



## PLANNING COMMITTEE

**DATE:** Monday, 12 August 2019  
**TIME:** 6.00 pm  
**VENUE:** Princes Theatre - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE

### 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 Keith Simmons on 01255686580

DATE OF PUBLICATION: Monday, 5 August 2019

## AGENDA

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

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

### 2 **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.

### 3 **Planning Application 19/00524/OUT - Land to the south of Thorpe Road, Weeley, CO16 9AJ (Pages 1 - 48)**

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

### 4 **Planning Application - A.2 - 18/01728/DETAIL - 171 Thorpe Road and Land to the Rear of 121-183 Thorpe Road and 4-20 Chapel Lane, Kirby Cross, CO13 0NH (Pages 49 - 78)**

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

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

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

## **INFORMATION FOR VISITORS**

### **PRINCES THEATRE 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 four fire exits in the auditorium and follow the exit signs out of the building.

Please follow the instructions given by any member of staff and they will assist in leaving the building.

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

The assembly point for the Princes Theatre is in the car park to the left of the front of the building as you are facing it. Your calmness and assistance is greatly appreciated.

### **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, which came into effect on 6 August 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.

# *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**

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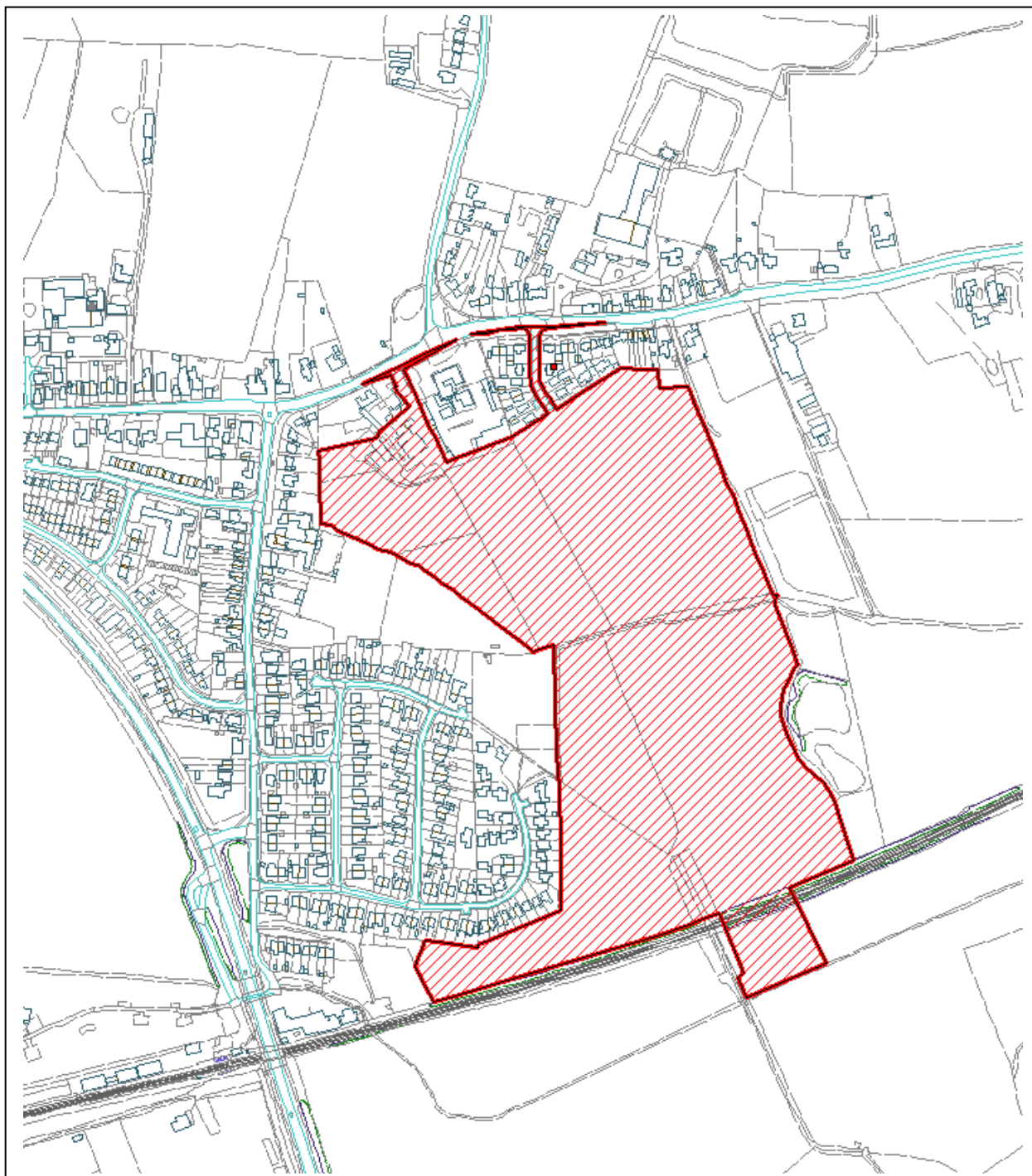


## PLANNING COMMITTEE

12 August 2019

### REPORT OF THE HEAD OF PLANNING

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



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**Application:** 19/00524/OUT

**Town / Parish:** Weeley Parish Council

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

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

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

## 1. Executive Summary

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

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

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

**Recommendation:**

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

**Within 6 (six) months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) dealing with the following matters:**

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

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

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

Subject to the conditions stated in section 8.2.

## 2. Planning Policy

### National Policy

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

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

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

*National Planning Practice Guidance (PPG)*

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

Local Development Plan Policy

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

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

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

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

2.14 In relation to housing supply:

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

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

Relevant policies include:

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

ER7	Business, Industrial and Warehouse Proposals
ER10	Small Scale Employment Sites in Villages
ER11	Conversion and Reuse of Rural Buildings
HG1	Housing Provision
HG3	Residential Development within Defined Settlements
HG3A	Mixed Communities
HG4	Affordable Housing in New Developments
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
COM1	Access for All
COM2	Community Safety
COM4	New Community Facilities (Including Built Sports and Recreation Facilities)
COM6	Provision of Recreational Open Space for New Residential Development
COM21	Light Pollution
COM22	Noise Pollution
COM23	General Pollution
COM24	Health Care Provision
COM26	Contributions to Education Provision
COM29	Utilities
COM31A	Sewerage and Sewage Disposal
EN1	Landscape Character
EN4	Protection of the Best and Most Versatile Agricultural Land
EN6	Biodiversity
EN6A	Protected Species
EN6B	Habitat Creation
EN12	Design and Access Statements
ER13	Employment Use in Residential Areas

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

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

Relevant policies include:

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



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

*Supplementary Guidance*

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

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

**3. Relevant Planning History**

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

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

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

#### 4. Consultations

Natural England

No objection.

