Dunnock and Yellowhammer are

considered to be breeding on site. Key habitats used by breeding birds included the hedgerows, scrub and trees present along the boundaries of the site, which are considered important on a site scale.

- 6.60 The grassland on site was confirmed suitable for reptiles during the reptile survey with a good population of Slow Worm recorded across the site, and which would need to be translocated to a dedicated part of the site where they can reside undisturbed i.e through the fencing off of an area separate from the Public Open Space. Detailed mitigation measures and recommendations for the enhancement of biodiversity are included within the EclA and which should be secured by way of planning condition/s. These measures would ensure the effective protection of protected species and other wildlife, including hedgehogs.
- 6.61 As has been highlighted above, the site has been identified as falling within the 'Zone of Influence' (Zol) of a number of European designated sites scoped into the Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS) – namely the Hamford Water Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI); the Essex Estuaries Special Area of Conservation (SAC); the Colne Estuary SPA, Ramsar site and SSSI; and the Stour and Orwell Estuaries SPA, Ramsar site and SSSI . In the context of the Council's duty as 'competent authority' under the provisions of the Habitats Regulations, it is therefore anticipated that, without mitigation, new residential development in this location is *'likely to have a significant effect on one or more European designated sites through increased recreation pressure, either when considered 'alone' or 'in combination' with other plans or projects.'*
- 6.62 Natural England understand that the Council has screened the proposed development and consider that it falls within the scope of the Essex Coast RAMS and as a result the Council has gone on to carry out a Habitats Regulations Assessment (HRA) (Stage 2 – Appropriate Assessment) in order to secure any necessary recreational disturbance mitigation.
- 6.63 Natural England raise no objection to the application based on the mitigation described in the Appropriate Assessment, being a combination of on-site measures (to create and support high-quality, informal, semi-natural area within the site; circular dog walking routes and/or links to surrounding public rights of way (PRoW); and dedicated 'dogs-off-lead' areas; in addition to signage/leaflets to householders to promote these areas for recreation; dog waste bins etc) and an off-site per dwelling tariff based financial contribution to mitigate direct recreational impacts at the European designated sites. Accordingly, they request that any planning permission be subject to an appropriate planning condition or obligation to secure the on-site mitigation measures, including links to footpaths in the surrounding area. The financial contribution should be secured through an appropriate and legally binding agreement.
- 6.64 With respect to the Weeley Hall Wood SSSI (which does not fall within the Essex Coast RAMS), the Essex Wildlife Trust have expressed concerns with regard to the impacts that an increase in visitors is already having upon Weeleyhall Wood and have costed work to improve rides and install boardwalks at around £55,000. The applicant has confirmed their agreement to the full payment for these works and accordingly Essex Wildlife Trust raise no objection to the application.
- 6.65 Therefore, in conclusion on this issue, it is considered that the proposal would not give rise to significant adverse effects upon ecology and nature conservation subject to the mitigation measures proposed which could be secured through the submission of reserved matters, imposition of appropriate conditions, and securing of financial contributions through the S106 Agreement.

## Archaeology and Cultural Heritage

- 6.66 Paragraph 184 of the NPPF states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. NPPF para. 189 states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. Furthermore, para. 192 of the NPPF states that in determining applications, local planning authorities should take account of:
- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
  - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - c) the desirability of new development making a positive contribution to local character and distinctiveness.
- 6.67 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 stipulates that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 6.68 There is one listed building in close proximity to the application site, which is Ash Farmhouse, a grade II listed building which is located immediately beyond the north western corner of the site. The listing description for this is: *Grade II listed 15th/16th century house with later alterations and additions. Timber-framed and plastered. Red plain-tiled roofs. Two red brick chimney stacks to left range, right stack to central range. 2 storeys. Left crosswing, jettied central range and right crosswing, this with 2 brackets. Single storey lean-to extension to left return.*
- 6.69 There are a number of farm buildings to the south of the farmhouse, these were built during the Victorian period and consisted of an enclosed rectangular farmyard and therefore can be deemed to be curtilage listed. This layout survived until 1923, but from 1958, there was very considerable change involving the construction of very large modern barns to the south, these would likely be demolished prior to building out the commercial element of the scheme (subject to the relevant consents), with the curtilage listed buildings converted to offices which would require an application for listed building consent.
- 6.70 The submitted heritage statement highlights that the curtilage listed buildings have undergone some change, and do not have as much 'heritage value' as the listed farmhouse. Nevertheless, the proposed changes to the farm and its farmyard should take into account the curtilage listing, and should treat sympathetically those structures within the curtilage listing. Officers concur with this view, and the fact that the curtilage listed buildings act as a 'buffer' to the farmhouse it is considered that these designated heritage assets and their settings would not be harmed by the proposal.
- 6.71 In its glossary, the NPPF highlights that *"There will be archaeological interest in a heritage asset if it holds, or potentially may hold, evidence of past human activity worthy of expert investigation at some point."*
- 6.72 As highlighted by ECC Archaeology, the heritage statement recognises the potential of the development area to contain multi-period archaeological remains associated with the

findings from the adjacent site at St Andrews Road and from other sources of evidence. The evidence for Palaeolithic remains within the area is strong and the potential for Pleistocene deposits with Palaeolithic potential to be present within the development site will need to be established through specialist consultation and, if required, fieldwork investigations. The assessment notes that no evidence of the Napoleonic barracks known to have been sited at Weeley has been found in the archaeological investigations in the surrounding area, however these were small scale and limited in their extent. Conditions securing a Programme of Archaeological and geo archaeological evaluation are therefore recommended.

- 6.73 Subject to the above measures, it is considered that the proposal would not give rise to detrimental effects upon Cultural Heritage or Archaeology; and Requirement j. of Policy SAMU5 would be met i.e. the delivery of opportunities for the protection and enhancement of the historic environment including the built and archaeological environment.

#### Hydrology, Flood Risk & Drainage

- 6.74 Part 14 of the NPPF sets out the Government's stance on climate change, flooding and coastal change, recognising that planning plays a key role in, amongst other things, providing resilience to the impacts of climate change. Inappropriate development in areas at risk of flooding should be avoided.
- 6.75 The site is currently greenfield land and forms part of the natural catchment of Weeley Brook which is located for much of its part, to the south of the railway line. A ditch runs from west to east approximately through the centre of the site, from here ultimately discharges to Holland Brook, close to where it joins Weeley Brook, to the east of the site. There are ditches running southwards, either side of the track that aligns with the railway crossing point. The ditches continue to the south of the railway and it has been proven that a filter drain drains from the site into the railway land. A pipe can be seen discharging to the continuation of the ditch to the south of the railway. The site is located within Flood Zone 1 and is therefore at low risk from tidal/fluvial flooding. Construction would also be managed and controlled to ensure no contamination of groundwater is caused during the construction phase.
- 6.76 Having reviewed the proposals and associated documents which accompanied the planning application, ECC Flood and Water Management confirm that, subject to the imposition of reasonable planning conditions, the proposal would provide appropriate measures to manage surface water through the implementations of SUDS and other engineered hydrological measures.
- 6.77 Requirement k) of Policy SAMU5 is for early engagement with Anglian Water to secure upgrades to both treatment infrastructure and network and to formulate a water and drainage strategy to serve the new development. In response, Anglian Water have stated that the foul drainage from this development is in the catchment of Clacton Holland Haven Water Recycling Centre, which currently does not have capacity to treat the flows from the development site. Anglian Water are obligated to accept the foul flows from the development with the benefit of planning permission and would therefore take the necessary steps to ensure that there is sufficient treatment capacity should the planning authority grant planning permission.
- 6.78 Anglian Water has raised no objection to the application subject to the imposition of a condition requiring a drainage strategy to address any unacceptable risk of flooding downstream. The drainage strategy would need to be prepared in consultation with them to determine mitigation measures. From this basis it is considered that the Council could not substantiate reasons for refusal of planning permission in respect of sewerage capacity;



and the proposal would not give rise to flood risk emanating from surface water generated by the proposal.

- 6.79 Overall no significant adverse or cumulative effects on water resource receptors have been identified during the construction and operational phases of the proposed development; therefore it would be compliant with legislation and planning policy.

#### Ground Conditions and Contamination

- 6.80 Section 15 of the NPPF states that to prevent unacceptable risks from pollution and land instability, planning decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.
- 6.81 Historically, the site has predominately been used for agriculture and has not been developed with the exception of the farmyard in its north-west corner which could have hot spots of contamination from chemical, fuel or oil spillages. The submitted report on a Phase 1 Desk Study and Risk Assessment states that an historical landfill is listed associated with a former gravel pit some 80m to the south-east of the site and which was licensed to take commercial and household waste between 1958 and 1966. This historical landfill could be a source of ground gases which could influence the eastern, central and south eastern parts of the site.
- 6.82 In addition, the Envirocheck Report which is appended to the Phase 1 Desk Study report indicates a number of areas of potentially infilled land which in addition to the historical landfill identifies an area close to the south-western corner which corresponds with the brick and tile works noted on the historical maps. It should be noted that this area has been redeveloped for housing (the estate which includes First and Second Avenue, and the streets leading from them), however, it is possible that the former brick and tile works could also be a potential source of ground gases.
- 6.83 Therefore it is recommended that an appropriately worded condition be imposed that requires further investigation to assess the potential for ground gases/vapours and establishing the concentrations of potential contaminants in particular areas of the site.

#### Air quality

- 6.84 NPPF paragraph 170 states that the planning system should contribute to and enhance the natural and local environment by, amongst other things, preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of air pollution. The PPG provides more detailed advice on air quality.
- 6.85 As confirmed in the submitted Air Quality report a qualitative construction dust risk assessment has been carried out based on the IAQM guidance 'Guidance on the Assessment of Dust from Demolition and Construction 1.1'. The dust emission magnitude for all activities: demolition, earthworks, construction and trackout, were considered. The sensitivity of the area to dust soiling effects and human health impact were also considered. An overall risk of the dust impact for each of the activities was derived. The risk for dust soiling impact for all activities is considered to be 'Medium' to 'High', and the risk of impact to human health impact is considered to be 'Negligible' to 'Low Risk'.
- 6.86 The Environmental and Sustainability Management Plan (EMP) – PEP Part 3 indicates that construction activities related to the development would cause some nuisance to local

population, however with appropriate mitigation measures recommended within the EMP and IAQM the resulting residual dust impacts during the construction phase would be 'insignificant'. Based on the air quality data available from the nearest non-automatic monitoring site (triplicate site 14/15/16, A133 Bypass) and background concentrations from DEFRA and non-automatic triplicate (11/12/13) site at Town Hall, a qualitative assessment of air quality impacts during the operational phase of the development has been carried out and it is considered that the operational phase impacts would also be 'Insignificant'. Therefore, based on available information the overall local air quality is unlikely to be an issue at the site; and furthermore, it is considered that future receptors (residential dwellings, staff and students at the school), once in operation, would be exposed to pollutant concentrations below the National Air Quality Objectives (NAQOs) and the locations are considered suitable for the proposed use.

- 6.87 In the absence of significant operational effects and taking into consideration the low background air pollutant levels, the site is considered to be suitable for development in air quality terms. Therefore it is considered that the proposal, during either the demolition/construction or operational phases would not have a detrimental effect upon the air quality of the surrounding area.

#### Noise & Vibration

- 6.88 As previously referred to in this report, NPPF paragraph 170 states that the planning system should contribute to and enhance the natural and local environment, in this case by, *inter alia*, preventing both new and existing development from contributing to or being put at unacceptable risk from noise pollution. Para. 180 of the NPPF stipulates that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
- 6.89 The PPG states that noise needs to be considered when new developments may create additional noise and when taking decisions about new development, there may also be opportunities to consider improvements to the acoustic environment. It goes on to say that decision taking should take account of the acoustic environment and in doing so consider:
1. whether or not a significant adverse effect is occurring or likely to occur;
  2. whether or not an adverse effect is occurring or likely to occur; and
  3. whether or not a good standard of amenity can be achieved.
- 6.90 A baseline noise survey has been undertaken and measurements taken over a representative time period. The noise levels have then been used to determine noise sources, such as the railway line and levels affecting the proposed development. Noise from additional road traffic associated with the scheme is unlikely to have a significant effect; and any impact of noise and vibration associated with construction activity would be managed through controls on the hours of construction and piling. All new dwellings would be designed to ensure that an acceptable living environment can be achieved.
- 6.91 Environmental Protection confirm that they are satisfied with the content of the acoustic report and require no further information or have no adverse comments at this time. Therefore, the proposed development has been assessed and it has been identified that with appropriate mitigation measures in place, there would be no significant effect to new or existing noise sensitive receptors.

### Living Conditions

- 6.92 Paragraph 117 of the NPPF states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.
- 6.93 Whilst matters of layout and scale are reserved for future determination, with regard to privacy, the Essex Design Guide states that *“with rear-facing habitable rooms, the rear faces of opposite houses approximately parallel, and an intervening fence or other visual barrier which is above eye level from the potential vantage point, a minimum of 25 metres between the backs of houses may be acceptable”*. It goes on to state that *“where new development backs on to the rear of existing housings, existing residents are entitled to a greater degree of privacy to their rear garden boundary, and therefore where the rear faces of the new houses may not encroach any closer than 15 metres to an existing rear boundary, even though with a closer encroachment 25 metres between the backs of houses would still be achieved”*.
- 6.94 The distances between new and existing dwellings could be well in excess of those required by the Essex Design Guide and Officers consider that there are no reasonable grounds for refusal in terms of the relationship between existing dwellings in the locality and the proposed development. Consequently, adherence to these standards would ensure that the living conditions of existing residents would be protected from overlooking; and a loss of outlook and daylight/sunlight.
- 6.95 Furthermore, the submission indicates how landscaping could be retained and enhanced within the application site, so as to further mitigate the effects of the development. Officers consider that a detailed layout could be designed which achieves an appropriate relationship with the existing dwellings and which would also be sympathetic to the character of the surrounding area and the wider landscape. All in all it is considered that the above measures would ensure that the living conditions of existing and future residents would be protected from any materially detrimental impacts.

### Planning Obligations

- 6.96 For the avoidance of doubt, the socio-economic impacts that would be mitigated through planning obligations (in addition to any previously cited within this report) secured through S106 of the Town and Country Planning Act 1990, and the policy basis for requiring them, are included in this section of the report. Ultimately, para. 54 of the NPPF states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
- 6.97 Consequently, this section also outlines the manner in which planning obligations would satisfy the tests set out in the Community Infrastructure Levy Regulations 2010 (CIL Regs) and paragraph 56 of the NPPF, which states that obligations should only be sought where they meet all of the following tests:
- necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.
- 6.98 Section 8 of the NPPF requires the planning system to take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

### *Affordable Housing*

- 6.99 Para. 62 of the NPPF requires, inter alia, LPAs where they have identified that affordable housing is needed, to 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.
- 6.100 Adopted Policy HG4 seeks up to 40% of dwellings on large housing sites to be secured as affordable housing for people who are unable to afford to buy or rent market housing, whereas draft Policy LP5 requires up to 30% of new homes on large development sites to be made available to the Council or a nominated partner, at a discounted price, for use as Affordable Housing or Council Housing, subject to viability testing. This is in compliance with the requirements of requirement (a) of draft Policy SAMU5 that specifies that the proposal should be for at least 280 new homes of a mixed size and type to include affordable housing as per the Council's requirements.

### *Education*

- 6.101 NPPF paragraph 94 states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should: Give great weight to the need to create, expand or alter schools; and work with schools promoters to identify and resolve key planning issues before applications are submitted.
- 6.102 In accordance with requirement (d) of draft Policy SAMU5, a new 2 form entry primary school with co-located 56 place early years and childcare facility (D1) use on 2.1 hectares of land is proposed to be provided as required by the Local Education Authority (LEA). The application makes provision for this requirement and the applicant has liaised directly with Essex County Council to determine where and how this would be delivered.
- 6.103 Furthermore, requirement (l) of draft Policy SAMU5 is for a financial contribution to early years and childcare and secondary education provision. The financial contributions, index linked from April 2017 and based on the projected future population of the scheme have been summarised thus from the consultation response from ECC Education:
- Early Years & Childcare: there are currently places available in the area to meet the needs of EY & C, so no contribution is requested;
  - Primary Education: £1,283,604; and
  - Secondary Education: £1,299,984 plus £281,960 for School Transport;

### *Healthcare*

- 6.104 NPPF paragraphs 91 and 92, amongst other things, state that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Planning decisions, in turn, should aim to achieve places which promote opportunities for meetings between members of the community, by planning positively for the provision and use of shared space, community facilities.
- 6.105 Requirement (m) of draft Policy SAMU5 is for financial contributions towards facilities such as health provision as required by the NHS/CCG either through the Community Infrastructure Levy or Section 106 Planning Obligations to be made. The NHS has stipulated that a financial contribution of £97,152 towards the relocation costs for Thorpe Surgery (including its branch surgery Kirby Cross) is required.

### *Public Open Space*

- 6.106 As highlighted above, the landscape scheme at the Reserved Matters stage would include an area of POS of 1ha, which the illustrative masterplan identifies as predominantly being in two parcels: between the secondary road proposed to serve the employment land and the school site; and along the northern edge of the railway line, including the copse through which PRoW 5 currently passes.
- 6.107 It would also be necessary to set aside a dedicated area with restricted access as a reserve for Slow Worms in addition to the POS, the precise location and area of which would be determined prior to the submission of the first reserved matters applications. All of the above would be managed by a Management Company specifically set up to look after the green areas of the site, amongst other things.

### *Ecology (RAMS)*

- 6.108 Prior to commencement of development either a sum calculated in accordance with an adopted Essex RAMS will be paid to the Council or if the Essex RAMS has not yet been adopted at commencement of development, then a sum of £122.30 per dwelling (£34,244 for 280 dwellings) will be paid to the Council.
- 6.109 The contribution will be used to mitigate increased recreational use at the European designated sites.

### *Ecology (Weeleyhall Wood SSSI)*

- 6.110 As highlighted above both Essex Wildlife Trust and Natural England have expressed concerns with regard to the impacts that an increase in visitors is already having upon Weeleyhall Wood and have costed work to improve rides and install boardwalks at around £55,000. Clearly the proposal would likely add to these pressures and therefore it is considered appropriate to seek this contribution. The applicant has confirmed agreement to payment in full rather than as a proportionate element only.

### *Highways and Transport*

- 6.111 ECC Highways have assessed the highway and transportation impact of the proposal including full assessment of the Transport Assessment, examination of all documents submitted, and undertaken a site visit and do not wish to raise an objection subject to the imposition of reasonable planning conditions and obligations. It is considered that the majority of the required works can be covered by planning condition, with the exception of the provision of a financial contribution towards the proposed improvements at the A133/B1033/ services roundabout (and Frating roundabout as appropriate), which would need to be covered by a planning obligation. The applicant has agreed to the need for this contribution and a meeting has been held between representatives of ECC Highways, TDC and the applicant to further consider the appropriate proportionate scale of financial contribution required towards these off-site highway works taking into account other committed schemes that feed into these key inter-sections on the current road network. It has been agreed in principle that this contribution will be in the region of £150,000.
- 6.112 It is considered that the proposal, during either the construction or operational phases would not have a detrimental effect upon the highway network or the general accessibility of the surrounding area with sustainable mitigation measures proposed and to be secured by the appropriate means, in accordance with requirements e.-g. of Policy SAMU5 requiring the principal point of vehicular access into the site off Thorpe Road; with capacity and/or safety enhancements to the local highway network and to public transport, cycle and pedestrian infrastructure, where necessary.

### *Public Rights of Way*

- 6.113 Requirement (h) of draft Policy SAMU5 is for the provision of a footbridge bridge over the railway line, as a replacement for the existing level crossing. Once constructed this would be transferred to Network Rail (or Essex County Council if deemed more appropriate) with a commuted sum (currently undetermined) for future maintenance. As part of this, PRoW 5 would be diverted away from its existing alignment over the level crossing via footbridge on completion.
- 6.114 As part of requirement (h) of draft Policy SAMU5, the provision of the pedestrian/cycle bridge over the railway, as a replacement for the existing level crossing point was indicated to be delivered '*prior to the occupation of the one-hundreth dwelling*', which at the time of the drafting of the emerging Local Plan was the agreed position with Network Rail. However, upon further analysis and review by Network Rail's Level Crossing Manager, Network Rail has amended their position and now recommend that the new bridge crossing be delivered on completion of the 25<sup>th</sup> dwelling. Discussions have been held with the applicant on this matter and they have now agreed to the imposition of a 25 unit cap on occupation prior to the delivery of the pedestrian/cycle bridge to replace the existing level crossing point.

