



## PLANNING COMMITTEE

<b>DATE:</b>	<b>Tuesday, 24 September 2019</b>
<b>TIME:</b>	<b>6.00 pm</b>
<b>VENUE:</b>	<b>Council Chamber - Council Offices, Thorpe Road, Weeley, CO16 9AJ</b>

### MEMBERSHIP:

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

**Councillor Fowler**  
**Councillor Harris**  
**Councillor McWilliams**  
**Councillor Placey**

**Most Council meetings are open to the public and press.**

**Agendas and Minutes are published on the Council's website [www.tendringdc.gov.uk](http://www.tendringdc.gov.uk). Agendas are available to view five working days prior to the meeting date and the Council aims to publish Minutes within five working days of the meeting.**

**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 01255 686463**

DATE OF PUBLICATION: Tuesday, 17 September 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 - 12)**

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on 28 August 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 37**

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 - 19-00978-OUT - Land to the East of New Road, Mistley, CO11 2AL (Pages 13 - 38)**

Variation of condition 4 of application 17/00004/OUT (approved at appeal APP/P1560/W/17/3176089) to amend the approved layout.

### **6 A.2 - Planning Application - 19-00539-DETAIL - Land south of Long Road, and to the West of Clacton Road, Mistley, CO11 2HN (Pages 39 - 56)**

Reserved matters application pursuant to outline planning permission 17/01537/OUT for the creation of phase 2 - 204 dwellings and four commercial buildings, plus associated roads, driveways, parking, footpaths, landscaping and ancillary works.

### **7 A.3 - Planning Application- 19/00283/FUL - LAND EAST OF HALSTEAD ROAD KIRBY CROSS FRINTON ON SEA CO13 0LR (Pages 57 - 76)**

Development of 13 dwellings with Associated Landscaping and Infrastructure.

### **8 A.4 - Planning Application - 19-00738-FUL - Land rear of 1 & 2 The Paddocks, Windmill Road, Bradfield, CO11 2QR (Pages 77 - 92)**

Erection of 5no. detached bungalows.

**9** **A.5 - Planning Application - 19-00909-FUL - Mulberry, Harwich Road, Beaumont, CO16 0AU (Pages 93 - 110)**

Proposed replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT).

**10** **A.6 - Planning Application - 19-01157-FUL - Land Adjacent to Little Thatch Mill Lane Thorpe Le Soken, CO16 0ED (Pages 111 - 128)**

One dwelling.

**11** **A.7 - Planning Application - 19-01044-FUL - 108A Pier Avenue, Clacton on Sea, CO15 1NJ (Pages 129 - 134)**

Proposed outbuilding.

**12** **Report of the Head of Planning - Planning Committee Appeals Report (Pages 135 - 144)**

This report advises Members of the number of appeals that have been received and determined over the past 24 months and analyses the Councils performance in terms of decisions made by the Planning Inspectorate.

### **MEETING OVERRUN DATE**

**In the event that all business is not concluded, the meeting will reconvene on 25 September 2019 at 6.00 p.m. in the Council Chamber, Council Offices, Thorpe Road, Weeley to consider any remaining agenda items**

#### **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 Tuesday, 22 October 2019.*

## **Information for Visitors**

### **PUBLIC ATTENDANCE AT PLANNING COMMITTEE MEETINGS**

Welcome to this evening's meeting of Tendring District Council's Planning Committee. This is an open meeting which members of the public can attend to see Councillors debating and transacting the business of the Council. However, please be aware that, unless you have registered to speak under the Public Speaking Scheme, members of the public are not entitled to make any comment or take part in the meeting. You are also asked to behave in a respectful manner at all times during these meetings.

Members of the public do have the right to film or record Committee meetings subject to the provisions set out below:-

#### **Rights of members of the public to film and record meetings**

Under The Openness of Local Government Bodies Regulations 2014, any person is permitted to film or record any meeting of the Council, a Committee, Sub-Committee or the Cabinet, unless the public have been excluded from the meeting for the consideration of exempt or confidential business.

Members of the public also have the right to report meetings using social media (including blogging or tweeting). The Council will provide reasonable facilities to facilitate reporting.

#### **Public Behaviour**

Any person exercising the rights set out above must not disrupt proceedings. Examples of what will be regarded as disruptive, include, but are not limited to:

- (1) Moving outside the area designated for the public;
- (2) Making excessive noise;
- (3) Intrusive lighting/flash; or
- (4) Asking a Councillor to repeat a statement.

In addition, members of the public or the public gallery should **not** be filmed as this could infringe on an individual's right to privacy, if their prior permission has not been obtained.

Any person considered being disruptive or filming the public will be requested to cease doing so by the Chairman of the meeting and may be asked to leave the meeting. A refusal by the member of the public concerned will lead to the Police being called to intervene.

### **FIRE EVACUATION PROCEDURE**

There is no alarm test scheduled for this meeting.

In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

Please heed the instructions given by any member of staff and they will assist you in leaving the building and direct you to the assembly point.

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.

# Tendring District Council



## PLANNING COMMITTEE MEETINGS PUBLIC SPEAKING SCHEME May 2017

This Public Speaking Scheme is made pursuant to Council Procedure Rule 38 and gives the opportunity for a member of the public and other parties identified below to speak to Tendring District Council's Planning Committee when they are deciding a planning application.

### TO WHICH MEETINGS DOES THIS SCHEME APPLY?

Usually any public meeting of the Council's Planning Committee, which are normally held every 4 weeks in the Council Chamber at the Council Offices, Thorpe Road, Weeley CO16 9AJ beginning at 6.00 pm. In some instances, the Planning Committee may be held at the Town Hall, Station Road, Clacton-on-Sea CO15 1SE and the public are encouraged to check the venue on the Council's Website before attending.

### WHO CAN SPEAK & TIME PERMITTED? All speakers must be aged 18 or over:

1. One member of the public who wishes to comment on or to speak in favour of the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes is allowed;
2. One member of the public who wishes to comment on or speak against the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes is allowed;
3. Where the proposed development is in the area of a Parish or Town Council, one Parish or Town Council representative. A maximum of 3 minutes is allowed;
4. All District Councillors for the ward where the development is situated ("ward member") or (if the ward member is unable to attend the meeting) a District Councillor appointed in writing by the ward member. Member(s) of adjacent wards or wards impacted by the proposed development may also speak with the agreement of the Chairman. Permission for District Councillors to speak is subject to the Council's Code of Conduct and the declarations of interest provisions will apply. A maximum of 5 minutes is allowed;
5. In accordance, with Council Procedure Rule 34.1, this Public Speaking Scheme takes precedence and no other Member shall be entitled to address or speak to the Planning Committee under Rule 34.1;
6. The applicant, his agent or representative; or (where applicable) one person the subject of the potential enforcement action or directly affected by the potential confirmation of a tree preservation order, his agent or representative. A maximum of 3 minutes is allowed; and

7. A member of the Council's Cabinet may also be permitted to speak on any application but only if the proposed development has a direct impact on the portfolio for which the Cabinet member is responsible. The Leader of the Council must approve the Cabinet Member making representations to the Planning Committee. A maximum of 3 minutes is allowed.

Any one speaking as a Parish/Town Council representative maybe requested to produce written evidence of their authority to do so, by the District Council's Committee Services Officer (CSO). This evidence may be an official Minute, copy of standing orders (or equivalent) or a signed letter from the Clerk to the Parish/Town Council and must be shown to the DSO before the beginning of the Planning Committee meeting concerned.

No speaker, (with the exception of Ward Members, who are limited to 5 minutes) may speak for more than 3 minutes on any agenda items associated with applications (such as a planning application and an associated listed building consent application). Speakers may not be questioned at the meeting, nor can any public speaker question other speakers, Councillors or Officers. Speakers are not permitted to introduce any photograph, drawing or written material, including slide or other presentations, as part of their public speaking.

All Committee meetings of Tendring District Council are chaired by the Chairman or Vice-Chairman (in their absence) whose responsibility is to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community. The Chairman of the Planning Committee therefore, has authority to use their discretion when applying the Public Speaking Scheme to comply with this duty.

#### **WHICH MATTERS ARE COVERED BY THIS SCHEME?**

Applications for planning permission, reserved matters approval, listed building consent, conservation area consent, advertisement consent, hazardous substances consent, proposed or potential enforcement action and the proposed or potential confirmation of any tree preservation order, where these are the subject of public reports to the Planning Committee meeting.

#### **HOW CAN I FIND OUT WHEN A MATTER WILL BE CONSIDERED?**

In addition to the publication of agendas with written reports, the dates and times of the Planning Committee meetings are shown on the Council's website. It should be noted that some applications may be withdrawn by the applicant at short notice and others may be deferred because of new information or for procedural reasons. This means that deferral takes place shortly before or during the Planning Committee meeting and you will not be able to speak at that meeting, but will be able to do so at the meeting when the application is next considered by the Planning Committee.

#### **DO I HAVE TO ATTEND THE PLANNING COMMITTEE MEETING TO MAKE THE COMMITTEE AWARE OF MY VIEWS?**

No. If you have made written representations, their substance will be taken into account and the Committee report, which is available to all Planning Committee Councillors, will contain a summary of the representations received.

#### **HOW DO I ARRANGE TO SPEAK AT THE MEETING?**

You can:-

Telephone the Committee Services Officer ("CSO") (01255 686585) during normal working hours on any weekday after the reports and agenda have been published,

## **OR**

On the day of the Planning Committee meeting, you can arrive in the Council Chamber at least 15 minutes before the beginning of the meeting (meetings normally begin at 6.00pm) and speak to the DSO.

If more than one person wants to speak who is eligible under a particular category (e.g. a member of the public within the description set out in numbered paragraph 1 above), the right to speak under that category will be on a “first come, first served” basis.

Indicating to the Chairman at a site visit that you wish to speak on an item is NOT formal notification or registration to speak; this must be made via the Committee Services Officer in the manner set out above.

### **WHAT WILL HAPPEN WHEN THE MATTER CONCERNED IS CONSIDERED?**

- Planning Officer presents officer report
- Public speaking takes place in the order set out above under the heading “WHO CAN SPEAK?”
- Officer(s) may respond on factual issues arising from public speaking and may sum up the key policies and material planning considerations relevant to the application
- Committee Members may ask Officers relevant questions and may move, debate and vote

Normally, the Committee then determines the matter, but sometimes the Councillors decide to defer determination, to allow officers to seek further information about a particular planning issue. If a matter is deferred after the public speaking, the Committee will not hear public speaking for a second time, unless there has been a substantial change in the application which requires representations to be made. The Executive Summary section of the Planning Committee Report will identify whether public speaking is going to be permitted on an application being reconsidered after deferral. If there is an update since the Report was published, the Council’s website will confirm this information.

### **WHAT SHOULD I SAY AT THE MEETING?**

Please be straightforward and concise and try to keep your comments to planning matters which are directly relevant to the application or matter concerned. Planning matters may include things such as planning policy, previous decisions of the Council on the same site or in similar circumstances, design, appearance, layout, effects on amenity, overlooking, loss of light, overshadowing, loss of privacy, noise or smell nuisance, impact on trees, listed buildings or highway safety.

Matters such as the following are not relevant planning matters, namely the effect of the development on property value(s), loss of view, personality or motive of the applicant, covenants, private rights or easements and boundary or access disputes.

Please be courteous and do not make personal remarks. You may wish to come to the meeting with a written statement of exactly what you want to say or read out, having checked beforehand that it will not overrun the 3 minutes allowed.

### **WHO DO I CONTACT FOR MORE INFORMATION?**



The Council's website will help you and you can also contact the relevant planning Case Officer for the matter. The name of the Officer is on the acknowledgement of the application or in the correspondence we have sent you.

Tendring District Council, Planning Services, Council Offices, Thorpe Road, Weeley,  
CLACTON-ON-SEA, Essex CO16 9AJ Tel: 01255 686161 Fax: 01255 686417  
Email: [planningservices@tendringdc.gov.uk](mailto:planningservices@tendringdc.gov.uk) Web: [www.tendringdc.gov.uk](http://www.tendringdc.gov.uk)

It always helps to save time if you can quote the planning application reference number.

**Monitoring Officer  
Tendring District Council  
in consultation with Head of Planning and  
Chairman of the Planning Committee  
(Council Procedure Rule 38)  
May 2017**

This page is intentionally left blank

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON WEDNESDAY, 28TH AUGUST, 2019 AT 6.00 PM  
IN THE COUNCIL CHAMBER - COUNCIL OFFICES, THORPE ROAD, WEELEY,  
CO16 9AJ**

<b>Present:</b>	Councillors White (Chairman), Bray (Vice-Chairman), Alexander, Cawthron, Clifton, Codling, Fowler, Harris and McWilliams
<b>Also Present:</b>	Councillor Gary Scott and Councillor Ann Wiggins
<b>In Attendance:</b>	Cath Bicknell (Head of Planning), Lisa Hastings (Head of Governance and Legal Services), Graham Nourse (Planning Manager), Michael Pingram (Planning Officer), Charlotte Cooper (Committee Services Officer)

**34. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were received from Councillor Placey (with Councillor Clifton as her substitute).

**35. MINUTES OF THE LAST MEETING**

The minutes of the previous meetings of the Committee, held on 30 July 2019 and 12 August 2019, were approved as a correct record and signed by the Chairman.

**36. DECLARATIONS OF INTEREST**

Councillors Scott and Wiggins, present in the public gallery, declared that, with regards to Planning Application 18/00163/FUL Land to the West of Edwards Drive, Thorrington, CO7 8FE, they are the ward councillors for Thorrington.

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

There were none on this occasion.

**38. A.1 - PLANNING APPLICATION - 18-00163-FUL - LAND TO THE WEST OF EDWARDS DRIVE THORRINGTON, CO7 8FE**

Councillors Scott and Wiggins, present in the public gallery, had earlier declared that, with regards to Planning Application 18/00163/FUL Land to the West of Edwards Drive, Thorrington, CO7 8FE, they are the ward councillors for Thorrington.

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.

An update sheet was circulated to the Committee prior to the meeting with details of:

- (1) A further two letters of objection have been received, and the Officer response.
- (2) The bungalow positions set closest to Clover Drive are marginally closer than shown on the original layout. However Officers consider that the proposed back to back distances remain acceptable.

Tim Snow, 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 McWilliams and **RESOLVED** that the Head of Planning (or equivalent authorised officer) be authorised to grant 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 (as amended) dealing with the following matters:**
  - **Mechanisms to ensure restrictions on occupation for those over 60, and / or those with, or supporting someone with a disability**
  - **Affordable Housing – the provision of 1 on-site 'gifted' unit and a financial contribution of £300,000 towards the construction or acquisition of property for use as council housing equivalent to delivering the remainder of the 30% requirement.**
  - **Public Open Space – towards local open space and/or public tennis court enhancements.**
  - **Financial contribution towards RAMS**
- b) Subject to the conditions stated below
- 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.

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 number 812-200Q (Block Plan)
  - Drawing number 812-202B (Plot 1 Heather (2 bed bungalow))
  - Drawing number 812-203B (Plots 2 & 3 Heather – Link (2 bed bungalow))
  - Drawing number 812-204B (Plots 20 & 24 Lily (2 bed bungalow))

Drawing number 812-205B (Plots 5 & 6, 23 & 22 Camelia (2 bed semi))  
Drawing number 812-206B (Plot 12 Azalea (3 bed bungalow))  
Drawing number 812-207B (Plot 8 Hibiscus (3 bed bungalow))  
Drawing number 812-208B (Plots 9 & 17 Wisteria (3 bed bungalow))  
Drawing number 812-209B (Plots 28 & 29 Camelia (2 bed semi))  
Drawing number 812-210B (Plot 7 Jasmine (3 bed bungalow))  
Drawing number 812-211B (Plot 18 Jasmine (3 bed bungalow))  
Drawing number 812-212B (Plots 13 & 27 Camelia (2 bed bungalow))  
Drawing number 812-213B (Plot 19 Chamomile (2 bed bungalow))  
Drawing number 812-214B (Plot 16 Juniper (4 bed bungalow))  
Drawing number 812-215B (Plot 21 Orchid (3 bed bungalow))  
Drawing number 812-216B (Plot 10 Jasmine (3 bed bungalow))  
Drawing number 812-217A (Single Garage)  
Drawing number 812-218A (Double Garage)  
Drawing number 812-219B (Plots 4 & 11 Lily (2 bed bungalow))  
Drawing number 812-220A (Plots 14 & 15, 25 & 26 Jasmine (3 bed bungalow))

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

3. The development shall not be occupied until such time as car parking and turning area has been provided in accordance with approved drawing 812-200 G. 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.

4. The development hereby permitted shall be carried out in strict accordance with the Preliminary Ecological Appraisal Version 1.0 Dated 25 October 2018.

Reason – To preserve and enhance the biodiversity of the site.

5. No above ground works shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority, a scheme of hard and soft landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication “BS 5837:2012 Trees in relation to design, demolition and construction.” The scheme shall incorporate the recommendations set out within the accompanying Preliminary Ecological Appraisal and Protected Species Survey dated 5 January 2018.

Reason – In the interest of visual amenity, the design quality of the development and biodiversity gain.

6. All changes in ground levels, hard landscaping, planting, seeding or turfing which have been submitted to and approved, in writing, by the Local Planning Authority under condition 5 above, shall be carried out during the first planting and seeding season (October – March inclusive) following the commencement of the

development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason – in the interest of visual amenity, the design quality of the development and biodiversity gain.

7. No above ground level works shall take place until precise details of the provision, siting, design and materials of all screen walls and fences have been submitted to and approved in writing by the Local Planning Authority. The approved screen fences shall be erected prior to the occupation of the development and thereafter be retained in the approved form unless otherwise agreed in writing by the Local Planning Authority. the scheme shall incorporate the recommendations set out within the accompanying Preliminary Ecological Appraisal and Protected Species Survey dated 5 January 2018.

Reason – To ensure that the development is appropriate within its setting in the interests of visual amenity and biodiversity gain.

8. Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no provision of fences, walls or means of other enclosures erected forward of the dwellings.

Reason – In the interests of visual amenity and the design quality of the development.

9. Prior to any above ground works, an ecological mitigation and enhancement scheme in line with the recommendations set out within the accompanying Preliminary Ecological Appraisal and Protected Species Survey dated 5 January 2018 shall be submitted to and approved in writing by the Local Planning Authority. The scheme, which shall include a timetable for its implementation, shall be implemented in accordance with the approved works prior to the occupation of the hereby approved development unless otherwise agreed in writing by the Local Planning Authority.

Reason – To preserve and enhance the biodiversity of the site.

10. No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the Local Planning Authority prior to the occupation/use of the site. Any external lighting that is installed shall accord with the details so approved.

Reason – To ensure lighting is sensitively designed and minimises light spillage in order to preserve and enhance the biodiversity of the site.

11. The removal of any vegetation for site access/site clearance shall only be carried out outside of the bird nesting season (March to August inclusive)

Reason – To ensure the protection of birds potentially nesting on site.

12. No development shall take place before a Demolition/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 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, the erection and maintenance of security hoarding, and a scheme for recycling/disposing of waste resulting from construction.

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.

13. 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.

14. No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme should include but not be limited to:

- If following further infiltration testing this is found to be unviable, discharge rates should be limited to the 1 in 1 year greenfield rate for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
- Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;
- Final modelling and calculations for all areas of the drainage system;
- The appropriate level treatment for all run-off leaving the site, in line with the CIRIA SuDS Manual C753;
- Detailed engineering drawings of each component of the drainage scheme;
- A final drainage plan which details exceedance and conveyance routes, finished floor levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation.

Reason – to prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site; to ensure the effective operation of SuDS features over the lifetime of the development; to provide mitigation of any environmental harm which may be caused to the local water environment; and failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

15. No works shall take place until a scheme to minimise the risk of off-site 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.

16. 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.

17. No works 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. should any part be maintainable by a maintenance company, details of the long-term funding arrangements should be provided.

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

18. 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.

19. Prior to any above ground works details of all refuse/recycling storage and collection points required to serve the 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.

20. 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.

21. 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.

22. 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.

23. Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A, B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwellings shall be erected or carried out except in accordance with drawings showing the siting and design of such enlargement, improvement or other alteration which shall previously have been submitted to and approved, in writing by the Local Planning Authority.

Reason – Given the specialist nature of the dwellings and having regard to the size of the approved plots.

## Informatives

### Positive and Proactive Statement

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

### Highways Specific

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.manangement@essexhighways.org](mailto:development.manangement@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 developers 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.

The applicant should be advised to contact the Essex County Council travel plan team on [travelplanteam@essex.gov.uk](mailto:travelplanteam@essex.gov.uk) to make the necessary arrangements for the provision of the Residential Travel Information Packs.

Essex County Council has a duty to maintain a register and record of assets which have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to [suds@essex.gov.uk](mailto:suds@essex.gov.uk)

Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.

Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in the attached standing advice note.

It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.

As 'Secured by Design' is referenced within the Design & Access Statement, Essex Police is able to support the applicant to achieve appropriate consideration of the requirements and is invited to contact Essex Police via [designingoutcrime@essex.pnn.police.uk](mailto:designingoutcrime@essex.pnn.police.uk)

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:

- Restrictions on Occupation
- Affordable Housing
- Public Open Space
- RAMS

#### **4. Additional Considerations**

##### Public Sector Equality Duty (PSED)

- 4.1 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:
- 4.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 4.3 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
- 4.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 4.5 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.
- 4.6 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.

- 4.7 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

- 4.8 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.
- 4.9 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).
- 4.10 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

- 4.11 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.
- 4.12 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.

**5. Background Papers**

None.

**39. A.2 - PLANNING APPLICATION - 19/00685/FUL - LAND AT HARWICH ROAD, WIX, CO11 2SA**

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

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

An update sheet was circulated to the Committee prior to the meeting with details of:

- (1) Removal of call in by Councillor Bush
- (2) Additional letter of objection received and the Officers response.

Steve Harmer, the applicant, spoke in support of the application.

Following discussion by the Committee, it was moved by Councillor Bray, seconded by Councillor Harris 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 reasons:-

- (1) Overdevelopment
- (2) Loss of Privacy

The meeting was declared closed at 7.15 pm

**Chairman**

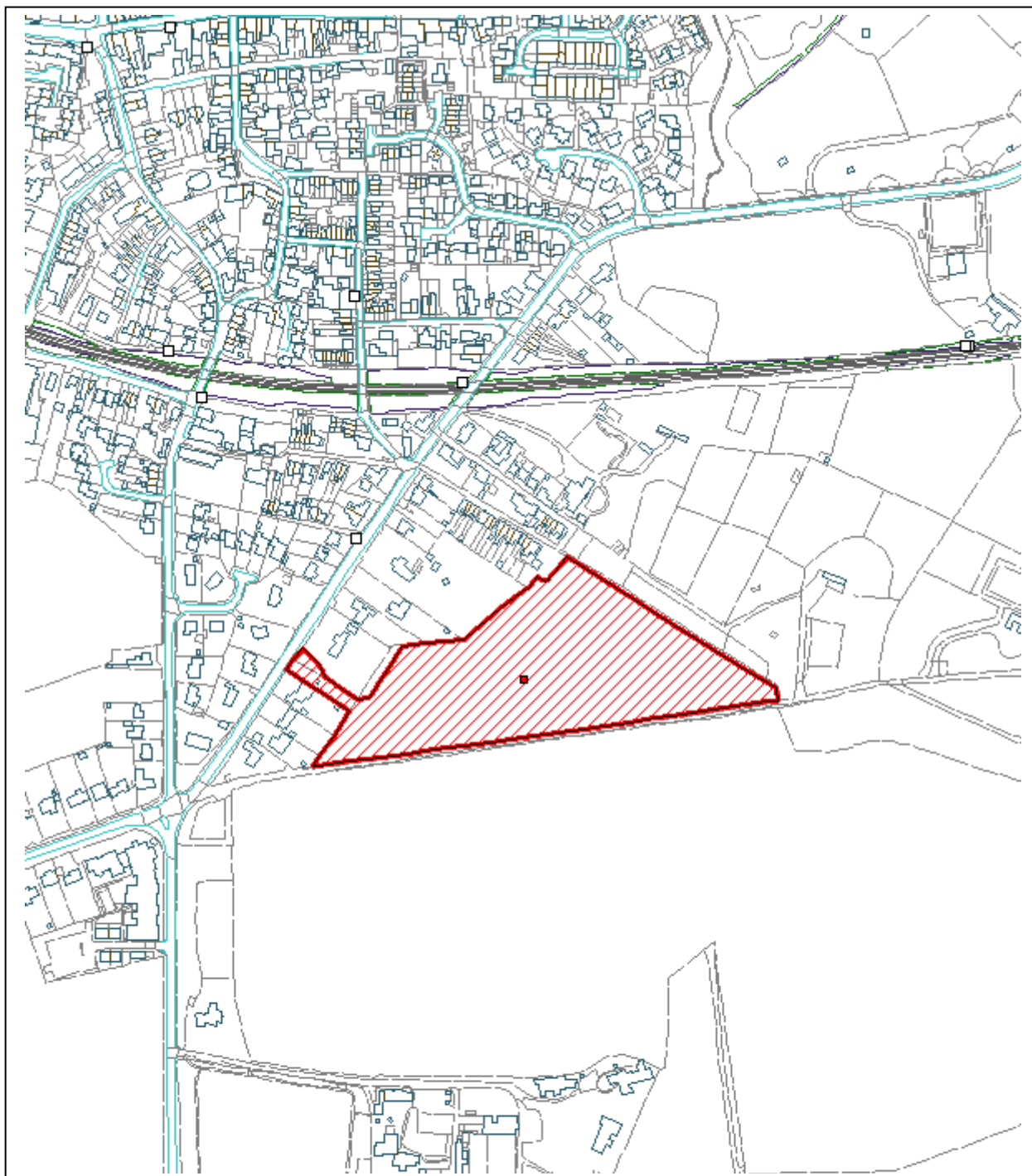
This page is intentionally left blank

## PLANNING COMMITTEE

24 SEPTEMBER 2019

## REPORT OF THE HEAD OF PLANNING

### **A.1 PLANNING APPLICATION – 19/00978/OUT – LAND TO THE EAST OF NEW ROAD MISTLEY CO11 2AL**



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

**Application:** 19/00978/OUT

**Town / Parish:** Mistley Parish Council

**Applicant:** CALA Homes (North Home Counties)

**Address:** Land to The East of New Road Mistley Essex CO11 2AL

**Development:** Variation of condition 4 of application 17/00004/OUT (approved at appeal APP/P1560/W/17/3176089) to amend the approved layout.

