



## PLANNING COMMITTEE

**DATE:** Wednesday, 30 March 2022

**TIME:** 6.00 pm

**VENUE:** Committee Room - Town Hall,  
Station Road, Clacton-on-Sea, CO15  
1SE

### MEMBERSHIP:

Councillor White (Chairman)  
Councillor Bray (Vice-Chairman)  
Councillor Alexander  
Councillor Baker  
Councillor Casey

Councillor Codling  
Councillor Fowler  
Councillor Harris  
Councillor Placey

Most Council meetings are open to the public and press. The space for the public and press will be made available on a first come first served basis. The meeting will normally be live streamed and the link to this is available at [www.tendringdc.gov.uk/livemeetings](http://www.tendringdc.gov.uk/livemeetings) Those attending the meeting may therefore be filmed. After the meeting the recording of the live stream will normally be available using the same link. 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 Emma Haward on 01255686007.

DATE OF PUBLICATION: Tuesday, 22 March 2022

## AGENDA

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

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

### **2 Minutes of the Last Meeting (Pages 1 - 14)**

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on Wednesday, 16th February 2022.

### **3 Declarations of Interest**

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

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

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

### **5 A.1 PLANNING APPLICATION 21/01000/FUL - ST JOHNS PLANT CENTRE, EARLS HALL DRIVE, CLACTON-ON-SEA, ESSEX CO16 8BP (Pages 15 - 96)**

This application seeks full planning permission for the demolition of the nursery glasshouses, buildings and structures and No. 700 St Johns Road and the redevelopment of the site with a predominately residential scheme. The proposed residential scheme comprises of: 180 Residential units comprising 10 no. 2 bed houses; 83 no. 3 bed houses; 24 no. 4 bed houses; 15 no. 5 bed houses; 16 no. 1 bed apartments; 24 no. 2 bed apartments and 8 no. live/work units (mixed commercial totalling 1064 square metres with flats above), with associated roads, open space, drainage, landscaping and other associated infrastructure.

### **6 A.2 PLANNING APPLICATION 20/00541/OUT - LAND WITHIN CAR PARK, BROOK RETAIL PARK, LONDON ROAD, CLACTON-ON-SEA, ESSEX (Pages 97 - 118)**

The application is referred to the Planning Committee at the request of St John's Ward Councillor Mark Stephenson, due to concerns over the sequential test and the effect of the proposal on highways and parking considerations.

The proposal seeks outline planning permission with access to be considered. Appearance, landscaping, layout, and scale are reserved matters for consideration under a subsequent application.

### **7 A.3 PLANNING APPLICATION 21/00738/FUL – HIGH BEECH, TURPINS LANE, KIRBY CROSS, FRINTON ON SEA (Pages 119 - 138)**

The application has been called in by Councillor Anne Davis.

The proposal is for the demolition of the existing dwelling and the construction of four detached bungalows with associated parking and landscaping. It is also proposed to increase the width of the main access way from Turpins Lane. The site is located within the defined Settlement Development Boundary of Frinton-on-Sea and is considered to be an existing backland site.

**8 A.4 PLANNING APPLICATION 21/02022/FUL – CHINESE COTTAGE RESTAURANT, HIGH STREET, THORPE LE SOKEN, CLACTON ON SEA, ESSEX (Pages 139 - 158)**

This application is before Members at the request of Councillor Land, for concerns regarding the development's impact on urban design/street scene, highways impact and/or other traffic issues and positive/negative Impact on neighbours.

The application seeks full planning permission for the erection of a single storey dwelling, with an attached car-port to the right hand side. The dwelling's footprint would be a reversed L-shape with a rear-gable projection and a feature oversail porch roof to the front elevation. Both the main roof and that of the car-port would be gabled-ended. The eaves of the dwelling would be in the region of 2.7m and it would have a ridge of approximately 5.5m. Areas of hardstanding are proposed to the perimeter of the dwelling, along with a grassed back garden with bin-storage to the rear right hand boundary.

**Date of the Next Scheduled Meeting**

*The next scheduled meeting of the Planning Committee is to be held in the Committee Room - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE at 6.00 pm on Tuesday, 12 April 2022.*

# **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 March 2021**

This Public Speaking Scheme is made pursuant to Council Procedure Rule 40 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?**

Public meeting of the Council's Planning Committee are normally held every 4 weeks at 6.00 pm in either the Council Chamber at the Council Offices, Thorpe Road, Weeley CO16 9AJ or at the Town Hall, Station Road, Clacton-on-Sea CO15 1SE or entirely by remote means and the public are encouraged to check the venue etc. on the Council's Website before attending.