### *Planning Obligation Summary*

- 6.115 The above obligations are summarised here and overall, it is considered that they satisfy the tests for planning obligations set out in the CIL Regulations, which are necessary to: make the development acceptable in planning terms; directly relate to the development; and fairly and reasonably related to the development in scale and kind:
- **Affordable Housing** – 30%, specific tenure and mix to be agreed at the reserved matter/s stage/s;
  - **Education** - 2.1ha of land to accommodate a 2-form entry primary school and commensurate nursery; along with financial contributions towards: Primary Education for 84 places (£1,283,604); Secondary Education for 84 places (1,299,984); plus £196,224 for School Transport;
  - **Healthcare** - Financial contribution of £97,152 towards relocation costs for Thorpe Surgery (including its branch surgery Kirby Cross);
  - **Public Open Space** - Public Open Space, equipped play areas and Ecology Land (for Slow Worms) - To be transferred to management company and laid out before transfer;
  - **RAMS** - sum of £122.30 per dwelling (£34,244 for 280 dwellings) to mitigate for increased recreational use at the European designated sites.
  - **Ecology (off site Weeleyhall Wood SSSI)** - Financial contribution of £55,000 towards off-site ecological mitigation - to improve access within Weeleyhall Wood SSSI;
  - **Highways and Transport** – The provision of a financial contribution (in the region of £150,000) towards the proposed improvements at and between the A133/B1033/ services and Frating roundabouts as identified in the Tending Local Plan Highways and Transportation Modelling work.
  - **Public Rights of Way (PRoW)** – Footbridge to be constructed over the railway line and transferred to Network Rail on completion with a commuted sum for future

maintenance, PRow 5 to be diverted away from existing level crossing via footbridge on completion. Footbridge to be provided on occupation of 25<sup>th</sup> dwelling.

## 7. Planning Balance/Conclusion

- 7.1 This is an application for Outline Planning permission, with all matters reserved with the exception of access. The applicant has provided details of how they propose to access the site off Thorpe Road; and the Local Highway Authority has no objection to the proposed arrangements. All other matters (Appearance; Landscaping; Layout; and Scale) are reserved and it can therefore be said that the application seeks to establish the principle of residential development of the site.
- 7.2 NPPF paragraph 10 stipulates that at its heart is a presumption in favour of sustainable development. For decision-taking (NPPF para. 11) this means approving development proposals that accord with the development plan without delay; but where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
- 7.3 It has been acknowledged that the site is currently situated outside a defined settlement boundary, and therefore for all intents and purposes rural policies of restraint apply. However, the site is specifically allocated through Policy SAMU5 for a mix of residential development, community facilities and public open space in the emerging Local Plan. This can be afforded some weight in the decision making process due to it being at the Publication Draft stage, and is a material consideration in the determination of this planning application.
- 7.4 As highlighted above within the executive summary and 'principle of development' section of this report, this application is essentially a resubmission of planning application ref. 17/02162/OUT which was refused by this Council on 19 November 2018.
- 7.5 That decision is currently subject of a planning appeal which is to be heard by way of a Public Inquiry to be held in October 2019. As Members are aware, this Council sought professional legal and planning advice in preparation for the appeal and on receipt of this legal opinion it was resolved to advise the Planning Inspectorate (by way of the Council's 'Statement of Case' March 2019) that the Council '*...wishes to withdraw its opposition to the Appeal and therefore do not wish to further defend the Appeal at the Public Inquiry.*'
- 7.6 Furthermore, the Council advised that '*This position has been relayed to the Appellant. Following useful discussion with the Appellant the Council have sought to agree a suitable course of action. It has been agreed with the Appellant that a duplicate planning application will be submitted imminently to the Council for consideration and determination. If the application is subsequently approved by the Council the Appellant has then agreed to withdraw the current Appeal.*'
- 7.7 Accordingly, if the Public Inquiry proceeds then it will be for the Government appointed Inspector to reach a decision on the planning merits of the case.
- 7.8 It is also considered pertinent to remind Members of the previous debate on 'prematurity' which was an issue of discussion on the previous application (Planning Committee 21 August 2018) and resulted in a resolution to defer determination of that application until the outcome of the Part 2 examination of the Council's emerging Local Plan. Following that resolution, the applicant sought legal advice and requested that the Council proceed to determine the application on the grounds that to defer for an indeterminate period of time

would amount to unreasonable behaviour, which would potentially have a significant financial implications for the public purse through the costs regime of the appeal process.

- 7.9 Officers would re-iterate previous advice that refusal of planning permission on grounds of prematurity will seldom be justified.
- 7.10 The application is accompanied by a suite of technical drawings and documents supporting the proposal and all in all Officers consider that no significant adverse or cumulative effects on the local environment or population would be caused, with it being deemed to be compliant with legislation and national planning policy.
- 7.11 In addition, whilst outline in form, Officers are content that subject to the imposition of reasonable planning conditions and obligations that the general principle of this level of development on the site is considered acceptable; and is in keeping with both the site's location on the edge of the village, along with the need to facilitate on site strategic landscaping, open space and the retention of existing landscape features. Furthermore, the proposal would ensure that the living conditions of existing and future residents would be protected from any materially detrimental impacts whilst providing much needed housing within the District.

## **8. Recommendation**

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section 106 legal agreement with the agreed Heads of Terms as referred to in Section 6 above.

### **8.2 Conditions and Reasons**

1. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. No development shall be commenced until plans and particulars of "the reserved matters" referred to in the above conditions relating to the appearance, landscaping, layout and scale have been submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason - The application as submitted does not provide sufficient particulars for consideration of these details.

4. Prior to submission of the first Reserved Matters application, a layout and phasing plan/programme to include details of market and affordable housing provision, employment provision, identification of the physical extent of each proposed phase of development, the layout and an indicative timescale for implementation of each phase, shall be submitted to and agreed, in writing, by the Local Planning Authority.



Reason – To ensure a satisfactory development programme in the interests of the occupiers of the development and in terms of local amenity.

5. The maximum number of dwellings to be contained in the development shall be 280 and the amount of employment land shall not exceed 1 hectare and the B1 office space shall not exceed 3000 sqm.

Reason – To ensure compliance with the description of development hereby approved.

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

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

7. Prior to occupation of the development, vehicular parking and turning facilities in accordance with current policy standards shall be provided for all dwellings, unless otherwise agreed in writing by the Local Planning Authority. They shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose. Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.

Reason – To ensure that vehicles can enter and leave highway in a forward gear in the interest of highway safety and to ensure adequate space for parking off the highway is provided in the interest of highway safety.

8. There shall be no discharge of surface water onto the Highway.

Reason – To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety.

9. No development shall take place before an Environmental Construction Management Plan for the construction of the development hereby approved has been submitted to, and approved in writing by, the Local Planning Authority. Works shall be carried out in accordance with the approved method statement. Details submitted in respect of the method statement, incorporated on a plan, shall provide for wheel cleaning facilities during the excavation, site preparation and construction stages of the development to prevent the deposition of mud or other debris onto the highway network/public areas. The method statement shall also include details of safe access to/from the site, the parking and turning of vehicles of site operatives and visitors, loading and unloading of plant and materials, delivery and construction working hours, dust suppression strategy, routing of delivery vehicles, measures to control noise and lighting, the provision of a means of storage and/or delivery for all plant, site huts, site facilities and materials, means of safeguarding the public right of way during construction, the erection and maintenance of security hoarding, a scheme for recycling/disposing of waste resulting from construction, and temporary traffic management/signage.

Reason - To ensure that development is carried out in a controlled manner in the interests of highway safety, while minimising impacts on the surrounding residential properties and the natural environment.

10. No development shall take place until details of surface water drainage have been submitted to and agreed, in writing, by the Local Planning Authority. No part of the

development shall be first occupied or brought into use until the agreed method of surface water drainage has been fully installed and is available for use.

Reason - To minimise the risk of flooding.

11. Prior to construction above damp proof course, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been carried out in complete accordance with the approved scheme.

Reason – To prevent environmental and amenity problems arising from flooding.

12. No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall subsequently be implemented as approved.

Reason - To ensure development does not increase flood risk elsewhere and does not contribute to water pollution.

13. No development shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Reason – To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

14. The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason - To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

15. No development shall take place within the application site until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the scheme so approved.

Reason – To allow for proper investigation and recording of the site, which is potentially of archaeological and historic significance.

16. Prior to the commencement of any work a full method statement in respect of piling works shall be submitted to and approved in writing by the Local Planning Authority, this will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

Reason - In the interests of residential amenity.

17. Other than for lighting within the public highways, each reserved matters application shall be accompanied by details of external lighting which shall be submitted to and

approved in writing by the Local Planning Authority. The external lighting strategy shall consider how the use of such lighting will avoid, or minimise, harm caused by light pollution and the development shall be carried out in accordance with the approved scheme.

Reason - To ensure that new external lighting of the development is not harmful to biodiversity or local amenity.

18. Prior to commencement of any phase of development, details of all refuse/recycling storage and collection points required to serve that phase of development shall be submitted to and approved in writing by the Local Planning Authority. Each refuse/recycling storage and collection point so approved shall be provided prior to first occupation of any dwelling to which it relates and shall be retained thereafter as approved.

Reason – To ensure a satisfactory development in terms of appearance and functionality in the interests of amenity.

19. Each Reserved Matters application shall incorporate a detailed scheme of hard and soft landscaping works, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication 2BS 5837: 2012 Trees in relation to design, demolition and construction.

Reason – In the interests of visual amenity and character of the area.

20. All trees and hedges identified to be retained, shall be protected in accordance with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction. The protective fences shall be retained throughout the duration of building and engineering works in the vicinity of the trees to be protected. Any trees dying or becoming severely damaged as a result of any failure to comply with these requirements shall be replaced with trees of appropriate size and species during the first planting season, or in accordance with such other arrangement as may be agreed in writing with the Local Planning Authority, following the death of, or severe damage to the trees.

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

21. No phase of development shall commence until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in the construction of that phase have been submitted to and approved, in writing, by the Local Planning Authority. Such materials so approved shall be those used in that particular phase of development.

Reason – To ensure a satisfactory development in relation to external appearance.

22. The development hereby permitted shall be carried out in accordance with the mitigation measures set out in the Ecological Impact Assessment; Barn Owl Mitigation Report; Bat Activity Survey; Breeding Bird Survey; Reptile Survey and Outline Mitigation Strategy, unless otherwise agreed in writing by the Local Planning Authority.

Reason – To ensure the proposal does not adversely affect any protected species and to enhance the biodiversity of the site.

23. Prior to the commencement of any above ground works a Landscape and Ecology Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall specify how areas of green space are to be managed, including measures to create habitats as well as general biodiversity enhancements and safeguarding of protected species.

Reason – To ensure the areas of green space are appropriately managed and to encourage biodiversity on the site.

24. No occupation of the development, or specific phase of development in accordance with Condition 4, shall take place until the following have been completed, as necessary for each phase, in accordance with details that shall have been completed, as necessary for each phase, in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority:

- Barleyfields carriageway to be widened to 6.75 metres, including 1 x 3 metre footway, and 1 x 2 metre footway to continue into the site;
- Right-turn lane into Barleyfields for traffic approaching from the west to be a minimum width of 3.5 metres with running lanes of 3 metres in both directions, including lane markings and hatching, as shown in principle on drawing no. 161890-002 Rev B;
- A pedestrian refuge island to be provided to the west of Barleyfields access road with pedestrian tactile as shown in principle on drawing no. 161890-002 Rev B;
- The existing footway along the site frontage to be widened to 3 metres minimum;
- Adjustments to carriageway width to the east of Crow Lane and removal of the layby, to include kerbing, adjustments to levels and carriageway construction.
- vi). Right-turn lane into Crow Lane approaching from the east to be a minimum width of 3.5 metres with running lanes of 3 metres in both directions, including lane markings and hatching, as shown in principle on drawing no. 161890-002 Rev B;
- Homestead access constructed appropriate kerb radii, including dropped kerb to facilitate pedestrian crossing;
- Right-turn lane into Homestead approaching from the east to be a minimum width of 3.5 metres with running lanes of 3 metres in both directions, including lane markings and hatching, as shown in principle on drawing no. 161890-002 Rev B.

No dwelling within the development or phase of development, shall be first occupied until such time as all facilities identified above, as necessary for each phase, have been provided in accordance with details so approved.

Reason – To protect highway efficiency of movement and safety and to enable satisfactory access to the site by pedestrians, bicycles, public transport and motorised vehicles.

25. Prior to commencement of any phase of development, details of cycle storage required to serve each dwelling within that phase of development shall be submitted to and approved in writing by the Local Planning Authority. All cycle storage so approved shall be provided prior to first occupation of the dwelling to which it relates and shall be retained thereafter as approved.

Reason – To ensure a satisfactory development in terms of appearance and functionality and sustainability, so that cycling is encouraged as a sustainable means of transport.

26. Each Reserved Matters application shall include precise details of the provision, siting, design and materials of screen walls and fences. The approved screen walls and fences shall be erected prior to the dwellings to which they relate being first occupied and thereafter be retained in the approved form.

Reason – To protect the amenities and privacy of occupiers of adjoining properties and in the interests of visual amenity.

27. As part of the first Reserved Matters application, details of any conversion of redundant listed buildings and/or demolition of non-curtilage listed buildings shall be submitted to and approved, in writing, by the Local Planning Authority.

Reason – To protect the special character and setting of the listed building(s).

28. Prior to commencement of any phase of development, details of existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the agreed scheme.

Reason – To protect existing vegetation and to protect the amenities and privacy of adjoining properties and in the interests of visual amenity.

29. Prior to commencement of any phase of development the precise location and specification (to include wooden shelters, raised kerbs, flag and timetable frames) of two new bus stops located to the east of Barleyfield's access on either side of Thorpe Road shall be submitted to and agreed, in writing, by the Local Planning Authority in consultation with the Local Highway Authority. The approved bus stops shall be provided prior to occupation of any dwelling and thereafter be retained in the approved form.

Reason - To ensure a satisfactory development in terms of appearance and functionality and sustainability, so that bus usage is encouraged as a sustainable means of transport.

30. The site access to Crow Lane as shown in principle on the planning application drawings shall include but not be limited to a visibility splay with dimensions of 2.4 metres by 75 metres to the west and 2.4 metres by 75 metres to the east, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be retained free of any obstruction at all times.

Reason – To protect highway efficiency of movement and safety.

31. The site access to Barleyfields as shown in principle on the planning application drawings shall include but not be limited to a visibility splay with dimensions of 2.4 metres by 66 metres to the west and 2.4 metres by 66 metres to the east, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be retained free of any obstruction at all times.

Reason – To protect highway efficiency of movement and safety.

32. The site access to Homestead as shown in principle on the planning application drawings shall include but not be limited to a visibility splay with dimensions of 2.4 metres by 75 metres to the west and 2.4 metres by 75 metres to the east, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be retained free of any obstruction at all times.

Reason - To protect highway efficiency of movement and safety.

33. A new gateway traffic calming feature(s) shall be provided on the approaches to Weeley on the B1033 to enhance the existing 30mph speed limits, scheme details to be submitted to and agreed in writing by the Local Planning Authority and implemented prior to first occupation.

Reason – To protect highway efficiency of movement and safety.

34. Prior to commencement of any phase of development, a soil survey of the site shall be undertaken and the results provided to the Local Planning Authority. The survey shall be taken at such points and to such depth as the Local Planning Authority may stipulate. Where contamination is identified, a scheme for decontamination of the site shall be submitted to and approved by the Local Planning Authority in writing and the scheme as approved shall be fully implemented and completed before any dwelling hereby permitted is first occupied.

Reason – To ensure that any contamination is identified and addressed in the interests of the health and safety of site operatives during the construction phases and the future occupiers of the development.

35. Details of acoustic measures to minimise noise disturbance to occupiers of dwellings in close proximity to the existing railway line shall be submitted to and agreed in writing by the local planning authority prior to commencement of development or if phased that part of the site closest to the railway. The agreed acoustic measures shall be fully implemented and completed before the dwellings identified for this mitigation are first occupied.

Reason – To protect the amenities of future occupiers.

36. Prior to commencement of any above ground works a scheme for the on-site mitigation of the recreational impact of the development on protected Essex Coast European sites shall be submitted to and approved in writing by the Local Planning Authority. This mitigation scheme shall comprise;
- a) a circular walking route; dog off lead area; dog waste bins; and residents' information leaflets;
  - b) full details of the long-term maintenance and management of the green space;
  - c) a program for implementation

Development shall be undertaken in strict accordance with the approved mitigation scheme and program and thereafter managed and retained as approved. Any approved information leaflet shall be included within the new residents welcome pack to every dwelling.

Reason - To encourage the future residents to remain on-site for day to day recreation/dog walking, so as to minimise pressures upon Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries SAC, Hamford Water SPA and Ramsar site, pursuant to the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.

37. The hereby permitted development shall not be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing, has been installed at the site, in accordance with details that shall be submitted and approved, in writing, by the Local Planning Authority. If the applicant is unable to achieve this standard of connection,

and can evidence through consultation that it would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 24mbps) wireless service will be considered acceptable.

Reason – To ensure the development is able to be equipped with high speed broadband to enable opportunities for web-based communication and homeworking.

38. Prior to commencement or at a later date agreed in writing by the Local Planning Authority, the applicants shall submit to the Local Planning Authority, in writing, a Local Recruitment Strategy to include details of how the applicant/developer shall use their reasonable endeavours to promote and encourage the recruitment of employees and other staff in the locality of the application site, for the construction of the development and for the uses of the development thereafter. The approved Local Recruitment Strategy shall be adhered to therein after.

Reason – To promote and encourage the recruitment of employees and other staff in the locality of the application site..

### 8.3 Informatives

1. All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to The Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate Notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway.
2. The Local Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.
3. The Public Right of Way network is protected by the Highways Act 1980. Any unauthorized interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpaths 3, 4 and 5 (Weeley) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.
4. The granting of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.
5. Any signal equipment/structures/non-standard materials/trees/public rights of way through the site proposed within the existing extent of the public highway or areas to be offered to the Highway Authority for adoption as public highway, will require a contribution (commuted sum) to cover the cost of future maintenance for a period of 15 years following construction.

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

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

SMO1 – Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

7. The application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement.

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
  - 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
  - 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

### Human Rights

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



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

#### Finance Implications

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

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

None.