## 1. Executive Summary

- 1.1 The application site comprises a triangular area of open land situated on the east side of New Road behind the frontage properties and including an undeveloped plot of land through the frontage housing which provides the access into the proposed development from New Road. The site extends to 2.93 hectares in size and is situated within the Mistley Conservation Area.
- 1.2 Outline planning permission was allowed at appeal on 19 February 2018 for the 'erection of 67 dwellings together with the formation of an access'. The principle of housing development on the site is therefore established. Only access and layout were approved at appeal stage.
- 1.3 A S73 planning application reference: 18/01767/OUT was submitted on 19 October 2018 to amend the layout to provide wider roads, to improve emergency access and to incorporate a mix of housing types including detached dwellings, semi-detached properties and apartments.
- 1.4 That planning application was refused by members of the planning committee in April 2019 due to the encroachment of the built form along the southern and north-eastern boundaries of the site combined with the loss of buffering green space and the absence of an updated legal agreement to secure affordable housing, education contributions and a RAMS payment.
- 1.5 This re-submitted S73 application seeks to vary Condition 4 attached to the aforementioned outline planning permission to amend the approved layout whilst addressing the grounds of refusal outlined above.
- 1.6 Officers consider the revisions represent an improved layout over the scheme approved previously on appeal which will enable emergency and servicing vehicles to adequately access and manoeuvre across the site, whilst proposing a more spacious appearing development allowing for better spacing between properties and larger private gardens for future residents.
- 1.7 The revised layout incorporating the additional set back of the buildings fronting Green Lane and the footpath along the north-eastern boundary of the site is, on balance, sufficient to overcome the previous reason for refusal and along with the retention and strengthening of the boundary vegetation would safeguard the semi-rural character of Green Lane and the footpath.
- 1.8 Subject to the applicant entering into a deed of variation to update the existing Section 106 agreement to cover the provision of affordable housing and education/RAMS contributions, the proposal is considered to be acceptable with no material harm to visual or residential amenity, heritage assets, or highway safety, and the application is therefore recommended for approval.



**Recommendation:**

That the Head of Planning be authorised to grant 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 (where relevant):**
  - **Financial Contribution towards RAMS**
  - **Affordable Housing Provision:**
  - **Education contribution**
- 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 Policy:**

The National Planning Policy Framework  
National Planning Policy Guidance

**Local Policy:****Tendring District Local Plan 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 and Compatibility of Uses  
QL12 Planning Obligations  
HG1 Housing Provision  
HG3A Mixed Communities  
HG4 Affordable Housing in New Developments  
HG6 Dwelling Size and Type  
HG7 Residential Densities  
HG9 Private Amenity Space  
COM2 Community Safety  
COM6 Provision of Recreational Open Space for New Residential Development  
COM21 Light Pollution  
COM23 General Pollution  
COM24 Health Care Provision  
COM26 Contributions to Education Provision  
COM29 Utilities

COM30 Electricity Supply  
COM31A Sewerage and Sewage Disposal  
EN1 Landscape Character  
EN2 Local Green Gaps  
EN3 Coastal Protection Belt  
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  
EN17 Conservation 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  
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)**

SPL1 Managing Growth  
SPL2 Settlement Development Boundaries  
SPL3 Sustainable Design  
HP2 Community Facilities  
HP3 Green Infrastructure  
HP4 Safeguarded Local Greenspace  
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  
PPL1 Development and Flood Risk  
PPL3 The Rural Landscape  
PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
PPL7 Archaeology  
PPL8 Conservation Areas  
PPL9 Listed Buildings  
CP1 Sustainable Transport and Accessibility  
CP3 Improving the Telecommunications Network

### **Local Planning Guidance**

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

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

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.

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.

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.

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

17/00004/OUT	Erection of 67 dwellings together with formation of access.	Refused <b>(Allowed on Appeal)</b>	07.04.2017
18/01767/OUT	Variation of Condition 4 approved plans 0964-F01 rev D, and 1628 URB XX XX GA 90 001 Rev H) of APP/P1560/W/17/3176089, to provide a re-worked layout to	Refused	12.04.2019

provide wider roads to improve emergency access and to incorporate a mix of housing types including detached dwellings, semi-detached properties and apartments.

19/00978/OUT	Variation of condition 4 of application 17/00004/OUT (approved at appeal APP/P1560/W/17/3176089) to amend the approved layout.	Current
19/01043/DISCON	Discharge of condition 16 (Bus Stop Upgrades) of application 17/00004/OUT (Approved on appeal APP/P1560/W/17/3176089).	Current
19/01068/DETAIL	Reserved matters application pursuant to conditions 1 and 5 of outline planning permission 17/00004/OUT (approved on appeal APP/P1560/W/17/3176089).	Current

#### 4. Consultations

ECC SuDS Consultee

As the application only relates to the variation of a condition that does not relate to SUDS, I am happy for the objection to be removed on the basis that this application is subject to the previously set drainage conditions.

ECC Highways Dept

RE: PRP DRAWING NUMBERED AA7718-2040 - 01

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

1 All carriageways should be provided at 5.5m between kerbed footways or 6.0m where vehicular access is taken but without kerbing.

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

2 All footways should be provided at no less than 2.0m in width.

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

3 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.

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

4 All off street car parking shall be provided in precise accord with the details contained within the current Parking Standards being provided within the site which shall be maintained free from obstruction and retained thereafter.

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

5 Any garage provided with its vehicular door facing the highway or proposed highway, shall be sited a minimum of 6m from the highway boundary.

Reason: To ensure that the vehicle to be garaged may be left standing clear of the highway whilst the garage door is opened and closed, in the interests of highway safety.

6 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.

7 Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of Residential Travel Information Packs for sustainable transport sufficient for the occupants of each dwelling, approved by the Local Planning Authority.

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

8 Prior to first occupation of the proposed apartment blocks, communal recycling/bin/refuse collection points shall be provided within 15m of the

carriageways or adjacent to the carriageways and additionally clear of all visibility splays at accesses and retained thereafter.

Reason: To minimise the length of time a refuse vehicle is required to wait within and cause obstruction of the highway, in the interests of highway safety.

9 Prior to the occupation of the proposed dwellings details of the provision for the storage of bicycles sufficient for all occupants of that dwelling of a design that shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport.

Anglian Water Services Ltd	No comments received
Essex Wildlife Trust	No comments received
Essex Bridleways Association	No comments received
Essex County Council Archaeology	The advice provided follows that given in response to the original application 17/00004/OUT.

The EHER records a number of cropmark features in the surrounding area that would indicate a high probability of surviving archaeological remains being present within the development site. These include ring ditches and enclosures which may be prehistoric in origin. To the south aerial photographic evidence indicates the route of a Roman road which ran to Colchester. In the late 1800's the land formed part of the parkland for Mistley Hall, prior to this the Heritage Statement indicates that it was in agricultural use bordering the settlement at Mistley, which is Medieval in origin. The site lies within the Conservation Area which includes the historic settlement and historic house and parkland at Mistley and there is potential for archaeological remains relating to the settlement to survive.

The following recommendations are made in line with the Department for Communities and Local Government National Planning Policy Framework:

**RECOMMENDATION:** A Programme of Archaeological evaluation

1. No development or preliminary ground-works can commence until a programme of archaeological evaluation has been secured and undertaken in

accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved by the planning authority. Following the completion of this initial phase of archaeological work, a summary report will be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ, shall be submitted to the local planning authority.

2. No development or preliminary groundwork can commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the mitigation strategy, which has been signed off by the local planning authority.

3. Following completion of the archaeological fieldwork, the applicant will submit to the local planning authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the planning authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

## **5. Representations**

5.1 Mistley Parish Council noted that there would appear to be insufficient infrastructure in place, especially the location of the nearest bus stop which is quite remote from the proposed development. The Parish Council consider that there is insufficient information available for it to make an informed comparison and recommendation to the LPA. Further detail is requested, including the location and position of affordable housing which is not clear in the detail received.

5.2 Cllr Coley has called in the planning application for the following reasons;

- This is yet another application to change the layout of this site, after a Planning Inspector has determined the layout when granting the previous appeal.
- It is acknowledged that some minor improvements have been incorporated into this plan, in comparison to the previous amendment application. However, there are still serious flaws contained in this latest iteration.
- The application includes a significant reduction in open space. Therefore, there would be further negative impact on the rural nature of this location which is firmly in the conservation area.
- The scheme still contains several flats which are out of keeping in the locality. The parish of Mistley has no need for further flats. It is currently overserved with this type of dwelling.
- Some of the properties have reduced front gardens, further urbanising the nature of this development.

- The layout results in an overcrowded nature with minimal distances between homes, reducing the light and privacy levels between these dwellings. This is out of character and falls short of minimum standards.

5.3 10 letters of objection have been received. The main areas of concern highlighted by objectors are as follows;

- Similar to previous refusal as development would dominate views from the footpath.
- Proposed changes are focussed more on profit than care for the local area.
- Over development and ruining of a local beauty spot.
- Substitution of terraced properties for larger houses.
- Pedestrian access onto footpath to NE would harm safety of existing residents.
- Adverse impact upon light received, overlooking and increase noise from development.
- Lack of detail provided showing lighting scheme and proposed planting.
- Erosion of natural buffer to Green Lane which hampers the ability of any landscape scheme to mitigate the effects.
- Substantial loss in open space compared to scheme allowed on appeal.
- Bolder, more continuous views of built form from Green Lane.
- Incursion into RPA of Sycamore Tree from proposed road and conflict between canopy of tree and vehicles using the road.
- Frontage parking to apartments is unattractive.
- Reduction in open space from previous appeal.
- New dwellings would result in more strain on local infrastructure.
- Reason for revisions, including access for emergency vehicles, should have been properly considered at appeal stage.
- Revisions represent an encroachment towards Green Lane and the footpath to the north-east of the site. Significant narrowing of the green buffer in both locations.
- Against the principle of developing the land for residential purposes.
- The encroachment towards Green Lane and the footpath to the NE will visually dominate and destroy the current rural feel in this conservation area.
- Layout and apartments are out of character with the conservation area setting.
- Adverse impacts on wildlife.
- Larger detached homes proposed which will have an additional impact on the setting.
- Some of the private garden sizes are below the required threshold.
- Size of front gardens has been eroded to allow for larger homes.
- Sub-standard back to back distances between proposed dwellings.
- Lack of parking provision.
- Flood risk assessment is out of date and drainage matters should be resolved prior to determination.

## 6. **Assessment**

### Site Context

- 6.1 The application site comprises a triangular area of open land situated on the east side of New Road behind the frontage properties and including an undeveloped plot of land through the frontage housing which provides the access into the proposed development from New Road. The site extends to 2.93 hectares in size and is situated within the Mistley Conservation Area.
- 6.2 There is residential development to the north and west of the site, which is divided from the wider countryside to the south by an access road/public footpath, Green Lane. To the north east is an area of grassland and wooded areas, comprised of the gardens associated with private dwellings and recreational areas, beyond which is the line of the railway.



- 6.3 The site is bounded by a hedge with small trees along the boundary with Green Lane, and by a hedge with large trees and groups of trees which border a pathway along the northeast boundary. To the northwest, the boundary is formed by the rear boundaries of the houses along New Road, with a mixture of timber fences, hedges and trees.
- 6.4 There are several heritage assets, or groups of heritage assets in the vicinity. The Lodge, listed grade II, is located at the corner of New Road and Green Lane, in a garden of a residence, with one wall facing directly onto Green Lane and there are three grade II listed houses along New Road, 100 metres from the site. There are also three listed structures to the south of the proposal site, accessed off Clacton Road all listed grade II: Mistle Hall, Walled Garden and Gardener's Shed. To the east of the site are Old Hall and Garden Wall which are also grade II listed structures. Further to the south-east off Green Lane is Diary Cottage which contains a cluster of listed buildings.

#### Proposal/Planning History

- 6.5 Outline planning permission reference 17/00051/REFUSE was allowed at appeal on 19 February 2019 for the 'erection of 67 dwellings together with formation of access'.
- 6.6 In determining the appeal, the Planning Inspector attached Condition 4 to the appeal decision which states:
- 'The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan: Drawing No. 0964-F01 rev D - Access Plan and Drawing No. 1628 URB XX XX GA 90 001 Rev H – Site Layout.'***
- 6.7 A S73 planning application reference: 18/01767/OUT was submitted on 19 October 2018 for the 'Variation of Condition 4 approved plans 0964-F01 rev D, and 1628 URB XX XX GA 90 001 Rev H) of APP/P1560/W/17/3176089, to provide a re-worked layout to provide wider roads to improve emergency access and to incorporate a mix of housing types including detached dwellings, semi-detached properties and apartments'.
- 6.8 That planning application was refused by members of the planning committee in April 2019 on three grounds, these being;
- The encroachment of the built form along the southern and north-eastern boundaries of the site combined with the loss of buffering green space was considered to have a detrimental impact upon the character of the locality and the wider conservation area setting.
  - A completed Section 106 to secure the above-mentioned planning obligation was not provided prior to the application determination date.
  - A proportionate financial contribution was not secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements.
- 6.9 This re-submitted S73 application seeks to vary Condition 4 attached to the aforementioned outline planning permission to amend the approved layout whilst addressing the grounds of refusal outlined above. As with the previous application the supporting documents state that it has become necessary to amend the approved layout to improve the proposed road network, thereby allowing sufficient access to the site for all emergency vehicles and servicing vehicles and to alter the housing types to include detached dwellings, semi-detached properties and apartments.

#### Revised Layout

- 6.10 The layout previously approved at appeal stage showed the majority of the development being formed of terrace blocks of dwellings with properties set in close proximity to the carriageways. The easternmost housing blocks were to be arranged around central parking courts with the properties facing outwards. A large number of the properties were indicated to have private amenity spaces below the required policy standard and aside from the access into the site the development was to comprise of shared surface style access roads. At the southern end of the site a landscape buffer to Green Lane was proposed measuring a minimum of 12m at its narrowest point. A drainage attenuation area was to be located in the south-eastern corner of the land.
- 6.11 The revised layout shows the provision of wider carriageways served partly by footways and a variety of detached, semi-terraced and apartment style properties. The parking courts have been removed and replaced by on-plot parking provided via open parking bays, under-crofts and garages.
- 6.12 The majority of the dwellings are now served by sufficient private amenity space provision to accord with policy requirements and the spacing between properties has been improved which will enhance future resident's privacy levels and outlook. The layout approved at appeal stage demonstrated that a large number of the dwellings would be served by small undersized gardens and the back to back distances between properties in some places fell as low 10m. The revised layout improves the back to back distances between the proposed properties by increasing the spacing to between 20m-24m. This is considered to represent a significant improvement over the layout approved at appeal stage.
- 6.13 The specific changes to the layout proposed in this resubmitted S73 application address the concerns raised by the planning committee regarding the reduction in open space along the southern and north-eastern boundaries of the site. This has been improved by amending the position of Plots 1 and 2 in the south-western corner of the site and rationalising the car parking layout in the northern corner of the site. The setbacks of the units fronting Green Lane have been improved to allow for as wide a buffer strip as possible. This will minimise any feeling of encroachment that may arise from the development.
- 6.14 In particular the revised plans show that at the south-western end of the development the revised layout of plots 1 and 2 has resulted in the properties being sited 15.2m from the edge of Green Lane whereas the refused scheme showed a smaller gap of 9.4m being retained. Further to the east the properties have been set back 1.2m further from Green Lane than shown on the refused scheme and in respect of the apartments in the north-eastern corner of the site these have been set back 6.7m from the edge of the footpath which represents an additional set back of 4m from the refused layout.
- 6.15 It is considered that the revised width of the open space on the southern and north-eastern boundaries of the site represent an improvement from the reduction proposed in the refused S73 application reference: 18/01767/OUT and addresses the reason for refusal previously outlined.
- 6.16 At appeal stage the inspector stated the following in respect of the visual impact of the development;

*As to visual impact, the greatest effect would be experienced in the direct, albeit, limited views from Green Lane and the public footpath on the north-eastern boundary. However, given the density and maturity of the boundary hedges, the opportunities to retain and reinforce these boundaries and the proposed setback from the southern boundary, the minor to moderate adverse effect in terms of visual impact would be mitigated.*

The latest revision to the layout broadly follows the set-back distances from Green Lane achieved within the scheme approved at appeal and in fact represents an improvement along the north-eastern boundary due to the inclusion of a wider space to the footpath. As such the findings of the inspector remain pertinent as it is considered the proposed changes to the layout along with the implementation of a robust landscaping scheme adequately mitigates against the impacts identified.

- 6.17 The eastern end of the development contains higher density development including the provision of apartment style properties which will front onto a footpath leading from The Path south-easterly towards Green Lane. The apartments comprise of two blocks separated by a landscaped parking area. Each block is proposed to contain 6 units and the indicative drawings provided show that the buildings are intended to be of a style commensurate with the terraced form of dwellings on The Park to the north-west with dark timber clad gables, plain tiled roofs and red brick linked elements. The plans show that the apartments are intended to be of a form, scale and materiality that relates appropriately to the character and appearance of this section of the conservation area. The green gap to the footpath running to the north-east is comparable with the size shown within the previously approved scheme. The retention of the mature hedgerow present on the shared boundary ensures that views of the development from the adjacent footpath would be limited and not represent a greater impact than the currently approved layout.
- 6.18 The increased size of the communal spaces around the apartment buildings along with the proximity of the large area of on-site public open space are sufficient to meet the amenity requirements of future residents of these units. Furthermore, Saved policy COM6 of the adopted Local Plan and the emerging District Local Plan requires at least 10% of gross area of the site to remain as open space provision. The provision of open space within the site comprises 0.81ha within an overall site area of 2.93ha. This equates to 27.6% of the site being open space and therefore the open space provision is comfortably in accordance with Saved policy COM6.
- 6.19 Overall the proposed changes to the layout result in a more open appearing development that would suitably complement the existing character and pattern of development in the vicinity. The higher density development at the eastern end of the site relates appropriately to the terraced form of properties on The Park to the north-west and the detached larger properties towards the western element of the site are more in keeping with the lower density character of New Road. The removal of the parking courts and their replacement with on-plot parking is considered to represent an improvement and the relationship between the dwellings has improved which will result in better privacy levels for future residents and larger private garden areas. The parking areas serving the apartments are to be suitably softened by planting and with the use of sympathetic surface materials, which can be secured at reserved matters stage, the visual impact can be adequately mitigated.
- 6.20 The revised layout incorporating the additional set back of the buildings fronting Green Lane and the footpath along the north-eastern boundary of the site is, on balance, sufficient to overcome the previous reason for refusal and along with the retention and strengthening of the boundary vegetation would safeguard the semi-rural character of Green Lane and the footpath.

#### Landscape Impacts/Tree Considerations

- 6.21 As the principle of development has been approved by the successful appeal against the Council's decision to refuse to grant planning permission the main issue to consider in terms of tree protection and impact on the local landscape character is whether or not the proposed amended layout is likely to increase the harm that would be caused to the countryside by the development of the land in accordance with the consented scheme.

- 6.22 As with the consented scheme, there would be a change in the local landscape character of the site, as a result of the change in use from a grazed field to residential development.
- 6.23 The changes to the approved layout show that the proposed layout will not significantly alter the impact of the already consented development on the local landscape character. The separation distance on the southern and eastern boundaries is broadly in line with the approved layout with the exception of a single property positioned at the north eastern edge of the development. However, as this property is proposed to have a significant setback of approximately 45m from Green Lane with an intervening landscaped area, its prominence in views from Green Lane would be minimal. The amended layout would also have the benefit of increasing the separation between the built development and the Public Right of Way to the north of the application site.
- 6.24 Whilst a detailed landscaping scheme will be provided at detail stage the submitted landscape strategy confirms that the following principles will be applied;
- Management of the existing species rich hedgerow along the north-eastern boundary of the site with opportunities to infill gaps along the hedgerow with appropriate native species planting.
  - Lime trees or similar to be planted in the south-eastern corner of the site that would supplement and create continuity with the existing partial lime avenue along Green Lane.
  - Public open space within the south-eastern corner of the site, to include a play equipment and seating.
  - A new native species hedgerow along the southern edge of the housing, including small trees planted within the hedgerow where appropriate.
- 6.25 In respect of the impact of the development upon trees there are several small trees in the gardens of the properties in New Road; some of which would need to be removed in order to facilitate the development proposal. The field has strong boundary hedgerows and a single Sycamore close to the southern boundary.
- 6.26 In order to show the impact of the trees on the application site the applicant has provided an Arboricultural Implications Assessment (AIA) as part of a detailed Tree Survey and Report. The information is in accordance with BS5837 2012 Trees in relation to designs, demolition and construction: Recommendations.
- 6.27 The report shows the extent of the constraint that the trees are on the development potential of the land. It identifies trees that would need to be removed in order to facilitate the development. None of the trees identified for removal make such a contribution to the appearance of the conservation area that they merit formal legal protection by means of a Tree Preservation Order (TPO). The amenity value provided by the young Oak in the position of the proposed new access to the highway could be relatively easily replicated by new planting.
- 6.28 A representation has been received in respect of the impact of the revised development upon a mature Sycamore present on the southern boundary of the plot. The tree is in fair condition and makes a positive contribution to the appearance of the area. It has a reasonably well formed crown although it has over-extended branches on both its northern and southern aspects.
- 6.29 With regard to the proposed groundworks the construction of the proposed highway within the Root Protection Area (RPA) has the potential to cause harm to the tree however taking into account the tree species and the known tolerance of Sycamores to root pruning the proposed, a relatively minor incursion into the RPA will not cause significant harm or long term damage to tree.

6.30 In terms of the above ground elements of the tree it would benefit from pruning works to re-shape and balance the crown to reduce load bearing stresses on the above-mentioned over-extended branches oriented to the north and south. A reduction in the region of 30% would reduce the likelihood of complete branch failure and increase the safe useful life expectancy of the tree. The removal of three or four sub-lateral branches on the northern aspect of the tree would provide adequate clearance over the highway without compromising the health, appearance or long term viability of the tree.

6.31 The development proposal makes provision for the retention of the tree and identifies steps to be taken to mitigate the harm caused by compaction of the ground close to the main stem caused by cattle gathering in this location. It is considered that the proposed development will not cause harm to, or compromise the health or viability of, the tree.

6.32 Consequently, the development proposal does not threaten the viability of the best trees on the land.

#### Highway Safety/Parking

6.33 Paragraph 108 of the NPPF (2019) requires Councils to, when making decisions, take account of whether;

- a. appropriate opportunities to promote sustainable transport modes can be, or have been, taken up, given the type of development and its location;
- b. safe and suitable access to the site can be achieved for all users; and
- c. any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

6.34 Saved Policy QL10 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.

6.35 The current application represents a variation to an outline scheme where the access into the site formed part of the application to be considered. The access remains unchanged and is therefore still proposed via a new opening located between 8 and 10 New Road. As a consequence the Highway Authority is satisfied that there is existing highway capacity to serve the proposed scheme and have not raised an objection subject to the inclusion of the conditions outlined in the Officer's recommendation above. Several of the conditions required by the Highway Authority are reflected on the submitted layout plan. All other conditions included by the planning inspector are re-instated.

6.36 The submitted layout plan shows that ample parking provision will be provided on site through driveway parking for the dwellings (some in excess of 2 spaces) and parking areas for the apartments. Visitor's parking is provided at certain points throughout the development and will also be absorbed by the longer driveways serving the larger dwellings.

#### Heritage

6.37 The Mistley Conservation Area Review (2006) identifies Green Lane as an entrance into the parkland associated with the former Mistley Hall which retains one surviving Adam gate lodge at the New Road junction. Reference is made to fine views over open countryside to the south, with more limited views to the north because of the mature hedge and specimen trees.

- 6.38 Within the appeal decision the planning inspector concluded that the application site, given its enclosed and discrete nature and the fact that it does not form part of or inform the significant views of the designed parkland indicated, does not contribute to the historical significance of Green Lane as a key access to the former Mistley Hall. Consequently, the planning inspector agreed that the site does not contribute to the aesthetic or historical significance of the Mistley Conservation Area and as such development on this site would preserve the character and appearance of the conservation area as a whole.
- 6.39 The proposal site does not contribute to the setting of the listed buildings in the vicinity. The proposal site is physically separated from each of the listed structures, and there is only a low level of intervisibility from some distance, over hedges and through some trees, with the side elevation of Mistley Hall. Due to topography, hedges, trees, woodland and intervening structures, the proposal site does not contribute to the experience of any of these listed structures.
- 6.40 The updated site layout does not alter the conclusions of the planning inspector, that the location, siting, form and appearance of the proposed development will have a neutral impact on the setting of the sixteen heritage assets near the proposed development site. Furthermore, it is considered that the revised layout reflects densities in the wider area and the proposed development will preserve the conservation area setting by making a positive contribution to local character and distinctiveness.

#### Ecology

- 6.41 An updated Phase 1 survey has been provided which confirms that the habitats on site and potential for protected species has not changed significantly since the previous survey dated November 2016. Consequently, the recommendations of the previous report remain pertinent, these being;
- Lighting should be considered at the site to ensure that dark corridors are created or maintained at the site to ensure that commuting and foraging routes are maintained.
  - 20 bat roosting features should be created at the site.
  - Any vegetation clearance at the site should be undertaken outside of breeding bird season (March – August inclusive).
  - 30 bird boxes are installed at the site.
  - Sward height within the improved grassland field should be maintained at a low level until the commencement of site clearance and construction activities.
  - The open space created within the proposal should include some areas of rough grassland as to improve the areas for reptiles in the future.
  - Creation of wildflower meadows and a pond will enhance the site for invertebrates.

These recommendations will be secured via conditions.

- 6.42 Legal advice has been sought to confirm that Tendring District Council should now seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment (HRA) has been carried out to confirm that the mitigation will be the RAMS 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. The recommendation seeks to secure this within six months of a committee resolution to approve, otherwise planning permission would be refused in its absence on the grounds that there is no certainty that the development would not adversely affect the integrity of Habitats sites. Natural England has been consulted and confirms that they have no further comments on the matter.

- 6.43 Notwithstanding this point, the creation of a large area of open space in the south of the site will provide recreational space for dog walkers who are more likely to use the onsite open space than the SPA for regular dog walks.