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

1. 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 to speak is allowed;
2. 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 to speak is allowed;
3. 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 to speak is allowed;
4. 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 to speak is allowed;

5. 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 to speak is allowed;

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; and

6. 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 686007) during normal working hours on any weekday after the reports and agenda have been published; or

Email: [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk)

## **OR**

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

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 paragraphs 2 or 3 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.

**As approved at the meeting of the Full Council held on 16 March 2021**



**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON WEDNESDAY, 16TH FEBRUARY, 2022 AT 6.00 PM  
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,  
CO15 1SE**

<b>Present:</b>	Councillors White (Chairman), Bray (Vice-Chairman), Alexander, Baker, Casey, Codling, Fowler, Placey and V Guglielmi
<b>In Attendance:</b>	Gary Guiver (Acting Director (Planning)), Graham Nourse (Assistant Director (Planning)), Joanne Fisher (Planning Solicitor), Jacob Jaarsmar (Planning Team Leader), Keith Durran (Committee Services Officer) and Matt Cattermole (Communications Assistant)

**200. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

An apology for absence was received from Councillor Harris (with Councillor V Guglielmi substituting).

**201. MINUTES OF THE LAST MEETINGS**

The minutes of the last meetings of the Committee, held on Tuesday 21 December 2021 and Tuesday 18 January 2022, were approved as correct records and signed by the Chairman.

**202. DECLARATIONS OF INTEREST**

Councillor Baker declared an interest in application **A.2 PLANNING APPLICATION – 21/02097/FUL – HOLLAND FOOTBALL CLUB THE CLUBHOUSE DULWICH ROAD HOLLAND ON SEA ESSEX insofar** as it was in his Ward. He stated that he was not predetermined in this application and that therefore he would take part in the debate on this application.

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

There were none on this occasion.

**204. A.1 PLANNING APPLICATION - 19/00851/DETAIL - LAND EAST OF POND HALL FARM STOUR CLOSE HARWICH ESSEX CO12 5EW**

The Committee recalled how this application sought approval of the Reserved Matters associated with the granting of planning permission 19/00917/OUT, which had been a hybrid application for the comprehensive development of the site consisting of outline approval to create employment units (including start-ups), café/restaurant units, public house, drive thru restaurants, cinema, hotel, up to 297 dwellings, landscaping, open space, associated means of access, internal estate road and car parking. The full approval included the creation of retail shop units, food store, petrol filling station, associated highway works and improvements included a new roundabout off the A120 and link road, earthworks, service infrastructure and other associated works & improvements.

Members were reminded that the Committee had resolved to approve the above outline planning permission at its meeting held on 20<sup>th</sup> October 2015 subject to conditions and a legal agreement. A different, albeit relevant, application for the variation of conditions 1 and 19 of approved application 14/01431/OUT to allow up to 80 residential unit occupations prior to completion of associated highway works and improvements including a new roundabout off the A120 as prescribed by condition 19, had been refused planning permission by the Council in March 2021.

The Committee heard how it had been established through the granting of outline permission 14/01431/OUT that the principle of mixed use commercial/employment and residential development for up to 297 dwellings was acceptable on this site (a total of 259 dwelling were proposed under this reserved matters application).

For the reasons outlined in their report, the detailed access, appearance, landscaping, layout and scale were considered by Officers to be acceptable subject to conditions and a unilateral undertaking to secure a RAMS contribution. Specifically, Officers had felt that the proposal would result in a high quality scheme in terms of its overall design and layout, and would result in no material harm to residential amenity or highway safety. There was no conflict with any of the key and most important planning policies and legislation for determining this reserved matters application.

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

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

An update sheet had been circulated to the Committee prior to the meeting with details of:-

- 1) A replacement of condition 1.
- 2) A third party objection received on 31.01.2022

Stuart Wilsher, Agent, spoke in favour of the development.

<b>Matters raised by Members of the Committee:-</b>	<b>Officer's response thereto:-</b>
There was concern the southern entrance could be used by cars, but a Bus Gate has been mentioned, could this be explained?	The details of the bus gate will be in the conditions. The applicant is in talks with ECC as to how the bus gate will work, but initially it is thought to be collapsible bollards.
What sort of arrangements are being made to facilitate walkers?	The existing foot path from the south will be kept as well as more to be added. It will be a condition for the application to outline a long term maintenance plan for publically accessible open spaces on the site.
Will emergency vehicles be able to use the Bus Gate?	Yes