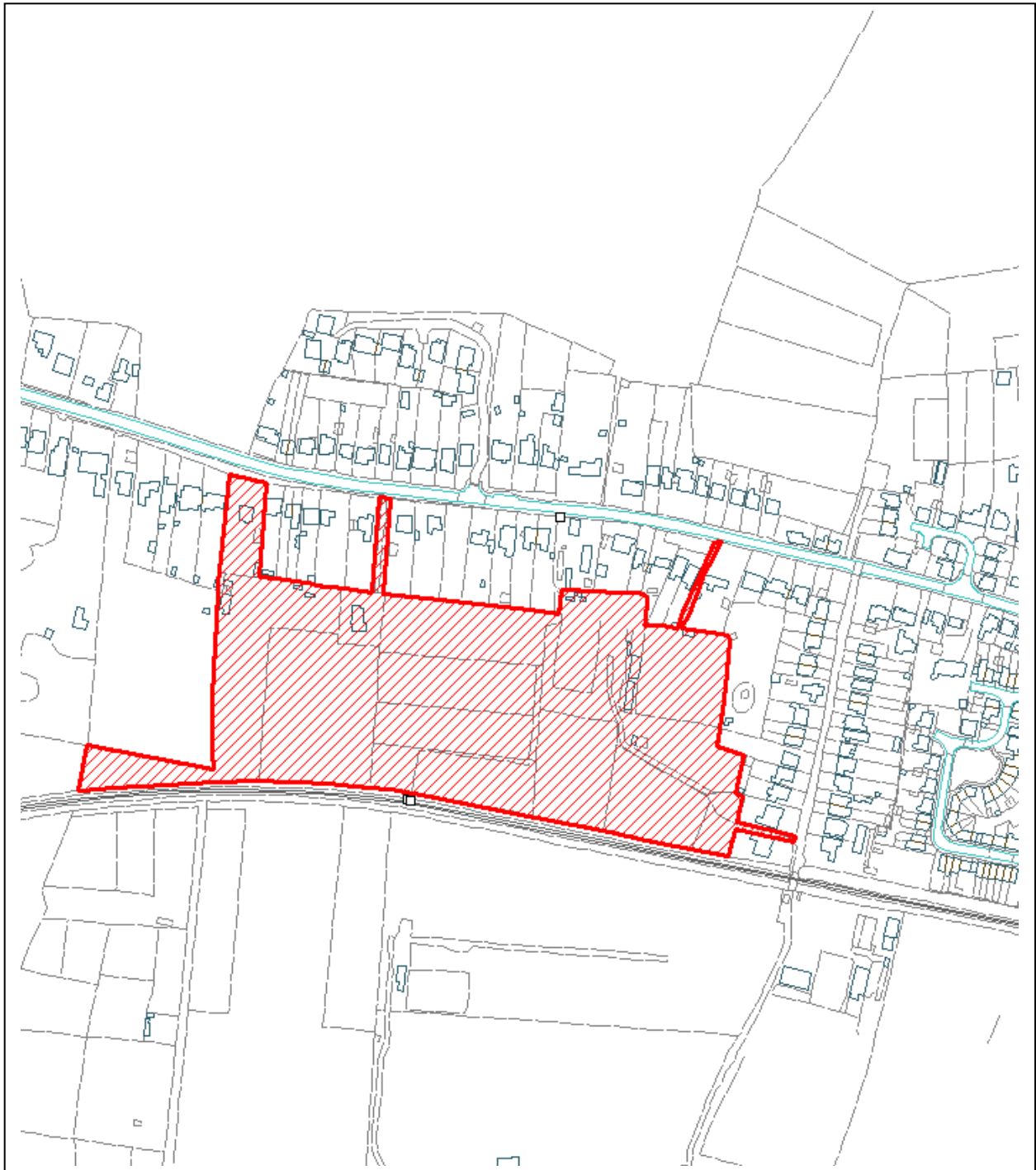
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## PLANNING COMMITTEE

30 July 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.2 PLANNING APPLICATION – 18/01728/DETAIL – 171 THORPE ROAD AND LAND TO REAR OF 121-183 THORPE ROAD AND 4-20 CHAPEL LANE KIRBY CROSS FRINTON ON SEA CO13 0NH**



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**Application:** 18/01728/DETAIL

**Town / Parish:** Frinton & Walton Town Council

**Applicant:** EMP Kirby Limited - Mr Pickett

**Address:** 171 Thorpe Road and Land to rear of 121-183 Thorpe Road and 4-20 Chapel Lane Kirby Cross Frinton On Sea CO13 0NH

**Development:** Demolition of one dwelling and reserved matters application for 105 no. residential units.

## 1. Executive Summary

- 1.1 This reserved matters application is referred to Planning Committee at the request of Members when determining the outline planning application. The development also represents a departure from the adopted Development Plan, being located outside the settlement development boundary in the Tendring District Local Plan 2007.
- 1.2 The Council refused a planning application (15/01710/OUT) that sought planning permission for the demolition of one dwelling and outline planning permission for the erection of up to 110 no. residential units, with all matters reserved except for access. Members refused the application contrary to the Officer recommendation. The applicant appealed that decision and in September 2016 a Planning Inspector granted the outline permission, subject to a S106 legal agreement and nineteen conditions.
- 1.3 The application site is situated on land that lies between the rear gardens of properties on the southern side of Thorpe Road and the railway line, and to the west of properties fronting onto Chapel Lane, at the western end of the village of Kirby Cross. The site covers an area of 4.8 hectares, the majority of which comprises former horse paddocks, but it also includes the detached bungalow and garden at no.171 Thorpe Road and land that will provide three further pedestrian connections from the main body of the application site to Thorpe Road and Chapel Lane.
- 1.4 The site is flanked to the north and east by the rear gardens of dwellings on Thorpe Road and Chapel Lane; to the south by the railway line; and the west by a wooded area beyond which is farmland.
- 1.5 The submitted application seeks the approval of Reserved Matters for Appearance, Landscaping, Layout, and Scale, pursuant to condition 1 imposed upon the grant of outline planning permission. Approval is now sought for the erection 105no dwellings, predominantly bungalow accommodation comprising a mix of 1, 2, 3 and 4-bedroom units, including 8no affordable housing units that are to be gifted to the Council.
- 1.6 The scheme has been revised following discussions with Planning Officers and is now considered to be sympathetic to local character, with a layout that responds positively to site constraints and opportunities, including the presence of numerous trees that are protected by Tree Preservation Orders. At the centre of the development a public green, with small play area, is proposed and this will help to create a sense of place. The layout is arranged so that the new homes face inwards from the boundaries of the site, so as to reduce the impact on the amenity of the existing residents adjoining the site and to provide an appropriate soft edge to this new edge of the village.
- 1.7 Finally, with regard to ecology, the applicant has agreed to suitable mitigation measures for the loss of barn owl habitat on the site and a package of measures to mitigate against

increased recreational pressure arising from these new dwellings on the relevant European Protected Habitat sites', in line with the aspirations of the emerging RAMS (Recreational disturbance Avoidance and Mitigation Strategy).

**Recommendation:**

That the Head of Planning be authorised to grant approval of the Reserved Matters for the development subject to: -

- a) **Within 6 (six) 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 dealing with the following matter:**
  - **Financial Contribution of £122.30 per new dwelling towards RAMS.**
- b) Subject to the conditions stated in section 8.2.
- c) That 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 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a s106 planning obligation.

**2. Planning Policy**

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

*National Planning Policy Framework 2019 (NPPF)*

- 2.1 The NPPF sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.2 Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The NPPF doesn't change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan, it should be approved and where it does not it should be refused – unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:
  - an economic role;
  - a social role; and
  - an environmental role.
- 2.3 These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.
- 2.4 Paragraph 38 of the NPPF states "Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of

planning tools available, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”

*National Planning Practice Guidance (PPG)*

- 2.5 The PPG provides additional planning guidance from Central Government on a range of issues, including, but not limited to: Air Quality; Climate Change; Design, Flood risk and coastal change; Light Pollution; Natural Environment; Noise; and Travel Plans, Transport Assessments and Statements.

Status of the Local Plan

- 2.6 The ‘development plan’ for Tendring is the 2007 ‘adopted’ Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.7 Section 1 of the emerging Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector’s initial findings were published in June 2018. They raise concerns, very specifically, about the three ‘Garden Communities’ proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector’s concerns and the North Essex Authorities are considering how best to proceed.
- 2.8 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.
- 2.9 In relation to housing supply, the NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years’ worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method

prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the emerging Local Plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

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

Tending District Local Plan (Adopted 2007)

QL1: Spatial Strategy

QL2: Promoting Transport Choice

QL3: Minimising and Managing Flood Risk

QL9: Design of New Development

QL10: Designing New Development to Meet Functional Needs

QL11: Environmental Impacts

QL12: Planning Obligations

HG1: Housing Provision

HG3: Residential Development Within Defined Settlements

HG3a: Mixed Communities

HG4: Affordable Housing in New Developments

HG6: Dwellings Size and Type

HG7: Residential Densities

COM1: Access For All

COM2: Community Safety

COM6: Provision of Recreational Open Space for New Residential Developments

COM21: Light Pollution

COM22: Noise Pollution

COM23: General Pollution

COM29: Utilities

COM31a: Sewerage and Sewage Disposal

EN1: Landscape Character

EN2: Local Green Gaps

EN4: Protection of the Best and Most Versatile Agricultural Land

EN6: Biodiversity

EN6a: Protected Species

EN6b: Habitat Creation

EN11a: Protection of International Sites: European Sites and Ramsar sites

EN12: Design and Access Statements

EN13: Sustainable Drainage Systems

EN23: Development within the Proximity of a Listed Building

TR1a: Development Affecting Highways

TR1: Transport Assessment

TR3a: Provision for Walking

TR5: Provision for Cycling

TR6: Provision for Public Transport Use

TR7: Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP1: Presumption in Favour of Sustainable Development

SP2: Spatial Strategy for North Essex

SP3: Meeting Housing Needs

SP5: Infrastructure and Connectivity

SP6: Place Shaping Principles

SPL1: Managing Growth

SPL2: Settlement Development Boundaries



SPL3: Sustainable Design

HP1: Improving Health and Wellbeing

HP3: Green Infrastructure

HP5: Open Space, Sports and Recreation Facilities

LP1: Housing Supply

LP2: Housing Choice

LP3: Housing Density

LP4: Housing Layout

LP5: Affordable and Council Housing

PP12: Improving Education and Skills

PPL1: Development and Flood Risk

PPL3: The Rural Landscape

PPL4: Biodiversity and Geodiversity

PPL5: Water Conservation, Drainage and Sewerage

PPL9: Listed Buildings

CP1: Sustainable Transport and Accessibility

CP2: Improving the Transport Network

CP3: Improving the Telecommunications Network

#### Other Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide for Residential and Mixed-Use Areas.

Essex Design Guide (2005)

Urban Place Supplement (2007)

### 3. Relevant Planning History

15/01710/OUT	Demolition of one dwelling and outline application for up to 110 no. residential units with all matters reserved except for access.	Refused. Allowed on Appeal.	02.08.2016
16/00804/OUT	Demolition of one dwelling and outline application for up to 109 no. residential units with all matters reserved except for access.	Withdrawn	09.11.2016

### 4. Consultations

Natural England

No objection subject to appropriate mitigation being secured. The development site falls within the 'Zone of Influence' (Zol) of one or more of the European designated sites and it is therefore anticipated that, without mitigation, new residential development in this location is 'likely to have a significant effect' on one or more European designated sites, through increased recreational pressure.

Essex County Council Ecology

We have reviewed the Barn Owl Ecological Advice Note (SES, March 2019) supplied by the applicant, relating to the likely impacts of development on Barn Owl, a legally Protected species and identification of proportionate mitigation & monitoring.

We are satisfied that the current measures proposed in the Barn Owl Ecological Advice Note (SES, March 2019) will, with fencing to restrict access to the on-site replacement nesting box, enable the LPA to demonstrate its compliance with its statutory duties including its duties to protect Schedule 1 bird under the Wildlife & Countryside Act 1981 and to prevent wildlife crime under s17 Crime & Disorder Act 1998.

The on-site nest box will need to be provided at least one year prior to demolition and a buffer area of min 75m be secured with fencing to restrict access. A follow up check for Barn Owls using the building to be demolished must be undertaken prior to commencement of development, with mitigation measures implemented in full.

As the applicant has no land to provide any additional nest boxes off site within the wider landscape, it is considered reasonable for future monitoring of the on site barn owl box to be undertaken by a suitable qualified licenced barn owl ecologist.

This will provide certainty for the LPA of the likely impacts on Barn Owl, a Protected species, and with appropriate mitigation measures secured, the development can be made acceptable.

This will enable the LPA to demonstrate its compliance with its statutory duties.

Essex Police (Designing out Crime Officer)

Essex Police would like to see this developer seek to achieve a Secured by Design award in respect of this development and stresses the importance of effective lighting, security and that all windows and door sets are to be Secure by Design compliant.

Network Rail

Network Rail do not object to the development in principle, however they do object to the direct footpath link between the development and Chapel Lane and the publication of a circular walking route over two level crossings as this may increase the recorded risk level at both crossings.

Removal of the direct footpath would make the development more acceptable to Network Rail, or the developer could provide a footbridge to allow Nursey level crossing to close.

The development may also create an increase in footfall to the station which may create capacity issues at the station.

Anglian Water Services Ltd

Foul drainage from this development is in the catchment of Walton-On-The-Naze Water Recycling Centre which still has available capacity for these flows. A condition is recommended to ensure that the sewage network has capacity to accept the flows and prevent there being an unacceptable risk of flooding.

Surface Water - The preferred method of surface water disposal would be to a sustainable drainage system (SuDS) with connection to sewer seen as the last option. Anglian Water do not consider that evidence has so far been provided to show that the surface water hierarchy has been followed as stipulated in Building Regulations Part H.

ECC Highway Authority

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

1. Prior to the occupation of any of the proposed development the internal road and footway layout shall be provided in accord with plans :

- 1370/P/03 Rev. P6 Amended block plan
- 1370/P/12 Rev. P6 Amended highway plan
- 1370/P/04 Rev. P6 Amended phase plan

2. Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority.

(No condition 3)

4. Each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles and each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

5. All single garages should have a minimum internal measurement of 7m x 3m  
And all double garages should have a minimum internal measurement of 7m x 5.5m

6. The proposed/any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

7. The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

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

9. No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:  
I. the parking of vehicles of site operatives and visitors  
II. loading and unloading of plant and materials  
III. storage of plant and materials used in constructing the development  
IV. wheel and underbody washing facilities

NHS East Essex CCG

A financial contribution was requested to contribute towards increasing primary healthcare capacity when Outline planning permission was requested

ECC SuDS Consultee

No objection. Initially ECC SuDS issued a holding objection as this application contained no further information on the detailed surface water drainage arrangements for the development.

ECC SuDS are now aware that a drainage strategy was agreed as part of the outline permission and that there is a condition attached to the outline permission that requires submission and approval of further drainage details. On the basis that there will be a separate

application to discharge this planning condition, which ECC SuDS will assess, they have withdrawn their holding objection.

## **5. Representations**

5.1 Frinton and Walton Town Council recommend that the application is refused. Their reasons for objecting to the application are:

- Object to the principle of a housing development on this site as the site is outside the village settlement boundary and is in an unsustainable location being distant from shops, education, healthcare and employment; development would erode the green gap; and would constitute backland development.
- Development would be too close to the railway line.
- Proposed development is too dense.
- Properties are of a poor design and lack suitable amenity space and parking
- Two storey properties in the south east corner will overlook the single storey properties in Chapel Lane.
- Highways - the vehicular entrance/exit on to Thorpe Road, is not in a safe location; roads should have 5.5m wide carriageways. Particularly concerned about the distance between properties and impact this will have on residents' amenity.
- Pond should be of an adoptable standard.

5.2 Letters objecting to the application have been received from twelve local residents. The objections received raise the following points:

### **Principle of Development**

- Village infrastructure does not have capacity to provide services for more residents – primary and secondary schools are full; broadband speed is very slow; not possible to get appointments to see GP; roads are congested
- The village has already been subject to considerable development and construction work will further inconvenience residents if more development is allowed
- Safety at railway level crossings near the development site
- There are lots of properties for sale in the area so there is no need for more new housing

### **Landscape & Ecology**

- New dwellings will be built in close proximity to mature oak trees that are in adjoining gardens
- Development will affect deer, bats, owls, and kestrels that have all been seen in the area
- Trees and hedgerow need protecting to help the birds and wildlife
- Barn owls are regularly seen in this area
- Bats fly around this area – potential for harm due to loss of habitats and introduction of lighting

### **Highways**

- Thorpe Road is already an extremely busy road and increasing traffic will increase danger
- Highway access is unsafe. Whilst the speed limit passing the entrance is 30 mph vehicles actually pass at 50 to 60 mph and the Councils should undertake their own traffic speed monitoring which will show that the proposed access will not be safe
- Roads are very narrow. Inadequate provision for resident's car parking will result in cars parking inconveniently and unsafely in the carriageway and on adjoining streets

- Developer should be made to provide a pedestrian crossing on Thorpe Road, to provide a safe crossing point for adults and children to access facilities north of Thorpe Road (shops, school, play area and bus services)
- Pedestrian access from the development to Chapel Lane between no's 20-22 will access onto the private unadopted Chapel Lane. The resulting increase in pedestrian and cyclists will increase the cost of repairs and maintenance which have to be borne by Chapel Lane residents who own the road

### **Neighbour Amenity**

- Proposed houses are far too near to current properties adjoining the site resulting in concerns about loss of privacy; light pollution from street lighting; loss of light and noise
- The road accessing the development will be close to existing properties
- Only bungalows should be allowed adjacent to existing residential properties – not two storey housing. Locating flats adjacent to existing properties is a particular concern as the upper floor accommodation would increase the extent to which properties were overlooked
- Loss of views
- Security - rear boundaries of existing properties will be left exposed to the public realm
- Construction work could cause structural damage to existing properties
- The siting of car parking areas and bin stores close to existing properties will increase likelihood of smell, noise, and disturbance which will adversely affect existing residents
- Development will adversely affect existing property values

### **Other Matters**

- Plans are inaccurate – two new build properties on Chapel Lane are missing from the plan.
- No provision for play areas for children
- Increase in traffic will adversely affect air quality
- The large water retention pond will be dangerous for young children unless adequately enclosed
- Social/affordable housing is proposed at the south-east corner of the site, overlooking bungalows fronting onto the private unadopted public right of way known as Chapel Lane. This overlooking of neighbouring properties and private garden amenities can be overcome if the social/affordable housing was re-positioned at the south-west corner of the site, adjacent to the railway line and adjoining countryside

## **6. Assessment**

### Site Context

- 6.1 The application site is located in the western part of the settlement of Kirby Cross and consists of 4.8 hectares of relatively flat open land which is to the rear of frontage development along Thorpe Road. To the north the site is bounded by the rear gardens of dwellings on Thorpe Road; to the east by a small area of open land to the rear of properties on Chapel Lane; to the south by the railway line; and to the west of the site is a wooded area beyond which is farmland. The site contains a number of mature trees on and close to site boundaries. Hedgerows within the site also contain some large trees.
- 6.2 The site was previously used for the keeping of horses and had included a number of equestrian related structures - stable buildings, shelters and a ménage. Since outline permission was granted horses are no longer kept at the site and the grassland has become overgrown.
- 6.3 In addition to the paddocks the site also includes 171 Thorpe Road which is a detached bungalow that would be demolished to provide the vehicular access to the site. A further

dwelling (No.157) is located within the site. There is an existing drive leading to that property which will be used to provide a further pedestrian access to the site from Thorpe Road. Further pedestrian links will be provided from Thorpe Road, between 127 & 129 Thorpe Road, and an access from Chapel Lane.

### Planning History

- 6.4 In November 2015 an application was made that sought planning permission for the demolition of one dwelling and outline planning permission for the erection of up to 110 no. residential units with all matters reserved except for access (15/01710/OUT). Officers reported the application to Planning Committee in March 2016 and recommended approval of the application. The Committee refused the application as it was considered that the development would be contrary to the 'Local Green Gap' policy; be out of character with the character of Kirby Cross and be harmful to the intrinsic character and beauty of the countryside. The applicant successfully appealed that decision and in September 2016 a Planning Inspector granted the outline permission, subject to a S106 legal agreement and nineteen planning conditions.
- 6.5 Thirteen of the planning conditions imposed by the Planning Inspector require the submission and approval of details prior to the commencement of development - Conditions 4 (Phasing Plan), 5 (External Materials), 7 (Tree Protection), 8 (Boundary Walls and Fences) Means of Enclosure), 9 (Surface Water Drainage ('SuDS') System), 10 (SuDS during construction), 11 (SuDS Management), 13 (Cycle Storage), 14 (Ecological Mitigation Statement), 15 (Construction Method Statement), 16 (Noise Mitigation), 17 (Refuse / Recycling), 18 (External Lighting). The applicant will need to submit discharge of conditions application(s) to the Council and gain approval for all these matters prior to the commencement of development. The remaining six planning conditions establish the scope of the planning permission, or are compliance conditions.