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

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

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

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

ECC Highways Dept

ECC Highways raise no objection to the application.

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

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

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

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

Essex Wildlife Trust

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

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

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

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

- vandalism of trees

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

ECC SuDS Consultee

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

Anglian Water Services Ltd

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

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

ECC Schools Service

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

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

The likely financial contributions are:

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

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

## 5. Representations

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

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

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

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

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

- 5.2 Letters of objection have been received from Weeley Residents Association and 23 local households. The letters of objection raise the following concerns:

### Principle of Development

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

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

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

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

#### Landscape and Ecology

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

#### Living Conditions/Residential Amenities

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

#### Community Infrastructure

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

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

#### Heritage/Setting of Listed Buildings

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

#### Flooding

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

## **6. Assessment**

### Site Context

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



## Proposal

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

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

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

#### Principle of Development

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

*Proposals must accord with the following:*

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

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

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

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

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

Reason 1

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

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

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

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

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

## Reason 2

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

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

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

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

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

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

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

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

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

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

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

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

#### Highways, Transport & Access

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



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

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

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

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

## Landscape & Visual Impact

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

## Ecology and Nature Conservation

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

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

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

## Archaeology and Cultural Heritage

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

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

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

#### Hydrology, Flood Risk & Drainage

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

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

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

#### Ground Conditions and Contamination

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

#### Air quality

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

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

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

#### Noise & Vibration

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



### Living Conditions

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

### Planning Obligations

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

### *Affordable Housing*

- 6.99 Para. 62 of the NPPF requires, inter alia, LPAs where they have identified that affordable housing is needed, to set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities.
- 6.100 Adopted Policy HG4 seeks up to 40% of dwellings on large housing sites to be secured as affordable housing for people who are unable to afford to buy or rent market housing, whereas draft Policy LP5 requires up to 30% of new homes on large development sites to be made available to the Council or a nominated partner, at a discounted price, for use as Affordable Housing or Council Housing, subject to viability testing. This is in compliance with the requirements of requirement (a) of draft Policy SAMU5 that specifies that the proposal should be for at least 280 new homes of a mixed size and type to include affordable housing as per the Council's requirements.

### *Education*

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

### *Healthcare*

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

### *Public Open Space*

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

### *Ecology (RAMS)*

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

### *Ecology (Weeleyhall Wood SSSI)*

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

### *Highways and Transport*

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

### *Public Rights of Way*

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

### *Planning Obligation Summary*

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

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

## **7. Planning Balance/Conclusion**

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

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

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

## **8. Recommendation**

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

### **8.2 Conditions and Reasons**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reason - To minimise the risk of flooding.

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

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

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

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

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

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

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

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

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

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

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

Reason - In the interests of residential amenity.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reason – To protect highway efficiency of movement and safety.

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

Reason – To protect highway efficiency of movement and safety.

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

Reason - To protect highway efficiency of movement and safety.

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

Reason – To protect highway efficiency of movement and safety.

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

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

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

Reason – To protect the amenities of future occupiers.

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

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

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

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

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

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

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

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

### 8.3 Informatives

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

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

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

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

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

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

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

### Human Rights

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

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

#### Finance Implications

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

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

None.

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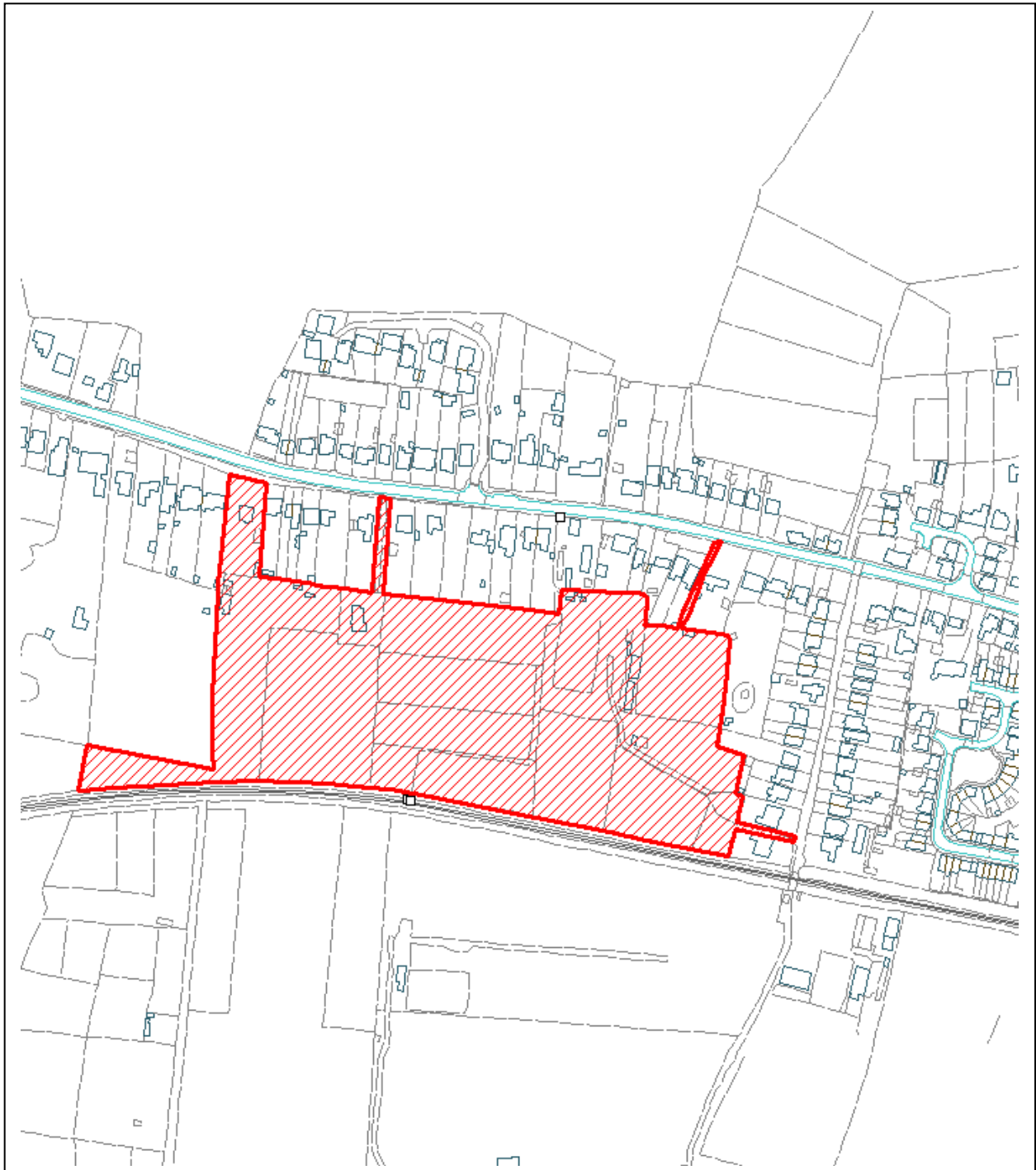