#### Impact on Residential Amenity

- 6.44 The NPPF (2019) at paragraph 127 states that planning should secure developments with a high standard of amenity for existing and future users. Saved 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.
- 6.45 The proposed layout has been carefully considered and although Officers note the concerns raised by residents living in close proximity to the site, the revised layout will retain sufficient spacing to existing properties to the west on New Road and to the north on The Park not to cause any adverse impacts in respect of loss of light, outlook or privacy. The closest point between the rear of the proposed properties and the rear of those existing properties on New Road is 30m which comfortably accords with the recommended distances outlined in the Essex Design Guide.
- 6.46 At detail stage the appearance and position of fenestration will be considered but it is clear from the submitted layout plan that this can be achieved without having adverse impacts on existing and future amenity.

#### Drainage

- 6.47 The absence of an adequate surface water drainage scheme formed one of the reasons for refusal on the original outline application. However, during the appeal process a suitable scheme was provided through discussions with ECC-SuDs. The planning inspector then included a condition on the appeal decision to secure this scheme.
- 6.48 The scheme submitted shows that surface water run-off from the proposed development will be discharged via infiltration. The majority of run-off will be conveyed to dedicated SuDS features in the eastern corner of the site, including an infiltration basin (which will also provide water quality, amenity and biodiversity benefits) and an underground soakaway
- 6.49 ECC-SUDs have confirmed no objections to this application and a condition securing the scheme is included within the recommendation.

#### Legal Obligations

- 6.50 As this application seeks to vary the outline permission granted on appeal it follows that the legal agreement secured at appeal stage will need to be the subject of a deed of variation to refer to the details of the new planning permission. Consequently, a deed of variation has been prepared by the applicant that stipulates the following obligations, namely;
- 30% affordable housing provision (siting and tenure to be confirmed at DETAIL stage);
  - RAMS Contribution; and
  - Education contributions.
- 6.51 These obligations remain the same as previously secured at the appeal stage.

## **7. Conclusion**

- 7.1 In conclusion the scheme represents an improved layout over that approved previously on appeal which will enable emergency and servicing vehicles to adequately access and

manoeuvre across the site, whilst proposing a more spacious appearing development allowing for better spacing between properties and larger private gardens for future residents. The layout also seeks to respond to the existing adjoining residential dwellings thereby presenting a more logical urban form.

7.2 The revised layout incorporating the additional set back of the buildings fronting Green Lane and the footpath along the north-eastern boundary of the site is, on balance, sufficient to overcome the previous reason for refusal and along with the retention and strengthening of the boundary vegetation would safeguard the semi-rural character of Green Lane and the footpath.

7.3 It is considered that the proposal meets the requirements set out within local and national policy and subject to the recommended conditions and completion of a S106 agreement 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:

<b>CATEGORY</b>	<b>TERMS</b>
Affordable Housing Provision	30% affordable housing provision
Education contribution	Early Years and Childcare Contribution, Primary Education Contribution and Secondary Education Contribution.
Financial contribution towards RAMS.	£122.30p per unit

8.2 Conditions and Reasons

1). Details of scale, appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as 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). The development hereby permitted shall take place not later than 2 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). The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan: Drawing No. 0964-F01 rev D - Access Plan and Drawing No. AA7718-2040 01 – Site Layout.

Reason – For the avoidance of doubt.

4). Any Reserved Matters application relating to landscaping as required by Condition 1 shall include a detailed specification of hard and soft landscaping works for the



development. This shall include plant and tree types and sizes, plant numbers and distances, details of the play equipment details, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting.

Reason - In the interests of visual amenity and biodiversity.

- 5). Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 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 approval in writing to any variation.

Reason - To ensure the effective implementation of the approved landscaping scheme, in the interests of visual amenity.

- 6). A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved, in writing, by the local planning authority prior to the first occupation of the development. The landscape management plan shall be carried out as approved in accordance with the details and timescales in the plan.

Reason - To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

- 7). All areas of hardstanding shall be constructed using porous materials laid on a permeable base. All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed in writing as part of that scheme by the local planning authority. Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

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

- 8). No development shall commence until details of all trees, shrubs and hedges to be retained, together with the means of protecting them including any trees located outside but adjacent to the site boundary, from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

Reason - To ensure the mature trees/hedges within the site are safeguarded during construction and retained in the interests of visual amenity.

- 9). No external lighting shall be installed until details of the illumination scheme have been submitted to and approved in writing by the Local Planning Authority. Development shall only be carried out in accordance with the approved details.

Reason - In the interests of amenity to reduce the impact of night time illumination on the character of the area

- 10). No development shall commence or site clearance or on site investigation works take place until a Biodiversity Management Plan for enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed, is submitted to and approved in

writing by the local planning authority in line with the recommendations contained in the submitted Ecological Assessment (as prepared by ethos Environmental Planning dated June 2019. Development shall be implemented in accordance with the approved scheme and thereafter maintained.

Reason - To preserve and enhance the biodiversity of the site.

- 11). No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges. No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, or hedges.

Reason - To ensure the mature trees/hedges within the site are safeguarded during construction and retained in the interests of visual amenity.

- 12). No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Construction Method Statement shall provide for:

- safe access to/from the site;
- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from construction works;
- details of hours of deliveries relating to the construction of the site;
- details of hours of site clearance or construction;
- a scheme to control noise and vibration during the construction phase, including details of any piling operations

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason - To ensure that on-street parking of construction vehicles and materials storage in the adjoining streets does not occur, in the interests of highway safety and to control delivery/working hours in the interests of residential amenity.

- 13). Prior to occupation of the development, the road junction at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4m by 43m in both directions, as measured from and along the nearside edge of the carriageway. The vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times.

Reason - To ensure adequate intervisibility between drivers of vehicles using the proposed access and those in the adjoining highway, in the interests of highway safety.

- 14). 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. The development shall be constructed as approved thereafter.

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

- 15). All parking spaces and turning areas within the site shall be provided prior to the first occupation of the approved dwellings and retained for the sole purpose of the parking and turning of vehicles thereafter.

Reason - To ensure off-street parking is provided at a level commensurate with the requirements of the current parking standards and to ensure there are sufficient turning facilities for all types of vehicles attracted by the development.

- 16). Prior to first occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport the details of which shall first be submitted and approved in writing by the local planning authority, to include 6 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.

- 17). Prior to commencement of development, a scheme shall be submitted to and approved in writing by the local planning authority for the upgrading and improvement of the 2 nearest bus stops to the site. The scheme shall be implemented in accordance with the approved details.

Reason – To promote the use of sustainable transport modes.

- 18). No vehicular access to the development shall be taken from Green Lane.

Reason – In the interests of safeguarding pedestrian use of Green Lane and in the interests of visual amenity.

- 19). Prior to first occupation of the proposed apartment blocks, communal recycling/bin/refuse collection points shall be provided within 15m of the carriageways or adjacent to the carriageways and additionally clear of all visibility splays at accesses and retained thereafter.

Reason - To minimise the length of time a refuse vehicle is required to wait within and cause obstruction of the highway, in the interests of highway safety.

- 20). Prior to the occupation of the proposed dwellings and apartments details of the provision for the storage of bicycles sufficient for all occupants of that dwelling of a design that shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

Reason - To promote the use of sustainable means of transport.

- 21). No development or preliminary ground-works shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted to and approved in writing by the local planning authority. Following the completion of this initial phase of

archaeological work, a summary report shall be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ, shall be submitted to the local planning authority.

Reason - The Tendring Historic Environment Characterisation project and Essex HER show that the proposed development is located within an area with potential for below ground archaeological deposits.

- 22). No development or preliminary groundwork shall commence on those areas of the development site containing archaeological deposits, until the completion of archaeological fieldwork, as detailed in the mitigation strategy, which has been approved off by the local planning authority.

Reason - The Tendring Historic Environment Characterisation project and Essex HER show that the proposed development is located within an area with potential for below ground archaeological deposits.

- 23). Following completion of the archaeological fieldwork, the applicant will submit to the local planning authority a written post-excavation assessment (within 6 months of the completion date, unless otherwise agreed in writing with the local planning authority), which will include a post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and the submission of a publication report.

Reason - The Tendring Historic Environment Characterisation project and Essex HER show that the proposed development is located within an area with potential for below ground archaeological deposits.

- 24). No works shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall include but not be limited to:

- detailed hydrogeological testing to demonstrate the viability of infiltration. Where possible infiltration should be the preferred method of surface water disposal;
- if infiltration testing demonstrates that ground conditions are unsuitable then further consideration should be given to the alternative discharge strategy, including limiting discharge rates to 5l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
- provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event and a 10% allowance for urban creep;
- final modelling and calculations for all areas of the drainage system;
- the appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753;
- detailed engineering drawings of each component of the drainage scheme;
- a final drainage plan which details exceedance and conveyance routes, finished floor levels and ground levels, and location and sizing of any drainage features;
- a written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall be implemented prior to occupation.

Reason - To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site. To ensure the effective operation of SuDS features over the lifetime of the development. To provide mitigation of any environmental harm which may be

caused to the local water environment. Failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

- 25). 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 to 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 mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development. Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating against this should be proposed.

- 26). No works 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. Should any part be maintainable by a maintenance company, details of long term funding arrangements shall be provided.

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. Failure to provide the above required information before commencement of works may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

- 27). The applicant or any successor in title shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan. These shall be available for inspection upon the submission of a written 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.

### 8.3 Informatives

- Positive and Proactive Statement

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

- 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.

- The applicant is reminded that this permission is linked to a planning obligation under Section 106 of the Town and Country Planning Act 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

This page is intentionally left blank

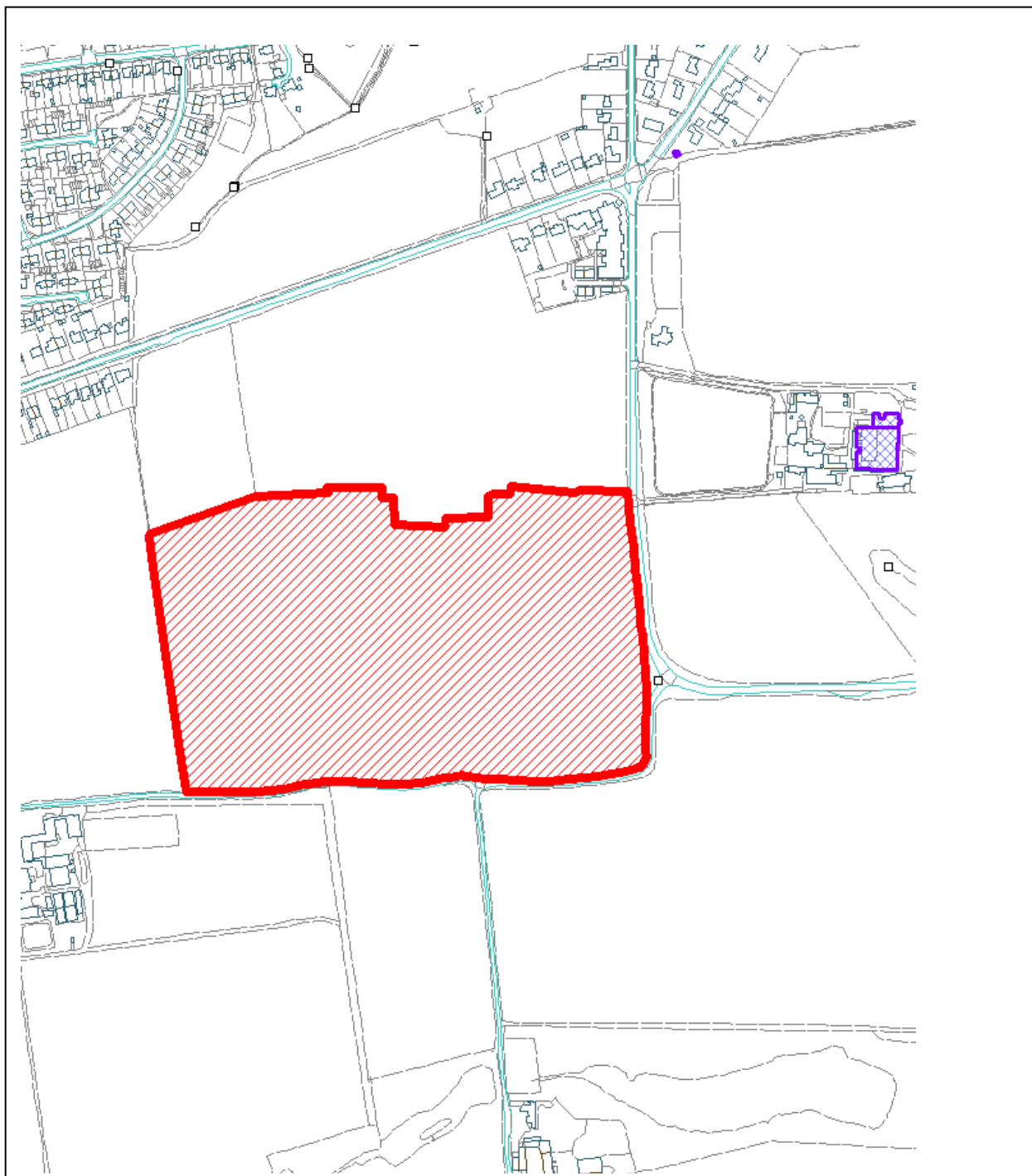


## PLANNING COMMITTEE

24 SEPTEMBER 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.2 PLANNING APPLICATION – 19/00539/DETAIL – LAND TO THE SOUTH OF LONG ROAD AND TO WEST OF CLACTON ROAD MISTLEY CO11 2HN**



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

**Application:** 19/00539/DETAIL

**Town / Parish:** Mistley Parish Council

**Applicant:** Tendring Farms Ltd

**Address:** Land to The South of Long Road and to West of Clacton Road Mistley Essex  
CO11 2HN

**Development:** Reserved matters application pursuant to outline planning permission 17/01537/OUT for the creation of phase 2 - 204 dwellings and four commercial buildings, plus associated roads, driveways, parking, footpaths, landscaping and ancillary works.

## 1. Executive Summary

- 1.1 The site benefits from extant outline planning consent for 300 homes and 2 hectares of employment land. Planning permission was granted subject to a number of planning conditions including that any detailed plans for the site need to be in general conformity with the submitted parameters plans. These broadly identified, the location of housing, commercial development and open space as well as the height of development.
- 1.2 A 'reserved matters' application (application ref 17/00535/DETAIL) for the northern section of the site (Phase 1) to include 96 dwellings, extensive areas of open space to the north and north-east, and an access onto Clacton Road (details of an access onto Long Road was determined at the outline stage) was subsequently approved in August 2018.
- 1.3 This application is for 'Phase 2' relating to the southern section of the site and is for the remaining 204 dwellings; provision of the employment land in the form of four two-storey commercial buildings; plus associated roads, driveways, parking, footpaths, landscaping and ancillary works.
- 1.4 Although there have been representations from Mistley Parish Council and from two members of the public, the issues raised were largely dealt with at Outline planning stage (and in part through the 'Phase 1' reserved matters application) and are considered not to be material to determination of this application.
- 1.5 It is considered that in respect of Access, Appearance, Layout, Scale and Landscaping, the application has demonstrated that the development would be of high quality, would respond to its surroundings and would be sustainable and as such, Reserved Matters can be agreed subject to: the completion of a legal obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) to secure a financial contribution to mitigate direct recreational impacts at European designated sites; and a suite of planning conditions.
- 1.6 If the Committee endorses this recommendation, conditions would be imposed relating directly to the reserved matters under consideration, while conditions attached to the outline approval would still apply. The legal agreement for the original application which secures affordable housing, education, health and off-site highway contributions would also still apply.

**Recommendation:**

That the Head of Planning be authorised to grant 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 (where relevant):**

- **Financial Contribution 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 Policy

*National Planning Policy Framework 2019 (NPPF)*

*National Planning Practice Guidance*

Local Development Plan Policy

*Tendring District Local Plan 2007*

QL9	Design of New Development
QL10	Designing New Development to Meet Functional Needs
HG3	Residential Development Within Defined Settlements
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
COM1	Access for All
COM2	Community Safety
COM8	Provision and Improvement of Outdoor Recreational Facilities
COM8A	Proposed New Recreational Open Space
ER7	Business, Industrial and Warehouse Proposals

EN1	Landscape Character
EN2	Local Green Gaps
EN6	Biodiversity
EN6A	Protected Species
TR1A	Development Affecting Highways
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)*

SPL3	Sustainable Design
HP1	Improving Health and Wellbeing
HP3	Green Infrastructure
HP5	Open Space, Sports & Recreation Facilities
LP2	Housing Choice
LP3	Housing Density and Standards
LP4	Housing Layout
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
PPL6	Strategic Green Gaps

*Essex Design Guide*

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

**Status of the Local Plan**

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.

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.

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.

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

15/00761/OUT	Outline application with all matters reserved, other than strategic access points onto the public highway, for the erection of up to 300 dwellings, up to 2 hectares of employment land (A2/A3/B1/D1 uses), with associated public open space and infrastructure.	Approved	18.07.2016
16/00818/OUT	Resubmission of outline application with all matters reserved, other than strategic access points onto the public highway, for the erection of up to 300 dwellings, up to 2 hectares of	Approved	

	employment land (A2/A3/B1/D1 uses), with associated public open space and infrastructure.		
17/00534/OUT	Variation of condition 4 of 15/00761/OUT to change parameter plans.	Refused	10.08.2017
17/00535/DETAIL	Application for Phase 1 Reserved Matters for Access, Appearance, Landscaping, Layout and Scale for 96 Residential following Outline Planning Permission 15/00761/OUT (as subsequently amended by 17/01537/OUT).	Approved	16.08.2018
17/01181/OUT	Outline application with all matters reserved, other than strategic access points onto the public highway, for the erection of up to 485 dwellings, up to 2 hectares of employment land (A2/A3/B1/B2; B8; D1 uses), with associated public open space and infrastructure.	Refused	29.11.2018
17/01537/OUT	Variation of condition 4 of application 15/00761/OUT to change the description of the condition to 'The reserved matters shall be in general conformity with the following indicative drawings: Building Heights Plan - Drawing No: 001, Illustrative Masterplan - Drawing No: PL17006/04 and Landscape Plan - Drawing No: 003'.	Approved	14.06.2018
18/01190/OUT	Variation of Conditions 1, 11, 12, 13, 14, 15, and 16 of 17/01537/OUT to allow work to commence prior to the submission of remaining reserved matters (reserved matters for 96 units already submitted).	Current	
19/00336/OUT	Variation of condition 4 of application 17/01537/OUT to change the description of the condition to 'The reserved matters shall be in general conformity with the following indicative drawings: Building Heights Plan - Drawing No: 001A, Illustrative Masterplan - Drawing No: PL17006/04A and Landscape Plan - Drawing No: 003A'.	Current	
19/00539/DETAIL	Reserved matters application pursuant to outline planning	Current	

permission 17/01537/OUT for the creation of phase 2 - 204 dwellings and four commercial buildings, plus associated roads, driveways, parking, footpaths, landscaping and ancillary works.

#### 4. Consultations

ECC Highways Proposal is acceptable subject to the imposition of a number of highway specific planning conditions.

ECC SuDS Consultee No object as it is in line with the approved outline drainage strategy and as such should be subject to the same conditions applied to the outline planning application (15/00761/OUT).

The proposed development will only meet the requirements of the National Planning Policy Framework if the measures as detailed in the Drainage strategies and the documents submitted with this application are implemented as approved.

#### 5. Representations

Mistley Parish Council recommend refusal based on the following planning and material considerations: the height of the dwellings, its scale and design will distract from the character of the village of Mistley, the scheme is contrary to Policy QL9 and the design of the new development which does not make a positive contribution to the local environment and does not protect or enhance the local character, there is an adverse impact on the landscape, the current Local Development Plan makes reference to safeguarding the open character of the important breaks between the settlements and between separate neighbourhoods. It also makes reference to preserving the attractive views and individual character of this settlement – both of these will not be met for this proposal, Policy QL2 Public Transport (the details in the Design Statement are incorrect regarding the bus routes to Colchester, Clacton and Harwich), the proposal is contrary to TR1a in relation to Public Transport. Policy QL10 makes reference to designing a new development to meet the functional needs of the highway network, i.e. access points to the highway and sustainable transport – this is not the case for this development. Sustainable and Affordable Housing Policy QL1 and PPS3 will not be met. Parking provision does not appear to be met and the footpath provision is insufficient.

2 letters of objection have been received from local residents. The letters of objection raise the following concerns: pressure of traffic around this local area is already strained, roads are narrow and the access to Long Road is not suitable; already significant development in the local area and this is unnecessary; concerns about change in the character of the area and loss of sense of being a village; and overdevelopment of the site. Other issues raised relate to the principle of development and matters relating more specifically to 'Phase 1' which have already been dealt with at the outline stage or through the 'Reserved Matters' application for the earlier phase and do not form part of the determination of this application.

## 6. Assessment

### The Application Site

- 6.1 The site comprises an agricultural enclosure, covering an area of approximately 23 hectares, lying immediately to the south of Long Road, to the west of Clacton Road and to the north of Dead Lane. The site rises gently from its northern boundary towards the south but then falls to a relatively flat plateau over the southern part of the site. With limited boundary hedging and vegetation, the site is very exposed to public view from vantage points within Long Road and Clacton Road.
- 6.2 To the west of the site, planning permission has been granted - and is being developed in phases – for major mixed-use development including up to 360 dwellings in accordance with 15/00876/OUT. The northern part of the site adjoining Long Road together with land to the north of Long Road is designated in the emerging Local Plan as a ‘Strategic Green Gap’ which passes between the built-up areas of Lawford and Mistley. To the north of Long Road, long distance views can be had over the built up area towards the Stour Estuary. A small number of dwellings and an assisting living complex lie in proximity to the junction of Long Road with Clacton Road, to the north-east of the site. To the south, and beyond Dead Lane, open countryside predominates.

### The Proposal

- 6.3 Outline planning permission 15/00761/OUT was granted in July 2016 on the site for up to 300 dwellings and up to 2 hectares land of employment land, with associated public open space and infrastructure.
- 6.4 Subsequently, a ‘reserved matters’ application (application ref 17/00535/DETAIL) for the northern section of the site (Phase 1) to include 96 dwellings, extensive areas of open space to the north and north-east, and an access onto Clacton Road (details of an access onto Long Road was determined at the outline stage) was approved in August 2018.
- 6.5 This application is for ‘Phase 2’ relating to the southern section of the site and is for the remaining 204 dwellings; provision of the employment land in the form of four two-storey commercial buildings; plus associated roads, driveways, parking, footpaths, landscaping and ancillary works.
- 6.6 The residential element represents approximately two thirds of those (up to 300) for which outline permission has been granted. The proposed 204 dwellings would comprise:
- 40 two bedroom houses (19.6%);
  - 82 three bedroom houses (40.2%)
  - 82 four bedroom houses (40.2%)

### Analysis

- 6.7 The principal issues are:  
The extent to which the reserved matters application would:
- Comply with the terms and conditions of the outline approval having particular regard to compliance with the parameter plans;
  - Would conform with National Planning Policy and the requirements of the Development Plan for Tendring District;

In respect of:

- Access;



- Appearance;
- Landscaping;
- Layout; and
- Scale

#### Access

- 6.8 In accordance with the outline approval, the principal means of access to the residential development was approved to be gained from its Long Lane frontage but with a secondary access from Clacton Road to the east retained as a 'Reserved Matter' on the basis that further design work was required. The details of the Clacton Road access was addressed as part of the 'Phase 1' reserved matters application and this 'Phase 2' site will continue to benefit from these two access points onto the highway network. No further accesses are proposed onto Clacton Road and there will be no vehicular access onto Dead Lane immediately to the south of the site.
- 6.9 In terms of internal access provision this is proposed to be determined by three route types: primary, secondary and tertiary. The primary route connects the two entrances into the development from Long Road and Clacton Road via the centre of the site and will be the main corridor of movement for residential traffic. Secondary and tertiary routes allow perforation into the balance of the site, with a separate secondary route running along the eastern boundary to provide access to the employment land without traffic needing to pass through the heart of the new residential estate area.
- 6.10 The Highway Authority has confirmed that they have no objection to the application as submitted from an access and highway layout perspective.

#### Appearance

- 6.11 The scheme for the Phase 2 will use the same house types already approved in Phase 1, ensuring there is a continuity in the appearance of the scheme and no differentiation between the two phases of development when the scheme is complete. The houses will be of a traditional vernacular of varying sizes and configurations to provide an attractive variation of buildings across the site, as well as to offer a mix of house types that respond to the local market and create a range of different size dwellings from modest 2-bedroom units up to more substantial 4-bedroom family units.
- 6.12 External finishes for the residential element of the scheme will include a mix of render, brick and timber finishes as found in the surrounding areas and which will provide visual interest and help create a 'sense of place'. The proposals also include the use of other traditional materials such as painted timber windows and doors.
- 6.13 With respect to the commercial elements, three of the four proposed two-storey buildings have been designed to be of a traditional appearance, borrowing heavily from the design of the maltings clustered around the quayside and railway station. Furthermore, they have been designed to read as converted space rather than as new buildings. The final commercial building which would sit on the corner of Clacton Road and Dead Lane has been deliberately design to be more bespoke and contemporary in form and appearance. The proposed building uses an angled floorplan to turn the corner (curved walls are not a feature of the local vernacular) that, in turn, creates a staggered appearance for the mono-pitched roof to create a feature building which would act as a 'gateway' to Mistle/Lawford from the south.
- 6.14 In support of the planning application, in terms of its overall appearance, the applicant states in their submitted 'Design and Access Statement' that:

*“The proposed scheme will create a new quarter on the east side of Lawford and west of Mistley, establishing a coherent relationship with the surrounding land uses and formalising the new gateway to the village when approaching on Clacton Road. The houses are set behind a landscape buffer of open space that separates the new homes from Clacton Road and Dead Lane, meaning that the majority of views of the new edge to the built-up area from passing traffic will be glimpsed through trees and landscaping. As such, the scheme seeks to define its own distinct character, but also responds sensitively to its location at the edge of the settlement, particularly in view of its role as a gateway to the village when approaching from the south. The landscaping design reflects the form of the development with tree planting to the edges in order to highlight the boundaries of the new transition to the countryside around the village, as well as closing vistas along the straight cul-de-sac roads. In parallel, the hard and soft landscaping creates the setting for the buildings and highlights the extent of the public realm as part of the hierarchy of streets.”*

- 6.15 It is considered that the scheme as submitted, in terms of both the residential and commercial built form, will be acceptable in terms of external appearance and act as a natural extension to the already approved ‘phase 1’ proposals.