### Proposal

- 6.6 The submitted application seeks the approval of Reserved Matters for Appearance, Landscaping, Layout, and Scale, pursuant to condition 1 imposed upon the grant of outline planning permission 15/01710/OUT.
- 6.7 The description of the outline aspect of the proposed development for 15/01710/OUT, as approved by the Planning Inspector, proposed the demolition of one dwelling and erection of up to 110 no. residential units. The means of accessing the site was approved as part of the Outline planning application. The approved vehicular access to the site will be a new priority junction formed off Thorpe Road, on the site of the bungalow that is to be demolished at no.171 Thorpe Road. The access road shall comprise a 5.5-metre-wide carriageway with 2-metre-wide footways to either side.
- 6.8 Following discussions between the applicant and Officers, revisions have been made to the application as originally submitted, and include amended drawings as well as additional or revised documents. The application submission comprises:
- Planning application form;
  - Constraints Plan;
  - Master Plan;
  - Phasing Plan;
  - Location Plan;
  - Topographical Survey;
  - Block Plan;
  - Amenity Plan;
  - Refuse Collection Plan;

- Heights Plan;
- Fence Plan;
- Parking Plan;
- Tenure Plan;
- Elevations and Floor Plans for each house type; apartment block and garage;
- Cycle / Refuse Store / Sub Station Plan;
- Street Scenes;
- Materials Plan;
- SuDS Drainage Plan;
- Highways and Surface Finish Plan;
- Design & Access Statement & Revised Design and Access Statement;
- Soft Landscape Plans;
- Circular Dog Walking Plan;
- Tree Protection Order Reference Plan and tree protection details; and
- Barn Owl Ecological Advice Note

6.9 Following discussions with the applicant the proposed development has been amended. The principle revisions to the original submission are summarised thus:

- Relocating two storey buildings from the rear of properties on Chapel Lane and replacing the two storey apartment buildings with one and half storey buildings at the rear of properties on Thorpe Road;
- Relocating Affordable Housing units so that they are not clustered just in the south east corner of the site;
- Elevational changes to some house types, including the apartment blocks;
- Equipped play area (LAP) added to the plans for the Central Green;
- Amendments to the road types to conform with the Highway Authority's current standards;
- Redesigning Apartment Block 2 and substituting 4no 1-bed flats, for 4no 2-bed flats (market housing)
- Further minor revisions to the mix of market bungalows – substituting 2no 3-bed bungalows for 2no 2-bed bungalows. The mix of housing now proposed is:

*Market Housing – 97 Units*

4 x 1-bed flats  
 2 x 2-bed flats  
 6 x 2-bed houses  
 34 x 2-bed bungalows  
 51 x 3-bed bungalows

*Affordable Housing – 8 Units*

4 x 2-bed flats  
 2 x 2-bed houses  
 2 x 4-bed houses

6.10 In totality, the proposal comprises: Vehicle access to the residential development from a new priority junction on Thorpe Road on the site of the bungalow at no.171 Thorpe Road which will be demolished leading to a 5.5m wide road, Formation of two pedestrian links from the site to Thorpe Road (via the access to no.157 Thorpe Road – which is to be demolished – and between 127 & 129 Thorpe Road) and one further pedestrian to Church Lane (between 22 & 24 Church Lane); Construction of 105no dwellings including 8no affordable housing units; The provision of public open spaces, including a children's play area; Formation of SUDs, including the construction of an attenuation basin as part of the Central Green; Landscaping and ecological mitigation; and Associated parking and access.

6.11 The main planning considerations for this reserved matters application are:



- Access and Highways;
- Design (Layout, Scale and Appearance);
- Impact on Heritage Assets
- Living Conditions;
- Landscaping and Ecology; and
- Section 106 of the Town and Country Planning Act 1990

### Access and Highways

- 6.12 Where concerning the promotion of sustainable transport, the NPPF in para. 103 states that the planning system should actively manage patterns of growth; and that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Policy QL2 in the adopted Local Plan and Policy CP1 in the emerging Local Plan seek to ensure that developments maximise the opportunities for access to sustainable transport including walking, cycling and public transport.
- 6.13 The site already has outline planning permission. Having considered the location of the development and the level of services and public transport available in the village the Planning Inspector was satisfied that the site is in a sustainable location by virtue of its accessibility.
- 6.14 As well as establishing the principle of residential development of the site access was also approved as part of the outline planning permission. A number of objectors have referred to the highway access arrangements to the site, claiming that this will be unsafe and that traffic speeds on Thorpe Road will make the access unsafe. The Highway Authority were satisfied with the access arrangements and raised no objection to the outline planning application. The access arrangements and highway capacity were considered by the Planning Inspector. Having reviewed the applicants Transport Statement and the Highway Authority recommendation the Inspector concluded that, subject to planning conditions, the development would be acceptable in terms of highway safety and granted the outline planning permission with access approved. As a result, the vehicular access to the site and highway capacity are not matters that the Council can consider as part of this Reserved Matters application.
- 6.15 In addition, to the new priority junction that will be constructed to provide vehicular access to the site, the applicant also proposed to provide three additional footway links from the site to surrounding roads – two separate links onto Thorpe Road and a further link to the east, to connect to Chapel Lane – which will encourage residents to walk and cycle for short journeys.
- 6.16 To further encourage residents to use more sustainable means of transport, condition no.12 of the outline planning permission requires the upgrading of the two bus stops on Thorpe Road, west of its junction with Chapel and the provision of a Residential Travel Information Pack for sustainable transport, to the first occupier of each new dwelling.
- 6.17 The Highway Authority have been consulted on this reserved matters application and they identified a number of issues regarding the internal estate roads and the road types that were being originally proposed. Following receipt of the Highway Authority comments the applicant has amended the development layout and provided footways, or shared surface roads, in accordance with the Highway Authority's requirements. Having reviewed the revised proposals, they state from a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to a series of conditions covering the design and construction of internal roads and footways; the design and provision of vehicle and cycle parking spaces; a Construction Method Statement which will cover

access arrangements for construction traffic (this is already covered by Condition 15 of the Outline Planning Permission and so doesn't need to be replicated); and that there be no new planting within 1 metre of the highway or visibility splays. A further condition is recommended requiring the provision of Residential Travel Information Packs to the first occupants of the new dwellings but this has already been covered by a condition that forms part of the Outline Planning Permission.

- 6.18 Consequently, from a highway and transportation perspective the impact of the proposal is deemed acceptable to the Highway Authority subject to the imposition of conditions as highlighted within the summary of their consultation response above.
- 6.19 Adopted Local Plan Policy TR7 states that in new residential development there will be a requirement that the parking is provided in accordance with the Council's adopted Parking Standards. The adopted parking standards state that a minimum of 1 space per dwelling should be provided for 1-bedroom dwellings and a minimum of 2 spaces per dwelling should be provided for 2 and more bedroom dwellings. Also 0.25 space per dwelling is required for visitor parking. Parking spaces should measure 5.5 metres by 2.9 metres and garages, where to be counted towards parking provision should measure 7 metres by 3 metres. The proposed development has been laid out in a manner that largely adheres to these standards. The only area where there is not complete compliance is in respect of the visitor parking. The parking plan shows 25 visitor parking spaces but the standards would require the provision of 26 visitor parking spaces – a shortfall of 1 visitor parking space. Plots 6, 7 and 14 each have three off street parking spaces and are therefore in excess of the standard requirement, this is considered to offset the deficit of one visitor parking space across the development.
- 6.20 A number of objectors refer to the development having inadequate car parking provision even though all dwellings have been provided with the required number of parking spaces to meet the Council's adopted standards. Some of these objections may be on the grounds that some properties have one of their parking spaces in a garage but this is permissible as the internal size of the garage complies with the Council's standards. For properties with 3-bedrooms and where the second parking space is being provided within a garage it is recommended that permitted development rights are withdrawn to ensure that the parking space is retained for its intended purpose.
- 6.21 The site is bordered by the railway line to the south of the site and there is a pedestrian level crossing a short distance from the site, off Chapel Lane. A number of objection letters refer to safety concerns as they believe that the crossings will be used more frequently as a result of the development, with some expressing a particular concern about children playing on the railway crossings.
- 6.22 Network Rail raised no objection to the outline planning application but have registered an objection to this reserved matters application due to the direct footpath link to Chapel Lane, and the publication of a circular walking route over two level crossings as this would increase the use of the crossings and this increases the risk of accidents.
- 6.23 Network Rail have suggested that if the dog walking route that is to be publicised for use by future residents, as part of the ecological mitigation, were to be altered so that it did not cross the railway they would be satisfied. Officers accept that it is possible that future occupants of these properties may use the crossings to access the countryside to the south but the level crossings are an existing situation and the increase in use, and potential resulting increase in risk, arising directly from the development is not considered to be sufficient to justify the developer being required to fund a footbridge over the railway line so that the crossings can be closed. Network Rail regularly assess railway crossings for safety and can ultimately apply to close the crossing, or provide alternative means of crossing the line, if public safety necessitates this. The outline planning permission requires that the

developer produce residential travel information packs that will be provided to the first occupier of each new dwelling. In light of Network Rail's concerns Officers recommend that a condition is added that requires that the Travel Information include information on the risks of crossing the railway line and how to use the level crossing safely.

- 6.24 It is noted that Network Rail also express concern that the development may also create an increase in footfall to the station which may create capacity issues at the station. The planning system seeks to locate development in locations where residents have access to a range of sustainable transport modes, including railway stations. Furthermore, it is not considered that the 105 dwellings proposed would generate such an increase in footfall at the station that specific measures would be required to mitigate that impact. Furthermore this issue was not raised at the time of the outline planning application.
- 6.25 In summary, the layout of the development is acceptable, adhering to relevant standards in respect of road design and car parking. The applicant has also demonstrated that pedestrian links will be provided that will link the new development to the existing settlement and its services and facilities.

#### Design (Layout, Scale and Appearance)

- 6.26 Paragraph 124 of the NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Furthermore, Part 11 of the NPPF indicates that development should contribute to and enhance the natural environment and that impacts on biodiversity should be minimised.
- 6.27 Only the vehicular access to the site was approved by the Planning Inspector when outline planning permission was granted. There were no other approved drawings listed in the decision letter and there was no masterplan or parameters plan which fixed the layout or scale of the development.
- 6.28 Following detailed discussions with Officers during the course of this application the scheme now proposes to provide 4no 1 bed flats; 6no 2-bed flats; 8no 2-bed houses; 34no 2-bed bungalows; 51no 3-bed bungalows and 2no 4-bed houses. The layout has been created using 12no house/bungalow and individual designs for each of the three apartment blocks. The housing stock in the village features a high percentage of bungalows and this can be clearly seen at the western end of Thorpe Road where bungalows often sit within very large plots. A limited number of two storey buildings are proposed to provide a suitable mix of housing for a site of this size. Given that the development will be predominantly single storey dwellings careful consideration has been given to the design and location of two storey dwellings. Following discussions with Officers the apartment buildings have been redesigned as one and a half storey buildings so that their scale and appearance is more in keeping with the surrounding dwellings.
- 6.29 In terms of design, given this site's setting on the edge of the settlement and its context, it was considered that a traditional design approach was appropriate. The proposed dwellings generally have a traditional appearance and it is proposed that a simple palette of materials is proposed with two different facing bricks being the predominant material, with weatherboarding and render used to provide variation and visual interest. Pitched roofs are proposed covered in concrete pantiles. Some of the house types feature architectural features including brickwork detailing, bay windows, chimneys and door canopy detailing. The housing mix and house types are considered appropriate and reflective of local character and distinctiveness.
- 6.30 The Council's Waste Management team have been consulted on the application. They have raised no objection subject to the usual requirements to ensure that refuse and

recycling can be appropriately stored and collected from the development. The layout allows for the suitable storage of refuse and recycling bins, often within the proposed garages. Condition 17 of the Outline Planning permission requires the submission of details of refuse storage and collection points. The applicant will need to provide further details to discharge this condition, including demonstrating that residents and refuse collections crews only have to carry refuse / recycling an appropriate distance and that there are appropriately located and designed refuse collection points.

- 6.31 In conclusion on this issue it is considered that the proposal provides an acceptable layout and detailed design in compliance with the NPPF and the development plan.

#### Impact on Heritage Assets

- 6.32 Policy EN23 of the adopted 2007 Local Plan states development affecting a listed building or its setting will only be permitted where it, amongst other things, does not have an unacceptable effect on the special architectural or historic character and appearance of the building or its setting. These sentiments are echoed in Policy PLA8 of the draft Local Plan. The NPPF also attaches great importance to the protection of the historic environment, including designated heritage assets such as Conservation Areas and Listed Buildings.
- 6.33 The site is not located within a Conservation Area but No. 127 Thorpe Road, also known as Mill House, is a Grade II listed building (formerly listed as group of 3 thatched cottages west of Methodist Chapel). The listing states the building dates to the 16<sup>th</sup> Century with 17<sup>th</sup> Century alterations. The listed building is adjacent to the proposed footpath link to the north east of the site. The applicant submitted a Heritage Statement as part of the outline planning application which highlighted that the building was already hemmed in by neighbouring properties along Thorpe Road and this had already eroded the setting of the building. The significance of the building lies mainly in its surviving architectural features and on the basis that the current scheme does not propose any physical changes to this property, Officers accept that the development would preserve the buildings significance. It should also be noted that the proposed buildings to the rear of the Mill House are bungalows, which will also minimise the potential impact on the setting of the listed building.
- 6.34 Paragraph 196 of the NPPF states that where development proposals will lead to 'less than substantial harm' to a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Officers again consider that the proposed development would not result in any significant harm to either the building itself or its wider setting that would outweigh the public benefits, mainly in respect of housing provision, of the current scheme.

#### Living Conditions

- 6.35 NPPF para. 127 states that planning decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
- 6.36 As stated above the development will consist of predominantly bungalows. By using standard 1.8m high closed board fences (or walls to prominent plots) single storey accommodation can usually be effectively built without existing neighbouring properties suffering an unacceptable loss of privacy, or significant issues with loss of light or overshadowing. The only dwellings that have two storeys of accommodation are the flats and a small cluster of two storey houses in the south east corner. The apartment blocks have been located so that they back onto properties on Thorpe Road, where properties enjoy long rear gardens. The applicant has produced an Amenity Plan which shows that for most properties there will be in excess of 35m between new dwellings and the rear elevation of existing properties on Thorpe Road. Officers consider that this arrangement

adequately safeguards existing residents' amenity. The two storey houses back onto the railway line. Plot 61 has a blank side gable that faces towards the neighbouring property on Chapel Lane. Any new openings at first floor level in that elevation would require planning permission unless they are obscure glazed and non-opening above 1.7m, this would therefore protect neighbouring amenity without needing to impose a planning condition.

- 6.37 The Council's Pollution and Environmental Control Team have recommended that details are provided in relation to demolition and construction method statements and external lighting. The outline planning permission contains conditions that seek to control these matters – no.15 Construction Method Statement; and no.18 external lighting. Both conditions must be discharged prior to the commencement of development.
- 6.38 The railway line runs along the southern boundary of the site and the layout proposes that dwellings are erected which back onto the line. The Planning Inspector imposed a condition (no.16) which requires details of noise mitigation measures to ensure that residents in these new properties enjoy a reasonable standard of amenity. These details must be submitted and approved prior to the commencement of development.
- 6.39 Policy HG9 of the adopted Local Plan specifies that private amenity space shall be provided to new dwellings with dwellings with three or more-bedroom house requiring a minimum of 100 square metres; two-bedroom houses - a minimum of 75 square metres; and for flats a minimum of 25 square metres per flat provided communally. As shown on the submitted amenity plan, each house would be provided with a private garden/sitting out area and the table on that plan demonstrates that all the houses and bungalows have private amenity space that would meet or exceed the Council's adopted standards.
- 6.40 Policy HG9 requires that the ten apartments would collectively require 250 square metres of communal amenity space. The three apartment blocks are clustered together and following discussions with Officers the mix of units and the layout has been revised to allow the provision of a 250 square metre communal garden area around the protected English Oak tree (T7). This area is to be enclosed by 1.2 metre high hoop top railings with shrub planting internally to provide a semi-private amenity area for use by the occupants of the apartments. This solution will provide an acceptable boundary treatment to this prominent corner which also forms a boundary to one of the footpaths up to Thorpe Road.

#### Landscaping and Ecology

- 6.41 Part 15 of the NPPF indicates that development should contribute to and enhance the natural environment and that impacts on biodiversity should be minimised.
- 6.42 The main body of the application site is set to grass that has become overgrown since the use of the site for the keeping of horses ceased.
- 6.43 The site contains several mature trees on and close to site boundaries and within the centrally situated hedgerow. There are two Tree Preservation Orders on the site – The trees covered by the 1998 order (TPO/98/19) are predominantly English Oaks that are situated to the north of the westernmost section of the application site intended for use as a public open space and attenuation pond. The second order, which was made in 2016 (16/01/TPO) protects 1 Ash and 10 Oak trees, situated on the eastern boundary of the land and in the hedgerow that runs from north to south, to the south of 155 Thorpe Road.
- 6.44 The Council's Tree and Landscape Officer raised concerns with the original submission – specifically that there was insufficient information to accurately assess the potential impact of development on retained trees and that it was also proposed that tree T7 (English Oak) would be removed to facilitate the development. He objected to the loss of T7 as it is a tree with high amenity value that has a long safe useful life expectancy. The applicant

subsequently amended the layout and T7 is now shown to be retained, standing within the amenity space that is provided for use by the occupants of the flats. They have also provided further information to show root protection areas and demonstrate that the trees covered by the TPO will be retained and physically protected for the duration of the construction phase of the proposed development. The information contained on the Existing Tree Preservation Order Reference Plan and Tree Protection Details plan indicates that the trees covered by the TPO can be retained and physically protected for the duration of the construction phase of the proposed development. Condition no.7 on the Outline permission states that no development shall take place until agreed measures for the protection of trees that are to be retained has been submitted and approved and this condition will still need to be discharged. The details of the density and quality of the soft landscaping proposal are also acceptable.

- 6.45 When the Outline planning permission was granted the Inspector considered the potential impact of development on ecology, including protected species. Condition 14 of the Outline planning permission states that no development shall take place until an Ecological Mitigation Scheme and Management Plan has been submitted to and approved by the Council. The scheme shall include survey information to establish whether any protected species would be affected by the development and the detail of any necessary mitigation measures.
- 6.46 During the consideration of this application the Council received a number of representations in respect of a pair of Barn Owls that had been observed at the application site. As these birds had not been observed during the ecological surveys carried out in 2015 for the outline planning application, and to address this specific concern, the applicant was requested to produce a report which considered the likely impact of development on the Barn Owls. The owls were found to be nesting in an old metal and asbestos shed on the site – a structure that would be demolished to facilitate the development. The Council's ecological advisor has reviewed the applicants report and is satisfied that the measures proposed in that report will suitably mitigate for the impact on this protected species. The mitigation originally involved the provision of both an on-site nest box one year prior to demolition of the existing nest building, in an area of open space in the south western corner of the site to which access will be restricted by fencing; and two off-site nest boxes to be provided prior to demolition of the structure containing the nest. The applicant has confirmed that they do not own or control any appropriate sites for the provision of the two off-site nest boxes. Officers have therefore sought an amended recommendation from the Council's ecological advisor. This confirms that future monitoring of the on-site barn owl box should be controlled by condition. This mitigation forms part of the recommended conditions and therefore provides certainty of the likely impacts on this Protected species.
- 6.47 Representations were also received by the Council in respect of bats that have been observed on and around the site, including one letter from a local resident who stated that the old stables that had been recently knocked down had been a resting hole for bats. Bats are a protected species and destroying a bat roost would be a criminal offence. Whilst Officers noted the findings of two previous ecological surveys on the site had concluded that no buildings on the site had potential as bat roosts, with the sheds and stables being too open or exposed to be suitable, because of the potential seriousness of the claim Officers referred the matter to Essex Police. The Rural and Heritage Crime Officer reviewed the matter but advised Officers that as the Ecologist had not recorded any roosts as being present at the site there was no evidence that a crime had been committed and that they would not be able to investigate further.
- 6.48 The development falls within the 'Zone of Influence' (Zol) for one or more of the European designated sites scoped in the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This residential development lies within the Zol for Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary

SPA and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries SAC. Hamford Water SPA and Ramsar site are the closest European sites and are located around 5.7km north-east of the application site. The outline planning permission did not secure a contribution towards RAMS or mitigation to contain recreation within and around the development site. In the contemporary context of the Council's duty as competent authority under the Habitats Regulations, it is anticipated that without mitigation, such new residential development would have a likely significant effect on the sensitive features of the coastal European sites, through increased recreational pressure when considered 'in combination' with other plans and projects. It is considered that the proposal falls within the scope of RAMS as 'relevant development'.