## PLANNING COMMITTEE

12<sup>th</sup> August 2019

### REPORT OF THE HEAD OF PLANNING

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



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**Application:** 18/01728/DETAIL

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

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

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

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

## 1. Executive Summary

- 1.1 **This application was deferred from Planning Committee on 30<sup>th</sup> July 2019 for further information to be sought on the overhead power lines. Updates to the original report are in bold font for clarity. The applicant has confirmed that the overhead power lines will be buried and routed through the site, and that this has been discussed with UK Power Networks (UKPN). A new terminal pole will be erected on the other side of the railway line to prevent encroachment on to Plot 82, and a new underground cable will need to be installed under the railway and through the site. The existing underground cable exits the development site through what will become plot 37's garden. The applicant states UKPN will require a 3m wide easement on the new cable, which will not be achievable within the demise of plot 37. Plot 38 and 39 do offer a route, however UKPN would not agree to multiple properties being encroached with the easement. The alternatives are to run the cable through the site and to exit via the footway link between 155 and 159 Thorpe Road, then to run east along the footway until 143 Thorpe Road, where it will connect to the existing underground cable, or to run the cable through the site and to exit the site via the footway link between 127 and 129 Thorpe Road. They believe that the new cable would be able to connect to the existing HV cable in the opposite footway, but this is subject to clarification from UKPN. An additional condition seeking approval of the route of the underground power cable is therefore included within the recommendation.**
- 1.2 This reserved matters application is referred to Planning Committee at the request of Members when determining the outline planning application. The development also represents a departure from the adopted Development Plan, being located outside the settlement development boundary in the Tendring District Local Plan 2007.
- 1.3 The Council refused a planning application (15/01710/OUT) that sought planning permission for the demolition of one dwelling and outline planning permission for the erection of up to 110 no. residential units, with all matters reserved except for access. Members refused the application contrary to the Officer recommendation. The applicant appealed that decision and in September 2016 a Planning Inspector granted the outline permission, subject to a S106 legal agreement and nineteen conditions.
- 1.4 The application site is situated on land that lies between the rear gardens of properties on the southern side of Thorpe Road and the railway line, and to the west of properties fronting onto Chapel Lane, at the western end of the village of Kirby Cross. The site covers an area of 4.8 hectares, the majority of which comprises former horse paddocks, but it also includes the detached bungalow and garden at no.171 Thorpe Road and land that will provide three further pedestrian connections from the main body of the application site to Thorpe Road and Chapel Lane.

- 1.5 The site is flanked to the north and east by the rear gardens of dwellings on Thorpe Road and Chapel Lane; to the south by the railway line; and the west by a wooded area beyond which is farmland.
- 1.6 The submitted application seeks the approval of Reserved Matters for Appearance, Landscaping, Layout, and Scale, pursuant to condition 1 imposed upon the grant of outline planning permission. Approval is now sought for the erection 105no dwellings, predominantly bungalow accommodation comprising a mix of 1, 2, 3 and 4-bedroom units, including 8no affordable housing units that are to be gifted to the Council.
- 1.7 The scheme has been revised following discussions with Planning Officers and is now considered to be sympathetic to local character, with a layout that responds positively to site constraints and opportunities, including the presence of numerous trees that are protected by Tree Preservation Orders. At the centre of the development a public green, with small play area, is proposed and this will help to create a sense of place. The layout is arranged so that the new homes face inwards from the boundaries of the site, so as the reduce the impact on the amenity of the existing residents adjoining the site and to provide an appropriate soft edge to this new edge of the village.
- 1.8 Finally, with regard to ecology, the applicant has agreed to suitable mitigation measures for the loss of barn owl habitat on the site and a package of measures to mitigate against increased recreational pressure arising from these new dwellings on the relevant European Protected Habitat sites', in line with the aspirations of the emerging RAMS (Recreational disturbance Avoidance and Mitigation Strategy).

**Recommendation:**

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

1. **Within 6 (six) months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matter:**
  - **Financial Contribution of £122.30 per new dwelling towards RAMS.**
2. Subject to the conditions stated in section 8.2.
3. That the Head of Planning be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a s106 planning obligation.

**2. Planning Policy**

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

*National Planning Policy Framework 2019 (NPPF)*

- 2.1 The NPPF sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.2 Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise.

The NPPF doesn't change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan, it should be approved and where it does not it should be refused – unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:

- an economic role;
- a social role; and
- an environmental role.

2.3 These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.

2.4 Paragraph 38 of the NPPF states "Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible."

#### *National Planning Practice Guidance (PPG)*

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

#### Status of the Local Plan

2.6 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

2.7 Section 1 of the emerging Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

2.8 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging

policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

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

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

Tendring District Local Plan (Adopted 2007)

QL1: Spatial Strategy

QL2: Promoting Transport Choice

QL3: Minimising and Managing Flood Risk

QL9: Design of New Development

QL10: Designing New Development to Meet Functional Needs

QL11: Environmental Impacts

QL12: Planning Obligations

HG1: Housing Provision

HG3: Residential Development Within Defined Settlements

HG3a: Mixed Communities

HG4: Affordable Housing in New Developments

HG6: Dwellings Size and Type

HG7: Residential Densities

COM1: Access For All

COM2: Community Safety

COM6: Provision of Recreational Open Space for New Residential Developments

COM21: Light Pollution

COM22: Noise Pollution

COM23: General Pollution

COM29: Utilities

COM31a: Sewerage and Sewage Disposal

EN1: Landscape Character

EN2: Local Green Gaps

EN4: Protection of the Best and Most Versatile Agricultural Land

EN6: Biodiversity

EN6a: Protected Species

EN6b: Habitat Creation

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

EN12: Design and Access Statements

EN13: Sustainable Drainage Systems

EN23: Development within the Proximity of a Listed Building

TR1a: Development Affecting Highways

TR1: Transport Assessment

TR3a: Provision for Walking

TR5: Provision for Cycling

TR6: Provision for Public Transport Use

TR7: Vehicle Parking at New Development

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

SP1: Presumption in Favour of Sustainable Development

SP2: Spatial Strategy for North Essex

SP3: Meeting Housing Needs

SP5: Infrastructure and Connectivity

SP6: Place Shaping Principles

SPL1: Managing Growth

SPL2: Settlement Development Boundaries

SPL3: Sustainable Design

HP1: Improving Health and Wellbeing

HP3: Green Infrastructure

HP5: Open Space, Sports and Recreation Facilities

LP1: Housing Supply

LP2: Housing Choice

LP3: Housing Density

LP4: Housing Layout

LP5: Affordable and Council Housing

PP12: Improving Education and Skills

PPL1: Development and Flood Risk

PPL3: The Rural Landscape

PPL4: Biodiversity and Geodiversity

PPL5: Water Conservation, Drainage and Sewerage

PPL9: Listed Buildings

CP1: Sustainable Transport and Accessibility

CP2: Improving the Transport Network

CP3: Improving the Telecommunications Network

Other Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide for Residential and Mixed-Use Areas.