#### Landscaping

- 6.16 With respect to landscaping, the application includes a landscape masterplan which is based on the following landscape strategy principles:

- The retention, wherever practicable, of existing trees and hedgerows around the periphery of the site where they have value and are good quality;
- Retain and enhance the landscape value of the existing verge to Clacton Road;
- Create a central area of public open space to mark the centre of the site, acting as a focus for the public realm and accommodating footpath routes through the site, including the link between the employment uses in the south eastern corner and the bus stops on Long Road;
- Establish a ‘parkland’ setting for the eastern edge of the site, offering separation from passing traffic on Clacton Road and placing the new buildings in a landscaped setting that responds to the grounds of Mistley Hall and the conservation area on the opposite side of the street;
- Create a landscaped edge to the southern side, establishing a transition from the new edge to the built-up area to the countryside and land in agricultural use further to the south;
- Provide a landscaped buffer against the land to the west, which also benefits from an outline planning permission for residential use. The existing field boundary will be incorporated, offering maturity in the short to medium term;
- Create an inclusive public realm that promotes feelings of safety and security. The public realm will be designed to address the needs of the whole community including the disabled and elderly;
- Recreational walking routes incorporated within the areas of public open space, offering a sequence of circuits for jogging, dog walking, etc. as well as connecting to the network of rights of way beyond the site boundary through the grounds of Mistley Hall (to the east), towards Chequers Farm (to the south) and via Dead Lane to the paths around Grange Farm (to the south west). These recreational benefits will also act as the on-site element of mitigation against the recreational impacts of an increased population on nearby nationally protected coastal habitats;
- The architectural design of the new homes will guide the choice of materials to ensure distinctive streets and spaces are created within the new public realm. The latter will provide a cohesive element to the overall design, reflecting that the same house types have already been approved for use in Phase 1; and
- Ornamental planting to front gardens will provide a defensible edge to the built form and mark the edge of the street. Defined planting palettes, responding to the

orientation of groups of houses within the development will create a consistent, high-quality planting design across the development. Tree planting will help to define character within the different individual streets and spaces.

- 6.17 The applicant has requested that the detailed planting to property frontages will be deferred at this stage and are agreeable to the imposition of a planning condition to agree the specification of planting.
- 6.18 In terms of hard landscaping, it is proposed that all roads and footways will be built to the County Council's standards, but they will not be adopted and will be maintained privately in perpetuity. Through routes shared by all residents will be surfaced in macadam, whilst private drives will be finished in block paving so that the boundary between the street and the curtilage of the property is clearly defined. Around the edges of the built development – where houses face outwards to overlook the landscaped buffers and the central area of open space, the private drives will be surfaced with 'Autumn Gold' coloured block paving. Similarly, within the heart of the site where houses face towards the streets, block paving will be employed to add character to the scheme. Within the employment area the parking areas will be a mix of tarmac (for the circulation areas), block paving (for the parking bays) and soft landscaping to soften the impact of parked cars.
- 6.19 It is considered that the strategic landscape approach proposed is acceptable and will facilitate the delivery of well thought out and usable open spaces which will establish a positive landscaping setting for the development whilst also aiding the transition from new built development to rural edge. However, specific detailed planting proposals are still required and according this needs to be subject to condition.
- 6.20 In accordance with Planning Policy Guidance, conditions requiring such details can be imposed at Reserved Matters stage as they relate directly to a specific reserved matter. It is consequently recommended that conditions be imposed to secure an acceptable hard and soft landscaping scheme for Phase 2 of development and to ensure its implementation and where necessary, replacement within 5 years should planting not survive.

#### Layout

- 6.21 The original outline planning permission was for up to 300 dwellings and that number is reinforced by condition. This application does not seek to increase the quantum of dwellings, as inclusive of the 'Phase 1' approval, this proposal will deliver 300 dwellings across the entire site. In accordance with the approved scheme, the total site area is approximately 23 hectares, including 12 hectares for residential development, 2 hectares of employment areas and 9ha for green infrastructure. Based on these site area splits and the fact that this scheme does not deviate from this position, the residential development will deliver a gross density over the entire site of 14 dwellings per hectare and a net density of around 25 dwellings per hectare in terms of the 'developable area'. It is considered that this is a relatively low housing density in keeping with the semi-rural nature of the site and far lower than the minimum density that is generally required under Policy HG7 of the adopted Local Plan and Policy LP3 of the emerging Local Plan.
- 6.22 The relatively low density of development would allow for a generous standard of road and footway width, ensuring that the internal road layout can safely and comfortably accommodate emergency services and waste collection services. All of the houses would benefit from a combination of garaging and surface parking, which in all instances would be compliant with parking standards. Residential amenity for future residents would be acceptable having regard to privacy, avoidance of overshadowing or overbearance, while garden sizes would be compliant with standards and would be satisfactorily orientated to take advantage of optimum levels of sunlight. Details of boundary treatment are subject to a separate outline planning condition.

- 6.23 The layout and orientation of the 4 commercial buildings, is considered appropriate to the south and eastern edges of the site. The flank-on configuration of the three traditional vernacular designed buildings with space for parking in between the blocks is a positive design approach which assists in breaking up the built form on this more sensitive rural edge. The more contemporary corner block is considered to be of an appropriate scale and will act as a landmark 'gateway' building.

#### Scale

- 6.24 The outline permissions, including approved variations to a 'Building Heights Plan', shows the site split, with buildings around the outside able to be up to two storeys tall and the scale of development rising to 2½ storey's in the centre (maximum height of 13 metres from road level to the ridge). The proposed scheme, whilst not looking to utilise the potential to build to up to 2½ storey's in the centre of the site, does seek to increase density in this location with the greater use of semi-detached properties coupled with buildings being placed closer to the roads, creating a scale that contrasts with the outside edges. In response to the suburban scale, the scheme predominantly proposes two storey buildings, although there will be interest created through variation in the streetscape, roofscape and the relationship with the new trees.
- 6.25 With respect to the more sensitive eastern and southern edges to the site - which form the new urban/rural edge to the site - the application has sought to introduce lower density detached frontage housing which would be set in an extensive parkland setting with respect to the dwellings facing east towards Clacton Road and a green buffer with new trees and reduced width private drives to the south with Dead Lane. With respect to the latter, following negotiations with the applicant, the built form has been further refined with the introduction of two chalets (plots 112 and 117) and two reduced ridge height houses (plots 114 and 119), which provide for a more organic and varied streetscape which is more sensitive to this rural edge.
- 6.26 The emphasis is on two-storey development across Phase 2, but alongside the introduction of two 1½ storey chalets on the southern boundary as referred to above, the application has further revised the scheme to introduce an additional four 1½ storey chalets dispersed across the site to add some varied and interest to the layout (these are plots 48, 84, 145 and 146).
- 6.27 The scale and form of the 4 commercial buildings, is considered appropriate to the south and eastern edges of the site, given the flank-on configuration of the three traditional vernacular designed buildings and the separation distances between the blocks which helps to soften their appearance on this more sensitive rural edge. The scale and form of the more contemporary corner block is considered to be of an appropriate scale given this will be set within a more in-depth parkland setting. Furthermore, it is considered that this building provides for a positive design approach which will deliver a landmark 'gateway' building.

#### Other Matters

- 6.28 Under Regulations 61 and 62 of the Habitats Regulations, local planning authorities as the 'competent authority' must have regard for any potential impact that a plan or project might have on European designated sites. The application site is not, itself, designated as a site of international, national or local importance to nature conservation but the urban area of Manningtree, Lawford and Mistley does fall within the 'Zone of Influence' (Zol) of the Stour and Orwell Estuaries Special Protection Area (SPA), a Ramsar Site and a Site of Special Scientific Interest (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.'*

- 6.29 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.
- 6.30 The mitigation described in the Appropriate Assessment, being a combination of on-site measures (circular dog walking routes and/or links to the 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 is considered to secure the necessary recreational disturbance mitigation. The financial contribution is to be secured through an appropriate and legally binding agreement.

**7. Conclusion**

- 7.1 The application satisfies the requirements of the NPPF and the Development Plan for Tendring having regard to Access, Appearance, Landscaping, Layout and Scale and should be approved subject to the conditions as set out in this Report.

**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 new dwelling

**8.2 Conditions and Reasons**

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

- Location Plan – CC011-PL-01 Rev A
- Development Layout – CC011-PL-05 Rev C
- Detailed Layout – CC011-PL-03 Rev C
- Parking Layout – CC011-PL-04 Rev C
- Storey Heights – CC011-PL-08 Rev C
- Landscape Masterplan – CC011-PL-07 Rev C
- Walking Route Mitigation Plan – CC011-PL-09 Rev A
- Emergency Drive-over Strip Detail – CC011-PL-10
- House Type HT3Bd – 212
- House Type HT2B – 203 Rev A
- House Type HT3Ba – 205 Rev A
- House Type HT3Bc - 206 Rev A
- House Type HT3Bb – 207 Rev A
- House Type HT4Ba – 208 Rev A
- House Type HT4Bb – 209 Rev A
- House Type HT4Bc – 210 Rev A
- House Type HT4Bd – 211 Rev A

Garages Floor Plans & Elevations – CC011-GR  
Commercial Block ‘A’ Proposed Plans – CC011-CB-A1  
Commercial Block ‘A’ Proposed Elevations – CC011-CB-A2  
Commercial Block ‘B’ Proposed Plans – CC011-CB-B1  
Commercial Block ‘B’ Proposed Elevations – CC011-CB-B2  
Commercial Block ‘C’ Proposed Plans – CC011-CB-C1  
Commercial Block ‘C’ Proposed Elevations – CC011  
Commercial Block ‘D’ Proposed Plan – CC011-CB-D1  
Commercial Block ‘D’ Proposed Elevations – CC011-CB-D2

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

2. No development shall commence until details of existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the agreed scheme prior to occupation.

Reason – To ensure a satisfactory form of development having particular regard to drainage and the provision of level access.

3. Prior to commencement of development, details of the estate roads, parking courts 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.

Reason – To ensure roads/parking courts/footways are constructed to an appropriate standard in the interests of highway safety.

4. The proposed estate roads shall be constructed prior to the commencement of the erection of any residential development proposed to have access from such road and the proposed road and turning space, where applicable shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced carriageway between the dwellings and the existing highway. The footways and footpaths commensurate with the frontage of each dwelling shall be constructed and completed within twelve months from the date of occupation of the dwelling; and a management plan, including management responsibilities and maintenance schedules for all parking areas other than those forming part of the public highway, or on private domestic property shall be submitted to and approved, in writing, by the Local Planning Authority prior to the first occupation of the development. The management plan shall be carried out as approved in accordance with the details and timescales in the plan.

Reason – In the interests of highway safety, to ensure satisfactory access at all stages of development and to ensure the maintenance of shared vehicular surfaces.

5. No development shall take place until:
  - a) There has been submitted to and approved in writing by the Local Planning Authority, a scheme of hard and soft landscaping works for the site, to include all areas of open space, all play areas, all amenity areas, all street trees, all verges and all other planted or open areas excluding private residential curtilages. The scheme shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication “BS 5837:2012 Trees in relation to design, demolition and construction. The development shall be carried out in accordance with the approved details.

- b) Existing trees on the site, agreed with the Local Planning Authority for inclusion in the scheme of landscaping (above), have been protected by the erection of temporary protective fences of a height, size and in positions which shall previously have been agreed, in writing, with the Local Planning Authority. 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.

Reason – To ensure a satisfactory standard of landscaping and the protection of retained trees.

6. A landscape implementation and management plan, including planting schedules and long term design objectives, management responsibilities and maintenance schedules for all hard and soft landscape areas, shall be submitted to and approved, in writing, by the Local Planning Authority prior to the first occupation of the development. The landscape implementation and management plan shall be carried out as approved in accordance with the details and timescales in the plan.

Reason – To ensure the timely implementation, management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

7. No street lighting or lighting of common area shall be installed until details of an illumination scheme have been submitted to and approved in writing by the Local Planning Authority. Development shall only be carried out in accordance with the approved details.

Reason – In the interests of amenity to reduce the impact of night time illumination on the character of the area.

8. Prior the commencement of development, details of cycle storage required to serve each dwelling 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.

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

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

10. Notwithstanding the provisions of Article 3, Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking and re-enacting that Order with or without modification), the commercial buildings hereby approved shall be used as offices and for no other purpose including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any Statutory instrument and re-enacting that Order with or without modification).

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

### 8.3 Informatives

**Informative 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.

**Informative 2:** The applicant has advised that it is intended that the roads will be privately maintained and not put forward for adoption.

**Informative 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.

**Informative 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.

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.

**Informative 5:** 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 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.



## **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**

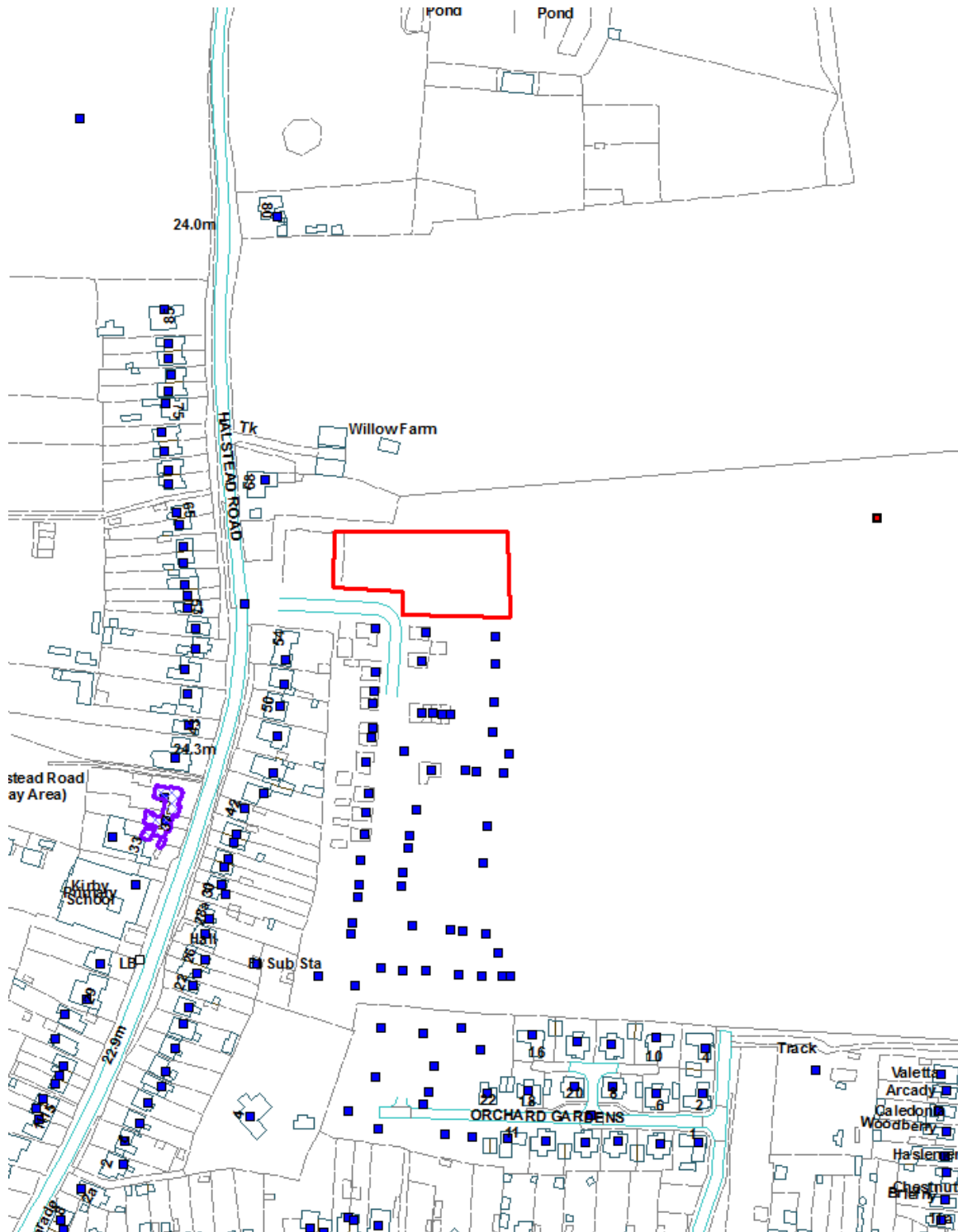
None

## PLANNING COMMITTEE

24 SEPTEMBER 2019

### REPORT OF THE HEAD OF PLANNING

#### A.3 PLANNING APPLICATION – 19/00283/FUL – LAND EAST OF HALSTEAD ROAD KIRBY CROSS FRINTON ON SEA CO13 0LR



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

<b>Application:</b>	19/00283/FUL	<b>Town / Parish:</b> Harwich Town Council Frinton & Walton Town Council
<b>Applicant:</b>	Miss Hannah Short - Linden Ltd	
<b>Address:</b>	Land East of Halstead Road Kirby Cross	
<b>Development:</b>	Development of 13 dwellings with Associated Landscaping and Infrastructure.	

## 1. Executive Summary

- 1.1 This application has been referred to Planning Committee at the request of Councillor Clifton due to concerns relating to; affordable housing provision, the design and street scene impact, poor layout and density, highway safety and parking.
- 1.2 This application site forms part of larger part of land stretching from Halstead Road to Buxton Avenue on the northern side of Kirby Cross.
- 1.3 Outline consent for the erection of up to 240 dwellings with a community hub including either a 40 bed space care home (Class C2) or a healthcare facility (Class D1) together with access from Halstead Road, Woburn Avenue and Buckfast Avenue; a parking area for up to 30 vehicles; green infrastructure provision including children's play area, kick-about area, footpaths, structural landscaping and biodiversity enhancement; a sustainable drainage system including detention basin and seales and other related infrastructure and services provision was granted at appeal on 6th September 2016. Phase 1 and 2 of the development have already been approved and are currently under construction. Phase 3 situated towards the south-west of the site, to the east of Phase 1 of the development was recently granted permission.
- 1.4 This land was shown as a community hub with either a 40 bedroom care home or a medical facility under the original Outline permission 15/01234/OUT. The applicants state there has been no interest in either use so are now proposing housing.
- 1.5 This application has been amended and now seeks full planning permission for 13 dwellings with associated landscaping and infrastructure.
- 1.6 The proposal includes a mix of traditional two storey, two and three bedroom houses, in compliance with the ridge height parameters as per the approved Outline Parameter Plan.
- 1.7 The scheme that forms this full application will provide 4 affordable homes (35%), comprising two two-bedroom and two three-bedroom houses.
- 1.8 Housing Mix:
- 2 bed open market house x 5
  - 3 bed open market house x 4
  - 2 bed affordable house x 2
  - 3 bed affordable house x 2

- 1.9 In conclusion, the proposed development would not result in any harmful impact upon visual amenity or neighbouring amenities and provides additional housing and sufficient additional parking spaces to serve the proposed units.
- 1.10 A legal agreement 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**

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 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 and Compatibility of Uses

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

HG14 Side Isolation

COM6 Provision of Recreational Open Space for New Residential Development

COM19 Contaminated Land

COM26 Contributions to Education Provision

EN1 Landscape Character

EN2 Local Green Gaps

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN13 Sustainable Drainage Systems

EN29 Archaeology

TR1A Development Affecting Highways

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

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

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

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

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL6 Strategic Green Gaps

PPL7 Archaeology

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

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

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) 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.

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.

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.

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 not 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

15/30107/PREAPP	Request for EIA screening opinion for residential development.		11.05.2015
15/30145/PREAPP	Erection of up to 270 dwellings and 40 bed care home, with primary access from Halstead Road and secondary access from Woburn Avenue and Buckfast Avenue, plus car parking for the school and associated open space and play area, SuDs and other infrastructure works.		23.07.2015
15/01234/OUT	Erection of up to 240 dwellings with a community hub including either a 40-bed space care home (Class C2) or a healthcare facility (Class D1) together with access from Halstead Road, Woburn Avenue and Buckfast Avenue; a parking area for up to 30 vehicles; green infrastructure provision including children's play area, kick-about area, footpaths, structural landscaping and biodiversity enhancements; a sustainable drainage system including detention basin and swales and other related infrastructure and services provision.	Refused	07.12.2015
17/30172/PREAPP	240 proposed dwellings, following on from appeal approval 15/01234/OUT. Pre-application advice for DETAIL application.		11.08.2017
17/01895/DETAIL	Phase 1 reserved matters application (49 units) for details of the appearance, landscaping, layout and scale.	Approved	07.03.2018
17/02145/DETAIL	Phase 2 reserved matters application for 28 bungalows on land off Woburn Avenue and	Approved	19.03.2018



Buckfast Avenue.

18/00355/DISCON	Discharge of conditions 11 (Phasing Plan and Programme), 12 (Green Infrastructure Management Plan), 13 (Foul Water Strategy), 14 (Surface Water Drainage Strategy), 15 (Written Scheme of Archaeological Investigation), 16 (Construction Method Statement), 20 (Design Code) and 21 (Landscaping Details) of approved planning appeal APP/P1560/W/15/3140113 (planning application 15/01234/OUT).	Approved	19.06.2019
18/00366/DISCON	Discharge of conditions 4 (Ground/Floor Levels, External Lighting, Means of Enclosure, Bicycle Parking and Refuse/Recycling Storage) of approved application 15/01234/OUT (allowed on appeal APP/P1560/W/15/3140113), in relation to Phase 1 only.	Approved	19.06.2019
18/00414/DISCON	Discharge of conditions 4 (Levels, Street Lighting and Refuse details), 10 (Arboricultural Method Statement), 13 (Foul Water Strategy) and 14 (Surface Water Drainage) of approved planning appeal APP/P1560/W/15/3140113 to planning application 15/01234/OUT, in relation to Phase 2 only.	Current	
18/00503/DISCON	Discharge of conditions 6 (roads & footways) and 11 (planning out crime) of 17/01895/DETAIL, in relation to Phase 1 only.	Approved	18.03.2019

#### 4. Consultations

Frinton and Walton Town Council

Provide the following comments;

State that assurances that these properties are affordable or part buy have not been met.

Recommend the application be refused.

Building Control and Access  
Officer  
Environmental Health

Private road needs to be designed to support a fire fighting appliance.

In order to minimise potential nuisance to nearby existing residents caused by construction works, Pollution and Environmental Control ask that the following is conditioned; Prior to the commencement of any construction works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Pollution and Environmental Control.

#### Noise Control

1) The use of barriers to mitigate the impact of noisy operations will be used where possible.

2) No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.

3) The selection and use of machinery to operate on site, and working practices to be adopted will as a minimum requirement, be compliant with the standards laid out in British Standard 5228:2014.

4) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).

5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). 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.

6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.

- o Emission Control 1) All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
- 2) No materials produced as a result of the site development or clearance shall be burned on site. All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.
- 3) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Tree & Landscape Officer

There are no trees or other significant vegetation on the application site. The application is supported by a detailed soft landscaping plan that shows an adequate level of soft landscaping to soften and enhance the appearance of the completed development.

Anglian Water Services Ltd

The submitted surface water drainage information (Flood Risk Assessment/Drainage Strategy) and proposed method of surface water discharge does not relate to an Anglian Water owned asset. As such, it is outside of our jurisdiction and we are unable to provide comments on the suitability of the surface water discharge. The Local Planning Authority should seek the advice of the Lead Local Flood Authority or the Internal Drainage Board. The Environment Agency should be consulted if the drainage system directly or indirectly involves the discharge of water into a watercourse.

Should the proposed method of surface water management change to include interaction with Anglian Water operated assets, we would wish to be re-consulted to ensure that an effective surface water drainage strategy is prepared and implemented. A connection to the public surface water sewer may only be permitted once the requirements of the surface water hierarchy as detailed in Building Regulations Part H have been satisfied. This will include evidence of the percolation test logs and investigations in to discharging the flows to a watercourse proven to be unfeasible.

Essex County Council  
Archaeology

The Archaeology team provide the following comments:

“The application relates to a proposed development which is situated on land that has been evaluated through archaeological trial trenching. No further fieldwork was required within the area of Phase 3 and there is no recommendation for any archaeological investigation for the above application.”

Essex Wildlife Trust  
Natural England

No Comments.

It has been identified that this development falls within the ‘Zone of Influence’ (Zol) for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS); see our recent advice to your authority on this issue (our ref: 244199, dated 16th August 2018) for further information. In the context of your duty as competent authority under the provisions of the Habitats Regulations<sup>2</sup>, it is anticipated that, without mitigation, new residential development in this area and of this scale is likely to have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure when considered ‘in combination’ with other plans and projects. The Essex Coast RAMS is a large-scale strategic project which involves a number of Essex authorities, including Tendring District Council, working together to mitigate the effects arising from new residential development. Once adopted, the RAMS will comprise a package of strategic measures to address such effects, which will be costed and funded through developer contributions. We therefore advise that you consider, in line with our recent advice, whether this proposal falls within scope of the RAMS as ‘relevant development’. Where it does, this scale of development would fall below that at which Natural England would offer bespoke advice on this issue. However, in such cases we advise that you must undertake a Habitats Regulations Assessment (HRA) to secure any necessary mitigation and record this decision within the planning documentation; you should not grant permission until such time as the HRA has been undertaken and the conclusions confirmed.

NHS East Essex CCG  
Waste Management

No Comments

Lead Local Flood Authority position Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission based on the following: • This site should be subject to the drainage conditions imposed on the wider drainage strategy Any questions raised within this response should be directed to the applicant and the response should be provided to the LLFA for further consideration. If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us. Summary of Flood Risk Responsibilities for your Council We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability<sup>2</sup> of the proposal. Prior to deciding this application you

Open Space and Play

should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team. • Sequential Test in relation to fluvial flood risk; • Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements); • Safety of the building; • Flood recovery measures (including flood proofing and other building level resistance and resilience measures); • Sustainability of the development. In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions. There is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby. Any additional development in Kirby will increase demand on already stretched play areas. The nearest play area to the proposed development is Halstead Road, Kirby approximately 0.2 miles from the proposed development. The site is well used by the local community and would struggle to cope with any additional usage. Recommendation Due to the significant lack of play facilities in the area it is felt that a contribution towards play is justified and relevant to the planning application. Additional play equipment will be installed in Halstead Road play area.

ECC Highways Dept

1. Block paved Area: In relation to the block paved footway and carriageway it is unclear whether the applicant is proposing a shared surface or a segregated footway? It is recommended that either the footway on the private drive is finished in tarmac if it is to be a segregated footway. Alternatively, if the block paved footway forms part of a shared surface then that is fine but the maximum width of the shared surface should be 6 metres.