- 6.49 One recommended way of trying to avoid increasing recreational pressures on the coastal European sites is to encourage dog walkers to exercise their dogs near their homes and not drive to the protected sites. The applicant has submitted a plan which shows a number of walking routes that residents of the development can use to exercise their dogs. Given the size of the site the routes include the open space within the site and the adjacent public rights of way network. In light of Network Rail's objection to increased use of the railway crossing to the south east corner of the site, the applicant has provided two more circular walking routes. Route 1 (original route) is 2.65km. Route 2 is 3.2km and uses an alternative second railway crossing point further west and more remote from the railway station. Route 3 is 4.5km and does not include any railway crossings, utilising the public rights of way network to the north of the site. These three routes, to be included within the welcome packs, are considered to provide a good variety of local walks to future residents to reduce pressure on the designated sites.
- 6.50 Natural England state that provided their guidance is adhered to, an 'adverse effect on the integrity' (AEOI) of the European sites included within the Essex Coast RAMS from increased recreational disturbance can be ruled out subject to the mitigation sought and to be secured by condition and planning obligation.
- 6.51 The Council has produced a Habitat Regulations Assessment (HRA) setting out the mitigation that is proposed – namely the dog walking routes, that will be publicised to new residents, and the provision of a dog waste bin, and a RAMS payment of £122.30 per dwelling (£12,841.50 based on 105 dwellings), is proposed to be included within a Unilateral Undertaking (UU), pursuant to S106 of the Town and Country Planning Act 1990, to enable to fund strategic off-site measures. These measures should be targeted towards increasing the relevant European sites' resilience to recreational pressure (such as schemes to provide wardens at the protected sites who will help manage and educate visitors) and be in line with the aspirations of the emerging RAMS. A unilateral undertaking to provide the required contribution is currently being completed and an update will be provided at the Planning Committee meeting.
- 6.52 Network Rail raised no objection to the outline planning application but have registered an objection to this application for approval of reserved matters due to the circular walking route over two level crossings as this would increase the use of the crossings and this increases the risk of accidents. Network Rail have suggested that if the dog walking route that is to be publicised for use by future residents, as part of the ecological mitigation, were to be altered so that it did not cross the railway they would be satisfied. Officers accept that it is possible that future occupants of these properties may use the crossings to access the countryside to the south but the level crossings are an existing situation and the increase in use, and potential resulting increase in risk, arising directly from the development is not considered to be sufficient to justify the developer being required to fund a footbridge over the railway line so that the crossings can be closed. The applicant has also now provided a total of three circular walking routes, one of which includes no railway crossings. Network Rail regularly assess railway crossings for safety and can ultimately apply to close the crossing, or provide alternative means of crossing the line, if public safety necessitates this.

The outline planning permission requires that the developer produce residential travel information packs that will be provided to the first occupier of each new dwelling. In light of Network Rail's concerns Officers recommend that a condition is added that requires that the Travel Information include information on the risks of crossing the railway line and how to use the level crossing safely.

#### Section 106 of the Town and Country Planning Act 1990

- 6.53 The Planning Inspector accepted a legal agreement to secure planning obligations as part of the grant of outline planning permission. This specified financial contributions to provide additional capacity for primary education places and the health service. The agreement also covered public open space requirements, including a sum for future maintenance of the Open Space as this will be transferred to the District Council.

#### *Affordable Housing*

- 6.54 The agreement specified that affordable housing would be provided on-site, either as 25% of the total number of dwellings erected and transferred to a Registered Provider, or as 8 units which would be transferred to the Council at a nominal charge, in accordance with draft policy LP5 of the emerging local plan. The Council's Housing Officer states they have agreed with the applicant that 8 properties will be gifted to the Council. The affordable homes will be grouped in three separate parts of the site and will provide 4 x 2-Bed Flats; 2 x 4-Bed Houses and 2 x 2-Bed Bungalows.

#### *Open Space Plan and Specification*

- 6.55 Schedule 3 of the legal agreement requires the applicant to submit an Open Space Plan and a specification for the setting out of the Open Space and Local Area of Play (LAP) and for these to be approved by the Council prior to the commencement of development. The planning drawings show that a 'Local Area of Play' (LAP) is to be provided as part of the central green. The legal agreement does not require submission of these documents as part of the Reserved Matters application and these will need to be submitted and agreed prior to the commencement of development.
- 6.56 The Primary Education contribution relates to all properties (including flats) of two bedrooms or more. This represents 101 properties in this detailed proposal which subject to the formulas in the S106 would represent around £321,740 (index linked) towards the provision/improvement of primary education facilities for Kirby Primary Academy, Hamford Primary Academy, and/or Frinton-on-Sea Primary School. The healthcare contribution is £33,300 for additional healthcare services at Thorpe Surgery and/or Caradoc Surgery.

#### Other Matters

#### Drainage

- 6.57 The Inspector considered the issue of surface water drainage as part of their consideration of the application for Outline planning permission. They concluded that it had been demonstrated that the appellant had presented a feasible surface water drainage strategy for the site. A condition was imposed as part of the Outline planning permission (Condition no.9) which states that no development shall take place until a detailed surface water drainage scheme has been submitted to and approved by the Council. This condition means that the applicant has not been required to provide these details as part of this application for approval of Reserved Matters. The Lead Local Flood Authority – Essex County Council – will assess the detailed scheme when it is submitted and development cannot commence until such time as the scheme is approved.



- 6.58 It should be noted that at the time when the outline application was originally submitted climate change predictions suggested that in order for a development to appropriately manage changes to rainfall a 30% allowance should be made for climate change. Subsequent revisions of the Environment Agency's climate change provisions suggest that 40% would be more appropriate and the Council will require that the detailed scheme is designed to accommodate higher volumes in line with the updated climate change allowances.
- 6.59 In respect of foul water drainage in December 2015 Anglian Water advised that the waste water treatment centre and the network of sewers connecting the site to the treatment centre had capacity to accept the foul water flows from the development. Anglian Water now advise that there would be a risk of flooding as the sewers now have insufficient capacity to accommodate the flows safely and they recommend conditions requiring submission of a phasing plan for the development and the agreement and implementation of a foul water drainage strategy. The outline planning permission already requires the submission and agreement of a phasing plan but it is recommended that a condition is added requiring the applicant to agree foul water drainage works prior to the occupation of any phase.

## **7. Conclusion**

- 7.1 The application site lies outside the adopted settlement development boundary but the principle of residential development has been firmly established by a Planning Inspector in granting an outline planning permission to develop the site for up to 110 dwellings.
- 7.2 The submitted application seeks the approval of Reserved Matters (relating to appearance, landscaping, layout and scale) for 105 dwellings pursuant to condition 1 of planning permission ref: 15/01710/OUT.
- 7.3 From a highway and transportation perspective the access arrangements were approved through the Outline planning permission. The Highway Authority have advised that they have no objection to the application, subject to the imposition of conditions. Although the development will be on the edge of the settlement the vehicular access and three pedestrian paths will mean that the development is well related to the existing village and its services and that residents will have access to public transport.
- 7.4 It is now considered that following discussions with Officers and the submission of revised plans the scale, layout, density, height and massing of the proposed dwellings and overall elevation designs are now acceptable. The character and appearance of the dwellings would be in broad harmony with the character and appearance of the surrounding area.
- 7.5 In addition, following amendments to the scheme, it is considered that the landscaping of the site would be appropriate and with regard to ecology, mitigation measures to enable increasing the relevant Europeans sites' resilience to recreational pressure would be in line with the aspirations of the emerging RAMS, and the impact upon Barn Owls will be acceptably mitigated.

## **8. Recommendation**

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section 106 legal agreement with the agreed Heads of Terms, as set out in the table below:

<b>CATEGORY</b>	<b>TERMS</b>
Financial contribution towards RAMS.	£122.30 per new dwelling

## 8.2 Conditions and Reasons

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Site Location Plan - 1370/P/01  
Master Plan - 1370/P/02 Rev P7  
Block Plan – 1370/P/03 Rev P7  
Amenity Plan - 1370/P/05 Rev P8  
Heights Plan - 1370/P/08 Rev P7  
Parking Plan - 1370/P/10 Rev P7  
Tenure Plan - 1370/P/11 Rev P7  
Highways Plan - 1370/P/12 Rev P7  
TPO Reference Plan and Protection - 1370/P/15 P6  
Circular Dog Walking Route 1 - 1370/P/16 Rev P1  
Circular Dog Walking Route 2 - 1370/P/17  
Circular Dog Walking Route 3 – 1370/P18  
Housetype A - 1370/P/A/01  
Housetype B - Affordable - 1370/P/B/01 Rev P1  
Housetype C - 1370/P/C/01 – Rev P1  
Housetype C1 - 1370/P/C1/01  
Housetype C1 - Affordable - 1370/P/C1/01/A  
Housetype D - 1370/P/D1/01 Rev P1  
Housetype D1 - 1370/P/D1/01  
Housetype D2 - 1370/P/D2/01  
Housetype E - 1370/P/E/01  
Housetype E1 - 1370/P/E1/01  
Housetype F - 1370/P/F/01  
Apartment Block 1 – Floor Plans and Elevations - 1370/P/APT1/01 Rev P2  
Apartment Block 2 – Affordable - Floor Plans and Elevations - 1370/P/APT2/01 Rev P3  
Apartment Block 3 Elevations - 1370/P/APT3/02 Rev P3  
Apartment Block 3 Floor Plans - 1370-P-APT3-01 Rev P3  
Garage Types - 1370-P-G-01  
Sub-Station - 1370/P/S/01 Rev P2  
Street Scenes Sheet 1 of 3 - 1370/P/30 Rev P5  
Street Scenes Sheet 2 of 3 – 1370/P/31 Rev P2  
Street Scenes Sheet 3 of 3 - 1370/P/32 Rev P1  
Soft Landscape Proposals 1 of 3 - MC/1511/18/02 A  
Soft Landscape Proposals 2 of 3 - MC/1511/18/03 A  
Soft Landscape Proposals 3 of 3 - MC/1511/18/01 A  
Barn Owl Ecological Advice Note (SES, March 2019)

Reason: For the avoidance of doubt and in the interests of proper planning.

2. Prior to commencement of any development, including demolition, groundworks and vegetation clearance, the on-site mitigation and pre-demolition survey shall be carried out in full accordance with the details contained in the Barn Owl Ecological Advice Note (SES, March 2019). The works shall be undertaken by an appropriately competent person e.g. a suitably qualified ecologist holding a Natural England Barn Owl Licence, to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details in the Barn Owl Ecological Advice Note.

Reason: To conserve Protected species and allow the LPA to discharge its duties under the Wildlife and Countryside Act 1981 as amended and s17 Crime & Disorder Act 1998 (wildlife crime).

3. Prior to commencement of any development, including demolition, groundworks and vegetation clearance, a biodiversity monitoring strategy for Barn Owls shall have been submitted to, and approved in writing by, the Local Planning Authority. The purpose of the strategy shall be to monitor the success of the replacement nest box for Barn Owls. The content of the Strategy shall include the following:
  - a) Aims and objectives of monitoring to match the stated purpose.
  - b) Identification of adequate baseline conditions prior to the start of development.
  - c) Appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the various conservation measures being monitored can be judged.
  - d) Methods for data gathering and analysis.
  - e) Location of monitoring.
  - f) Timing and duration of monitoring.
  - g) Responsible persons and lines of communication.
  - h) Review, and where appropriate, publication of results and outcomes.

A report describing the results of monitoring shall be submitted to the Local Planning Authority at intervals identified in the strategy. The report shall also set out (where the results from monitoring show that conservation aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed with the Local Planning Authority, and then implemented so that the development still delivers the biodiversity objectives of the originally approved scheme.

The monitoring strategy will be implemented in accordance with the approved details.

Reason: To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended.

4. Prior to installation of the new Barn Owl nest box, as detailed within the Barn Owl Ecological Advice Note (SES, March 2019), fencing to restrict public access shall have been erected in accordance with details to have been previously approved in writing by the Local Planning Authority. The fencing shall restrict public access within the application site a minimum of 75 metres from the new Barn Owl nest box. The fencing as approved shall be retained and maintained for the lifetime of the new Barn Owl nest box.

Reason: To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended.

5. Prior to the occupation of each dwelling the internal road and footway serving that dwelling shall have been provided in precise accord with drawing numbers 1370/P/03 Rev P7 and 1370/P/12 Rev P7.

Reason: To ensure acceptable vehicle and pedestrian access to each dwelling.

6. Prior to the commencement of any above ground works, details of the estate roads and footways, including the three footway links proposed to Thorpe Road and Chapel Lane (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety.

7. Prior to the commencement of any above ground works, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been completed in full accordance with the approved scheme.

Reason: To prevent environmental and amenity problems arising from flooding.

8. Prior to the commencement of any above ground works, details of the number, location and design of a covered parking facility for bicycles for each dwelling without a garage shall have been submitted to and approved in writing by the Local Planning Authority. The approved facility shall be provided prior to the first occupation of each respective unit and retained as approved thereafter.

Reason: To ensure appropriate cycle parking is provided to encourage cycling as a means of sustainable transport.

9. No dwelling shall be occupied until such time as its car parking/garaging and turning area as shown on the approved plans has been provided. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

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

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

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

11. Prior to occupation of Plots 26, 27, 28 or 29 the pedestrian link between the estate road and Thorpe Road, and running between no. 155 Thorpe Road and no. 159 Thorpe Road, shall have been constructed in accordance with the approved details and shall be available for public access and thereafter retained and maintained in the approved form.

Reason: To ensure footways are constructed to an acceptable standard and available for the public to use, to encourage more sustainable modes of transport and to reduce reliance on the private car.

12. Prior to occupation of Plots 49, 50 or 51 the pedestrian link between the estate road and Thorpe Road, and running between no. 129 Thorpe Road and no. 127 Thorpe Road, shall have been constructed in accordance with the approved details and shall be available for public access and thereafter retained and maintained in the approved form.

Reason: To ensure footways are constructed to an acceptable standard and available for the public to use, to encourage more sustainable modes of transport and to reduce reliance on the private car.

13. Prior to occupation of Plots 58, 59, 60, 61, 62, 63 or 64 the pedestrian link between the estate road and Chapel Lane, running between no. 22 Chapel Lane and no. 24 Chapel Lane, shall have been constructed in accordance with the approved details and be available for public access and thereafter retained and maintained in the approved form.

Reason: To ensure footways are constructed to an acceptable standard and available for the public to use, to encourage more sustainable modes of transport and to reduce reliance on the private car.

14. The Residential Travel Packs that are to be provided pursuant to Condition no.12 of planning permission 15/01710/OUT, shall include the following;
- a) Information regarding the safe use of level crossings over the railway lines and the dangers of failing to use them properly.
  - b) Details of the three circular walking routes to and from the site, which can be used by residents along with specific encouragement for dog walkers to use these routes.

As required by condition no.12 of planning permission (15/01710/OUT) the Residential Travel Information Packs shall have been previously submitted to and approved in writing by the local planning authority, and shall be provided to the first occupant of each new dwelling.

Reason: To promote the safe use of railway level crossings and to encourage the future residents to remain on-site for day to day recreation/dog walking, so as to minimise pressures upon Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries SAC pursuant to the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.

15. The scheme of landscaping as shown on drawing numbers MC/1511/18/02 A, MC/1511/18/03 A and MC/1511/18/01 A, or such other scheme as may be agreed in writing by the local planning authority, shall be carried out during the first available planting season after the commencement of the development. Any trees or plants which die, are removed or become seriously damaged, or diseased within a period of five years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

Reason: To ensure a satisfactory scheme of hard and soft landscaping to enhance the appearance of the development.

### 8.3 Informatives

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

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

SMO1 - Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

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

2) All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to the Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway by the ECC.

3) Prior to occupation, the development shall be served by a system of operational street lighting of design approved from the Highway Authority along the Primary route, which shall thereafter be maintained in good repair.

4) Any tree planting proposed within the highway must be agreed with the Highway Authority. Trees must be sited clear of all underground services and visibility splays and must be sympathetic to the street lighting scheme. All proposed tree planting must be supported by a commuted sum to cover the cost of future maintenance, to be agreed with the Highway Authority.

5) Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact Development Services Team 0345 606 6087.

6) Anglian Water advise that they have assets close to or crossing this site or there are assets subject to an adoption agreement. Therefore, the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991. or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence.

7) Given the close proximity to the operational railway line, if and before any works are undertaken the developer would need to engage with the ASPRO team (AssetProtectionAnglia@networkrail.co.uk) to ensure the protection of the railway line.

8) Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

#### Human Rights

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

#### Finance Implications

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

### **10. Background Papers**

None.

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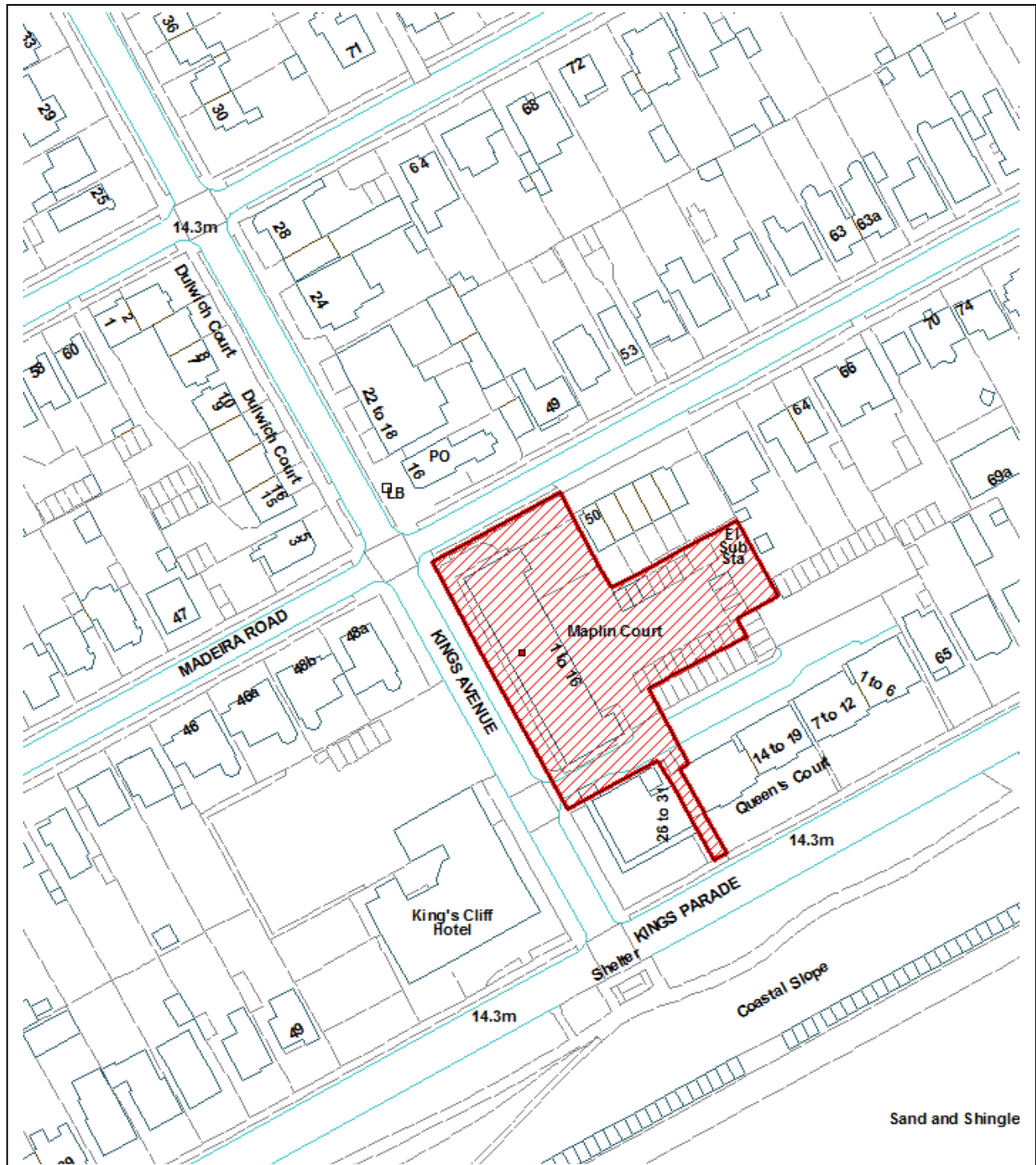


## PLANNING COMMITTEE

30 July 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.3 PLANNING APPLICATION – 18/01434/FUL – MAPLIN COURT KINGS AVENUE HOLLAND ON SEA CO15 5EY**



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**Application:** 18/01434/FUL

**Town / Parish:** Clacton Non Parished

**Applicant:** Long Term Reversions (Torquay) Ltd

**Address:** Maplin Court Kings Avenue Holland On Sea CO15 5EY

**Development:** Construction of new third floor (fourth storey) to include 4 no. 1 bed units.  
New parking layout/additional parking spaces and cycle storage.