Essex Design Guide (2005)

Urban Place Supplement (2007)

**3. Relevant Planning History**

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

**4. Consultations**

Natural England	No objection subject to appropriate mitigation being secured. The development site falls within the 'Zone of Influence' (Zol) of one or more of the European designated sites and it is therefore anticipated that, without mitigation, new residential development in this location is 'likely to have a significant effect' on one or more European designated sites, through increased recreational pressure.
Essex County Council Ecology	We have reviewed the Barn Owl Ecological Advice Note (SES, March 2019) supplied by the applicant, relating to the likely impacts of development on Barn Owl, a legally Protected species and identification of proportionate mitigation & monitoring.  We are satisfied that the current measures proposed in the Barn Owl Ecological Advice Note (SES, March 2019) will, with fencing to restrict access to the on-site replacement nesting box, enable the LPA to demonstrate its compliance with its statutory duties including its duties to protect Schedule 1 bird under the Wildlife & Countryside Act 1981 and to prevent wildlife crime under s17 Crime & Disorder Act 1998.



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

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

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

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

Essex Police (Designing out Crime Officer)

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

Network Rail

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

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

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

Anglian Water Services Ltd

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

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

surface water hierarchy has been followed as stipulated in Building Regulations Part H.

ECC Highway Authority

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

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

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

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

(No condition 3)

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

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

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

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

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

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

- I. the parking of vehicles of site operatives and visitors
- II. loading and unloading of plant and materials
- III. storage of plant and materials used in constructing the development
- IV. wheel and underbody washing facilities

NHS East Essex CCG

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

ECC SuDS Consultee

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

ECC SuDS are now aware that a drainage strategy was agreed as part of the outline permission and that there is a condition attached to the outline permission that requires submission and approval of further drainage details. On the basis that there will be a separate application to discharge this planning condition, which ECC SuDS will assess, they have withdrawn their holding objection.

## 5. **Representations**

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

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

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

### **Principle of Development**

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

### **Landscape & Ecology**

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

### **Highways**

- Thorpe Road is already an extremely busy road and increasing traffic will increase danger
- Highway access is unsafe. Whilst the speed limit passing the entrance is 30 mph vehicles actually pass at 50 to 60 mph and the Councils should undertake their own traffic speed monitoring which will show that the proposed access will not be safe
- Roads are very narrow. Inadequate provision for resident's car parking will result in cars parking inconveniently and unsafely in the carriageway and on adjoining streets
- Developer should be made to provide a pedestrian crossing on Thorpe Road, to provide a safe crossing point for adults and children to access facilities north of Thorpe Road (shops, school, play area and bus services)
- Pedestrian access from the development to Chapel Lane between no's 20-22 will access onto the private unadopted Chapel Lane. The resulting increase in pedestrian and cyclists will increase the cost of repairs and maintenance which have to be borne by Chapel Lane residents who own the road

### **Neighbour Amenity**

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

### **Other Matters**

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

## 6. Assessment

### Site Context

- 6.1 The application site is located in the western part of the settlement of Kirby Cross and consists of 4.8 hectares of relatively flat open land which is to the rear of frontage development along Thorpe Road. To the north the site is bounded by the rear gardens of dwellings on Thorpe Road; to the east by a small area of open land to the rear of properties on Chapel Lane; to the south by the railway line; and to the west of the site is a wooded area beyond which is farmland. The site contains a number of mature trees on and close to site boundaries. Hedgerows within the site also contain some large trees.
- 6.2 The site was previously used for the keeping of horses and had included a number of equestrian related structures - stable buildings, shelters and a ménage. Since outline permission was granted horses are no longer kept at the site and the grassland has become overgrown.
- 6.3 In addition to the paddocks the site also includes 171 Thorpe Road which is a detached bungalow that would be demolished to provide the vehicular access to the site. A further dwelling (No.157) is located within the site. There is an existing drive leading to that property which will be used to provide a further pedestrian access to the site from Thorpe Road. Further pedestrian links will be provided from Thorpe Road, between 127 & 129 Thorpe Road, and an access from Chapel Lane.

### Planning History

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

### Proposal

- 6.6 The submitted application seeks the approval of Reserved Matters for Appearance, Landscaping, Layout, and Scale, pursuant to condition 1 imposed upon the grant of outline planning permission 15/01710/OUT.
- 6.7 The description of the outline aspect of the proposed development for 15/01710/OUT, as approved by the Planning Inspector, proposed the demolition of one dwelling and erection

of up to 110 no. residential units. The means of accessing the site was approved as part of the Outline planning application. The approved vehicular access to the site will be a new priority junction formed off Thorpe Road, on the site of the bungalow that is to be demolished at no.171 Thorpe Road. The access road shall comprise a 5.5-metre-wide carriageway with 2-metre-wide footways to either side.

6.8 Following discussions between the applicant and Officers, revisions have been made to the application as originally submitted, and include amended drawings as well as additional or revised documents. The application submission comprises:

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

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

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

*Market Housing – 97 Units*

4 x 1-bed flats

2 x 2-bed flats

6 x 2-bed houses

34 x 2-bed bungalows  
51 x 3-bed bungalows

*Affordable Housing – 8 Units*

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

- 6.10 In totality, the proposal comprises: Vehicle access to the residential development from a new priority junction on Thorpe Road on the site of the bungalow at no.171 Thorpe Road which will be demolished leading to a 5.5m wide road, Formation of two pedestrian links from the site to Thorpe Road (via the access to no.157 Thorpe Road – which is to be demolished – and between 127 & 129 Thorpe Road) and one further pedestrian to Church Lane (between 22 & 24 Church Lane); Construction of 105no dwellings including 8no affordable housing units; The provision of public open spaces, including a children’s play area; Formation of SUDs, including the construction of an attenuation basin as part of the Central Green; Landscaping and ecological mitigation; and Associated parking and access.
- 6.11 The main planning considerations for this reserved matters application are:
- Access and Highways;
  - Design (Layout, Scale and Appearance);
  - Impact on Heritage Assets
  - Living Conditions;
  - Landscaping and Ecology; and
  - Section 106 of the Town and Country Planning Act 1990