2. Parking bays for Plot 6: where these bays are to be located it is proposed to have the block paved footway at either end of the bays; if this is to be a segregated footway the footway will need to be continued round the parking bay to form a continuous link for pedestrians.

3. Parking bays for Plot 8: It is proposed to have these parking bays to be located at the junction/ entrance into the development; creating potential conflict with vehicles leaving the site and the vehicles from Plot 8 entering or leaving their property. The location of these bays will need to be revisited.

4. Parking bays for Plot 5: The proposed location of these bays is located at the end of the cul-de-sac and adjacent to boundary limits of the development. There is minimal turning area for these spaces to allow vehicles to turn in and out of the spaces in forward gear. Again, the location of these bays will need to be revisited to enable enough turning movement for these two spaces.

The Highway Authority will consider a revised proposal if these points can be clarified/ amended.

## 5. Representations

Sixty three letters of objection and a petition containing 213 signatures has been received which raise the following concerns;

- Exacerbate existing parking problems.
- Noise and fumes from increased traffic.
- Noise, disturbance, obstruction and fumes from construction traffic.
- Access for emergency and refuse vehicles will be worsened.

- No disabled parking bays.
- Detrimental to residential amenities.
- Overdevelopment of the site.
- Drains/Sewage would not cope with the demands of further flats.
- Existing garages too small.
- Leaseholders not notified of proposed development.
- Overlooking and harm to privacy.
- Too high and out of character.
- Loss of light.
- Access to new spaces blocked by existing garages and parked vehicles.
- Loss of property values.
- Existing amenities will not cope with the increase of housing in this area.
- Area cannot cope with the additional traffic
- Noise Pollution during construction
- Were assured by Linden Homes that there would be no homes built in this area and it would be reserved for open space.
- Lack of detail in regard to infrastructure and detrimental to the rural aspect of the locality.

The Parish Council have made the following comments on the application

- Assurances that these properties are affordable or part buy have not been met.

## **6. Assessment**

6.1 The main considerations in this instance are;

- Site Context;
- Proposal;
- Principle of Residential Development;
- Affordable Housing;
- Design and Appearance;
- Landscaping;
- Layout;
- Scale;
- Highway Safety and Parking Provision;
- Impact on Residential Amenity;
- Financial Contribution – Recreational Impact; and,
- Financial Contribution – Open Space / Play Space;
- Other Issues.

### Site Context

6.2. The application site forms part of larger part of land stretching from Halstead Road to Buxton Avenue on the northern side of Kirby Cross.

6.3. Outline consent for the erection of up to 240 dwellings with a community hub including either a 40 bed space care home (Class C2) or a healthcare facility (Class D1) together with access from Halstead Road, Woburn Avenue and Buckfast Avenue; a parking area for up to 30 vehicles; green infrastructure provision including children's play area, kick-about area, footpaths, structural landscaping and biodiversity enhancement; a sustainable drainage system including detention basin and seales and other related infrastructure and services provision was granted at appeal on 6th September 2016. Phase 1 and 2 of the development have already been approved and are currently under construction. Phase 3 situated towards the south-west of the site, to the east of Phase 1 of the development was recently granted permission.

- 6.4. The site consists of just under 0.36 hectares (ha) of generally level arable land north of the built-up area of Kirby Cross, a settlement west of the coastal towns of Frinton-on-Sea and Walton-on-the-Naze.
- 6.5. This land was shown as a community hub with either a 40 bedroom care home or a medical facility under the original Outline permission 15/01234/OUT. The applicants state there has been no interest in either use so are now proposing housing.
- 6.6. A S106 legal agreement was secured at outline planning permission stage requiring:
- 6.7. The provision of affordable housing, contributions towards education and healthcare, the provision and maintenance of public open space; and a residential travel information pack including bus vouchers.

Proposal

- 6.8. Linden Limited have stated in their submitted Planning Statement which accompanies this planning application that they have tested the care home/healthcare facility market and found no demand for such use for the site, as such they see an opportunity to provide additional housing on the site as an alternative.
- 6.9. This application therefore seeks full planning permission for 13 dwellings (Amended from 15) on the site (at land North of Barley Road, Kirby Cross) and includes a mix of traditional two storey, two and three bedroom houses, in compliance with the ridge height parameters as per the approved Outline parameter plan.
- 6.10. The following documents and amended plans have been submitted in support of the application;

27 Jun 2019	Drawing	P121 b Amended illustrative street scenes
27 Jun 2019	Drawing	P114 b Amended hardwick-mountford semi-detached proposed elevations
27 Jun 2019	Drawing	P113 b Amended hardwick-mountford semi-detached - proposed floor plans
27 Jun 2019	Drawing	P109 b Amended hardwick semi-detached - proposed elevations
27 Jun 2019	Drawing	P106 b Amended refuse strategy layout
27 Jun 2019	Drawing	P102 b Amended proposed block plan
27 Jun 2019	Drawing	P101 g Amended proposed site layout plan
27 Jun 2019	Drawing	18284/c101 a Amended coloured site layout plan
27 Jun 2019	Other	Amended schedule of accommodation
27 Jun 2019	Other	Amended drawing issue sheet
27 Jun 2019	Report	Amended soft landscape management and maintenance plan
27 Jun 2019	Drawing	Lhe132/skz a Amended fire and refuse tracking

27 Jun 2019	Drawing	P107 b Amended garden size layout
27 Jun 2019	Drawing	P104 b Amended boundary materials layout
27 Jun 2019	Drawing	18284/c102 a Amended coloured street scenes
27 Jun 2019	Other	Amended landscape drawing issue sheet
27 Jun 2019	Report	Amended planning statement
27 Jun 2019	Drawing	P103 b Amended building materials layout
27 Jun 2019	Report	Amended design and access statement
27 Jun 2019	Drawing	P105 b Amended surface materials layout
27 Jun 2019	Drawing	Lin22259-11 a Amended landscape proposals
		Amended Habitat Regulation Assessment
		Amended Planning Statement

#### Principle of Residential Development

- 6.11. The principle of residential development on this site has been established by the granting of the outline application at appeal. To reflect this decision the site is now included within the Settlement Development Boundary in the Tendring District Local Plan (2013-2033) and Beyond Publication Draft (Emerging Plan)
- 6.12. With regards to the provision of the aforementioned care home and community hub, under the original Outline permission (15/01234/OUT) the Council cannot insist on its provision as they were not primary considerations in the proposal being acceptable. Furthermore the S106 legal agreement is worded so that if the medical facility is not built then the developer will have to pay a healthcare contribution of £389.67 per dwelling, payable to NHS England.

#### Affordable Housing

- 6.13. The wider development will provide 18 homes classified as affordable housing as per the S106 Agreement. There will be eight one-bedroom flats, six two-bedroom houses and four three-bedroom houses. These will be gifted to Tendring District Council and allocated to people on the housing waiting list. 9 of these affordable dwellings were proposed for the third phase of development with the balance to be provided for within Phase 4.
- 6.14. The scheme that forms this full application will provide 4 affordable homes (35%), comprising two two-bedroom and two three-bedroom houses.
- 6.15. Housing Mix:
- 2 bed open market house x 5
  - 3 bed open market house x 4
  - 2 bed affordable house x 2
  - 3 bed affordable house x 2

- Details of garden sizes, (drawing 18284 - P107B (Garden Size Layout)
- Fully policy compliant parking requirements, (drawing 18284 - P102B (Site Layout)
- Vehicular access from Barley Road
- Soft Landscaping for each individual plot

#### Design and Appearance

- 6.15. The detailed design of the dwellings is varied with different roof forms, and use of porches and window detailing which adds a somewhat traditional element to the design and provides visual interest.
- 6.16. The surrounding area comprises of a mixture of type and styles of dwellings, using a range of materials all fairly traditional in appearance, it is therefore considered that the design of the proposed dwellings are in keeping with the character of the area. The design and appearance is in keeping with previous approved Phases that have been granted reserved matters consent.

#### Landscaping

- 6.17. The land subject to this application does not contain any significant trees other than those on the southern boundary. The trees, hedgerows and hedges are associated with the adjacent residential area and do not merit formal legal protection. As part of the application detailed landscaping plans have been submitted; the soft landscaping proposals are comprehensive and sufficiently detailed to enhance the appearance of the development.
- 6.18. Whilst the location of boundary treatments have been provided no details of the type, height and design have been. However, this is an issue that can be dealt with by condition.

#### Layout

- 6.19. Each of the proposed dwellings, have their own private amenity space. Policy HG9 of the Saved Local Plan requires 50 sq.m for 1 bed dwellings; 75 sq.m for 2 bed dwellings and 100 sq.m for dwellings with 3 or more beds. For flats, the policy sets out a requirement for either: a minimum of 25 sq.m per flat provided communally; or a minimum of 50 sq.m private garden area for a ground floor flat or maisonette and a minimum balcony area of 5 sq.m for units above. All the dwellings are provided with garden areas which meet or exceed this standard.
- 6.20. All of the proposed dwellings address the street and create an active street frontage.
- 6.21. Parking is provided either to the front or sides of the dwellings, in appropriate locations throughout the site and therefore do not dominate the proposed development.
- 6.22. In conclusion there is no objection to the layout of the proposed development.

#### Scale

- 6.23. Conditions imposed on the outline consent restricts development to predominately two storeys in height up to 10m with the northern part of the site being restricted to bungalows up to 7 metres in height. The proposed development complies with this condition and therefore the scale of the dwellings is considered acceptable.

#### Highway Safety/Parking



- 6.24. The proposed access was agreed at outline stage and therefore is not under consideration as part of this application. However, the internal layout is a matter for consideration as part of this application.
- 6.25. Essex County Council Highways have been consulted on the application and raise the following concerns
- 1. In relation to the block paved footway and carriageway it is unclear whether the applicant is proposing a shared surface or a segregated footway? It is recommended that either the footway on the private drive is finished in tarmac if it is to be a segregated footway. Alternatively, if the block paved footway forms part of a shared surface then that is fine but the maximum width of the shared surface should be 6 metres.**
  - 2. Parking bays for Plot 6: where these bays are to be located it is proposed to have the block paved footway at either end of the bays; if this is to be a segregated footway the footway will need to be continued round the parking bay to form a continuous link for pedestrians.**
  - 3. Parking bays for Plot 8: It is proposed to have these parking bays to be located at the junction/ entrance into the development; creating potential conflict with vehicles leaving the site and the vehicles from Plot 8 entering or leaving their property. The location of these bays will need to be revisited.**
  - 4. Parking bays for Plot 5: The proposed location of these bays is located at the end of the cul-de-sac and adjacent to boundary limits of the development. There is minimal turning area for these spaces to allow vehicles to turn in and out of the spaces in forward gear. Again, the location of these bays will need to be revisited to enable enough turning movement for these two spaces.**
- 6.26. Subject to receipt of Amended plans to address the above ECC Highways also recommend conditions to cover the following:
- timings of internal road and footways;
  - details of the estate roads and footways;
  - provision and retention of car parking and turning areas;
  - sizes of parking spaces and garages and provision of cycle parking in accordance with the Essex Parking Standards.
- 6.27. Essex County Council Parking Standards state that for one bedroom dwellings 1 off-street parking space is provided and for dwellings with 2 or more bedrooms a minimum of 2 off-street parking spaces are provided. Furthermore, 0.25 space per dwelling should be provided for visitor parking. Each parking space should measure 5.5 metres by 2.9 metres and if a garage is to be relied on it should measure 7 metres by 3 metres internally. The plans show that the proposal provides parking in accordance with the adopted standards.
- 6.28. Provision for cycle storage has not been shown on the plans. However, the garages are of a sufficient size to provide cycle parking and all dwellings have space within the garden area for a shed. Therefore it is considered that adequate cycle parking can be provided and a condition is not considered necessary.

- 6.29. The proposal is therefore acceptable in terms of highway safety. As the plans show compliance with the Essex Parking Standards in relation to sizes of parking spaces and garages it is not necessary to impose conditions to cover this matter, as requested by the Highway Authority.

#### Impact on Residential Amenity

- 6.30. 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'.
- 6.31. The closest residential property (Willow Farm) is a considerable distance from the proposed development and is unlikely to suffer loss of light, privacy or residential amenity as a result of the proposals.
- 6.32. The proposed dwellings are situated between 5 and 20 metres from the eastern boundary of the site. The distance between the rear elevations of the proposed Plots meets the guidance as set out in the Essex Design Guide.
- 6.33. The relationship between the proposed dwellings is also considered acceptable with adequate separation to provide good standards of privacy and light.

#### Financial Contribution – RAMS

- 6.34. 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.
- 6.35. 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.
- 6.36. 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.

## **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 site 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:

CATEGORY	TERMS
Financial contribution towards RAMS	£122.30 per dwelling

- 8.2. As established through the granting of outline application 15/01234/OUT at appeal, the principle of residential development on this site is acceptable.

- 8.3. The details design, layout, landscaping and scale are considered acceptable. The proposal would result in no significant material harm to residential amenity or highway safety and the application is recommended for approval.

### 8.4. Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved Drawing Nos:

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

- 2) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

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

- 3) Prior to the first occupation of any of the proposed development hereby permitted the internal road and footway layout as shown on the approved plans shall be provided.

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

- 4) Prior to the commencement of above ground 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. The 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.

- 5) The development shall not be occupied until such time as the car parking and turning areas as shown on the approved plans have 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.

- 6) No development shall take place until precise details of the provision, siting, design and materials of screen walls and fences have been submitted to and approved in writing by the Local Planning Authority. 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 the adjoining property.

## 8.5. 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: 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:

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.

### **9. Background Papers**

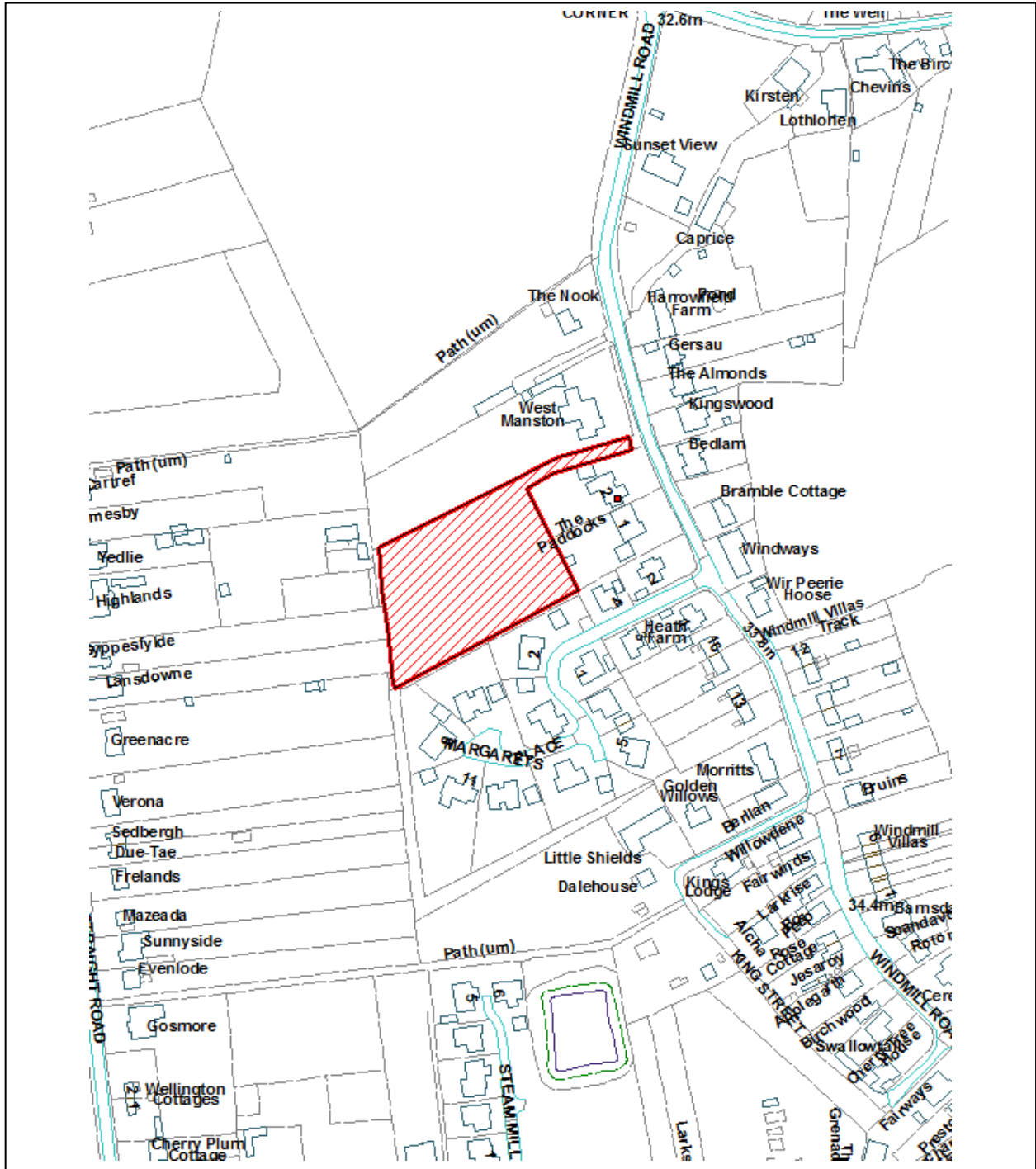
None.

## PLANNING COMMITTEE

24 SEPTEMBER 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.4 PLANNING APPLICATION – 19/00738/FUL – LAND REAR OF 1 & 2 THE PADDOCKS WINDMILL ROAD BRADFIELD CO11 2QR**



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

**Application:** 19/00738/FUL

**Town / Parish:** Bradfield Parish Council

**Applicant:** ARC LTD

**Address:** Land rear of 1 & 2 The Paddocks Windmill Road Bradfield CO11 2QR

**Development:** Erection of 5no. detached bungalows.

## 1. Executive Summary

- 1.1 This application is before the Planning Committee as it was called in by Councillor Fairley on the grounds that the proposal is a form of backland development that will be harmful to neighbours privacy and harmful to the countryside. Issues are also raised that the access point is unsafe and that there is a telegraph pole in front of the access.
- 1.2 The application site falls outside of a recognised settlement development boundary within both the Adopted and Emerging Local Plans. However, given the Council is unable to demonstrate a five year supply of housing, the proposal has been assessed against the economic, social and environmental strands of sustainability.
- 1.3 Following a recent appeal decision it has previously been determined the site is socially acceptable, while the development of five dwellings will bring small economic benefits to the area.
- 1.4 While the scheme does represent a form of backland development, it is in accordance with the requirements of Adopted Local Plan Policy HG13 and Emerging Local Plan Policy LP8.
- 1.5 The development will not result in harm to neighbouring amenities, harm to any trees, and Essex Highways Authority have raised no objections subject to conditions.

### **Recommendation:**

That the Head of Planning be authorised to grant 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 (where relevant):
  - Financial Contribution towards RAMS
  - Open Space
- 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.

NPPF National Planning Policy Framework February 2019



National Planning Practice Guidance

Tendring District Local Plan 2007:

COM6 Provision of Recreational Open Space for New Residential Development  
EN1 Landscape Character  
EN6A Protected Species  
EN11A Protection of International Sites European Sites and RAMSAR Sites  
HG1 Housing Provision  
HG9 Private Amenity Space  
HG13 Backland Residential Development  
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

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

CP1 Sustainable Transport and Accessibility  
HP5 Open Space, Sports & Recreation Facilities  
LP1 Housing Supply  
LP2 Housing Choice  
LP3 Housing Density and Standards  
LP4 Housing Layout  
LP8 Backland Residential Development  
PPL3 The Rural Landscape  
PPL4 Biodiversity and Geodiversity  
SP1 Presumption in Favour of Sustainable Development  
SPL1 Managing Growth  
SPL3 Sustainable Design

Local Planning Guidance:

Essex County Council Car Parking Standards - Design and Good Practice

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

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.

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.

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.

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

15/01726/FUL	Erection of 2 No. detached dwellings and garages.	Approved	22.02.2016
16/00595/DISCON	Discharge of condition 07 (Construction Method Statement) and 09 (Landscaping Scheme) of planning permission 15/01726/FUL.	Approved	17.06.2016

### 4. Consultations

ECC Highways Dept

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 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of obstruction above 900mm at all times. These visibility splays must not form part of the vehicular surface of the access.

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

2. Prior to occupation of the development a vehicular turning facility, as proposed in Block Plan, drawing no. CCWR -01 B 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.

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

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

4. Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.3 metres for at least the first 6 metres from the back of the footway and provided with an appropriate dropped kerb crossing of the footway.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

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.

Reason: To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety and in accordance with Policy DM8.

6. Prior to commencement of the development, the areas within the curtilage of the site for the purpose of loading / unloading / reception and storage of building materials and manoeuvring of all vehicles, including construction traffic shall be provided clear of the highway.

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

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: As the private access road is less than 5.5 metres in width consideration should be given to provide one suitable vehicle passing place within the curtilage of

the site at a minimum dimension of 2 metres wide x 7.5 metres in length, adjacent to Plot 1. Details to be agreed in writing with the local Planning Authority, this is to ensure that medium to large vehicles can pass clear of the limits of the highway.

Informative 2: Prior to the first use of the vehicular access to the development arrangements will need to be made with the respective Statutory Undertakers to arrange for the re-location of the telegraph pole at the existing access so it provides the required width in and out of the development.

Informative 3: 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 4: 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.

## **5. Representations**

- 5.1 Bradfield Parish Council have objected to the application. They have raised numerous concerns relating to the narrow width of the access to the site, which they feel will not be sufficient to cope with 10 cars and visitors associated with the five dwellings. The access also enters onto Windmill Road on a slight bend at its narrowest point, which could result in highway safety issues given traffic on Windmill Road has increased in recent years.
- 5.2 Further concerns relate to the site being backland development with a long narrow track, and it is questioned if there is a need for more bungalows in this location given there has previously been 24 bungalows constructed within Bradfield in the past four years.
- 5.3 There have also been five letters of objection received, with a summary of the concerns raised below:
- The access will not be able to cope with the additional traffic;
  - Concerns where the telegraph pole will be situated;
  - Site is outside of a settlement development boundary;
  - Land has a covenant that states it cannot be developed on;
  - Could set a harmful precedent for more backland development;
  - Will put more pressure on local infrastructure;
  - Loss of character to the area; and
  - Impacts of construction works.
- 5.4 There has also been one letter of support received.

## **6. Assessment**

### Site Description

- 6.1 The application is located on western side of Windmill Road to the rear of two detached dwellings (1 and 2 The Paddocks) that front Windmill Road. The site is largely laid to grass, however there is a mound of soil on part of the site from the neighbouring development to the south. The site was previously amenity land served by an access road between Number 2 The Paddocks and West Manston to the north. The site is separated from West Manston by a line of conifers. Windmill Road itself contains a mixture of dwelling types, with examples of single and two storey designs.
- 6.2 The site falls outside of a recognised Settlement Development Boundary within the Adopted Tendring Local Plan 2007. Within the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft, the access falls within the Settlement Development Boundary for Bradfield, while the rest of the site falls outside.

#### Planning History

- 6.3 The land adjacent to the south of the application site has recently been the subject of a number of planning applications. Under planning references 16/00701/OUT and 16/01413/DETAIL planning permission was granted for six dwellings. Then under planning references 16/01614/OUT and 17/00166/DETAIL an additional four dwellings were approved. These 10 dwellings have now been constructed.
- 6.4 Under planning reference 15/01726/FUL, planning permission was granted for two dwellings, which have now been constructed and are known as 1 and 2 The Paddocks.
- 6.5 Under planning reference 17/01065/FUL, permission was initially refused for the erection of one dwelling, on the grounds that the site fell outside of a recognised settlement development boundary and the removal of the hedgerow required for visibility splays would erode the rural character of the road and would therefore result in overriding harm to the character and appearance of the surrounding area.
- 6.6 However, under appeal reference APP/P1560/W/17/3184415 (Land adjacent to Sunset View, Windmill Road, Bradfield, dated 21 February 2018) this decision was allowed, with the Inspector stating that *“On balance . . . I find that the adverse impacts in this case, arising from the location of the appeal site outwith the development boundary for Bradfield, do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.”*

#### Proposal

- 6.7 This application seeks full planning permission for the erection of five detached bungalows. The layout plan shows the bungalows to be served by three bedrooms, garages and accessed from Windmill Road in a col-de-sac arrangement.

#### Principle of Development

- 6.8 The application site lies outside of a Settlement Development Boundary as defined within the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.9 Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft.
- 6.10 The National Planning Policy Framework 2019 (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.

- 6.11 At the time of this report, 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.
- 6.12 Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.
- 6.13 Therefore, at this present time, it is correct to assess the housing development on its merits against the sustainable development objectives set out within Paragraph 8 of the NPPF. The economic objective, a social objective and an environmental objective are therefore assessed below.

Economic:

- 6.14 It is considered that the proposal for five dwellings would contribute economically to the area, for example by providing employment during the construction of the development and from future occupants using the nearby facilities, and so meets the economic arm of sustainable development.

Social:

- 6.15 Socially, it is necessary to consider the proximity to services and facilities, such as healthcare, schools, convenience shopping and jobs and whether these would be accessed by sustainable modes of transport. Bradfield Heath has only a small convenience store and a good bus route (as established by the Council's "Establishing a Settlement Hierarchy", 2016). Bradfield Heath coalesces with Bradfield, which has a primary school. At the application site access onto Windmill Road there are pedestrian footpaths that lead to the bus stops, primary school and a shop located nearby. As such the proposed site is deemed to be socially sustainable.
- 6.16 This view is reinforced by appeal decision APP/P1560/W/17/3184415 (Land adjacent to Sunset View, Windmill Road, Bradfield). Within this the Inspector stated the following: *"Whilst, as a smaller rural settlement, Bradfield may not have the full range of services and facilities that might be required by residents on an everyday basis, I saw a primary school, public houses, a church, local shop etc. Moreover, the Council clearly considers it a sufficiently sustainable settlement to warrant in principle at least, extending the development boundary in the vicinity of the appeal site to accommodate additional development. To my mind, future occupiers would be no more reliant on the private car to access those services and facilities than those living in the*

*immediately adjacent properties, properties that the Council considers appropriate for inclusion within the proposed revised settlement boundary . . . I therefore conclude that, in principle, the appeal site is an appropriate location for new residential development and that allowing the appeal would not undermine the District's sustainable pattern for growth."*

Environmental:

- 6.17 The environmental role is about contributing to protecting and enhancing the natural built and historic environment which is considered below under Impact on Surrounding Area.