## 1. Executive Summary

- 1.1 This application has been referred to Planning Committee at the request of Councillor Winfield due to concerns relating to; the design and street scene impact, poor layout and density, highway safety and parking and the harmful impact on neighbouring amenities including exhaust fumes from additional traffic into open ground floor doors and windows.
- 1.2 The application site is situated on the corner of Kings Avenue and Madeira Road, within the Settlement Development Boundary of Holland on Sea as defined within both the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013 – 2033 and Beyond Publication Draft 2017 where the principle of residential development is accepted subject to relevant detailed considerations under adopted Policy HG3 (Residential Development within Defined Settlements) and emerging Policy SPL2 (Settlement Development Boundaries).
- 1.3 This application follows a previous refusal under planning reference number 14/01350/FUL for a similar scheme seeking full planning permission for the addition of a third floor to create 6 no. flats (comprising 2 x 3 bed, 3 x 1 bed and 1 x 2 bed). This was refused on highways grounds due to insufficient parking.
- 1.4 This application has been amended and now seeks full planning permission for the addition of a third floor to create 4 no. 1 bed flats together with a new parking layout to allow for allocated garages and parking bays to serve the existing flats and additional spaces to serve the new flats.
- 1.5 Maplin Court occupies a prominent position and appears prominent due to its height and massing. The addition of a third floor (fourth storey) will therefore be visually prominent simply due to the character of the existing building and site. However, the proposed first floor is set in from the existing elevations of Maplin Court and is of a design that is sympathetic to the character and appearance of the existing building. Furthermore, there are existing four storey properties immediately adjacent fronting Kings Parade.
- 1.6 The addition of a third floor (fourth storey) will create additional windows with the potential to overlook adjacent dwellings. However, any overlooking would be distant views only. In the context of the existing windows at Maplin Court, any overlooking could not be considered materially harmful.
- 1.7 The proposal involves the reworking and formalising of the existing parking arrangements by allocating and marking out bays to each existing and proposed flat. Currently there are 21 garages and 24 unallocated parking spaces (45 in total). The proposed plan results in 32 parking bays (including 4 visitor spaces) and 21 garages (as existing) being 53 spaces in total and a net gain of 8 spaces. The Essex County Council Adopted Parking Standards require a total of 5 spaces to serve the new flats (1 per flat and 1 visitor space). The

proposed layout provides sufficient parking for the development of 4 no. additional 1 bed flats.

- 1.8 In conclusion, the proposed development would not result in any harmful impact upon visual amenity or neighbouring amenities and provides a formalised parking layout and sufficient additional parking spaces to serve the proposed units.
- 1.9 A legal agreement has is currently being prepared to account for a contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS).

**Recommendation:**

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

**Within 6 (six) 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 dealing with the following matters (where relevant):**

- **Financial Contribution towards RAMS**

Subject to the conditions stated in section 8.2.

**2. Planning Policy**

- 2.1 The following Local and National Planning Policies are relevant to this planning application:

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

HG9 Private Amenity Space

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

COM6 Provision of Recreational Open Space for New Residential Development

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

LP1 Housing Supply

LP2 Housing Choice

LP4 Housing Layout

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

PPL4 Biodiversity and Geodiversity

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

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

- 2.2 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.3 Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.
- 2.4 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.
- 2.5 In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

### 3. Relevant Planning History

CLA/378/71/1	Ground floor offices and 8 flats on first floor and 8 flats on second floor	Approved	11.07.1972
TEN/1246/76	Change of use of ground floor premises from offices to eight self-contained flats, including alterations to elevations	Approved	25.01.1977
99/00229/FUL	Concrete sectional garage on owners allocated garage space (No 4)	Approved	19.04.1999
14/01350/FUL	Proposed erection of third floor to form 6 no. additional flats with associated parking and cycle storage, including upgrading the whole building facade and landscaping.	Refused	21.01.2015

### 4. Consultations

ECC Highways Dept  
**ORIGINAL COMMENTS**

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

1. No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and under body washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

Informative1: The Highway Authority observes that the proposed new parking spaces in front of the garages and substation are unlikely to be used due to the restricted access space and lack of efficient and convenient turning facilities. It is also observed that the existing garages are of insufficient width and length to contain a modern motor vehicle and their use limited to domestic storage bicycles or powered two wheelers only and should be discounted from the total car parking facility.

Informative2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

SMO1 - Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

ECC Highways Dept  
**AMENDED COMMENTS**

The information that was submitted in association with the application has been fully considered by the Highway Authority.

Access will be via the existing vehicle access and the proposal provides 1 parking space for each of the new flats following modifications to the current parking layout. Information has been supplied to show that the applicant is introducing a parking and visitor permit scheme for all residents therefore:

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

1. Prior to occupation of the development a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced and maintained free from obstruction within the

site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

2. Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

3. Each vehicular parking space which is bounded by walls or other construction shall have minimum dimensions of 3.4 metres x 5.5 metres.

Reason: To encourage the use of off-street parking and to ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

4. No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM 1.

5. The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

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

Informative 1: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any

neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Informative 2: As an observation the existing parking spaces located off Madeira Road appear to be full and well used consideration may need to be given to install some form of collapsible bollard for these private parking spaces to keep these spaces free for the permit holders. The bollards would need to be located off the publicly maintainable highway and set half a metre back from the back of the footway.

Informative 3: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

SMO1 – Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

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

## **5. Representations**

5.1 The site lies within the non-parished area of Clacton-on-Sea.

5.2 43 letters of objection and representation have been received to the original and amended schemes (including objection from Holland Residents Association and Essex County Council Councillor Sargeant. The concerns raised can be summarised as follows;

- Exacerbate existing parking problems.
- Noise and fumes from increased traffic.
- Noise, disturbance, obstruction and fumes from construction traffic.
- Access too narrow for existing and additional traffic.
- Likely to impact on neighbouring Queens Court from exacerbated parking problems.
- Access for emergency and refuse vehicles will be worsened.
- No disabled parking bays.
- Detrimental to residential amenities.
- Overdevelopment of the site.
- Building cannot support a further floor.



- Drains/Sewage would not cope with the demands of further flats.
- Insufficient parking for new flats.
- Blocks access to substation.
- Existing garages too small.
- Leaseholders not notified of proposed development.
- Overlooking and harm to privacy.
- Too high and out of character.
- No change since previous refusal.
- Inadequate refuse areas.
- Loss of light.
- Unsafe access – a lift should be provided.
- No access via Queens Court.
- Access to new spaces blocked by existing garages and parked vehicles.
- Result in additional costs to residents.
- Proposed parking restricts access to ground floor flats.
- Loss of property values.

## 6. **Assessment**

The main considerations in this instance are;

- Site Context;
- Proposal;
- Planning History;
- Principle of Residential Development;
- Design and Appearance;
- Impact on Neighbouring Amenities;
- Highway Safety and Parking Provision;
- Waste Management and Refuse Storage;
- Financial Contribution – Open Space / Play Space;
- Financial Contribution – Recreational Impact; and,
- Other Issues.

### Site Context

- 6.1 The application site is situated on the corner of Kings Avenue and Madeira Road, within the Settlement Development Boundary of Holland on Sea as defined within both the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013 – 2033 and Beyond Publication Draft 2017.
- 6.2 The site comprises a three storey, flat roof building accommodating 24 residential apartments. The existing building is predominately brick with some cladded elements. There are balconies at the first and second floors facing Kings Avenue and external walkways on the rear elevation. The ground floor flats have small gardens along the Kings Avenue frontage.
- 6.3 Parking is predominately to the rear of the site; the access point is to the south of the existing building off Kings Avenue. Within the parking area there are existing garage blocks, however, no spaces are marked out. There is a small amount of parking which occurs to the side of the building, accessed directly from Madeira Road but again these spaces are not marked out.
- 6.4 The site is in a mixed-use area, but predominantly residential in character. Adjacent to the access is a café/restaurant; on the opposite side of Kings Avenue to the south is the Kings

Cliff Hotel and to the north of the site on the opposite side of Madeira Road is a post office and shop.

- 6.5 The properties to the south of the site are a mixture of 3 and 4 storey buildings which front onto Kings Parade. To the south of the site are two storey and single storey properties, to the east of the site is a three-storey building and to the west are single storey bungalows.

#### Proposal

- 6.6 The proposal would provide an additional 4 no. 1 bed units by adding a third floor (fourth storey) to the existing building. The proposed additional floor is a flat roof structure which is set in from the outer elevations of the existing building. It will result in an increase in height by approximately 2.8 metres. The addition will be finished in white render with a single ply membrane for the roof. The proposed windows and doors are double glazed UPVC to match the existing building.
- 6.7 Pedestrian access will be gained to the proposed flats by a continuation of the external staircase of the rear elevation.
- 6.8 Each flat will have an individual front door on the eastern, rear elevation. The two central flats are served by a balcony to the western elevation fronting Kings Avenue with each end flat being served by a large terrace area the full depth of the building. Beyond will be a 'green roof' to the edge of the building.
- 6.9 As part of the proposal it is proposed to rearrange the car park to create 2 no. disabled bays, 2 no. additional car parking spaces and a cycle store for 13 no. cycles. An additional bin store is also provided.

#### Planning History

- 6.10 The building was originally approved under CLA/378/71/1 with offices on the ground floor and 16 flats above.
- 6.11 Application TEN/1246/76 was then approved for the change of use of ground floor premises from offices to eight self-contained flats, including alterations to elevations. Details within the application documents state that existing flats no.'s 1 to 16 had allocated garages together with no.'s 17 to 24 (new flats) with spaces 25 to 48 being casual parking based on 1 space per flat but not specifically allocated.
- 6.12 This application follows a previous refusal under planning reference number 14/01350/FUL for a similar scheme seeking full planning permission for the addition of a third floor (fourth storey) to create 6 no. flats (comprising 2 x 3 bed, 3 x 1 bed and 1 x 2 bed). This was refused due to insufficient parking only.

#### Principle of Residential Development

- 6.13 The site is situated within the Settlement Development Boundary for Holland on Sea as defined by both the Saved and Draft Plan. Policy HG3 of the Saved Plan states that 'within the defined development boundaries of a towns and villages, residential development will be permitted provided it satisfies amenity, design, density, environmental, highway, local housing needs and sustainability criteria, as appropriate and can take place without material harm to the character of the local area'.
- 6.14 It is therefore considered that there is no principle objection to the proposal, subject to the proposal meeting all the relevant policy criteria as discussed below.

### Design and Appearance

- 6.15 Paragraphs 127 and 170 of the NPPF state that developments should add to the overall quality of the area, be visually attractive as a result of good architecture and be sympathetic to local character, including the surrounding built environment.
- 6.16 Saved Policies QL9, QL10 and QL11 of the adopted Tendring District Local Plan (2007) seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward within Policy SPL3 of the emerging Local Plan.
- 6.17 The surrounding area is characterised by a mixture of design and styles of development. To the southwest and east of the site are buildings of a similar style and appearance to Maplin Court, with some buildings fronting onto Kings Parade being four storeys in height. The other properties surrounding the site and in the vicinity are two-storey and single storey residential properties.
- 6.18 Maplin Court appears prominent due to its positioning, height and massing. The addition of a third floor (fourth storey) will therefore be visually prominent simply due to the character of the existing building and site. However, the proposed third floor is set in from the existing outer elevations of Maplin Court and is of a design that is sympathetic to the character and appearance of the existing building. Furthermore, there are existing four storey properties immediately adjacent fronting Kings Parade.
- 6.19 For the above reasons, it is considered that the proposal would not result in any material harm to the character and appearance of the surrounding area.

### Impact on Neighbouring Amenities

- 6.20 The NPPF, in paragraph 127 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).
- 6.21 The addition of a further storey will result in the potential for overlooking to surrounding properties in Madeira Road, both to the east and west of the application site. However, these properties are currently overlooked from a distance by the existing windows and balconies serving the upper floor flats within Maplin Court. Due to the current overlooking that occurs and the distance of separation between the proposed new flats and neighbouring dwellings, it is considered that any increase in overlooking would not be so significant as to warrant a reason for refusal.
- 6.22 With regard to the amenities of existing residents of Maplin Court, the proposed development will not have a harmful impact upon the outlook, light or privacy due to its siting above existing properties.
- 6.23 The development has the potential to result in some noise and disturbance from additional residents accessing their flats via the extended staircase and some noise to the living areas above the existing top floor residents. However, as the proposal is for 4 no. 1 bed flats only, this will result in minimal movements of which would be via 2 separate stair cases. Compliance with building regulations will mitigate any potential noise from within the units and to neighbouring dwellings.

- 6.24 The construction phase would cause some disturbance to existing residents, however, this would only be for a temporary period and working hours could be controlled by condition. Construction works are an inevitable part of the building process and cannot form a reason for refusal. The submission and approval of a Construction Method Statement can mitigate any potential impact to neighbouring amenities. Noise of a statutory nuisance would be controlled by environmental health legislation.
- 6.25 For the above reasons, it is considered that the proposal would not result in any material harm to the neighbouring amenities.

#### Highway Safety and Parking Provision

- 6.26 Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.27 The Council's current Adopted Parking Standards require that for dwellings with 1 bedroom a minimum of 1 parking space is provided per unit. The preferred bay size for cars is 5.5 metres by 2.9 metres and the minimum bay size is 5 metres by 2.5 metres. Furthermore, 0.25 visitor parking spaces per dwelling should also be provided.
- 6.28 The application is accompanied by an 'approved plan' showing the layout of the site as approved under planning application TEN/1246/76 and an 'existing plan' showing how the parking layout is currently configured on-site. These differ due to 5 of the originally approved garages not being built but later added under 99/00229/FUL. Overall the existing 24 flats are served by 24 garages and 21 parking spaces. The building and subsequent approvals were granted prior to the current adopted parking standards. The parking and garage dimensions meet the minimum standards but not the preferred sizes.
- 6.29 It would be unreasonable to apply the current adopted parking standards to the existing flats as these were approved in 1972 and 1977. The proposal includes improvements to the existing parking layout and the introduction of allocated spaces which will improve parking arrangements for the existing residents. Information has also been provided explaining how parking permits are to be allocated to the residents and visitors of Maplin Court again helping to deter any illegitimate parking.
- 6.30 The proposal involves the reworking and formalising of the existing parking arrangements by allocating and marking out bays to each existing and proposed flat. Currently there are 21 garages and 24 unallocated parking spaces (45 in total). The proposed plan results in 32 parking bays (including 4 visitor parking spaces) and 21 garages (as existing) being 53 spaces in total and a net gain of 8 spaces on the existing layout and a net gain of 5 from the originally planned 48. The Essex County Council Adopted Parking Standards require a total of 5 spaces to serve the new flats (1 per flat and 1 visitor space). The proposed layout provides sufficient parking for the development of 4 no. additional 1 bed flats.
- 6.31 Concerns have been raised regarding the parking layout block access to the ground floor flats. However, spaces 1 to 12 as shown on the approved and existing plans (now demised to individual flats on the proposed plans) are located in the originally approved positions. Any deviation from this approved parking layout is informal.

- 6.32 Unrestricted off-street parking is available on parts of Kings Avenue and Madeira Road and time limited parking available on Kings Parade. Double yellow and single yellow lines are present on the junctions and corners of neighbouring roads. Any illegal parking is a matter for Essex County Council and are not a consideration under this application.
- 6.33 In addition, the site is located within a sustainable location with access to amenities and leisure activities within a reasonable walking distance from the site. These include Holland on Sea centre approximately 500 metres to the north-west, Holland on Sea beach approximately 50 metres to the south and Eastcliff Recreational Ground approximately 600 metres to the south-west. Furthermore, there is a bus stop approximately 120 metres from the site with a regular bus service to Clacton Town Centre.
- 6.34 The development will also be served by cycle storage for 10 bikes.
- 6.35 Any traffic movements or fumes generated from an additional 4 no. 1 bedroom flats would not result in any material environmental harm that would warrant refusal of planning permission on this ground.
- 6.36 Essex County Council Highway Authority raise no objection subject to a condition relating to the submission and approval of a Construction Method Statement. Officers' note that The Highway Authority expresses concerns over the usability of the new spaces in front of the garages and substation and the substandard size of the existing garages in relation to current parking standards. There are no allocated spaces in front of the garages adjacent to the substation and this area should therefore be free from obstruction. Access rights are not a material planning consideration and the onus is on the applicant to ensure the correct permissions are sought and secured from relevant third parties. For the reasons set out above and as the determining authority, the Council do not consider that a refusal on highway safety and parking is justified in this instance.
- 6.37 Concerns have been raised over the lack of disabled parking bay provision. There are no existing disabled bays. The Adopted Parking Standards do not insist on disabled bay provision where there are visitor spaces available. Essex County Council Highway Authority have not raised any concerns on this basis.
- 6.38 Officers are satisfied that the parking layout provides sufficient parking and cycle parking for the development of 4 no. additional 1 bed flats, in a highly sustainable location where residents would not be solely dependant on their cars.

#### Waste Management and Refuse Storage

- 6.39 The collection arrangements for Maplin Court are unchanged (black sacks) and there are no current plans to provide the flats with wheelie bins.
- 6.40 The proposed bin storage areas are considered sufficient to accommodate the additional 4 no. 1 bed flats.

#### Financial Contribution – Open Space / Play Space

- 6.41 There is currently a deficit of 41.08 hectares of play space/open space in the Clacton/Holland area. Although there is a deficit of play space in Clacton/Holland, it is not felt that this development would impact the current deficit to an extent that would warrant a financial contribution.
- 6.42 Therefore, no financial contribution toward play space or open space is being sought in this instance.

### Financial Contribution – Recreational Impact

- 6.43 Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation); within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.
- 6.44 Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be a proportionate financial contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on European Designated Sites.
- 6.45 A unilateral undertaking is currently being prepared to secure this legal obligation and to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

### Other Issues

- 6.46 The requirement for a lift and if the footings, existing structure and drainage are capable of coping with an additional storey are a matter for building regulations.
- 6.47 It was the role of the applicant/agent to notify the existing leaseholders of the application. This was not done when the application was originally submitted. The Council has notified all flats of the application and subsequent amendments.
- 6.48 The effect of the proposal on prices of properties is not a material planning consideration.
- 6.49 Access rights and land ownership is not a material planning consideration. The development would be subject to an approved plans condition. If the approved layout cannot be implemented then the development could not go ahead. A fresh planning permission would be required for full consideration of a revised development.

## **7. Conclusion**

- 7.1 In conclusion, the proposed development would not result in any harmful impact upon visual amenity or neighbouring amenities and provides a formalised parking layout and sufficient additional parking spaces to serve the proposed units.

## **8. Recommendation**

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

<b>CATEGORY</b>	<b>TERMS</b>
Financial contribution towards RAMS	£122.30 per dwelling

## 8.2 Conditions and Reasons

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

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: DRAWING NO. 01, Drawing Number: 19-MCHOS-04 Rev. C, DRAWING NO. 8, DRAWING NO. 9 and DRAWING NO. 10.

Reason - For the avoidance of doubt and in the interests of proper planning.

3. No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and under body washing facilities

Reason - To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety.

4. The development shall not be occupied until such time as the approved parking layout shown on Drawing Number: 19-MCHOS-04 Rev. C has been constructed and laid out for parking in allocated bays. The parking and garaging areas shall be retained in this approved form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason - To minimise on-street parking of vehicles in the adjoining streets, in the interests of highway safety.

5. In respect of the car parking works, provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the site.

Reason - In the interests of sustainable development and to ensure that run-off water is avoided to minimise the risk of surface water flooding.

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

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

7. Prior to the occupation of the development hereby approved, details of the design and appearance of the cycle storage for 10 bikes shown on approved Drawing Number: 19-MCHOS-04 Rev. C shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained in this approved form for cycle parking related to the use of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason – To promote alternative, sustainable modes of transport.