Access and Highways

- 6.12 Where concerning the promotion of sustainable transport, the NPPF in para. 103 states that the planning system should actively manage patterns of growth; and that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Policy QL2 in the adopted Local Plan and Policy CP1 in the emerging Local Plan seek to ensure that developments maximise the opportunities for access to sustainable transport including walking, cycling and public transport.
- 6.13 The site already has outline planning permission. Having considered the location of the development and the level of services and public transport available in the village the Planning Inspector was satisfied that the site is in a sustainable location by virtue of its accessibility.
- 6.14 As well as establishing the principle of residential development of the site access was also approved as part of the outline planning permission. A number of objectors have referred to the highway access arrangements to the site, claiming that this will be unsafe and that traffic speeds on Thorpe Road will make the access unsafe. The Highway Authority were satisfied with the access arrangements and raised no objection to the outline planning application. The access arrangements and highway capacity were considered by the Planning Inspector. Having reviewed the applicants Transport Statement and the Highway Authority recommendation the Inspector concluded that, subject to planning conditions, the development would be acceptable in terms of highway safety and granted the outline planning permission with access approved. As a result, the vehicular access to the site and highway capacity are not matters that the Council can consider as part of this Reserved Matters application.

- 6.15 In addition, to the new priority junction that will be constructed to provide vehicular access to the site, the applicant also proposed to provide three additional footway links from the site to surrounding roads – two separate links onto Thorpe Road and a further link to the east, to connect to Chapel Lane – which will encourage residents to walk and cycle for short journeys.
- 6.16 To further encourage residents to use more sustainable means of transport, condition no.12 of the outline planning permission requires the upgrading of the two bus stops on Thorpe Road, west of its junction with Chapel and the provision of a Residential Travel Information Pack for sustainable transport, to the first occupier of each new dwelling.
- 6.17 The Highway Authority have been consulted on this reserved matters application and they identified a number of issues regarding the internal estate roads and the road types that were being originally proposed. Following receipt of the Highway Authority comments the applicant has amended the development layout and provided footways, or shared surface roads, in accordance with the Highway Authority's requirements. Having reviewed the revised proposals, they state from a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to a series of conditions covering the design and construction of internal roads and footways; the design and provision of vehicle and cycle parking spaces; a Construction Method Statement which will cover access arrangements for construction traffic (this is already covered by Condition 15 of the Outline Planning Permission and so doesn't need to be replicated); and that there be no new planting within 1 metre of the highway or visibility splays. A further condition is recommended requiring the provision of Residential Travel Information Packs to the first occupants of the new dwellings but this has already been covered by a condition that forms part of the Outline Planning Permission.
- 6.18 Consequently, from a highway and transportation perspective the impact of the proposal is deemed acceptable to the Highway Authority subject to the imposition of conditions as highlighted within the summary of their consultation response above.
- 6.19 Adopted Local Plan Policy TR7 states that in new residential development there will be a requirement that the parking is provided in accordance with the Council's adopted Parking Standards. The adopted parking standards state that a minimum of 1 space per dwelling should be provided for 1-bedroom dwellings and a minimum of 2 spaces per dwelling should be provided for 2 and more bedroom dwellings. Also 0.25 space per dwelling is required for visitor parking. Parking spaces should measure 5.5 metres by 2.9 metres and garages, where to be counted towards parking provision should measure 7 metres by 3 metres. The proposed development has been laid out in a manner that largely adheres to these standards. The only area where there is not complete compliance is in respect of the visitor parking. The parking plan shows 25 visitor parking spaces but the standards would require the provision of 26 visitor parking spaces – a shortfall of 1 visitor parking space. Plots 6, 7 and 14 each have three off street parking spaces and are therefore in excess of the standard requirement, this is considered to offset the deficit of one visitor parking space across the development.
- 6.20 A number of objectors refer to the development having inadequate car parking provision even though all dwellings have been provided with the required number of parking spaces to meet the Council's adopted standards. Some of these objections may be on the grounds that some properties have one of their parking spaces in a garage but this is permissible as the internal size of the garage complies with the Council's standards. For properties with 3-bedrooms and where the second parking space is being provided within a garage it is recommended that permitted development rights are withdrawn to ensure that the parking space is retained for its intended purpose.



- 6.21 The site is bordered by the railway line to the south of the site and there is a pedestrian level crossing a short distance from the site, off Chapel Lane. A number of objection letters refer to safety concerns as they believe that the crossings will be used more frequently as a result of the development, with some expressing a particular concern about children playing on the railway crossings.
- 6.22 Network Rail raised no objection to the outline planning application but have registered an objection to this reserved matters application due to the direct footpath link to Chapel Lane, and the publication of a circular walking route over two level crossings as this would increase the use of the crossings and this increases the risk of accidents.
- 6.23 Network Rail have suggested that if the dog walking route that is to be publicised for use by future residents, as part of the ecological mitigation, were to be altered so that it did not cross the railway they would be satisfied. Officers accept that it is possible that future occupants of these properties may use the crossings to access the countryside to the south but the level crossings are an existing situation and the increase in use, and potential resulting increase in risk, arising directly from the development is not considered to be sufficient to justify the developer being required to fund a footbridge over the railway line so that the crossings can be closed. Network Rail regularly assess railway crossings for safety and can ultimately apply to close the crossing, or provide alternative means of crossing the line, if public safety necessitates this. The outline planning permission requires that the developer produce residential travel information packs that will be provided to the first occupier of each new dwelling. In light of Network Rail's concerns Officers recommend that a condition is added that requires that the Travel Information include information on the risks of crossing the railway line and how to use the level crossing safely.
- 6.24 It is noted that Network Rail also express concern that the development may also create an increase in footfall to the station which may create capacity issues at the station. The planning system seeks to locate development in locations where residents have access to a range of sustainable transport modes, including railway stations. Furthermore, it is not considered that the 105 dwellings proposed would generate such an increase in footfall at the station that specific measures would be required to mitigate that impact. Furthermore this issue was not raised at the time of the outline planning application.
- 6.25 In summary, the layout of the development is acceptable, adhering to relevant standards in respect of road design and car parking. The applicant has also demonstrated that pedestrian links will be provided that will link the new development to the existing settlement and its services and facilities.