Impact on Surrounding Area:

- 6.18 The development involves the construction of five dwellings in a 'backland' location to the rear of the established residential frontage along Windmill Road. With regards to Policy HG13 of the 2007 Local Plan (and echoed in policy LP8 of the draft Local Plan), it states proposals for the residential development of backland sites must comply with the following criteria:
- i. the site lies within a defined settlement development boundary and does not comprise land allocated or safeguarded for purposes other than a residential use;
  - ii. where a proposal includes existing private garden land which would not result in less satisfactory access or off-street parking arrangements, an unacceptable reduction in existing private amenity space or any other unreasonable loss of amenity to existing dwellings;
  - iii. a safe and convenient means of vehicular and pedestrian access/egress can be provided that is not likely to cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will be discouraged;
  - iv. the proposal does not involve "tandem" development using a shared access;
  - v. the site does not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution;
  - vi. the site is not on the edge of defined settlements and likely to produce a hard urban edge or other form of development out of character in its particular setting; and
  - vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.
- 6.19 The main problems that can arise as a result of backland development include undermining the established character of an area (especially if similar schemes were to be repeated elsewhere in a locality); dwelling plots appearing cramped relative to their surroundings; the fragmentation of established gardens with a loss of mature landscaping; and the infringement of neighbouring residents' amenities. Development behind an established building line can also appear incongruous, particularly with isolated dwellings.
- 6.20 There must also be proper means of access to backland development, which is safe and convenient for both drivers and pedestrians, with a turning area where necessary to avoid the need for vehicles to reverse onto a public highway. A proposed access should avoid excessive disturbance or loss of privacy to neighbouring residents through, for example, an access drive passing unreasonably close to an adjoining dwelling. The likely frequency of use by vehicular traffic and the suitability of the access for service vehicles and the emergency services will also be relevant material considerations.

6.21 In respect of the policy criteria noted above the development is considered to meet the requirements as follows;

i. the site is not located within a defined settlement boundary in either the adopted or emerging local plans; however is not designated for any particular use;

ii. the plans show that the private amenity areas for all plots will meet the requirements of Policy HG9, while the proposal will not result in loss of any existing private amenity space for 1 and 2 The Paddocks. Further, there is sufficient off-street parking for all dwellings, while the layout has been designed in such a way to ensure significant distance to the nearest neighbouring properties.

iii. the private access would be located to the north-eastern corner of the site, off Windmill Road. While there are neighbouring properties to each side of this access, there is good separation distances to each, while the comings and goings associated with five dwellings is not considered to be excessively harmful. Following recent approvals to the south of the site there is a similar form of development constructed, while the access is currently in situ. Therefore there is not considered to be significant visual harm to the street scene.

It is acknowledged the proposal includes a long and relatively narrow driveway, however given the lack of visual harm to the street scene and that Essex Highways Authority do not object, on balance the identified harm is not considered sufficient to recommend a reason for refusal.

iv. the proposal does not represent a form of tandem development using a shared access.

v. the site is of a regular shape and would not compromise a more comprehensive development solution.

vi. the application site is sited in a backland location between residential development to the east fronting Windmill Road and to the west fronting Straight Road. To the south are recently constructed properties following recent planning permissions. As such the site does not form part of the edge of the settlement and views of the site would be limited from surrounding public vantage points. A public footpath runs to the north but the development would be viewed against the backdrop of existing development to the rear and therefore have minimal visual intrusion. The single storey nature of the properties would further reduce their prominence. As such the development would not adversely impact upon the character or pattern of the settlement and would not form a hard urban edge. The siting of residential development around the plot in question means that the development would not appear as a prominent intrusion into open countryside or out of character.

vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.

As stated above the proposal would be located amongst existing development, particularly that recently approved adjacent to the south of the site. Given this and the development to the east and west of the site, the proposal represents an infill development that will not appear out of character or set a harmful precedent.

#### Design, Layout and Appearance

6.22 The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 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 in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).



- 6.23 The development will include a total of five dwellings, all of which will be detached, single storey and served by garages. The proposed layout shows a mini cul-de-sac which is largely in-keeping with the development recently approved adjacent to the south. The submitted plans include three different designs, all of which incorporate key features including front gables, bay windows and a brick plinth. These features help to soften the dwellings' appearance and ensure they sit more comfortably within their surrounds.
- 6.24 Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling of three bedrooms or more should be a minimum of 100 square metres. The submitted plans show that this will be achieved for all five new dwellings.

#### Impact to Residential Amenities

- 6.25 Policy QL11 of the Saved Plan 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 (June 2017).
- 6.26 There are a number of neighbouring properties located to the east, south and west of the site. However, given there is a minimum 20 metres separation distance and that the dwellings are all single storey, there is not considered to be harm with respect to overlooking, loss of light or the development appearing imposing.

#### Highway Safety

- 6.27 Essex County Council as the Highway Authority has been consulted on the application and has stated that they have no objections subject to conditions relating to visibility splays, vehicular turning facilities, the use of no unbound materials and the width of the private drive.
- 6.28 Furthermore, the Council's Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied on to provide a parking space, should measure 7 metres by 3 metres internally. The submitted layout supplied shows that these are comfortably adhered to.

#### Tree and Landscape Impacts

- 6.29 The main body of the application site is set to grass and does not contain any trees or other significant vegetation. Within the grounds of the property immediately to the north of the application site there are several trees situated close to the boundary fence adjacent to the access road. These trees will not be affected by the development proposal.
- 6.30 The northern boundary of the main body of the application site is demarcated by an established conifer hedge, most of which has been trimmed although one or two appear to have been left untrimmed. This landscape feature is of little merit.
- 6.31 The southern boundary of the land is planted with an established Hawthorn hedge which forms a pleasant boundary feature. However it has little amenity value and does not fall within the scope of legislation under which it could be afforded formal legal protection.

#### Legal Obligations

- 6.32 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".

- 6.33 There is currently a deficit of 0.83 hectares of equipped play in Bradfield, however there is adequate formal open space to cope with some additional development. There is one play area located in the village of Bradfield, and is classified as a Local Equipped Area for Play. Some works were recently carried out to refurbish the current play area, however this has not reduced the current deficit. Therefore it is felt that a contribution is justified and relevant to this application, and that the money would be spent at the closest play area in Bradfield.
- 6.34 A unilateral undertaking is being prepared to secure this legal obligation and to ensure compliance with saved policy COM6.

#### Habitats Regulation Assessment

- 6.35 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.
- 6.36 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 the RAMS level 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. The contribution is secured by unilateral undertaking. There is therefore certainty 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 Considerations

- 6.37 In order to meet the visibility splays requested by Essex Highways Authority the existing fencing arrangement for Number 2 The Paddocks would need to be altered. Therefore any recommendation for approval would be subject to this being agreed.
- 6.38 Neighbour objections have noted that there is an existing telegraph pole to the front of the access point that would need to be removed for access to the site to be achievable. Any recommendation for approval would be subject to the operator of this telegraph pole agreeing to its relocation.

## **7. Conclusion**

- 7.1 In conclusion, while the site falls outside of a recognised Settlement Development Boundary the Council is unable to demonstrate a five year housing supply and must therefore assess the application on its own merits. The proposal would represent an economic and social form of sustainable development. While the scheme does represent a form of backland development, it is in accordance with the requirements of Adopted Local Plan Policy HG13 and Emerging Local Plan Policy LP8. The development will not result in harm to neighbouring amenities, while Essex Highways Authority have raised no objections. Therefore, subject to the completion of a legal agreement for contributions towards Open Space and RAMS, 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 to be used towards improving and upgrading the current play equipment in Bradfield.

### 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, the untitled Site Location Plan, and drawing numbers CCWR-01 Revision C, CCWR-02 Revision B, CCWR-03 Revision A, CCWR-04.

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

- 3 Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of obstruction above 900mm at all times. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety.

- 4 Prior to occupation of the development a vehicular turning facility, as proposed in Block Plan, drawing no. CCWR -01 B 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.

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

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

- 6 Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.3 metres for at least the first 6 metres from the back of the footway and provided with an appropriate dropped kerb crossing of the footway.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety.

- 7 No above ground works shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason - In the interests of visual amenity as insufficient information has been submitted within the application for full consideration of these details.

- 8 Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction.

Reason - To enhance the visual impact of the proposed works.

- 9 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason -To enhance the visual impact of the proposed works.

### 8.3 Informatives

Positive and Proactive Statement:

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

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 Informatives:

As the private access road is less than 5.5 metres in width consideration should be given to provide one suitable vehicle passing place within the curtilage of the site at a minimum dimension of 2 metres wide x 7.5 metres in length, adjacent to Plot 1. Details to be agreed in writing with the local Planning Authority, this is to ensure that medium to large vehicles can pass clear of the limits of the highway.

Prior to the first use of the vehicular access to the development arrangements will need to be made with the respective Statutory Undertakers to arrange for the re-location of the telegraph pole at the existing access so it provides the required width in and out of the development.

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.

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.

## **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**

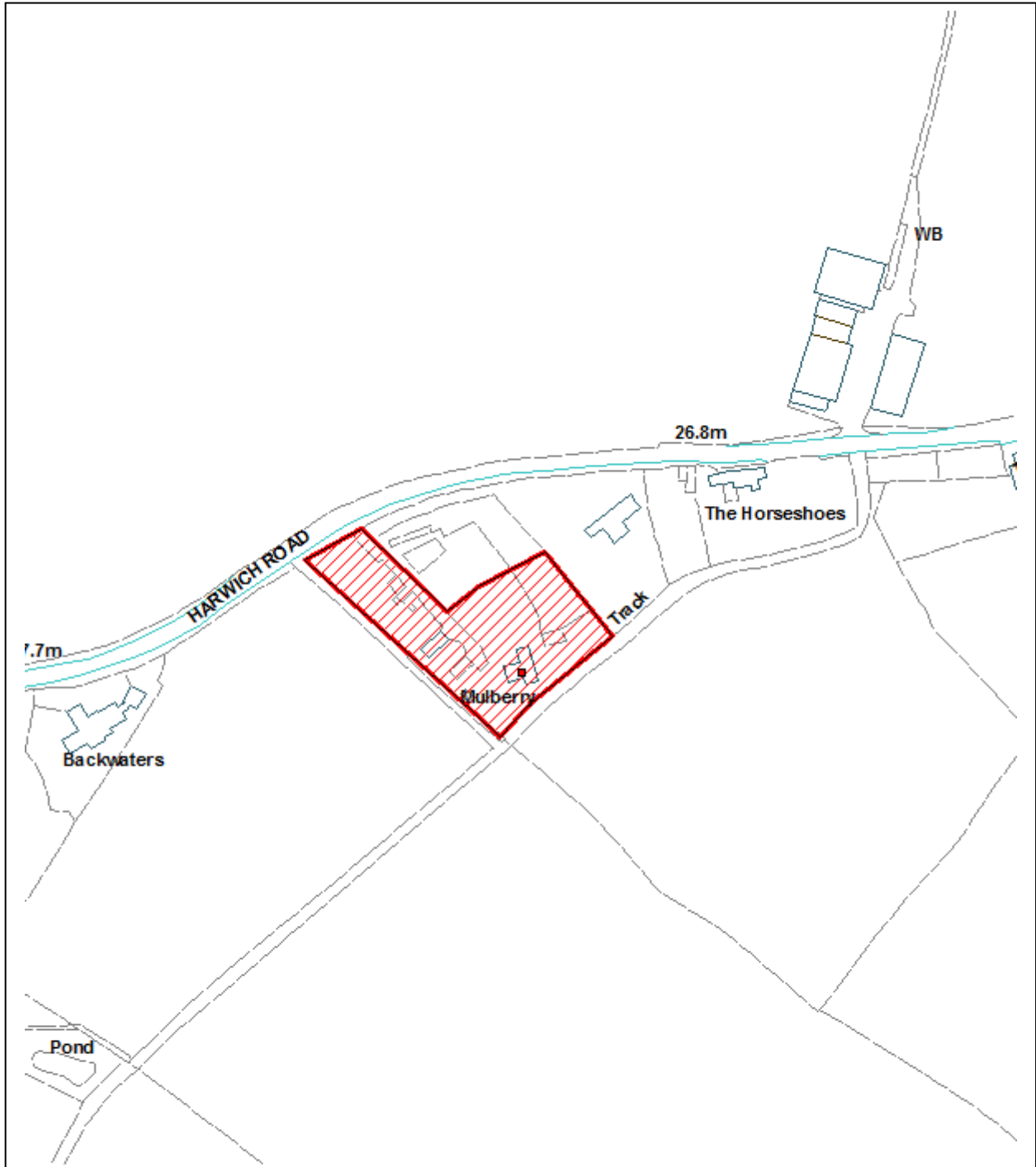
None

## PLANNING COMMITTEE

24 SEPTEMBER 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.5 PLANNING APPLICATION - 19/00909/FUL - MULBERRY HARWICH ROAD BEAUMONT CLACTON ON SEA CO16 0AU**



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

**Application:** 19/00909/FUL

**Town / Parish:** Beaumont Parish Council

**Applicant:** Mr and Mrs Smith

**Address:** Mulberry Harwich Road Beaumont Clacton On Sea Essex CO16 0AU

**Development:** Proposed replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT).

## 1. Executive Summary

- 1.1 This planning application has been referred to Planning Committee at the request of Councillor Land due to concerns relating to highway impact, traffic issues and negative impact upon neighbour.
- 1.2 This application seeks full planning permission for the erection of a proposed replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT).
- 1.3 In September 2017, a formal notification was submitted pursuant to Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 for the conversion of the three agricultural buildings on the site into three dwellings. Following consideration of the issues involved, the Council accepted by letter dated 23<sup>rd</sup> April 2019 that Prior Approval was not required (reference 19/00358/COUNOT). This approval was subject to the conversion of the building with a gross floor area of approximately 139 sqm with a height of 3.7 metres.
- 1.4 A copy of the appeal decision in relation to appeal references APP/A1530/W/16/3144635 and APP/A1530/W/16/3144643 for Chesnut Farm, Abberton Road, Layer De La Haye has been submitted with the application in support of the proposal. These appeals deal with the replacement of buildings where the fall-back position relates to a Prior Notification Application under Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 (formerly Class MB). The Inspector accepted that the fall-back position is a material planning consideration and concluded that the proposal would have a very similar effect to the prior approval scheme in relation to its sustainability of location and access to local services and facilities (the occupants would be reliant on private car); would not increase the number of dwellings over the prior approval scheme and would not result in an increase in new isolated homes in the countryside. The Inspector supported the replacement of three poultry sheds with three dwellings with the same floor area subject to conditions (in order to protect the character and appearance of the rural character of the area).
- 1.5 The application site is located outside the defined Settlement Development Boundary for Beaumont, as defined by the Saved Tendring District Local Plan 2007 and the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017). In considering the overall planning balance, there would be economic benefits arising from the proposal, in particular the additional employment created during the demolition and construction phases, as well as social benefits in respect of the contribution towards the supply of new housing and support for rural communities. The proposal would also meet the requirements of the environmental role, as it would contribute to protecting the natural environment in comparison with the fall-back position of the prior approval scheme. There are no adverse impacts which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Consequently, the proposal would amount to sustainable development.



- 1.6 The proposed dwelling is visually acceptable, will result in no significant harm to neighbouring dwellings and represents no highway safety risk.

**Recommendation:**

That the Head of Planning be authorised to grant 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 (where relevant):**
- **Financial Contribution 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.

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

HG6 Dwelling Size and Type

HG9 Private Amenity Space

HG14 Side Isolation

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

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

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

PPL3 The Rural Landscape

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

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

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.

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.

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.

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**

18/01144/FUL	Alterations and extension.	Approved	06.09.2018
19/00358/COUNOT	Proposed conversion of agricultural buildings to three x 1 bedroom residential dwelling houses.	Prior Approval Not Required	23.04.2019

**4. Consultations**

ECC Highways Dept

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

1. There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic for the three residential dwellings and retained free of any obstruction at all times.
- 2.No unbound material shall be used in the surface treatment of the existing vehicular access within 6 metres of the highway boundary.
3. Prior to the occupation of the proposed dwellings, the existing private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of the Highway Boundary.
4. 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.

5. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

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: As per the information contained in The Planning Statement, under item 2.5 it will be necessary to undertake some maintenance to the existing hedgerow and cut back any overhanging trees adjacent to Harwich Road to ensure that a 2.4 metres parallel band visibility splay will be provided for the entire site frontage.

Informative 2: 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 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

## **5. Representations**

5.1 Beaumont Parish Council have not commented on this application

2 letters of objection have been received raising the following concerns:

- Referral to the comments made on planning application 19/00358/COUNOT concerning the fact that the original site was based on a lie as the site was never agricultural.
- TDC should take reasonable steps to properly verify the accuracy of the original Application.
- If it is acceptable for a planning officer to simply "think or feel" that the site was agricultural, without obtaining any support for that view from those who would actually know, then that will open the door to anyone with similar sheds in their gardens (prior to the relevant date under the legislation) to claim them as agricultural, and be able to convert them to living accommodation.
- Site line is incorrect
- The site is delineated by a red line which could be used for further development.
- Need to restrict further development
- The site is accessed by a drive off of Harwich Road on a bend
- Additional traffic causes a risk to road users.
- The proposal will change the rural character of the location.
- Neighbour not informed of the application
- Change of name of property from Meadowside to Mulberry as a cynical means to obscure the intentions of the application.

## **6. Assessment**

### Site Context

- 6.1 This application refers to 'Mulberry' which is a detached bungalow set to the rear of the application site. There are other outbuildings located on the application site which are now redundant following the cessation of the use of the site for poultry rearing purposes. As stated with the accompanying planning statement, throughout the past 20 years the buildings have been used only poultry rearing purposes or for the storage of agricultural items. There has been no other use of the building at any time other than for agricultural purposes.

### Proposal

- 6.2 This application seeks full planning permission for the erection of a proposed replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT).

### Assessment

- 6.3 The main considerations for this application are:
- Planning and Appeal History;
  - Principle of Development
  - Residential Amenities;
  - Access and Parking;
  - Trees and Landscaping;
  - Ecology and Protected Species;
  - Financial Contributions - RAMS;
  - Financial Contributions - Open /Play Space; and,
  - Representations.

### Planning and Appeal History

### Site Specific History

- 6.4 In September 2017, a formal notification was submitted pursuant to Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 for the conversion of the three agricultural buildings on the site into three dwellings.
- 6.5 Following consideration of the issues involved, the Council accepted by letter dated 23<sup>rd</sup> April 2019 that Prior Approval was not required (reference 19/00358/COUNOT). This approval was subject to the conversion of the building with a gross floor area of approximately 139 sqm with a height of 3.7 metres.

#### Appeal History

- 6.6 A copy of the appeal decision in relation to appeal references APP/A1530/W/16/3144635 and APP/A1530/W/16/3144643 for Chesnut Farm, Abberton Road, Layer De La Haye has been submitted with the application in support of the proposal.
- 6.7 These appeals deal with the replacement of buildings where the fall-back position relates to a Prior Notification Application under Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 (formerly Class MB).
- 6.8 The Inspector accepted that the fall-back position is a material planning consideration and concluded that the proposal would have a very similar effect to the prior approval scheme in relation to its sustainability of location and access to local services and facilities (the occupants would be reliant on private car); would not increase the number of dwellings over the prior approval scheme and would not result in an increase in new isolated homes in the countryside. The Inspector supported the replacement of three poultry sheds with three dwellings with the same floor area subject to conditions (in order to protect the character and appearance of the rural character of the area).

#### Principle of Development

- 6.9 The National Planning Policy Framework 2019 (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.
- 6.10 At the time of this report, 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.
- 6.11 Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the

NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.

#### Assessment of Sustainable Development

- 6.12 While the NPPF advocates a plan-led approach, it is important to consider whether any circumstances outweigh the conflict. Development should be plan led unless material considerations indicate otherwise and it is accepted that the site is not in a preferred location for growth.
- 6.13 In line with paragraph 11 d) of the NPPF and the appeal decision set out above, the fall-back position is of particular relevance when considering circumstances that outweigh the conflict with Saved Policy QL1 and Emerging Policy SPL1.
- 6.14 Paragraph 8 of the National Planning Policy Framework (2019) sets out the criteria of achieving sustainable development as meeting an economic objective, a social objective and an environmental objective. These are assessed below and also take into account the fall-back position:
- economic;
  - social, and;
  - environmental roles.
- 6.15 The sustainability of the application site is therefore of particular importance. In assessing sustainability, it is not necessary for the applicant to show why the proposed development could not be located within the development boundary.

#### Economic

- 6.16 It is considered that the proposal would contribute economically to the area, for example by providing employment during the construction of the dwelling and from future occupants utilising local services, and so it meets the economic arm of sustainable development.
- 6.17 The development now incorporates a demolition stage which has the potential to generate more employment than the fall-back position.

#### Social

- 6.18 Emerging Policy SPL1 of the Publication Draft of the Local Plan 2017 includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations therefore being in line with the aims of the aforementioned paragraph 17 of the NPPF. This is the emerging policy equivalent to Saved Policy QL1 of the adopted Tendring District Local Plan 2007 which states that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan.
- 6.19 Beaumont is identified as a village within saved Policy QL1 of the adopted Tendring District Local Plan 2007 and is defined as a Smaller Rural Settlement within Policy SPL1 of the emerging Tendring District Local Plan Publication Draft (2017). These smaller villages are considered to be the least sustainable locations for growth and there is a concern that encouraging too much development in these areas will only serve to increase the number of people having to rely on cars to go about their everyday lives. It is accepted that each of these smaller rural settlements can achieve a small scale increase in housing stock over the plan period. To allow for this to happen, Settlement Development Boundaries have been drawn flexibly, where practical, to accommodate a range of sites both within and on

the edge of villages and thus enabling them to be considered for small-scale residential 'infill' developments. With this in mind, where appropriate the emerging Local Plan settlement development boundary has been extended but does not include or extent near to the application site.

- 6.20 The proposal will generate the same number of private car journeys in comparison with the fall-back position of the prior approval. The development would be no less sustainable than the permitted scheme.

#### Environmental

- 6.21 The environmental role is about contributing to protecting and enhancing the natural and built environment. The proximity of the site to open fields and agricultural land and the considerable distance to the residential properties along Harwich Road, gives it a strongly rural character.
- 6.22 The Council accepted that the conversion of the building into a dwelling can be undertaken without further prior approval. This approval is subject to the conversion of the building with a gross floor area of approximately 139 sqm. The Council did not raise any concern on the three grounds for consideration of the prior notification application, namely access, flooding or contamination.
- 6.23 The current application is for the replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT). The proposed dwelling will replace plot 3 in virtually the same location as the existing building subject of the prior notification approval. The proposed replacement dwelling comprises of a gross floor area of 140 m2 and a maximum height of 5.5 metres.
- 6.24 With the exception of the inclusion of additional floor space and the additional height of the 1.8 metres, the proposed scheme will be virtually equal to the 'fall back' scheme.
- 6.25 The proposed replacement building is a modest structure with limited impact upon its surroundings having a comparable impact upon the character and appearance of the area as the fall-back position.

#### Layout and Appearance

- 6.26 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 in Policy SPL3 of the Emerging Plan. Saved Policy HG14 requires a minimum of 1 metre side isolation between dwellings.
- 6.27 The application proposes the erection of a single storey dwelling with a hipped roof. The proposed dwelling is located to the south east corner of the application site and adjacent to 'Mulberry'. As stated within the planning statement, although the new building will have a greater height than the existing poultry buildings, this is due to the pitched roof arrangement. However, the dwelling will equate to the same floor space as the proposed three conversions. A condition will be imposed to ensure that prior to occupation of the proposed dwelling; the farm related buildings will be removed in the interests of protecting and enhancing the rural character and appearance of the area.
- 6.28 Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling with three bedrooms or more should be a minimum of 100 square metres. This is achieved comfortably.



### Residential Amenities

- 6.29 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).
- 6.30 To the north east of the application site is 'The Horseshoes'. The proposed dwelling will be located approximately 60 metres away from the neighbouring dwelling and due to the single storey nature of the dwelling as well as the existing vegetation along the boundary which will help to screen the single storey dwelling, it is considered that the proposal will not cause any significant impact upon neighbouring amenities.
- 6.31 The proposed dwelling will be located approximately 12 metres away from the neighbouring dwelling 'Mulberry' which will comply with Policy HG14 of the Tendring District Local Plan 2007. The proposed dwelling comprises of a hipped roof which will slope away from the neighbouring dwelling as well as the single storey nature of the proposal, it is considered that the proposal will not cause any significant impact upon neighbouring amenities.
- 6.32 To the south west of the application site is 'Backwaters', however due to the approximate distance of approximately 160 metres to the neighbouring dwelling as well as the single storey nature and the existing vegetation, it is considered that the proposed dwelling will not cause any significant impact upon neighbouring amenities.
- 6.33 Conditions removing permitted development rights are considered necessary in this instance due to the potential impact and harm from extensions and outbuildings to the character and appearance of the area, and given the fact that the proposal represents effectively an alternative permission the already approved Prior Notification application which does not benefit from permitted development rights due to the countryside location.

### Highway Safety/Parking

- 6.34 Essex County Highways have been consulted on this application and do not raise any objections subject to conditions relating to; visibility splays, no unbound materials, width of existing private drive, cycle parking and storage of building materials. All conditions will be imposed however the condition relating to the storage of building materials which will be imposed as an informative.
- 6.35 The plans provided demonstrate that there are two parking spaces proposed to serve the dwelling which are in line with Essex Parking Standards requirements of parking spaces measuring 5.5 metres by 2.9 metres. The proposed dwelling will not have any adverse impact on traffic generation, the existing highway network or noise generation when compared with the former agricultural use.

### Trees and Landscaping

- 6.36 The application site is well populated with trees, mainly culinary varieties of edible fruit such as Apples, Pears and Plums. The site also contains decorative species with the most prominent being a large willow on the eastern boundary.
- 6.37 Taking into account the density of the vegetation on the boundary with the highway and the limited extent to which the application site can be seen by the public any trees on the site have low amenity value.

- 6.38 The erection of the dwelling in the proposed position will not result in harm being caused to any trees on the land.
- 6.39 A soft landscaping condition will be imposed to secure details of soft landscaping to practically obscure views of the site from the Public Right of Way network to the south-west of the application site.

#### Financial Contributions – RAMS

- 6.40 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.
- 6.41 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.
- 6.42 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.

#### Financial Contributions – Open Space

- 6.43 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".
- 6.44 There is currently a deficit of 0.49 hectares of play and formal open space in Beaumont. Although there is a current deficit of play facilities in Beaumont it is unlikely due to the size and location that this development will impact on the current facilities.