### 8.3 Informatives

#### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

#### Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

#### Highways Informatives

Informative 1: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Informative 2: As an observation the existing parking spaces located off Madeira Road appear to be full and well used consideration may need to be given to install some form of collapsible bollard for these private parking spaces to keep these spaces free for the permit holders. The bollards would need to be located off the publicly maintainable highway and set half a metre back from the back of the footway.

Informative 3: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

SMO1 – Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

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

#### Building Regulations Informative

The designer should ensure that the means of escape meet BS5588-1:1990.



## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

### Human Rights

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

### Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 9.12 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings

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

**10. Background Papers**

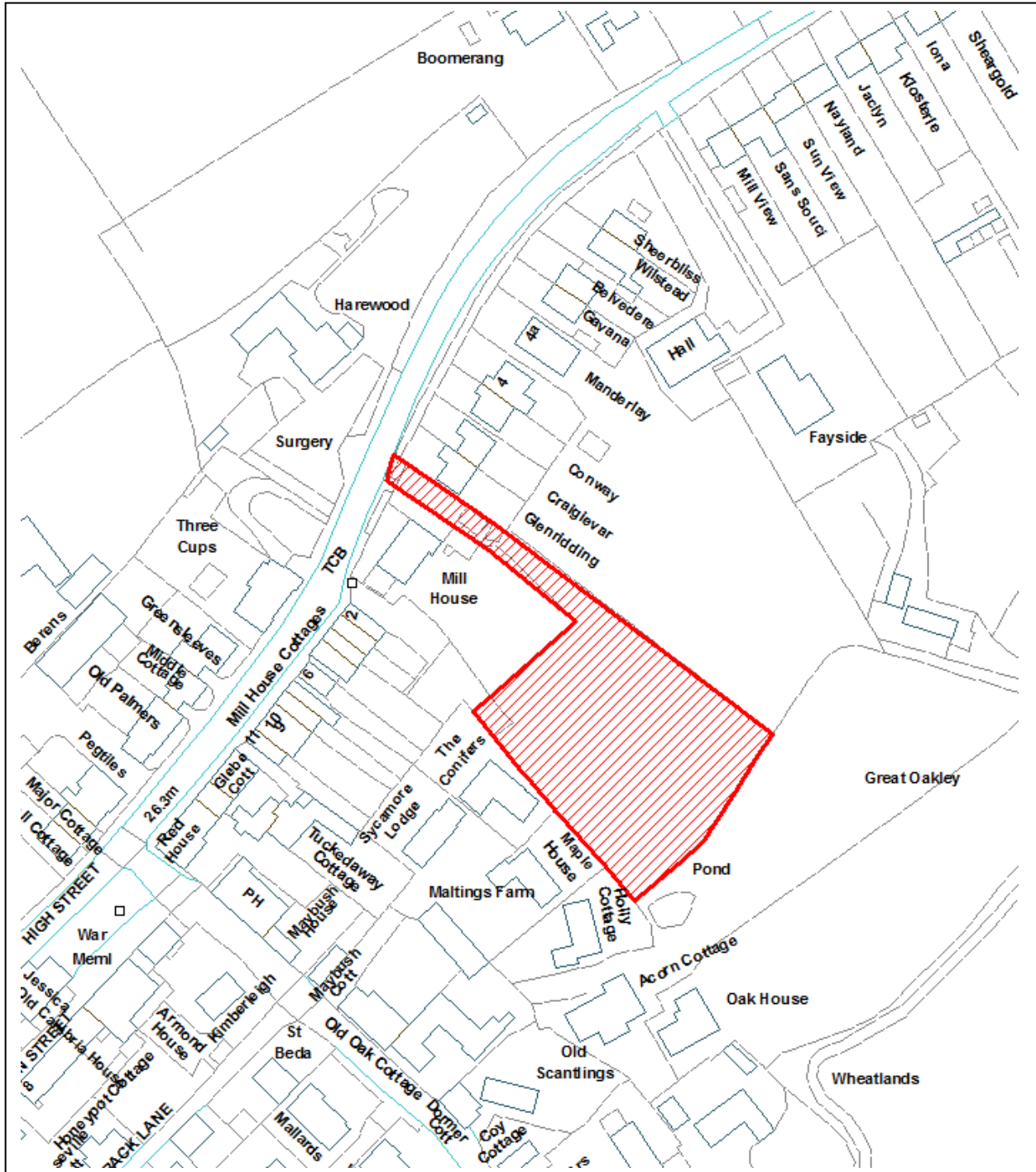
None.

## PLANNING COMMITTEE

30 July 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.4 PLANNING APPLICATION – 19/00004/OUT – LAND TO THE REAR OF MILL HOUSE HIGH STREET GREAT OAKLEY HARWICH CO12 5AQ**



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**Application:** 19/00004/OUT

**Town / Parish:** Great Oakley Parish Council

**Applicant:** Burfoot Construction Ltd

**Address:** Land to The rear of Mill House High Street Great Oakley Harwich CO12 5AQ

**Development:** Erection of 5 no. four bedroom dwellings.

## 1. **Executive Summary**

- 1.1 This application has been referred to Planning Committee at the request of Councillor Bush due to concerns relating to; the previous application 17/01109/OUT refused on appeal ref: APP/P1560/W/3196781, the site is located outside the development boundary of the existing and emerging local plan, the site is located within the coastal protection belt of the existing and emerging local plan, TDC have identified and can demonstrate a five year housing supply and overdevelopment of the village deemed smaller rural settlement of emerging local plan 2017.
- 1.2 The application site is located outside of the Settlement Development Boundary of Great Oakley as defined within both the adopted Tendring District Local Plan 2007 and Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 1.3 Planning Permission was refused by officers under planning reference 17/01109/OUT in June 2017, due to the application site being located outside of the settlement development boundary, the impact of the proposal on the open countryside and the Coastal Protection Belt, and the lack of an ecology survey. The application was taken to planning appeal and it was dismissed by the Planning Inspectorate in October 2018 under appeal reference APP/P1560/W/18/3196781. The principle of development has been established within the appeal decision. The Planning Inspectorate stated that 'there would be conflict with TLP Policy QL1 in terms of the sites location beyond the settlement development boundary. However, while the NPPF advocates a plan led approach, it is important to consider whether any circumstances outweigh the conflicts. In this instance the accessibility of services and facilities and the effect of development on the character of the countryside indicate that the site would provide an appropriate location for housing'. The appeal decision was dismissed on ecological grounds only due to the absence of an ecological assessment and the appeal decision states that 'the proposed development would have uncertain effects on protected species and would conflict with TLP Policies EN6 and EN6a'.
- 1.4 Since the appeal decision, the land has been cleared of all vegetation.
- 1.5 An Ecological Impact Assessment Report has been submitted as part of this application following the clearance of all vegetation since the appeal decision. ECC Ecology now have no objections to the proposal and have stated that there is sufficient ecological information available for the application to be determined. Two conditions will be imposed relating to the mitigation and enhancements to be carried out in line with the Ecological Impact Assessment Report and a biodiversity enhancement layout which will provide the finalised details and locations of the enhancement measures to secure the recommendations.

**Recommendation:**

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

- a) **Within 6 (six) 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 dealing with the following matters:**
- **Financial Contribution of £122.30 per new dwelling towards RAMS**
  - **Financial Contribution for Open Space towards improving and upgrading the current planning equipment at Orchard Close, Great Oakley.**
- b) Subject to the conditions stated in section 8.2.
- c) That 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 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a s106 planning obligation.

**2. Planning Policy**

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

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG13 Backland Residential Development

HG14 Side Isolation

EN1 Landscape Character

EN3 Coastal Protection Belt

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN17 Conservation Areas

EN23 Development Within the Proximity of a Listed Building

COM6 Provision of Recreational Open Space for New Residential Development

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP1 Presumption in Favour of Sustainable Development

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP8 Backland Residential Development

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL8 Conservation Areas

PPL9 Listed Buildings

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

## **Status of the Local Plan**

- 2.2 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.3 Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.
- 2.4 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.
- 2.5 In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

## **3. Relevant Planning History**

17/01109/OUT	Erection of 5 no. four bedroom dwellings.	Refused	31.08.2017
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#### 4. Consultations

ECC Highways Dept

A site visit has been undertaken and the information that was submitted in association with the application has been fully considered by the Highway Authority.

The proposal is within an existing 30-mph speed limit with a generous footway on Harwich Road and retains adequate room and provision for off street parking and turning, for the existing and proposed dwellings therefore:

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

1. Prior to the first occupation of the development, the proposed road junction at its bell mouth with Harwich Road shall be constructed at right angles to the highway boundary and to the existing carriageway as shown in principle in the Indicative Site layout, plan Ref: 001 to a carriageway width of 5.5 metres.

2. Prior to first occupation of the development, the road junction at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be retained free of any obstruction at all times.

3. No unbound materials shall be used in the surface treatment of any proposed vehicular access within 6 metres of the highway boundary.

4. There shall be no discharge of surface water onto the Highway.

5. Any part of the existing access at Mill House shown on the Indicative site layout plan (REF:001) that becomes redundant shall be suitably and permanently closed incorporating the reinstatement to full height of the highway footway / kerbing immediately the proposed new access is brought into first beneficial use.

6. Prior to first occupation of the development vehicle parking shall be provided in accordance with the EPOA Parking Standards as shown in principle in the Indicative Site Layout Plan REF: 001 constructed ready for use. The vehicle parking area and associated turning area shall be retained in the agreed form at all times.



7. All single garages should have a minimum internal measurement of length 7 metre x 3 metres and all double garages should have a minimum internal measurement of 7m x 5.5m.

8. Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

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

10. No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

**Essex County Council Ecology  
Amended Comments**

No objection subject to securing:

- a) a financial contribution towards visitor management measures at Hamford Water SPA, SAC and Ramsar site and
- b) ecological mitigation and enhancement measures

We have reviewed the recently submitted Ecological Impact Assessment (EclA) report (Liz Lord Ecology, July 2019) for the above application relating to likely impacts on designated sites, Protected and Priority species and habitats.

We note that the EclA also refers to a number of recent Great crested newt records approximately 5km west of the site, and a single record of this European Protected Species approximately 1km to the south west of the site, on the western side of Gt Oakley village. The report considers that there is therefore a risk of a remnant population of Great crested newts remaining in the immediate vicinity of an infilled pond on adjacent land. It recommends that site clearance should follow the Non-licensed Method Statement (Appendix 3 of the EclA) and if any Great crested newts are discovered, work should

stop immediately. The EcIA also states that the site has the potential to support reptiles if vegetation is left to grow unchecked and therefore recommends that the vegetation on site is regularly strimmed to ground level to prevent it becoming suitable for reptiles.

As the site was cleared (with a small number of trees remaining) in October 2018, there is a limited impact of development though we welcome consideration of likely impacts on Protected and Priority species on site. As the site provides potential foraging habitat for Priority Species such as Dunnock, House Sparrow, Song Thrush, Common Toad and Hedgehog, biodiversity enhancements should be provided for these species.

We are now satisfied that there is sufficient ecological information available for determination of this application. We recommend that the suggested mitigation measures are secured to avoid any offence, any further surveys considered necessary and enhancements to deliver measurable net gain for biodiversity. In addition, it should include reasonable biodiversity enhancements, as paragraph 175 of the NPPF 2019 which highlights that development should identify and pursue opportunities for securing measurable net gains for biodiversity.

The above additional information is required for the LPA to have certainty of impacts for Protected and Priority species and habitats for this application and to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 and s17 Crime & Disorder Act 1998.

Recommendation:

Two conditions relating to mitigation and enhancements to be carried out in line with the Ecological Impact Assessment Report and a biodiversity enhancement layout which will provide the finalised details and locations of the enhancement measures to secure recommendation.

## **5. Representations**

5.1 Great Oakley Parish Council have raised the following comments:

- The proposed development site is outside of any past, current or proposed housing development boundary for the village.
- At no time during the extensive consultation on the Emerging Local Plan has this site been put forward.
- The site sits within the Coastal Protection Belt.
- The development would require the demolition of at least one existing building within the curtilage of a Grade 2 Listed Building which would have a significant impact on the listed building's setting and the wider street scene. The proposed access is narrow and would have a detrimental impact on vehicle movements in the already busy centre of the village.

5.2 29 letters of objection have been received (including objection from The Harwich Society and RSPCA). The concerns raised can be summarised as follows;

- The piece of land is land locked
- Views and quietness of the Maltings Grange will be severely compromised
- Access too narrow for existing and additional traffic.
- Site clearance after Appeal decision
- Alter the street scene within the Conservation Area
- Highway Safety and potential collisions
- Site is located outside the Settlement Development Boundary of the Draft and Emerging Local Plan.
- Site is located outside the Coastal Protection Belt.
- TDC can demonstrate a 5/6 year housing supply.
- Overdevelopment of smaller rural settlement
- Lack of ecology survey
- Demolition of garage linked to Grade II Listed Building – negative impact
- Detrimental impact on the appearance of the local area
- Narrow vehicular entrance/exist is opposite the doctors surgery and will have restricted views due to the road layout and parking.
- Lack of local amenities
- Owner acted in an unethical manner by destroying the local ecological environment including filling in the adjacent pond.
- Unnecessary development with no public benefits
- Inspector's comments have been disregarded regarding the high possibility of serious ecological damage.
- Alter the setting of the Grade II Listed Building
- The statement made by the landowner is factually incorrect. No RSPCA inspector gained access to the land or completed an inspection and therefore were unable to confirm whether there were any protected species on the land.
- Full application is required to assess design, scale and materials

## 6. Assessment

The main considerations for this application are;

- Site Context;
- Proposal;
- Planning History;
- Principle of Residential Development;
- Layout, Scale, Character and Impact;
- Residential Amenities;
- Highway Safety and Parking;
- Trees and Landscaping;
- Heritage Impact;
- Coastal Protection Belt;
- Financial Contributions;
- Habitat Regulations Assessment; and,
- Ecology and Biodiversity.

### Site Context

6.1 The application site measures approximately 0.25 hectares in size and is roughly square shaped. The application site is located immediately to the rear of Mill House, a Grade II Listed Building and is currently used as grassland. Access to the site is alongside the

curtilage of Mill House and would involve the demolition of a single storey outbuilding/garage which is adjacent to the neighbouring dwelling Glenridding.

- 6.2 To the north and west of the application site are the rear gardens of dwellings along Harwich Road. To the east of the application site are paddocks and to the south west of the application site is a modern residential development of Maltings Farm.
- 6.3 The area surrounding the site is primarily residential, with a variety of properties in scale, age and design.
- 6.4 The majority of the application site (apart from the access from Harwich Road) falls within the Coastal Protection Belt of both the Adopted and Emerging Local Plan. The south west of the application site lies adjacent to the Great Oakley Conservation Area.

#### Planning History

- 6.5 Planning Permission was refused by officers under planning reference 17/01109/OUT in June 2017, due to the application site being located outside of the settlement development boundary, the impact of the proposal on the open countryside and the Coastal Protection Belt and the lack of an ecology survey. The application was taken to planning appeal and it was dismissed by the Planning Inspectorate in October 2018 under appeal reference APP/P1560/W/18/3196781. The appeal was dismissed on ecological reasons only in the absence of an ecological assessment and the appeal decision states that ‘the proposed development would have uncertain effects on protected species and would conflict with TLP Policies EN6 and EN6a’.
- 6.6 Since the appeal decision, the land has been cleared of all vegetation.

#### Proposal

- 6.7 The application seeks outline planning permission for the construction of five dwellings off a private drive, with each property, indicated to have either a dedicated garage or off street parking.
- 6.8 All matters (access, appearance, landscaping, layout and scale) are reserved for consideration as part of a future detailed application. The proposal therefore seeks to establish the principle of five dwellings on this site.

#### Principle of Development

- 6.9 The site lies outside of the Settlement Development Boundary (SDB) of the Saved Local Plan (Tendring District Local Plan 2007) but within the SDB of the draft Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.10 The principle of development has been established through the planning appeal decision reference APP/P1560/W/18/3196781 dated 3<sup>rd</sup> October 2018. The Planning Inspector stated ‘the proposal would result in a backland and cul-de-sac form of layout but given the proximity of similar recent development such as Maltings Grange, this would not look particularly out of keeping or set a harmful precedent’.
- 6.11 The Inspector explained that ‘Great Oakley contains a range of services and facilities for day to day needs including a primary school, shop, public house, doctor’s surgery and village hall. While the site is currently land locked, the indicative site layout shows the access onto High Street/Harwich Road. The above services and facilities are within a reasonable walking distance via pavements through the village. While there would be need to travel beyond Great Oakley for a greater range of services and facilities, there are regular

bus services through the week connecting the village to Harwich, Clacton and Colchester. Therefore, future occupants of the proposed development would not be greatly reliant on the private motor car. Thus the negative social effects in terms of the accessibility of services would be limited'. It is therefore considered that due to the sites close proximity to Great Oakley, the development would not represent new isolated homes in the countryside.

- 6.12 The Inspector concluded that 'there would be conflict with TLP Policy QL1 in terms of the sites location beyond the settlement development boundary. However, while the NPPF advocates a plan led approach, it is important to consider whether any circumstances outweigh the conflicts. In this instance the accessibility of services and facilities and the effect of development on the character of the countryside indicate that the site would provide an appropriate location for housing'. Therefore, limited weight is given to the policy conflict. The Planning Inspector at appeal therefore accepted the principle of development and that decision is a strong material planning consideration.
- 6.13 At the time of the appeal decision the Council was able to demonstrate a robust five year supply of deliverable housing sites and this was confirmed in a number of appeal decisions. However the Councils stance has changed since the decision was issued and the Council is currently unable to demonstrate a five year housing supply. The tilted balance under the NPPF therefore applies.
- 6.14 Therefore, given the above, the accessibility of services and facilities and the effect of development on the character of the countryside indicate that the site would provide an appropriate location for housing. There would be some intrinsic conflict with Saved Policy QL1 but this would not manifest itself into any harm in terms of its overall objectives or result in social, economic or environmental harm. The principle of residential development is therefore considered to be acceptable as established by the recent appeal decision.

#### Layout, Scale, Character and Impact

- 6.15 Paragraphs 127 and 170 of the NPPF state that developments should add to the overall quality of the area, be visually attractive as a result of good architecture and be sympathetic to local character, including the surrounding built environment.
- 6.16 Saved Policies QL9, QL10 and QL11 of the adopted Tendring District Local Plan (2007) seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward within Policy SPL3 of the emerging Local Plan.
- 6.17 Whilst all matters are reserved for later consideration, an Indicative Block Plan has been provided to indicate how development could be achieved within the application site. The indicative plan shows that 5 x 4 bedroom dwellings with garages and parking spaces will be located, accessed off of High Street/Harwich Road.
- 6.18 The dwellings indicate that they can all accommodate in excess of 100 square metres of private amenity space in line with Policy HG9 of the Tendring District Local Plan 2007 and that sufficient private amenity space is retained for the host dwelling Mill House.
- 6.19 The site adjoins existing residential development to the south west, Maltings Farm with the rear of dwellings located to the north and west of Harwich Road. The proposed development will therefore appear as part of the existing built up area.
- 6.20 It is therefore considered that a detailed design, layout and landscaping scheme could be provided at reserved matters stage which would preserve the character of the surrounding area and be acceptable in terms of visual impact.

### Residential Amenities

- 6.21 The NPPF, in paragraph 127 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).
- 6.22 Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.23 Appearance and layout are reserved for later consideration. It is considered that five dwellings could be accommodated on the site with no material loss of amenity in terms of loss of light, outlook or privacy. It is therefore considered that sufficient spacing between properties could be achieved to result in a development that would not harm the amenities of neighbours.

### Highway Safety/Parking

- 6.24 Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.25 Essex Highway Authority raise no objections subject to conditions relating to the construction of the road junction, visibility splays, no unbound materials, no discharge of surface water onto the highway, any part of access to Mill Lane becomes redundant shall be suitably or permanently closed, parking in line with Parking Standards, garage measurements, cycle parking, Residential Travel Information Pack and construction method statement.
- 6.26 Access is a reserved matter so the detail will be considered in a future reserved matters application and it is not necessary to impose conditions at this stage. This is not a 'major' application and it is not therefore considered reasonable to request provision of residential travel packs. It would however be reasonable to impose a construction method statement at this time as this relates to the principle of development.
- 6.27 The Council's current Adopted Parking Standards require that dwellings with 4 bedroom that a minimum of 2 parking space is provided per unit. The preferred bay size for cars is 5.5 metres by 2.9 metres. The minimum bay size is 5 metres by 2.5 metres and should only be used in exceptional circumstances. Garages should measure 7 metres by 3 metres in line with Essex Parking Standards. There is ample space within the site to provide sufficient parking to each dwelling.