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

- 6.26 Paragraph 124 of the NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Furthermore, Part 11 of the NPPF indicates that development should contribute to and enhance the natural environment and that impacts on biodiversity should be minimised.
- 6.27 Only the vehicular access to the site was approved by the Planning Inspector when outline planning permission was granted. There were no other approved drawings listed in the decision letter and there was no masterplan or parameters plan which fixed the layout or scale of the development.
- 6.28 Following detailed discussions with Officers during the course of this application the scheme now proposes to provide 4no 1 bed flats; 6no 2-bed flats; 8no 2-bed houses; 34no 2-bed bungalows; 51no 3-bed bungalows and 2no 4-bed houses. The layout has been created using 12no house/bungalow and individual designs for each of the three apartment

blocks. The housing stock in the village features a high percentage of bungalows and this can be clearly seen at the western end of Thorpe Road where bungalows often sit within very large plots. A limited number of two storey buildings are proposed to provide a suitable mix of housing for a site of this size. Given that the development will be predominantly single storey dwellings careful consideration has been given to the design and location of two storey dwellings. Following discussions with Officers the apartment buildings have been redesigned as one and a half storey buildings so that their scale and appearance is more in keeping with the surrounding dwellings.

- 6.29 In terms of design, given this site's setting on the edge of the settlement and its context, it was considered that a traditional design approach was appropriate. The proposed dwellings generally have a traditional appearance and it is proposed that a simple palette of materials is proposed with two different facing bricks being the predominant material, with weatherboarding and render used to provide variation and visual interest. Pitched roofs are proposed covered in concrete pantiles. Some of the house types feature architectural features including brickwork detailing, bay windows, chimneys and door canopy detailing. The housing mix and house types are considered appropriate and reflective of local character and distinctiveness.
- 6.30 The Council's Waste Management team have been consulted on the application. They have raised no objection subject to the usual requirements to ensure that refuse and recycling can be appropriately stored and collected from the development. The layout allows for the suitable storage of refuse and recycling bins, often within the proposed garages. Condition 17 of the Outline Planning permission requires the submission of details of refuse storage and collection points. The applicant will need to provide further details to discharge this condition, including demonstrating that residents and refuse collections crews only have to carry refuse / recycling an appropriate distance and that there are appropriately located and designed refuse collection points.
- 6.31 In conclusion on this issue it is considered that the proposal provides an acceptable layout and detailed design in compliance with the NPPF and the development plan.

#### Impact on Heritage Assets

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

public benefits of the proposal. Officers again consider that the proposed development would not result in any significant harm to either the building itself or its wider setting that would outweigh the public benefits, mainly in respect of housing provision, of the current scheme.

### Living Conditions

- 6.35 NPPF para. 127 states that planning decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
- 6.36 As stated above the development will consist of predominantly bungalows. By using standard 1.8m high closed board fences (or walls to prominent plots) single storey accommodation can usually be effectively built without existing neighbouring properties suffering an unacceptable loss of privacy, or significant issues with loss of light or overshadowing. The only dwellings that have two storeys of accommodation are the flats and a small cluster of two storey houses in the south east corner. The apartment blocks have been located so that they back onto properties on Thorpe Road, where properties enjoy long rear gardens. The applicant has produced an Amenity Plan which shows that for most properties there will be in excess of 35m between new dwellings and the rear elevation of existing properties on Thorpe Road. Officers consider that this arrangement adequately safeguards existing residents' amenity. The two storey houses back onto the railway line. Plot 61 has a blank side gable that faces towards the neighbouring property on Chapel Lane. Any new openings at first floor level in that elevation would require planning permission unless they are obscure glazed and non-opening above 1.7m, this would therefore protect neighbouring amenity without needing to impose a planning condition.
- 6.37 The Council's Pollution and Environmental Control Team have recommended that details are provided in relation to demolition and construction method statements and external lighting. The outline planning permission contains conditions that seek to control these matters – no.15 Construction Method Statement; and no.18 external lighting. Both conditions must be discharged prior to the commencement of development.
- 6.38 The railway line runs along the southern boundary of the site and the layout proposes that dwellings are erected which back onto the line. The Planning Inspector imposed a condition (no.16) which requires details of noise mitigation measures to ensure that residents in these new properties enjoy a reasonable standard of amenity. These details must be submitted and approved prior to the commencement of development.
- 6.39 Policy HG9 of the adopted Local Plan specifies that private amenity space shall be provided to new dwellings with dwellings with three or more-bedroom house requiring a minimum of 100 square metres; two-bedroom houses - a minimum of 75 square metres; and for flats a minimum of 25 square metres per flat provided communally. As shown on the submitted amenity plan, each house would be provided with a private garden/sitting out area and the table on that plan demonstrates that all the houses and bungalows have private amenity space that would meet or exceed the Council's adopted standards.
- 6.40 Policy HG9 requires that the ten apartments would collectively require 250 square metres of communal amenity space. The three apartment blocks are clustered together and following discussions with Officers the mix of units and the layout has been revised to allow the provision of a 250 square metre communal garden area around the protected English Oak tree (T7). This area is to be enclosed by 1.2 metre high hoop top railings with shrub planting internally to provide a semi-private amenity area for use by the occupants of the apartments. This solution will provide an acceptable boundary treatment to this prominent corner which also forms a boundary to one of the footpaths up to Thorpe Road.

### Landscaping and Ecology

- 6.41 Part 15 of the NPPF indicates that development should contribute to and enhance the natural environment and that impacts on biodiversity should be minimised.
- 6.42 The main body of the application site is set to grass that has become overgrown since the use of the site for the keeping of horses ceased.
- 6.43 The site contains several mature trees on and close to site boundaries and within the centrally situated hedgerow. There are two Tree Preservation Orders on the site – The trees covered by the 1998 order (TPO/98/19) are predominantly English Oaks that are situated to the north of the westernmost section of the application site intended for use as a public open space and attenuation pond. The second order, which was made in 2016 (16/01/TPO) protects 1 Ash and 10 Oak trees, situated on the eastern boundary of the land and in the hedgerow that runs from north to south, to the south of 155 Thorpe Road.
- 6.44 The Council's Tree and Landscape Officer raised concerns with the original submission – specifically that there was insufficient information to accurately assess the potential impact of development on retained trees and that it was also proposed that tree T7 (English Oak) would be removed to facilitate the development. He objected to the loss of T7 as it is a tree with high amenity value that has a long safe useful life expectancy. The applicant subsequently amended the layout and T7 is now shown to be retained, standing within the amenity space that is provided for use by the occupants of the flats. They have also provided further information to show root protection areas and demonstrate that the trees covered by the TPO will be retained and physically protected for the duration of the construction phase of the proposed development. The information contained on the Existing Tree Preservation Order Reference Plan and Tree Protection Details plan indicates that the trees covered by the TPO can be retained and physically protected for the duration of the construction phase of the proposed development. Condition no.7 on the Outline permission states that no development shall take place until agreed measures for the protection of trees that are to be retained has been submitted and approved and this condition will still need to be discharged. The details of the density and quality of the soft landscaping proposal are also acceptable.
- 6.45 When the Outline planning permission was granted the Inspector considered the potential impact of development on ecology, including protected species. Condition 14 of the Outline planning permission states that no development shall take place until an Ecological Mitigation Scheme and Management Plan has been submitted to and approved by the Council. The scheme shall include survey information to establish whether any protected species would be affected by the development and the detail of any necessary mitigation measures.
- 6.46 During the consideration of this application the Council received a number of representations in respect of a pair of Barn Owls that had been observed at the application site. As these birds had not been observed during the ecological surveys carried out in 2015 for the outline planning application, and to address this specific concern, the applicant was requested to produce a report which considered the likely impact of development on the Barn Owls. The owls were found to be nesting in an old metal and asbestos shed on the site – a structure that would be demolished to facilitate the development. The Council's ecological advisor has reviewed the applicants report and is satisfied that the measures proposed in that report will suitably mitigate for the impact on this protected species. The mitigation originally involved the provision of both an on-site nest box one year prior to demolition of the existing nest building, in an area of open space in the south western corner of the site to which access will be restricted by fencing; and two off-site nest boxes to be provided prior to demolition of the structure containing the nest. The applicant has confirmed that they do not own or control any appropriate sites for the provision of the two