## **7. Conclusion**

- 7.1 The underlying purpose of Class Q is to allow the conversion of agricultural buildings and increase rural housing without building on the countryside. Total demolition and replacement of buildings falls outside of Class Q. Officers recognise that the approval of this permission could be considered at odds with the purpose and aims of Class Q and also be considered contrary to the principles of sustainable development set out within national and local plan policies. However, the approval of this application will not set a harmful precedent due to the special circumstances under which the application is being assessed. Any future applications for residential development would be considered on its merits at the time of the application.

7.2 In considering the overall planning balance, there would be economic benefits arising from the proposal, in particular the additional employment created during the demolition and construction phases, as well as social benefits in respect of the contribution towards the supply of new housing and support for rural communities. The proposal would also meet the requirements of the environmental role, as it would contribute to protecting the natural environment in comparison with the fall-back position of the prior approval scheme. There are no adverse impacts which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Consequently, the proposal would amount to sustainable development and the application is recommended for approval, subject to conditions.

**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 for the one dwelling proposed

**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 and documents: Drawing No. BHR -101 Revision A, Block Plan – Demolition Plan scanned 6<sup>th</sup> August and Planning Statement dated June 2019.

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

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

Reason - To provide adequate inter-visibility between users of the access and the public highway in the interests of highway safety

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

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

5 Prior to the occupation of the proposed dwellings, the existing private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of the Highway Boundary.

Reason - To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety

- 6 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.

- 7 Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction.

Reason - To obscure views of the site from the Public Right of Way Network to the south west of the application site.

- 8 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - To ensure that the landscaping scheme is suitably implemented within an appropriate timescale.

- 9 The proposed dwelling shown on drawing no. BHR-101 Revision A hereby permitted shall be occupied until all of the existing agricultural buildings as shown on drawing Block Plan – Demolition Plan scanned 6<sup>th</sup> August, have been demolished and the resulting demolition materials removed from the site.

Reason – In the interests of protecting and enhancing the rural character and appearance of the area.

- 10 Notwithstanding the provisions of Classes A, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), the dwelling shown on drawing no. BHR-101 Revision A hereby permitted shall not be extended or ancillary buildings or structures shall be erected within the curtilage, without the prior written approval of the local planning authority.

Reason – In the interests of protecting and enhancing the rural character and appearance of the area.

### 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.

#### Building Control and Access

Fire service access is required in accordance with B5.

#### Highways

Informative 1: As per the information contained in The Planning Statement, under item 2.5 it will be necessary to undertake some maintenance to the existing hedgerow and cut back any overhanging trees adjacent to Harwich Road to ensure that a 2.4 metres parallel band visibility splay will be provided for the entire site frontage.

Informative 2: 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 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

Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

## **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

This page is intentionally left blank

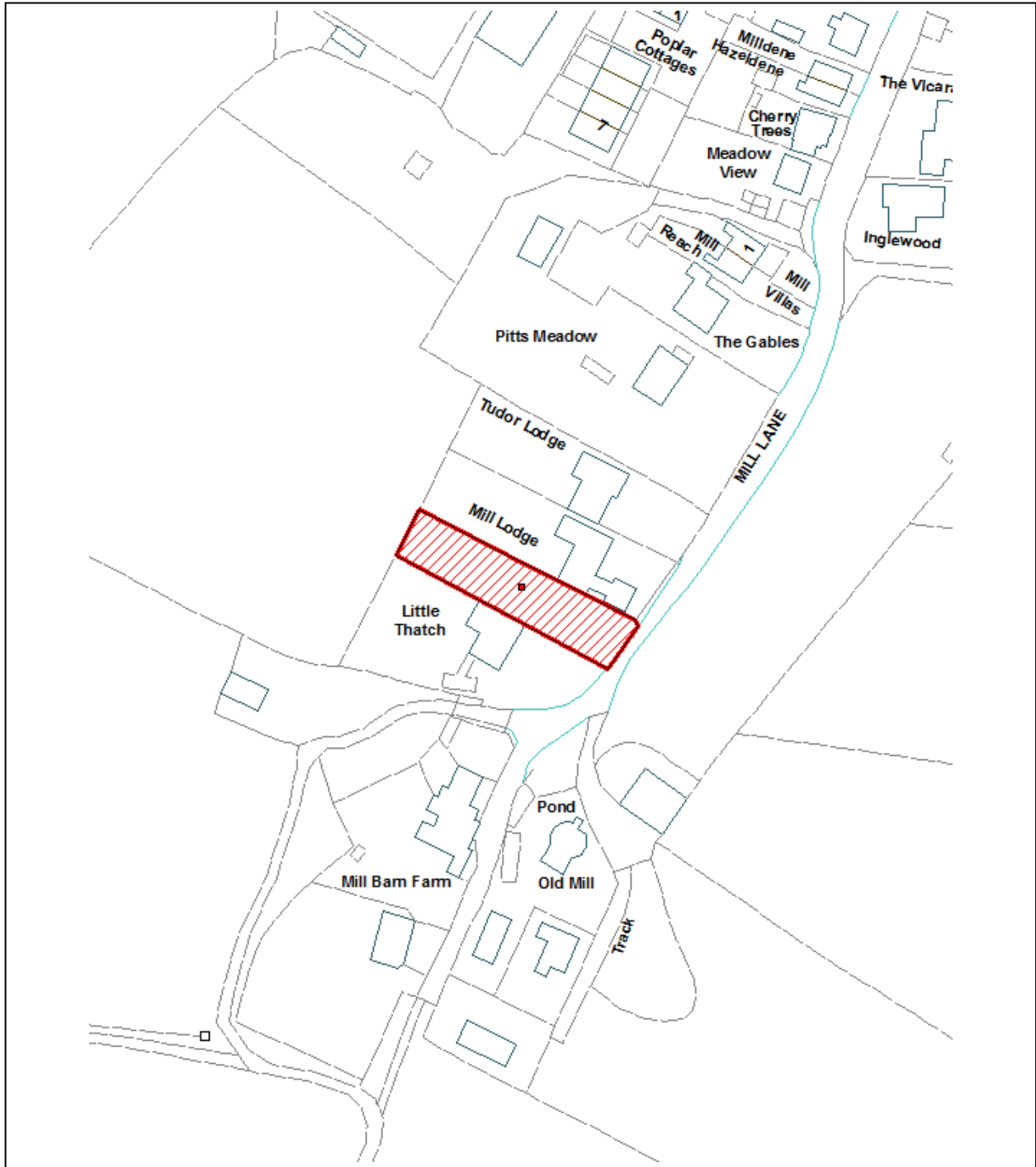


## PLANNING COMMITTEE

24 SEPTEMBER 2019

### REPORT OF THE HEAD OF PLANNING

#### **A.6 PLANNING APPLICATION – 19/01157/FUL – LAND ADJACENT LITTLE THATCH MILL LANE THORPE LE SOKEN CO16 0ED**



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

**Application:** 19/01157/FUL

**Town / Parish:** Thorpe Le Soken Parish  
Council

**Applicant:** Mr & Mrs Cramphorn

**Address:** Land adjacent Little Thatch Mill Lane Thorpe Le Soken Essex CO16 0ED

**Development:** One dwelling.

## 1. Executive Summary

- 1.1 The application is referred to the Planning Committee by Councillor Land due to the proposed dwelling causing highway impacts and other traffic issues, a negative impact on neighbours, the site is located within a Conservation Area, it is located on a public right of way and it is within a confined space. Additional comments have been received by email from Councillor Land, dated 26<sup>th</sup> August relating to polluted waterway.
- 1.2 The application seeks full planning permission for the erection of one dwelling accessed via Mill Lane.
- 1.3 The application site is located within the defined Settlement Development Boundary for Thorpe Le Soken, as defined by the Saved Tendring District Local Plan 2007 and the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 1.4 Planning permission reference 18/00781/FUL was recommended for approval, and overturned by Members who refused planning permission due to the impact upon neighbouring amenities – Little Thatch and Mill Lodge; the proposal was contrary to Saved Policy EN6 Biodiversity and EN6a 'Protected Species'; and the impact upon the setting of the Listed Building, Mill Barn Farm. The application was taken to planning appeal and it was dismissed by the Planning Inspectorate on 25 July 2019. The Planning Inspectorate considered that the proposal was contrary to Paragraph 11 of the NPPF as it failed to provide a RAMs contribution.

- 1.5 Appeal reference APP/P1560/W/18/3213632 was dismissed only on the lack of a Unilateral Undertaking for RAMS. A UU is currently being prepared to overcome the above concern. 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 ecology and biodiversity, harm to heritage assets or highway safety.

**Recommendation:**

That the Head of Planning be authorised to grant 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 (where relevant):**
- **Financial Contribution 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.

NPPF National Planning Policy Framework

National Planning Practice Guidance

Tendring District Local Plan 2007

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG14 Side Isolation

TR1A Development Affecting Highways

TR4 Safeguarding and Improving Public Right of Way

TR7 Vehicle Parking at New Development

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

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

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

PPL4 Biodiversity and Geodiversity

PPL8 Conservation Areas

PPL9 Listed Buildings

LP1 Housing Supply

LP2 Housing Choice

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

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

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.

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.

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.

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

01/01840/FUL	New Cottage	Refused	17.12.2001
16/01886/TCA	1 No. Cherry tree - fell	Approved	15.12.2016
17/01933/FUL	Proposal for one dwelling.	Refused	10.04.2018
18/00781/FUL	One dwelling.	Refused Dismissed at appeal	27.07.2018
18/01574/TCA	2 No. Blackthorn - remove, 1 No. - Multi-trunk (species unknown) - remove, 2 No. Cherry Trees - remove	Approved	15.10.2018

### 4. Consultations

Essex County Council  
Highways

As with the previous Planning Application: 18/00781/FUL the Highway Authority retain some concerns that the access onto the High street /B1033 is narrow, with an adverse effect on visibility and therefore the safety of both pedestrians and drivers, but consider that the increased vehicle movements associated with this one additional property could be considered to be within an acceptable tolerance and note that there are no recorded personal injury collisions at the connection of Mill Lane to

the High Street.

This does not in any way detract the underlying principal of seeking to avoid the intensification of usage of PROW by private vehicular means in order to avoid associated maintenance and safety issues that would otherwise impact the public usage. It remains that intensification (site dependent) will, more often than not, result in a frequency and volume of vehicular movement that is well beyond levels afforded by established prescriptive rights and therefore give rise to public nuisance issues. Such matters must continue to be material to the determination of all future planning applications where intensification is likely to result.

In consequence, any further development along this land/footpath beyond this application would be unacceptable and would be objected to.”

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 proposed dwelling, the proposed vehicular access shall be constructed to a width of 4.8m and shall be provided with an appropriately constructed connection to Mill Lane.
2. Prior to the proposed access on the proposed dwelling being brought into use, an 2.4m x 11m visibility splay in both directions, shall be provided on both sides of that access onto the Public Right of Way and shall be retained and maintained free from obstruction clear to ground thereafter. These splays must not form part of the vehicular surface of the access.
3. No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.
4. All off street car parking shall be in precise accord with the details contained within the current Parking Standards being provided within the site which shall be maintained free from obstruction and retained thereafter.
5. The Cycle / Powered two wheeler parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.
6. Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

development, the developer shall make good and effect any repairs necessary to the surface and sub surface of Mill Lane, Public Footpath No11 (Thorpe Le Soken) which have been unavoidably caused by the construction and fitting out phases of the proposed development to the specifications of the highway Authority entirely at the developers own expense.

8. 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

9. The public's rights and ease of passage over public footpath No.11 (Thorpe Le Soken) shall be maintained free and unobstructed at all times.

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: 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 One letter of representation has been received from District Councillor Daniel Land, stating the following:

- The development is in a poor location at the bottom of a narrow unmade road which doubles as a PROW.
- It's deep in the conservation area, in close proximity to some local historical landmarks. Thorpe High Street is a busy main road, with access from Mill Lane causing additional troubles on the road network at peak times.
- This development will have an impact on the neighbours on their visual amenity and privacy.
- The area at the bottom of this tiny lane is not suitable for heavy vehicles servicing a building site and will disrupt local residents and people using the busy footpaths

5.2 Two letters of representation has been received from one member of the public stating the following:

- Insufficient survey effort provided to establish the presence or absence of Great Crested Newt on or in the vicinity of the site.
- It has been previously reported that a breeding colony of Great Crested Newt exist in the pond less than 5 metres from the site.
- The site has had no survey effort expended on it despite Natural England Standing advice advising that this should be undertaken. Not to do so would be against both the NPPF guidance and indeed would be contrary to English and European Law. A Habitat Suitability Index (HSI) has been undertaken of the pond ecologically connected and adjacent to the site and found that the pond has 'Good' suitability for Great Crested Newt. This indicates that there is an 0.74 suitability for GCN to be present. With a score as high as this it would be unlawful for a decision to be taken to develop the site without the proper survey effort being undertaken. The HSI report has been sent to the council for their information and action.
- It should be clear, as emphasised by the planning inspector, R Sabu that all applications should be considered on their own merits.
- The inspector also made the point that the proposed developments harm to the living conditions of the occupants of neighbouring properties, adverse highway safety and biodiversity impacts, and harm in character and appearance terms were not positive benefits to the appeal scheme. The inspector concluded that they accordingly only had a neutral effect on the planning balance. It is therefore clear that in combination with other material considerations this application should be refused.

## **6. Assessment**

### Site Context

6.1 The application site is located on the western side of Mill Lane and is situated in between 'Little Thatch' to the south and 'Mill Lodge' to the north. Mill Lane is an unadopted, unmade road with a mix of housing types including bungalows, terraces, and detached 1.5 and 2 storey dwellings.



- 6.2 The site lies within the Settlement Boundary for Thorpe -le-soken, as established in the Tendring District Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017). The site lies within the Thorpe-le-soken Conservation Area and located to the east of the site is a Public Right of Way which forms the vehicular access to the site.

#### Principle of Development

- 6.3 The application site is located within the defined Settlement Development Boundary for Thorpe Le Soken, as defined by the Saved Tendring District Local Plan 2007 and the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.4 Policy SPL2 of the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft states that there is a general presumption in favour of new development within defined development boundaries of towns and villages, subject to detailed consideration against other relevant Local Plan policies. The principle for residential development is therefore acceptable subject to the detailed consideration below. The appeal decision also accepted the principle of development.

#### Layout, design and Appearance

- 6.5 The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 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 in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.6 The plan demonstrates that the proposed dwelling will be situated towards the front of the site and accessed via a vehicular access from Mill Lane. The proposed dwelling will be one and a half storeys with a traditional cottage design. The materials proposed are red brick and plain tiles which will be in keeping with the character of the area. Due to the sensitive location of the proposed dwelling, a condition will be attached to this decision to ensure a sample of these materials is provided subject to being agreed by the Local Planning Authority. The design is unchanged from the appeal proposal and the Inspector has not raised any objection to the design.
- 6.7 The residential character of the locality is predominantly linear in form consisting of detached dwellings on fairly spacious plots fronting Mill Lane. Dormer windows to the front of the dwelling are a prominent feature along Mill Lane and therefore the design of this proposal is considered to be in keeping with the character of the area.
- 6.8 Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling with three bedrooms or more should be a minimum of 100 square metres. This is achieved comfortably.

#### Impact upon Neighbouring Amenities

- 6.9 The NPPF, in paragraph 17 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'.
- 6.10 The appeal site lies between two detached dwellings; Little Thatch to the south and Mill Lodge to the north. Within the appeal decision, the Planning Inspectorate has stated that, *'the proposed dwelling would occupy almost the full width of the plot such that the flank walls would be in close proximity to the boundaries with the adjacent properties. The flank*

wall of Mill Lodge is also in close proximity to the boundary and has an existing triple window that currently looks out onto the vacant site’.

- 6.11 Paragraph 15 of the appeal decision states that *‘the proposed building would present a two-storey wall, albeit with a slope at higher level, that would be readily visible from the kitchen window in the flank wall of Mill Lodge. However, the space served by this window is a dual aspect open plan kitchen, which also benefits from a patio door to the adjacent wall which affords a high quality of outlook across the rear garden. Therefore, while outlook from the kitchen window would be affected by the proposed development, due to the nature of the room that this window serves it would result in no material harm to the living conditions of the occupiers of Mill Lodge in this respect’*. The relationship with the neighbouring dwelling is unchanged from the appeal proposal and therefore there is no objection in terms of the impact on Mill Lodge.
- 6.12 In terms of loss of light, *‘the window is south facing, and given the close proximity and height of the flank wall of the proposed dwelling, it would reduce the levels of light reaching the kitchen area. However, given that there is a full height patio door on the adjacent wall, the space would still receive adequate light such that the living conditions of the occupiers would not be unduly affected. Moreover, given the function and layout of the room, it is unlikely that the occupiers would spend substantial portions of the day in the space adjacent to that flank window’*. The planning inspectorate noted the guidance within the Essex Design Guide relating to 45 degree angle from the centre of the window and the purpose of the document is as a guide only. It was concluded that *‘given the position of the proposed building in relation to Mill Lodge and the open plan nature of the internal spaces, the harm to outlook and light would not be significant such that refusal of permission on this ground alone would be justified’*.
- 6.13 Within paragraph 18 of the appeal decision, the Planning Inspectorate acknowledged the concerns in relation to the effect of the proposed dwelling on the living conditions of occupiers of Little Thatch with regards to outlook. However, the appeal decision states that *‘since the proposed building would not be located directly opposite to this side of the house, the outlook from the bedroom window in the flank wall of Little Thatch would not be unduly affected. Furthermore, since the room is unlikely to be occupied during substantial parts of the day, any harm would be very limited such that refusal of permission on this ground alone would not be justified’*.
- 6.14 Paragraph 18 refers to the Planning Inspectorate acknowledging concerns relating to overlooking to the front of Little Thatch. The Inspectorate states that *‘the windows on the flank wall of the proposed building facing Little Thatch would be to an ancillary room of the kitchen and a secondary window to the dining area. Therefore, a suitable condition could be reasonably imposed to require these windows to be obscured such that the privacy of the occupants of Little Thatch would not be unduly affected should planning permission be forthcoming’*. A condition will be imposed to ensure that the two windows proposed on the south western elevation show on Drawing No.CML.01 Revisions E shall be non-opening and glazed in obscure glass and retained in this approved form.
- 6.15 Paragraph 19 concluded that *‘given the position of the proposed dwelling in front of the building line of Little Thatch, the proposed building would not significantly affect the levels of light reaching the bedroom window. It may be likely that the future occupants of the appeal site would erect a fence along the boundary with Little Thatch that may reduce the levels of light to this room. However, given that the room is less likely to be occupied for substantial parts of the day compared with other spaces, the harm in this respect would be limited. While light levels to the front of Little Thatch may be reduced for certain parts of the day, given that the windows to the front of Little Thatch would continue to receive light from the south, the levels of light available in the dwelling would not be significantly reduced such that the living conditions of the occupiers would be unduly affected’*. The relationship with Little Thatch is unchanged from the appeal proposal and therefore there are no objections in terms of impact upon Little Thatch.

### Impact upon Heritage Assets

- 6.16 Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) state that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.
- 6.17 Policy EN23 of the adopted Tendring District Local Plan (2007) seeks to ensure that any proposals for development that would adversely affect the setting of a Listed Building, including group value and long distance views will not be permitted. Policy PPL9 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) seeks to ensure that the proposals for new developments affecting a listed building or setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric: are explained and justified through an informed assessment and understanding of the significant of the heritage asset and its setting; and are of a scale, design and use materials and finishes that respect the listed building and its setting.
- 6.18 A Planning and Heritage Statement was submitted as part of this planning application describing the proposed development and the impact upon the Conservation Area and Listed Buildings.
- 6.19 As stated within appeal decision, within paragraph 25, the Planning Inspector recognises the *'concerns relating to the effect of the proposed development on The Old Mill and the Grade II Listed Mill Barn Farm in terms of the effect on the setting of these buildings and the living conditions of the occupiers'*. The Inspector explains that *'given the distance between these buildings and the appeal site, and the design and conditions of the occupiers would not be adversely affected by the proposal. Thus, taking these matters together, and in accordance with the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude that the proposed development would preserve the character and appearance of the Conservation Area and the setting of the aforementioned Listed Buildings.'* It is therefore considered that there is no objection in terms of heritage grounds.

### Trees and Landscaping

- 6.20 Unfortunately the vegetation on the application site has been cut down to ground level. There is some re-growth comprising rank and ruderal vegetation including brambles. There is a large Willow in the northernmost corner of the site that will not be affected by the development proposal.
- 6.21 On, or close to the boundary with the adjacent property known as Little Thatch there is an established boundary hedge.
- 6.22 A soft landscaping condition will be imposed to secure new planting on the site frontage to soften the appearance of the development and the retention of the front boundary hedge within the Conservation Area.

### Highway safety

- 6.23 Essex County Council Highways have been consulted on this application and have stated that although there were concerns with planning application 18/00781/FUL, the access onto High Street is narrow, with an adverse effect on visibility and therefore the safety of both pedestrians and drivers, but consider that the increased vehicle movements associated with this one additional property could be considered to be within an acceptable tolerance and note that there are no recorded personal injury collisions at the connection of Mill Lane to the High Street.

- 6.24 This does not in any way detract the underlying principal of seeking to avoid the intensification of usage of PROW by private vehicular means in order to avoid associated maintenance and safety issues that would otherwise impact the public usage. It remains that intensification (site dependent) will, more often than not, result in a frequency and volume of vehicular movement that is well beyond levels afforded by established prescriptive rights and therefore give rise to public nuisance issues. Such matters must continue to be material to the determination of all future planning applications where intensification is likely to result. In consequence, any further development along this land/footpath beyond this application would be unacceptable and would be objected to.
- 6.25 The Planning Inspector in paragraph 27 of the appeal decision acknowledges '*local concerns regarding highway safety and congestion relating to Mill Lane and High Street including during the construction process and I note the evidence relating to damage to The Oaks*'. The inspector also recognises '*the evidence relating to the use of Mill Lane as a Public Footpath. However, while I acknowledge that the Highways Authority objected to previous proposals for the site, it has not raised any objections on this proposal in this regard and from the evidence before me I see no reason to disagree with this assessment*'.
- 6.26 There is sufficient parking to the front of the host dwelling to meet Essex County Council Parking Standards requirement of 5.5 metres by 2.9 metres. There is therefore no objection on highway safety grounds.
- 6.27 The Highway Authority does not raise any objection to the proposal subject to conditions relating to vehicular access, visibility splays, no unbound materials, off street parking, cycle parking, boundary hedge 1 metre back from highway, repairs to public footpath and construction method statement. All of the conditions will be imposed apart from the condition relating to off street parking as the application site can accommodate sufficient parking.

#### Financial Contributions – Open Space

- 6.28 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".
- 6.29 On this occasion, a contribution is not required from the Public Realm team.

#### Habitat Regulations Assessment

- 6.30 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.
- 6.31 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.
- 6.32 The application site lies within the Zone of Influence (Zoi) of Hamford Water SPA and Ramsar Site. Within the Appeal paragraph 9, the Planning Inspector stated that the

appellant has 'provided a signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 during the course of the appeal seeking to ensure the payment of a financial contribution prior to the commencement of development'. However, the UU provided by the appellant 'does not refer specifically to Essex Coast RAMS or to Hamford Water SPA and Hamford Water Ramsar site, the sites that would be adversely affected by the proposal. Consequently, there is a possibility that it would not mitigate the harm caused by the proposed development. Moreover, NE's interim advice<sup>2</sup> states that "in the interim period before the RAMS is adopted, a financial contribution should be agreed with and collected from the developer, prior to commencement, on the basis that it can be used to fund strategic 'off site' measures (i.e. in and around the relevant European designated site(s))" (my emphasis). Since the relevant European designated sites are not explicitly identified in the UU it would not meet this requirement. The inspector concluded in paragraph 11 of the appeal decision that 'the UU therefore would conflict with Regulation 122 of the Community Infrastructure Levy regulations 2019 (as amended)'.

- 6.33 Following legal advice the Council has now changed the wording in its unilateral undertakings to be CIL compliant. 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. Approval is recommended subject to completion of the UU within 6 months of the committee date.

#### Ecology and Biodiversity

- 6.34 Paragraph 174 of the National Planning Policy Framework 2019 requires Local Planning Authorities to protect and enhance biodiversity and geodiversity.
- 6.35 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.
- 6.36 Within the appeal, paragraph 22, the Planning Inspector has acknowledged '*concerns relating to clearance works being carried out on the site since the application was determined. However, some of these matters are covered by legislation outside of the planning acts and I have assessed the proposal as presented for appeal against its planning merits – which these matters are extraneous to*'. The appeal statement acknowledges '*the evidence relating to ecology, the Council has stated that it no longer contests this reason for refusal*'. When determining the appeal, the Inspector was aware of the neighbouring pond and the Great Crested Newts which was referred to in the Councils reason for refusal. The inspector concluded that '*from the evidence before me I am satisfied that the ecology of the site would not be unduly affected*'.

## **7. Conclusion**

- 7.1 Appeal reference APP/P1560/W/18/3213632 was dismissed only on the lack of a satisfactory Unilateral Undertaking for RAMS. A UU is currently being prepared to overcome the above concern. 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 ecology and biodiversity, harm to heritage assets 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

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 and documents; drawing numbers CML -01 Revision E and Planning and Heritage Statement dated October 2017.

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

3 Prior to first occupation of the proposed dwelling, the proposed vehicular access shall be constructed to a width of 4.8m and shall be provided with an appropriately constructed connection to Mill Lane.

Reason - To ensure that all vehicles using the private drive access do so in a controlled manner, in the interests of highway safety

4 Prior to the proposed access to the proposed dwelling being brought into use, a 2.4m x 11m visibility splay in both directions, shall be provided on both sides of that access onto the Public Right of Way and shall be retained and maintained free from obstruction clear to ground thereafter. These splays must not form part of the vehicular surface of the access.

Reason - To ensure adequate inter-visibility between drivers of vehicles using the proposed access and pedestrians in the adjoining Public Right of Way, in the interests of highway safety.

5 No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason - To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.

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

Reason - To ensure appropriate cycle / powered two wheeler parking is provided in the interest of highway safety and amenity

7 Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

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

- 8 Prior to the occupation of the proposed development, the developer shall make good and effect any repairs necessary to the surface and sub surface of Mill Lane, Public Footpath No11 (Thorpe Le Soken) which have been unavoidably caused by the construction and fitting out phases of the proposed development to the specifications of the highway Authority entirely at the developers own expense.