- 6.28 The application is accompanied by an indicative site layout. This demonstrates that three of the five dwellings will be served by garages. The garages measure 6 metres x 6 metres which falls short of the Essex Parking Standards requirements of 7 metres by 3 metres. However, there is sufficient parking to be able to accommodate parking spaces to the front of the garages which will accommodate parking spaces measuring 5.5 metres by 2.9 metres. The remaining two dwellings demonstrate that two parking spaces can be achieved in line with Essex Parking Standards to the frontage. There is therefore no objection on highway safety grounds.

#### Trees and Landscaping

- 6.29 Landscaping will be secured at the reserved matters stage. There is scope for planting to the front of each dwelling and for planting around the perimeter of the application site. There is also some vegetation along the existing boundary which will be retained and secured by condition when a detailed application is submitted.

#### Heritage Impact

- 6.30 Paragraph 189 of the National Planning Policy Framework ("the Framework") requires applicants to describe the significance of any heritage assets affected. This requirement is retained by draft Policy PPL9 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. Paragraph 196 of the Framework adds that 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.
- 6.31 Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Tendring District Local Plan 2013-2033 and Beyond Publication Draft states that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.
- 6.32 Policy EN22 of the Saved Plan states that development involving proposals to extend or alter a Listed Building will only be permitted where; it would not result in the damage or loss of features of special architectural or historic interest; and the special character and appearance or setting of the building would be preserved or enhanced. These requirements are carried forward to Policy PPL9 of the Emerging Publication Draft (June 2017) which also requires the use of building materials, finishes and building techniques that respect the listed building and its setting.
- 6.33 A Planning Statement and Heritage Statement was submitted as part of this planning application. The statement explains that the entrance to the site is located within the Great Oakley Conservation Area however the rest of the site lies adjacent.
- 6.34 As stated within the Appeal decision reference APP/P1560/W/18/3196781, 'the access from the High Street and Harwich Road would necessitate the removal of one of the garages to the side of Mill House'. The Inspector considered that the garage 'is a modest structure in terms of size, age and materials and its removal would have little negative effect on the special interest of the listed building or the character and appearance of the adjoining Conservation Area'.
- 6.35 The Planning Inspector in paragraph 19 of the appeal decision states that 'residential development in this location would avoid a negative effect on the character and appearance of the adjoining Conservation Area. There would be sufficient distance between new buildings and Mill House to avoid adverse effects on the special interest and setting of the Listed Building'. These points remain unchanged from the appeal proposal and are therefore acceptable.

### Coastal Protection Belt

- 6.36 Saved Policy EN3 of the Tendring District Local Plan 2007 and Draft Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development as well as seeking to improve public access to and enjoyment of the coast in accordance with the National Planning Policy Framework.
- 6.37 As stated within the appeal decision, APP/P1560/W/18/3196781, 'the sites contribution to the countryside and rural character of the area surrounding Great Oakley, including the CPB, is very limited. It does not provide an important transition from village to countryside'. It is therefore considered that the proposal will not have a substantial impact on the Coastal Protection Belt.

### Financial Contributions – Open Space

- 6.38 Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".
- 6.39 There is currently a deficit of -0.76 hectares of equipped play in Great Oakley. However, there is adequate provision in terms of formal open space.
- 6.40 There is one play area in Great Oakley, located off Orchard Close approx. 0.3 miles. This play area has recently been upgraded and is classified as a Local Equipped Area for Play. However, should further development take place in the village it would be necessary to increase the size of the current play provision to prevent the current deficit from increasing.
- 6.41 Due to the limited play provision in Great Oakley, a contribution towards play is justified and relevant to the planning application. The contribution would be used towards improving and up grading the current equipment at Orchard Close, Great Oakley. A Unilateral undertaking is currently being prepared to secure this legal obligation.

### Habitat Regulations Assessment

- 6.42 Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Areas of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against the in-combination recreational impact from new dwellings.
- 6.43 Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be a proportionate financial contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any likely significant effect the proposal may have on European Designated Sites.
- 6.44 A unilateral undertaking is currently being prepared to secure this legal obligation and to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-



2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

### Ecology and Biodiversity

- 6.45 Paragraph 174 of the National Planning Policy Framework 2019 requires Local Planning Authorities to protect and enhance biodiversity and geodiversity.
- 6.46 Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the adopted Tendring District Local Plan 2007 state that development proposals will not be granted planning permission unless existing local biodiversity and protected species are protected. These sentiments are carried forward within draft Policy PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.47 ECC Ecology were originally consulted on the application and had a holding objection due to insufficient information for impacts on designed sites, and Protected and Priority species/habitats.
- 6.48 An Ecological Impact Assessment Report was requested from the applicant and this was submitted in support of this application. ECC Ecology have removed their holding objection with no objection to the proposal subject to securing a financial contribution (RAMS) towards visitor management measures at Hamford Water SPA, SAC and Ramsar Site and ecological mitigation and enhancement measures.
- 6.49 ECC Ecology note that the Ecological Impact Assessment Report refers to a number of recent Great crested newt records approximately 5km west of the site, and a single record of this European Protected Species approximately 1km to the south west of the site, on the western side of Gt Oakley village. The report considers that there is therefore a risk of a remnant population of Great crested newts remaining in the immediate vicinity of an infilled pond on adjacent land. It recommends that site clearance should follow the Non-licensed Method Statement (Appendix 3 of the Ecological Impact Assessment Report) and if any Great crested newts are discovered, work should stop immediately. The Ecological Impact Assessment Report also states that the site has the potential to support reptiles if vegetation is left to grow unchecked and therefore recommends that the vegetation on site is regularly strimmed to ground level to prevent it becoming suitable for reptiles.
- 6.50 As the site was cleared (with a small number of trees remaining) in October 2018, there is a limited impact of development though we welcome consideration of likely impacts on Protected and Priority species on site. As the site provides potential foraging habitat for Priority Species such as Dunnock, House Sparrow, Song Thrush, Common Toad and Hedgehog, biodiversity enhancements should be provided for these species.
- 6.51 ECC Ecology are now satisfied that there is sufficient ecological information available for determination of this application subject to the suggested mitigation and enhancement measures to deliver measurable net gain for biodiversity.

## **7. Conclusion**

- 7.1 Appeal reference APP/P1560/W/18/3196781 was dismissed only on ecological grounds. These concerns have now been addressed. The principle of residential development in this location is acceptable and subject to conditions there is not considered to be any material visual harm, harm to neighbouring amenities, harm to local landscape, ecology and biodiversity or highway safety. Therefore the application is recommended for approval.

## **8. Recommendation**

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

CATEGORY	TERMS
Financial contribution towards RAMS.	£122.30 per dwelling
Open Space	Financial Contribution for Open Space towards improving and upgrading the current play equipment at Orchard Close, Great Oakley.

8.2 Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

3. No development shall be commenced until plans and particulars of "the reserved matters" referred to in the above conditions relating to the access, appearance, landscaping, layout and scale have been submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason - The application as submitted does not provide sufficient particulars for consideration of these details.

4. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Drawing Ref:001 and Ecological Impact Assessment Report – Ref 1512 - Dated 3rd July 2019.

Reason - For the avoidance of doubt and in the interests of proper planning.

5. No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason - To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety

6. All vegetation clearance shall be undertaken outside of the bird nesting season (March to September inclusive). If this is not possible, immediately prior to commencement of works

a check for nesting birds should be undertaken by a suitably experienced ecologist. Any active nests will need to be left in situ until the young have left the nest.

Reason - To preserve and enhance the biodiversity of the site in accordance with the Ecological Impact Assessment Report dated 3rd July 2019 Ref: 1512

7. Development shall be carried out in full accordance with the mitigation and enhancement measures and/or works detailed in the Ecological Impact Assessment Report (Liz Lord Ecology, July 2019) including Appendix 3. This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

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

8. Prior to commencement of any above ground works, A Biodiversity Enhancement Layout, providing the finalised details and locations of the enhancement measures contained within the Ecological Impact Assessment (EclA) report (Liz Lord Ecology, July 2019), shall be submitted to and approved in writing by the local planning authority. The enhancement measures shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Reason - To enhance Protected and Priority Species and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species)

### 8.3 Informatives

#### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

#### Legal Agreement Informative - Open Space/Play Space Contribution

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: Public Open Space financial contribution in accordance with Policy COM6 of the adopted Tendring District Local Plan (2007) and Policy HP5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

#### Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

## Highways

Under Building Regulations B5, access for fire tenders is required to a point not further than 45 metres from the entrance to the dwelling. Any road or private drive forming part of such a fire access must be no less than 3.7 metres wide between kerbs (this may be reduced to 3.1 metres for a gateway or similar short narrowing) and should have a minimum centre line bend radius of 6.55 metres. The access way should be capable of carrying a 12.5 tonne vehicle. A cul-de-sac which is more than 20 metres long must have a turning head of a least Size 3.

Informative 2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

SMO1 ' Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester.  
CO4 9YQ.

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

### Human Rights

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

### Finance Implications

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

## **10. Background Papers**

None.

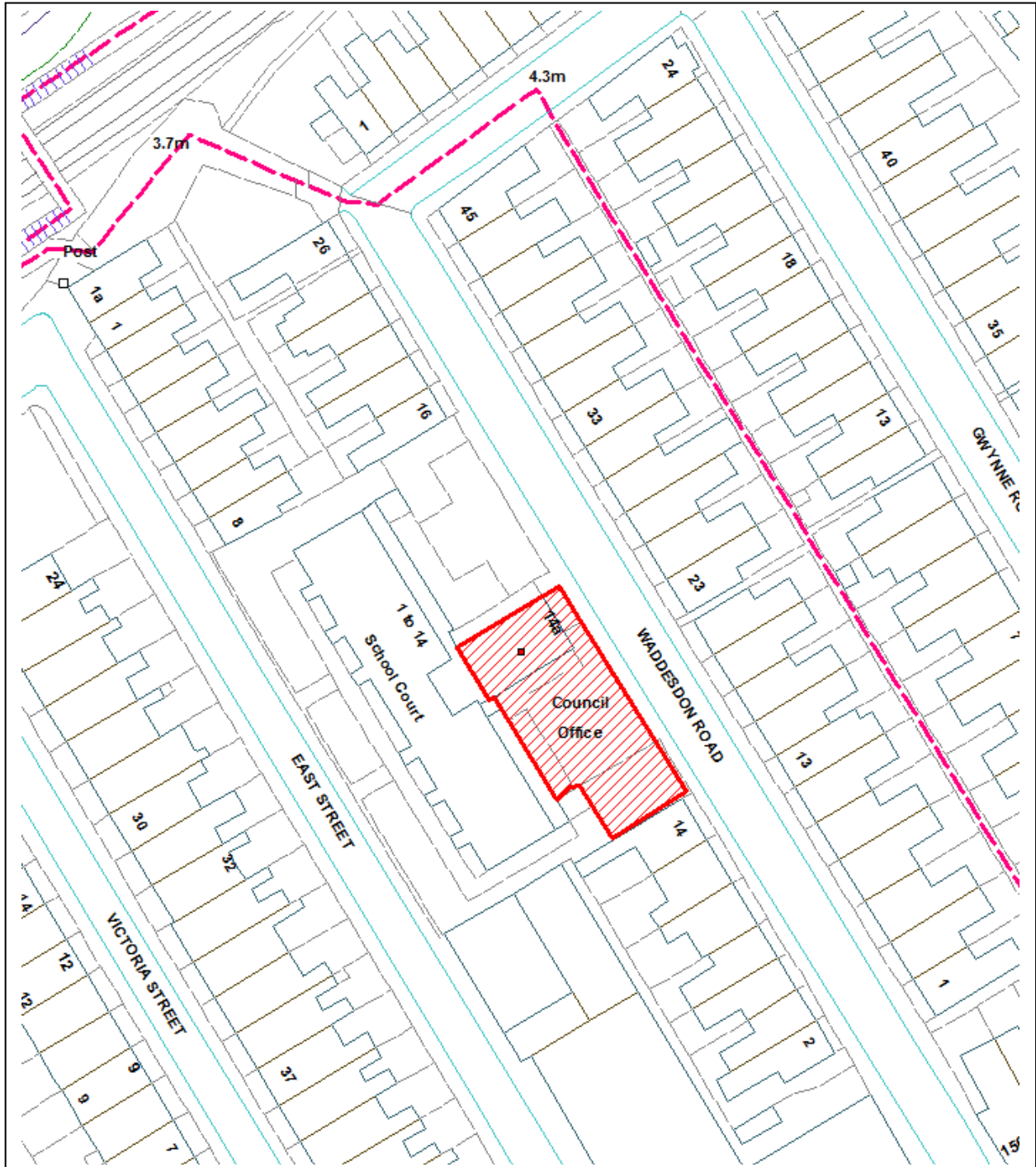
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## PLANNING COMMITTEE

30 July 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.5 PLANNING APPLICATION – 19/00398/COUNOT – 14A WADDES DON ROAD DOVERCOURT HARWICH CO12 3BA**



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**Application:** 19/00398/COUNOT

**Town / Parish:** Harwich Town Council

**Applicant:** Miss Victoria Found - Tendring District Council

**Address:** 14A Waddesdon Road Dovercourt Harwich CO12 3BA

**Development:** Change of use from cash office (A2) to accessible 2 bedroom Bungalow (C3).

## 1. **Executive Summary**

- 1.1 This application has been referred to Planning Committee as Tendring District Council is the landowner and applicant.
- 1.2 This is a "prior notification" under Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The applicant is seeking the Council's determination as to whether its "prior approval" is required for the change of use of the existing A2 (Cash Office) use to C3 (Residential) subject to the restricted considerations detailed in the report below.
- 1.3 The considerations are restricted solely to the impacts of transport and highways; contamination risks in relation to the building; flood risk; whether the change of use is undesirable in terms of impact on the adequate provision of that use; where the building is located in a key shopping area, on the sustainability of that shopping area; and the design or external appearance of the building.
- 1.4 The report concludes that the proposal would be acceptable in terms of these specific impacts and therefore that the change of use from A2 (Cash Office) use to C3 (Residential) does not require Prior Approval.

### **Recommendation: Prior Approval Not Required**

Subject to the conditions stated in section 8.1.

## 2. **Planning Policy**

- 2.1 Not applicable to a prior approval application.

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

- 2.2 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.3 Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very



specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

- 2.4 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

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

04/01271/FUL	Provision of disabled access ramp	Approved	25.08.2004
15/01638/COUNOT	Change of use from cash office (A2) to a fitness class and personal training studio (D2).	Prior approval not required	21.12.2015
19/00756/FUL	Proposed 2 new council owned garages.	Withdrawn	04.07.2019

### 4. **Consultations**

ECC Highways Dept  
**AMENDED COMMENTS**

Based on the information submitted in association with the application, including revised drawing no. 2018/16/02, from a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority.

### 5. **Representations**

- 5.1 Harwich Town Council has no objection to this application.
- 5.2 1 letter of objection has been received. The concerns raised can be summarised as follows;
- Lack of parking on Waddesdon Road.

### 6. **Assessment**

The main considerations in this instance are;

- Site Context;
- Proposal;
- Provisions of Schedule 2, Part 3, Class M of the GPDO;
- Conditions of Schedule 2, Part 3, Class M of the GPDO; and,
- Other Matters.

#### Site Context

- 6.1 This prior notification application relates to 14A Waddesdon Road the former, now vacant, Tendring District Council Harwich Cash office.

- 6.2 The site comprises a single storey building and access ramp and the adjacent car park area and landscaped area both to the southern side of the building.
- 6.3 The site is located on the western side of Waddesdon Road within the Settlement Development Boundary of Harwich, the Dovercourt Urban Regeneration Area and within Flood Zone 2.
- 6.4 The site is situated within a predominately residential area bounded by dwellings on all sides with the High Street approximately 85 metres to the south.

Proposal

- 6.5 This is a "prior notification" under Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The applicant is seeking the Council's determination as to whether its "prior approval" is required for the change of use of the existing A1 (shop) use to C3 (Residential).
- 6.6 The existing car park is to form the private amenity space for the new dwelling.
- 6.7 The existing landscape area is to be cleared and 2 parking spaces provided including 1 disabled parking bay. The dimensions of both parking bays meet the Adopted Parking Standards.

Provisions of Schedule 2, Part 3, Class M of the GPDO

- 6.8 Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that:

Permitted development comprises development consisting of—

(a) a change of use of a building from—

(i) a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order;

(ii) a use as a betting office or pay day loan shop, or

(iii) a mixed use combining use as a dwellinghouse with—

(aa) a use as a betting office or pay day loan shop, or

(bb) a use falling within either Class A1 (shops) or Class A2 (financial and professional services) of that Schedule (whether that use was granted permission under Class G of this Part or otherwise), to a use falling within Class C3 (dwellinghouses) of that Schedule, and

(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

- 6.9 The former Cash Office falls within (i) Class A2 (financial and professional services) and seeks a change of use to (bb) Class C3 (dwellinghouses). Development is permitted by Class M subject to relevant criteria which can be summarised and addressed below;
- 6.10 (a) the building was not used for one of the uses referred to in Class M(a)—
  - (i) on 20th March 2013, or
  - (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;

***The unit has been vacant for some time but when it was last in use, it was for the purposes of A2 Cash Office.***

- 6.11 (b) permission to use the building for a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order has been granted only by this Part;

***Not applicable.***

- 6.12 (c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;

***The building amount to approximately 70 square metres.***

- 6.13 (d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;

***The site has not been subject of any other development under Class M.***

- 6.14 (e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

***No extensions or alterations are proposed that would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.***

- 6.15 (f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order);

***No demolition is proposed.***

- 6.16 Or; (g) the building is—  
(i) on article 2(3) land;  
(ii) in a site of special scientific interest;  
(iii) in a safety hazard area;  
(iv) in a military explosives storage area;  
(v) a listed building; or  
(vi) a scheduled monument.

***The building is not located within or subject of any of the above designations.***

Conditions of Schedule 2, Part 3, Class M of the GPDO

- 6.17 Therefore, the application meets the requirements of Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015, subject to the following conditions:

- 6.18 (a) transport and highways impacts of the development,

***The site has off street parking in accordance with the Council's current Adopted Parking Standards.***

***The site is located in a highly sustainable location within easy walking distance of public transport links, local services within the town centre, the beach and other recreational facilities. It is therefore considered that a development of this scale would not result in any adverse impacts on transport or highways.***

**Essex County Council raise no objection.**

- 6.19 (b) contamination risks in relation to the building,

***This is not applicable to this application.***

- 6.20 (c) flooding risks in relation to the building,

***This is not applicable to this application as the site is not within a high risk flood zone.***

- 6.21 (d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or

***The existing Council Cash Office falls within use class A2 as a financial and professional service. The site lies on the edge of the Town Centre where there are numerous existing A2 uses such as banks and estate agents. It is not considered that the proposal would affect the provision of A2 uses in the area. The former cash office use has been closed for some time with no direct equivalent service provided.***

- 6.22 (ii) where the building is located in a key shopping area, on the sustainability of that shopping area,

***The site lies outside of any protected shopping frontage or designated Town Centre and would not therefore adversely affect the sustainability of the main shopping area.***

- 6.23 (e) the design or external appearance of the building,

***No extensions or alterations are proposed to the building. The private garden area is to be enclosed by close boarded fencing and the visual impact softened by soft landscaping.***

***The overall design and external appearance of the building and ancillary works are considered acceptable.***

#### Other Matters

- 6.24 Legal obligations for open space/play space or Essex Coast Recreational disturbance Avoidance and Mitigation is not a requirement in this instance as this application is for prior notification only.

## **7. Conclusion**

- 7.1 The proposal is considered to comply with all of the above criteria and it is therefore concluded that the change of use from A2 (cash office) to C3 (dwellinghouses) does not require Prior Approval.

## **8. Recommendation**

### **8.1 Conditions and Reasons**

1. Development under Class M must begin within a period of 3 years starting with the prior approval date.

### **8.2 Informatives**

#### Building Control Informative

Escape windows should be provided to the bedrooms. The door to the bathroom should open outwards.

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

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**10. Background Papers**

None.