off-site nest boxes. Officers have therefore sought an amended recommendation from the Council's ecological advisor. This confirms that future monitoring of the on-site barn owl box should be controlled by condition. This mitigation forms part of the recommended conditions and therefore provides certainty of the likely impacts on this Protected species.

- 6.47 Representations were also received by the Council in respect of bats that have been observed on and around the site, including one letter from a local resident who stated that the old stables that had been recently knocked down had been a resting hole for bats. Bats are a protected species and destroying a bat roost would be a criminal offence. Whilst Officers noted the findings of two previous ecological surveys on the site had concluded that no buildings on the site had potential as bat roosts, with the sheds and stables being too open or exposed to be suitable, because of the potential seriousness of the claim Officers referred the matter to Essex Police. The Rural and Heritage Crime Officer reviewed the matter but advised Officers that as the Ecologist had not recorded any roosts as being present at the site there was no evidence that a crime had been committed and that they would not be able to investigate further.
- 6.48 The development falls within the 'Zone of Influence' (Zoi) for one or more of the European designated sites scoped in the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This residential development lies within the Zoi for Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries SAC. Hamford Water SPA and Ramsar site are the closest European sites and are located around 5.7km north-east of the application site. The outline planning permission did not secure a contribution towards RAMS or mitigation to contain recreation within and around the development site. In the contemporary context of the Council's duty as competent authority under the Habitats Regulations, it is anticipated that without mitigation, such new residential development would have a likely significant effect on the sensitive features of the coastal European sites, through increased recreational pressure when considered 'in combination' with other plans and projects. It is considered that the proposal falls within the scope of RAMS as 'relevant development'.
- 6.49 One recommended way of trying to avoid increasing recreational pressures on the coastal European sites is to encourage dog walkers to exercise their dogs near their homes and not drive to the protected sites. The applicant has submitted a plan which shows a number of walking routes that residents of the development can use to exercise their dogs. Given the size of the site the routes include the open space within the site and the adjacent public rights of way network. In light of Network Rail's objection to increased use of the railway crossing to the south east corner of the site, the applicant has provided two more circular walking routes. Route 1 (original route) is 2.65km. Route 2 is 3.2km and uses an alternative second railway crossing point further west and more remote from the railway station. Route 3 is 4.5km and does not include any railway crossings, utilising the public rights of way network to the north of the site. These three routes, to be included within the welcome packs, are considered to provide a good variety of local walks to future residents to reduce pressure on the designated sites.
- 6.50 Natural England state that provided their guidance is adhered to, an 'adverse effect on the integrity' (AEOI) of the European sites included within the Essex Coast RAMS from increased recreational disturbance can be ruled out subject to the mitigation sought and to be secured by condition and planning obligation.
- 6.51 The Council has produced a Habitat Regulations Assessment (HRA) setting out the mitigation that is proposed – namely the dog walking routes, that will be publicised to new residents, and the provision of a dog waste bin, and a RAMS payment of £122.30 per dwelling (£12,841.50 based on 105 dwellings), is proposed to be included within a Unilateral Undertaking (UU), pursuant to S106 of the Town and Country Planning Act 1990,

to enable to fund strategic off-site measures. These measures should be targeted towards increasing the relevant European sites' resilience to recreational pressure (such as schemes to provide wardens at the protected sites who will help manage and educate visitors) and be in line with the aspirations of the emerging RAMS. A unilateral undertaking to provide the required contribution is currently being completed and an update will be provided at the Planning Committee meeting.

- 6.52 Network Rail raised no objection to the outline planning application but have registered an objection to this application for approval of reserved matters due to the circular walking route over two level crossings as this would increase the use of the crossings and this increases the risk of accidents. Network Rail have suggested that if the dog walking route that is to be publicised for use by future residents, as part of the ecological mitigation, were to be altered so that it did not cross the railway they would be satisfied. Officers accept that it is possible that future occupants of these properties may use the crossings to access the countryside to the south but the level crossings are an existing situation and the increase in use, and potential resulting increase in risk, arising directly from the development is not considered to be sufficient to justify the developer being required to fund a footbridge over the railway line so that the crossings can be closed. The applicant has also now provided a total of three circular walking routes, one of which includes no railway crossings. Network Rail regularly assess railway crossings for safety and can ultimately apply to close the crossing, or provide alternative means of crossing the line, if public safety necessitates this. The outline planning permission requires that the developer produce residential travel information packs that will be provided to the first occupier of each new dwelling. In light of Network Rail's concerns Officers recommend that a condition is added that requires that the Travel Information include information on the risks of crossing the railway line and how to use the level crossing safely.

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

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

#### *Affordable Housing*

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

#### *Open Space Plan and Specification*

- 6.55 Schedule 3 of the legal agreement requires the applicant to submit an Open Space Plan and a specification for the setting out of the Open Space and Local Area of Play (LAP) and for these to be approved by the Council prior to the commencement of development. The planning drawings show that a 'Local Area of Play' (LAP) is to be provided as part of the central green. The legal agreement does not require submission of these documents as part of the Reserved Matters application and these will need to be submitted and agreed prior to the commencement of development.

- 6.56 The Primary Education contribution relates to all properties (including flats) of two bedrooms or more. This represents 101 properties in this detailed proposal which subject to the formulas in the S106 would represent around £321,740 (index linked) towards the provision/improvement of primary education facilities for Kirby Primary Academy, Hamford Primary Academy, and/or Frinton-on-Sea Primary School. The healthcare contribution is £33,300 for additional healthcare services at Thorpe Surgery and/or Caradoc Surgery.