Reason - To ensure the continued safe passage of pedestrians on the definitive right of way

- 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

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.

- 10 The public's rights and ease of passage over public footpath No.11 (Thorpe Le Soken) shall be maintained free and unobstructed at all times.

Reason - To ensure the continued safe passage of the public on the definitive right of way and accessibility.

- 11 Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction.

Reason - To enhance the visual impact of the proposed works

- 12 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - To ensure that the landscaping scheme is suitably implemented within an appropriate timescale.

- 13 The mature hedgerow along the south western boundary of the site which is adjacent to Little Thatch shall be retained.

Reason - To ensure retention of the mature hedgerow in the interests of visual amenity.

- 14 The removal of any vegetation for site access/site clearance shall only be carried out by hand stripping and not by using mechanical machinery.

Reason - To protect any wildlife within the site.

- 15 Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), the two windows proposed on the south western side elevation shown on Drawing No. CML 01 Revision E shall be non-opening and glazed in obscure glass and shall thereafter be permanently retained in this approved form.

Reason – To protect the privacy and amenities of the occupiers of the adjoining property.

- 16 Notwithstanding the details shown on the approved drawings, no development shall take place until a plan indicating the positions, design, materials and type of boundary treatments to be erected shall be submitted to and approved by the Local Planning Authority. The approved boundary treatments shall be implemented before the dwellings hereby permitted are occupied.

Reason – In the interests of residential amenities and visual amenity.

### 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

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: 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.

## **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**

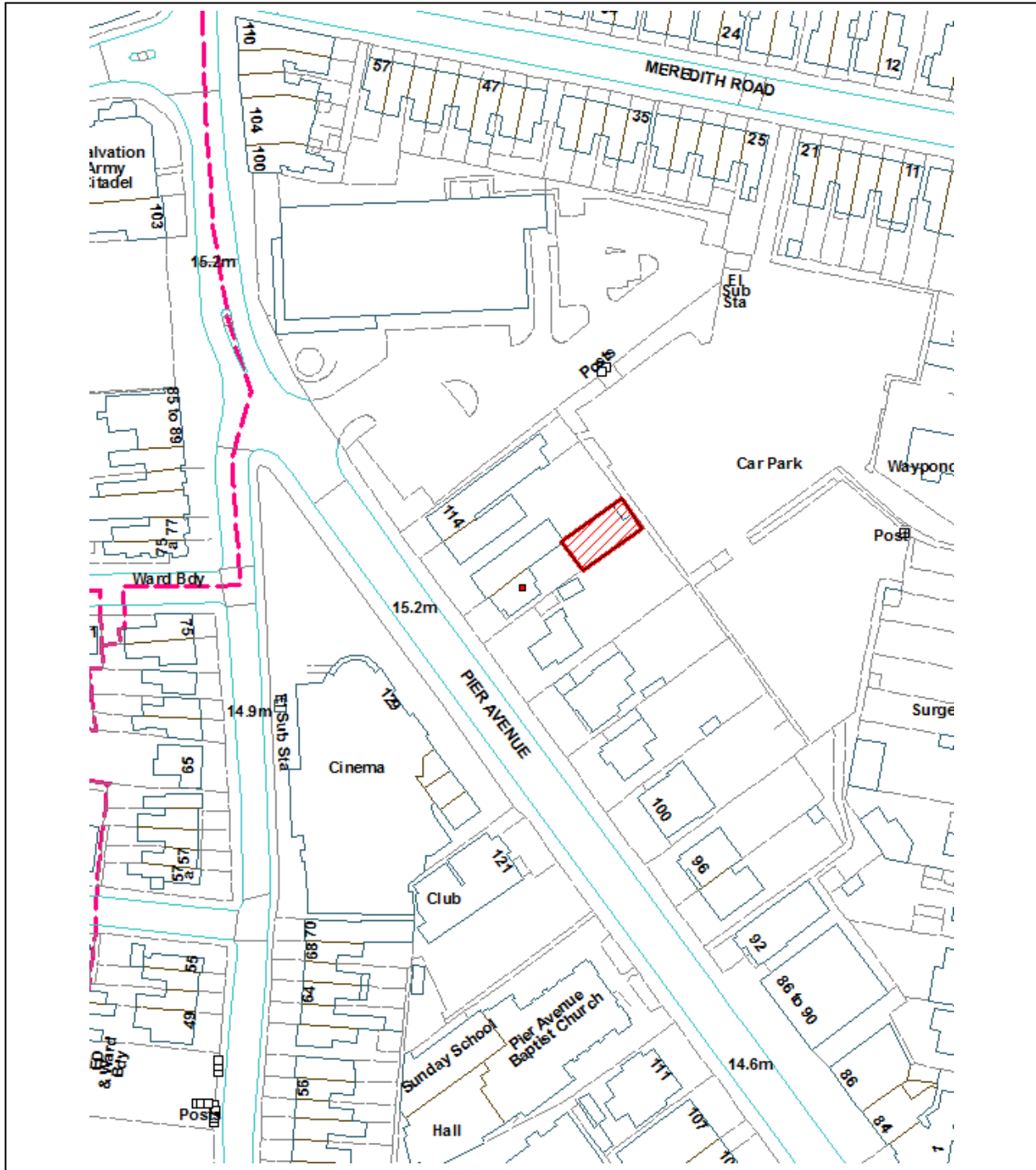
None

## PLANNING COMMITTEE

24 SEPTEMBER 2019

## REPORT OF THE HEAD OF PLANNING

### A.7 PLANNING APPLICATION – 19/01044/FUL – 108A PIER AVENUE CLACTON ON SEA CO15 1NJ



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

**Application:** 19/01044/FUL

**Town / Parish:** Clacton Non Parished

**Applicant:** Mr A Davis

**Address:** 108A Pier Avenue Clacton On Sea Essex CO15 1NJ

**Development:** Proposed outbuilding.

## 1. **Executive Summary**

- 1.1 The application is referred to the Planning Committee by Councillor Griffiths due to the proposed outbuilding having a negative impact on urban design/street scene, poor layout and traffic issues, overdevelopment in a densely populated area and loss of amenity.
- 1.2 The application seeks planning permission for the erection of an outbuilding used for storage purposes only.
- 1.3 The proposal is located to the rear of 108A Pier Avenue with restricted views from Pier Avenue and partial views from Wellesey Road Car Park. However, the proposal is seen in conjunction with neighbouring outbuildings to the North West and South East.
- 1.4 It is noted that flats do not have permitted development rights and therefore the outbuilding requires planning permission in this instance. The proposed outbuilding as shown on drawing no. 1 A demonstrates that the proposal will be used for storage purposes only and it will be used ancillary to the flat.
- 1.5 The proposal is visually acceptable and it will not cause any impact upon neighbouring properties.

### **Recommendation:**

That the Head of Planning be authorised to grant planning permission for the development.

## 2. **Planning Policy**

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

NPPF National Planning Policy Framework  
National Planning Policy Guidance

Tendring District Local Plan 2007

QL9 Design of New Development  
QL10 Designing New Development to Meet Functional Needs  
QL11 Environmental Impacts and Compatibility of Uses  
HG9 Private Amenity Space

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

SPL3 Sustainable Design

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

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.

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.

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**

19/01044/FUL	Proposed outbuilding.	Current
--------------	-----------------------	---------

### **4. Consultations**

Not Applicable

### **5. Representations**

- 5.1 Clacton is non parished.
- 5.2 No letters of representation have been received.

### **6. Assessment**

#### Site Context

- 6.1 The application site relates 108A Pier Avenue, Clacton on Sea which is a residential flat located within a residential and commercial area.
- 6.2 The site falls within the Settlement Development Boundary for Clacton on Sea within both the Saved Tendring Local Plan 2007 and the Emerging 2013-2033 Tendring Local Publication Draft.

### Proposal

- 6.3 This application seeks retrospective planning permission for an outbuilding which will be used for storage purposes only. The outbuilding will measure 7 metres in width, 5 metres in depth with an overall height of 2.9 metres. The outbuilding is constructed from render, red plastic coated steel roofing and UPVC windows and doors.

### Visual Impact

- 6.4 The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 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 in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.5 The outbuilding is located to the rear of the application site; therefore views from the street scene of Pier Avenue are largely restricted. However, as the application site backs onto Wellesey Road car park, there are partial views of the outbuilding from the car park seen in conjunction with neighbouring outbuildings to the North West and South East.
- 6.6 The outbuilding is single storey with a flat roof. The outbuilding is constructed from render, red plastic coated steel roofing and UPVC windows and doors which are considered to be acceptable materials.
- 6.7 Policy HG9 of the Tendring District Local Plan 2007 states that private amenity space shall be provided for flats with the following standards; a minimum of 25 square metres per flat communally or a minimum of 50 square metres private garden area for a ground floor flat or maisonette and a minimum balcony area of 5 square metres of units above. This is achieved comfortably.
- 6.8 It is noted that flats do not have permitted development rights and therefore an outbuilding requires planning permission in this instance. The proposed outbuilding as shown on drawing no. 1 A demonstrates that the proposal will be used for storage purposes only and used ancillary to the flat.

### Impact on Residential Amenities

- 6.9 The NPPF, in paragraph 17 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'.
- 6.10 Due to the single storey nature of the proposal and the distance of the proposals from neighbouring properties with existing vegetation along the neighbouring boundaries, it is considered that the outbuilding does not cause any adverse impact on the daylight, privacy or other amenities currently enjoyed by the neighbouring properties and is considered acceptable in this regard.

## **7. Conclusion**

- 7.1 Overall, the outbuilding in this location is acceptable, and represents no visual harm or detrimental impacts to neighbouring amenities. The proposed use of the outbuilding is ancillary to the host dwelling and is for storage purposes only.

## **8. Recommendation**

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

### **8.2 Conditions and Reasons**

1 The development hereby permitted shall be carried out in accordance with the following approved plans and documents; Drawing No. 1A and Amended site plan dated 6<sup>th</sup> August.

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

2 The outbuilding comprising of a storage area hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the flat known as 108A Pier Avenue, Clacton on Sea, CO15 1NJ.

Reason – To ensure that the outbuilding is used for storage purposes only.

### **8.3 Informatives**

#### **Positive and Proactive Statement**

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

## **9. Additional Considerations**

### **Public Sector Equality Duty (PSED)**

9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:

9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and

9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

9.5 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



<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
-------------------------------	-----------	-----------------------------	-----------

**PLANNING COMMITTEE  
24<sup>th</sup> September, 2019**

**REPORT OF THE HEAD OF PLANNING**

**PLANNING APPEALS**

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

This report advises Members of the number of appeals that have been received and determined over the past 24 months and analyses the Councils performance in terms of decisions made by the Planning Inspectorate.

**EXECUTIVE SUMMARY**

This report provides Members with statistical data for appeal decisions made within the District over the past two years. A summary of appeal decisions, comparing the number of appeals received and the Councils performance in dealing with appeals is set down under Appendix A.

A total of 78 appeals were determined between September 2017 and August 2018 of which 39% were allowed. A total of 79 appeal decisions were received between September 2018 and August 2019 of which 31% were allowed. The Planning Inspectorate currently allows 28% of appeals on average nationally. The national performance measure, which local authorities are required to meet, requires that no more than 10% of all planning applications determined in the past two years are allowed on appeal. At present during the period April 2016 – March 2018, a total of 5.78% of major application decisions were allowed on appeal within Tendring, well within the 10% target. For non-major applications the figure was 2.21%.

A summary of appeal cost decisions is set out at Appendix B.

**RECOMMENDATIONS**

**That the Committee: Note contents of the report.**

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

It remains essential that the Council continues to determine planning applications in accordance with both the adopted Local Plan and emerging Local Plan as well as the National Planning Policy Framework. Adherence to policy guidance ensures that the Council remains in a robust position to defend planning appeals made against decisions taken by the Council and the planning service remains fully effective.

### RESOURCES AND RISK

**Resources:** TDC Officers and where necessary external consultant and legal support. The cost of external legal and technical support to defend appeals for the two year periods 2017/18 – 2018/19, was £152,647.80 in 2017/18 and £253,956.78 in 2018/19.

**Risks:** The Council will continue to carefully monitor the outcome of all appeal decisions to ensure that the Council's decisions are being defended thoroughly and that appropriate and defensible decisions are being made by Committee and under delegated powers. To do otherwise may result in poor quality or inappropriate development being allowed or costs awards being made against the Council.

### LEGAL

**Legislation:** S78 Town and Country Planning Act 1990.

### OTHER IMPLICATIONS

**Area or Ward affected:** All Wards  
**Consultation/Public Engagement:** None.

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

This report provides an update in respect of the number of planning appeals received by the Council and assesses the Council's success in defending appeals over the past two years.

Further data is provided in the attached appendices.

When a planning application is refused, the applicant has the right to appeal to the Secretary of State against the decision. Appeals can be made against all types of application including major applications, householder applications, planning conditions and enforcement notices. Appeals can also be lodged against the non-determination of applications which have passed the statutory time for determination.

A total of 78 appeals were determined in the year to 31<sup>st</sup> August 2018 with 39% being allowed. Over the past twelve months to August 2019, 79 appeals were received with 31% being allowed. There is a significant improvement in appeal performance and outcomes in the past 12 months. This is primarily due to an improved position in respect of the Councils housing five year land supply and further progress with the Councils emerging Local Plan. Despite the requirement to abide by the 'Standard Methodology' for calculation of housing land supply, applied under the National Planning Policy Framework, the Council remain in a robust position to defend future appeals. The Council have been particularly successful in defending appeals at Public Inquiry relating to greenfield sites located outside the recognised settlement boundary.

A further breakdown of the figures can be applied to appeals relating to delegated decisions and those taken by the Planning Committee. In the period 2017/18, 40% of appeals against delegated officer decisions were allowed and 75% of committee decisions were allowed on appeal. This contrasts with 2018/19 when 28% of appeals against delegated decisions were allowed and 50% of committee decisions allowed. This again is a reflection of the Council's improving success rates in defending appeals.

The Government impose a national target in respect of local authority performance in defending appeals. If the Government consider that a Local Planning Authority is not adequately performing its function in determining applications it can be designated as underperforming and in extreme cases special measures applied. The measure used to assess quality of decision making is the average percentage of decisions on all applications that have been overturned on appeal. The threshold for inadequate performance by a Local Planning Authority over all applications is reached where more than 10% of all decisions made over the previous two years have been overturned at appeal. The latest national figures are only currently available to March 2018 but for Tendring

show that in dealing with Major applications in the period April 2016 – March 2018, a total of 5.78% of decisions were allowed on appeal, well under the 10% target. For non-major applications the figure was 2.29%. For the period April 2018 to date the figure is 0.84% for Major applications and 0.73% for non-major appeals. This again reflects the Councils improving position in being able to defend appeals successfully.

In some cases costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. This may be in a case where either the Council or Appellant have failed to provide adequate evidence of their case or tried to introduce new evidence during the appeal process.

Costs awarded against the Council are rare – during 2017/18 there were no cost awards against the Council, however a total of £5467.00 was awarded as partial costs awards in three appeal cases in the past 12 months. Costs were awarded specifically for the Councils failure to either justify reasons for refusal and failure to engage with an appellant in respect of ecology evidence. Although costs awards are rare this does highlight the need to be able to fully justify reasons for refusal at application stage.

Appeal performance has continued to improve over the past year and eventual adoption of the Local Plan will place the Council in an even stronger position to resist future appeals.

Performance on appeals will continue to be monitored and Members regularly updated.

As Members will be aware a forthcoming Member training session has been arranged to consider specifically Planning Appeals and Appeal processes. Issues that feature regularly in appeal decisions will also be discussed.

## **APPENDICES**

Appendix 1: Number of Appeals received and performance

Appendix 2: Details of Costs awarded against the Council

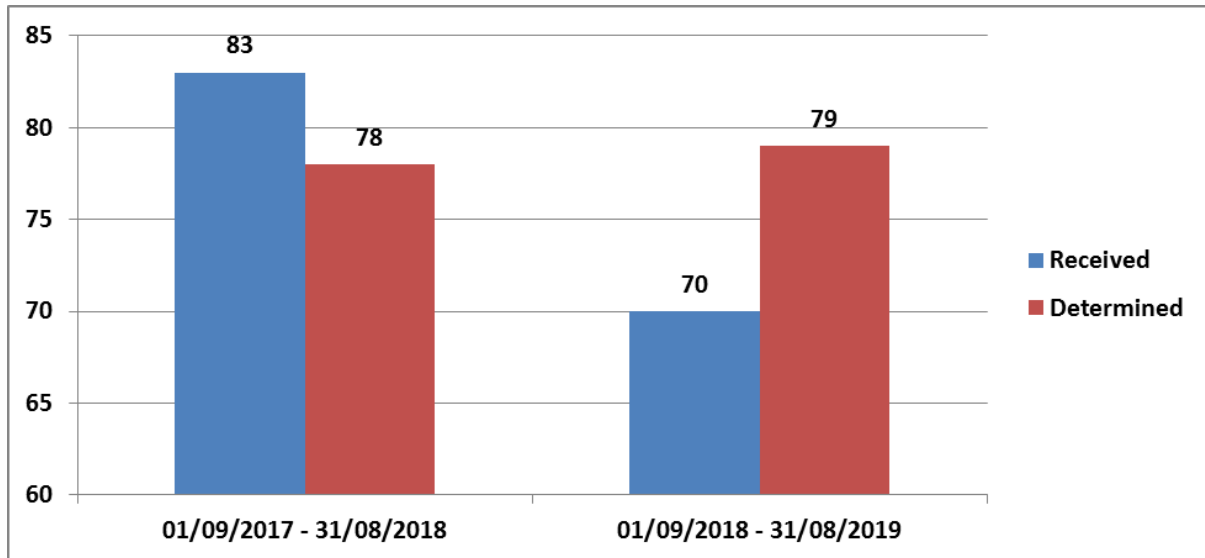
## **BACKGROUND DOCUMENTS**

**None**

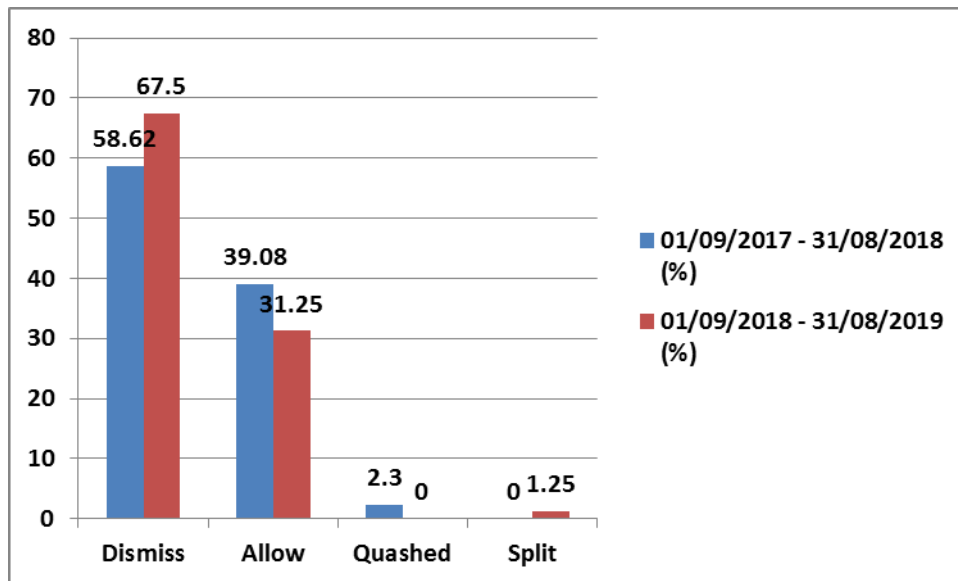
DRAFT

This page is intentionally left blank

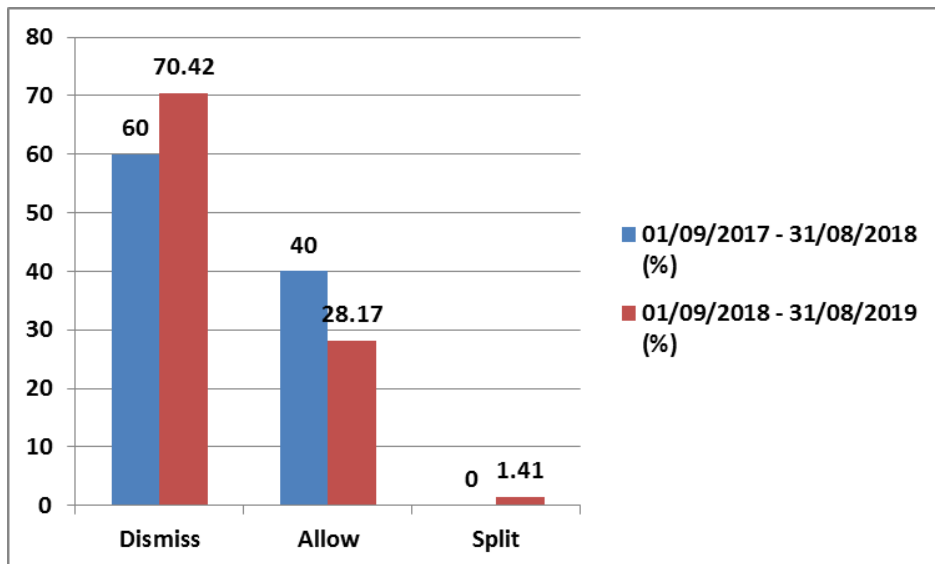
**Overall Number of Planning Appeals Received and Determined**



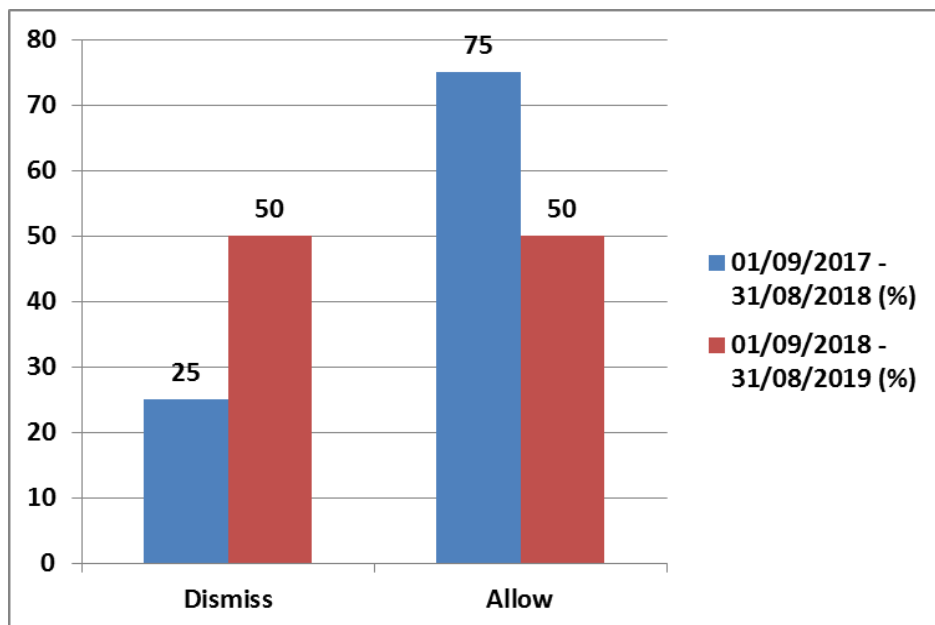
**Total Appeal Decision Outcomes - Including Enforcement & TPO's**



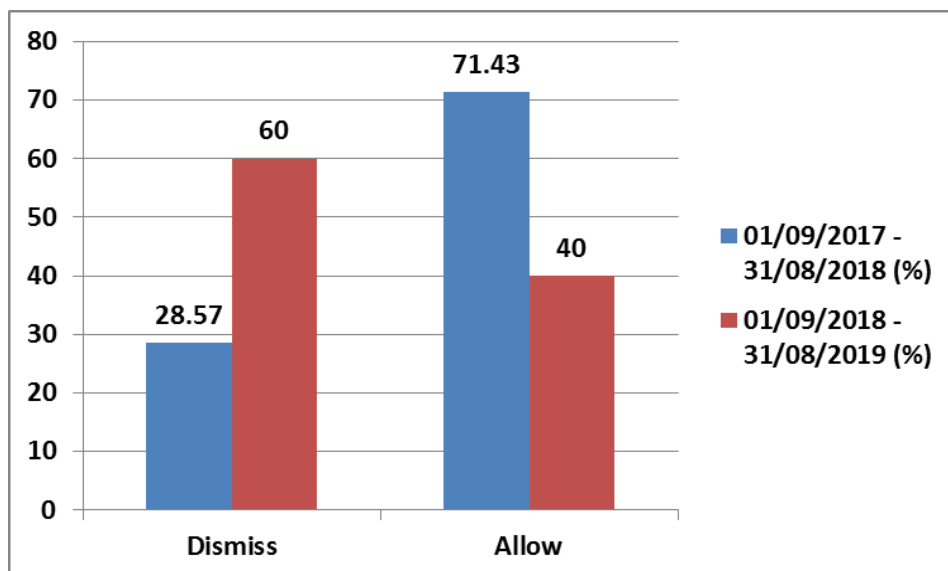
### Delegated Decisions – Appeal Outcomes



### Committee Decisions – Appeal Outcomes



### Decisions Overturned at Planning Committee – Appeal Outcomes





## **Costs Application Details**

### **1 September 2017 – 31 August 2018:**

No costs were awarded to the appellant in this period.

### **1 September 2018 – 31 August 2019:**

**Planning Reference: 17/00859/OUT**  
Appeal Reference: 17/00080/REFUSE

Site Address: Land to The South of Bromley Road, Ardleigh, Essex, CO7 7SE

Description of Development: Erection of up to 145 dwellings, the removal of prefabricated livery stables and the provision of public open space, landscaping and sustainable drainage systems and vehicular access point from Bromley Road. All matters reserved except for means of access.

Appeal Decision Received: 13 September 2018

**Planning Reference: 17/01109/OUT**  
Appeal Reference: 18/00041/REFUSE

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

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

Appeal Decision Received: 3 October 2018

**Planning Reference: 18/01691/OUT**  
Appeal Reference: 19/00016/REFUSE

Site Address: Leighmark, Golden Lane, Thorpe Le Soken, Clacton On Sea, Essex, CO16  
0LE

Description of Development: Proposed demolition of garage & the erection of one dwelling.

Appeal Decision Received: 5 July 2019

This page is intentionally left blank