#### Other Matters

##### Drainage

- 6.57 The Inspector considered the issue of surface water drainage as part of their consideration of the application for Outline planning permission. They concluded that it had been demonstrated that the appellant had presented a feasible surface water drainage strategy for the site. A condition was imposed as part of the Outline planning permission (Condition no.9) which states that no development shall take place until a detailed surface water drainage scheme has been submitted to and approved by the Council. This condition means that the applicant has not been required to provide these details as part of this application for approval of Reserved Matters. The Lead Local Flood Authority – Essex County Council – will assess the detailed scheme when it is submitted and development cannot commence until such time as the scheme is approved.
- 6.58 It should be noted that at the time when the outline application was originally submitted climate change predictions suggested that in order for a development to appropriately manage changes to rainfall a 30% allowance should be made for climate change. Subsequent revisions of the Environment Agency's climate change provisions suggest that 40% would be more appropriate and the Council will require that the detailed scheme is designed to accommodate higher volumes in line with the updated climate change allowances.
- 6.59 In respect of foul water drainage in December 2015 Anglian Water advised that the waste water treatment centre and the network of sewers connecting the site to the treatment centre had capacity to accept the foul water flows from the development. Anglian Water now advise that there would be a risk of flooding as the sewers now have insufficient capacity to accommodate the flows safely and they recommend conditions requiring submission of a phasing plan for the development and the agreement and implementation of a foul water drainage strategy. The outline planning permission already requires the submission and agreement of a phasing plan but it is recommended that a condition is added requiring the applicant to agree foul water drainage works prior to the occupation of any phase.

## **7. Conclusion**

- 7.1 The application site lies outside the adopted settlement development boundary but the principle of residential development has been firmly established by a Planning Inspector in granting an outline planning permission to develop the site for up to 110 dwellings.
- 7.2 The submitted application seeks the approval of Reserved Matters (relating to appearance, landscaping, layout and scale) for 105 dwellings pursuant to condition 1 of planning permission ref: 15/01710/OUT.
- 7.3 From a highway and transportation perspective the access arrangements were approved through the Outline planning permission. The Highway Authority have advised that they have no objection to the application, subject to the imposition of conditions. Although the development will be on the edge of the settlement the vehicular access and three

pedestrian paths will mean that the development is well related to the existing village and its services and that residents will have access to public transport.

- 7.4 It is now considered that following discussions with Officers and the submission of revised plans the scale, layout, density, height and massing of the proposed dwellings and overall elevation designs are now acceptable. The character and appearance of the dwellings would be in broad harmony with the character and appearance of the surrounding area.
- 7.5 In addition, following amendments to the scheme, it is considered that the landscaping of the site would be appropriate and with regard to ecology, mitigation measures to enable increasing the relevant European sites' resilience to recreational pressure would be in line with the aspirations of the emerging RAMS, and the impact upon Barn Owls will be acceptably mitigated.

## 8. Recommendation

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

CATEGORY	TERMS
Financial contribution towards RAMS.	£122.30 per new dwelling

## 8.2 Conditions and Reasons

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

Site Location Plan - 1370/P/01  
 Master Plan - 1370/P/02 Rev P8  
 Block Plan – 1370/P/03 Rev P7  
 Amenity Plan - 1370/P/05 Rev P8  
 Heights Plan - 1370/P/08 Rev P7  
 Parking Plan - 1370/P/10 Rev P7  
 Tenure Plan - 1370/P/11 Rev P7  
 Highways Plan - 1370/P/12 Rev P7  
 TPO Reference Plan and Protection - 1370/P/15 P6  
 Circular Dog Walking Route 1 - 1370/P/16 Rev P1  
 Circular Dog Walking Route 2 - 1370/P/17  
 Circular Dog Walking Route 3 – 1370/P18  
 Housetype A - 1370/P/A/01  
 Housetype B - Affordable - 1370/P/B/01 Rev P1  
 Housetype C - 1370/P/C/01 – Rev P1  
 Housetype C1 - 1370/P/C1/01  
 Housetype C1 - Affordable - 1370/P/C1/01/A  
 Housetype D - 1370/P/D1/01 Rev P1  
 Housetype D1 - 1370/P/D1/01  
 Housetype D2 - 1370/P/D2/01  
 Housetype E - 1370/P/E/01  
 Housetype E1 - 1370/P/E1/01  
 Housetype F - 1370/P/F/01  
 Apartment Block 1 – Floor Plans and Elevations - 1370/P/APT1/01 Rev P2  
 Apartment Block 2 – Affordable - Floor Plans and Elevations - 1370/P/APT2/01 Rev P3  
 Apartment Block 3 Elevations - 1370/P/APT3/02 Rev P3



Apartment Block 3 Floor Plans - 1370-P-APT3-01 Rev P3  
Garage Types - 1370-P-G-01  
Sub-Station - 1370/P/S/01 Rev P2  
Street Scenes Sheet 1 of 3 - 1370/P/30 Rev P5  
Street Scenes Sheet 2 of 3 – 1370/P/31 Rev P2  
Street Scenes Sheet 3 of 3 - 1370/P/32 Rev P1  
Soft Landscape Proposals 1 of 3 - MC/1511/18/02 A  
Soft Landscape Proposals 2 of 3 - MC/1511/18/03 A  
Soft Landscape Proposals 3 of 3 - MC/1511/18/01 A  
Barn Owl Ecological Advice Note (SES, March 2019)

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

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

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

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

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

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

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

4. Prior to installation of the new Barn Owl nest box, as detailed within the Barn Owl Ecological Advice Note (SES, March 2019), fencing to restrict public access shall

have been erected in accordance with details to have been previously approved in writing by the Local Planning Authority. The fencing shall restrict public access within the application site a minimum of 75 metres from the new Barn Owl nest box. The fencing as approved shall be retained and maintained for the lifetime of the new Barn Owl nest box.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. The scheme of landscaping as shown on drawing numbers MC/1511/18/02 A, MC/1511/18/03 A and MC/1511/18/01 A, or such other scheme as may be agreed in writing by the local planning authority, shall be carried out during the first available planting season after the commencement of the development. Any trees or plants

which die, are removed or become seriously damaged, or diseased within a period of five years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

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

- 16. Prior to the commencement of any above ground works, full details of the route of the underground power line shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**

**Reason: As insufficient information has been provided with the application, in the interests of visual and residential amenity, and the Grade II listed building Mill House at 127 Thorpe Road.**

### 8.3 Informatives

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

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

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

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

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

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

4) Any tree planting proposed within the highway must be agreed with the Highway Authority. Trees must be sited clear of all underground services and visibility splays and

must be sympathetic to the street lighting scheme. All proposed tree planting must be supported by a commuted sum to cover the cost of future maintenance, to be agreed with the Highway Authority.

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

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

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

8) Legal Agreement Informative - Recreational Impact Mitigation

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

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

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

- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

#### Human Rights

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

#### Finance Implications

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

### **10. Background Papers**

None.