Is all the construction traffic for the site going to be going via the A120 access to the site and not the southern entrance?	There is a Construction & Environmental management plan on the REM. The phasing in the plan means the roads will go in first which will greatly assist in the construction traffic using the A120.
Does the proposed pub garden back onto residential properties?	The pub garden is small, with a 3 meter wide landscape bunt between itself and the properties and the applicants have agreed to secure that. The conditions can be strengthened to add an acoustic fence.
Will there be any signage to indicate what the Pill Box is and its history?	Yes.
Can the car park spaces/amounts be explained?	The larger properties (Family homes) have 2 spaces each. Everything is compliant with ECC policy and our Adopted Local Plan.
Does the management plans include the management of traffic due to the construction?	This level of detail should come through with the conditional submissions.
Is it possible that at some point traffic may have to be diverted through Dovercourt?	That would be a matter for ECC Highways to decide.
Where are the affordable homes in the development?	They are 'pepper potted' across the northern arch of the development and some next to the park in the middle and they will be indistinguishable from the other homes.
Will each property have an electric charging point on it.	Yes.

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

**RESOLVED** that the Assistant Director (Planning) (or equivalent authorised officer) be authorised to grant planning permission for the development, subject to the following planning and conditions (and reasons):-

1. The development hereby permitted shall be carried out in accordance with the following approved Drawing Titles and Numbers:

Drawing title	Dwg no.	Rev
Masterplan	PH-165-002	B
Detailed Layout	PH-165-003	B
Materials Layout	PH-165-004	B
Storey Heights	PH-165-005	B
Tenure Plan	PH-165-006	B
Boundary Treatment Plan	PH-165-007	B

<b>Drawing title</b>	<b>Dwg no.</b>	<b>Rev</b>
Refuse and Recycling	PH-165-008	B
Open Space Plan	PH-165-009	B
Mistley House Type	PH-165-030	A
Kirby House Type	PH-165-031	A
Oakley House Type	PH-165-032	A
Beaumont House Type	PH-165-033	A
Raven House Type	PH-165-034	A
Bentley A House Type	PH-165-035	A
Bentley B House Type	PH-165-036	A
Bromley A House Type	PH-165-037	A
Bromley B House Type	PH-165-038	A
Thorpe House Type	PH-165-039	A
Horseley House Type	PH-165-040	A
Thorrington House Type	PH-165-041	A
Walton House Type	PH-165-042	B
Lawford A House Type	PH-165-043	A
Lawford B House Type	PH-165-044	A
Weeley House Type	PH-165-045	A
Sutton A House Type	PH-165-046	A
Sutton B House Type	PH-165-047	A
Brantham House Type	PH-165-048	A
Apartment Block Plan	PH-165-050	B
Apartment Block Elevations	PH-165-051	C
Garage	PH-165-070	A
Bin Store	PH-165-071	A
Street Scenes AA B CC *	PH-165-080	
Street Scenes DD *	PH-165-081	
MASTERPLAN*	19186-2043	-
MASTERPLAN	19186-2044	P-04
SITE LAYOUT PLAN – BUSINESS UNITS	19186-2045	P-03
SITE LAYOUT PLAN – WAREHOUSE UNITS 1 & 2	19186-2046	P-02
SITE LAYOUT PLAN – WAREHOUSE UNIT 3	19186-2047	P-02
SITE LAYOUT PLAN – WAREHOUSE UNIT 4	19186-2048	P-02
SITE LAYOUT PLAN – PUBLIC HOUSE	19186-2049	P-03
SITE LAYOUT PLAN – CINEMA	19186-2050	P-02
SITE LAYOUT PLAN – HOTEL	19186-2051	P-02
SITE LAYOUT PLAN - DRIVE THRU	19186-2052	P-04
Drive-Thru Restaurants Vehicle Swept Path	J000313- ATR101	

<b>Drawing title</b>	<b>Dwg no.</b>	<b>Rev</b>
Assessment Out of Hours FTA Rigid HGV (Eastern Unit)		
Drive-Thru Restaurants Vehicle Swept Path Assessment Large Refuse Collection Vehicle (Eastern Unit)	J000313- ATR102	
Drive-Thru Restaurants Vehicle Swept Path Assessment 7.5t Luton Van Servicing (Eastern Unit)	J000313- ATR103	
Drive-Thru Restaurants Vehicle Swept Path Assessment Luxury 4x4 via DriveThru Lane (Eastern Unit)	J000313- ATR104	
Drive-Thru Restaurants Vehicle Swept Path Assessment Out of Hours FTA Rigid HGV (Western Unit)	J000313- ATR105	
Drive-Thru Restaurants Vehicle Swept Path Assessment Large Refuse Collection Vehicle (Western Unit)	J000313- ATR106	
Drive-Thru Restaurants Vehicle Swept Path Assessment 7.5t Luton Van Servicing (Western Unit)	J000313- ATR107	
Drive-Thru Restaurants Vehicle Swept Path Assessment Luxury 4x4 via DriveThru Lane (Western Unit)	J000313- ATR108	

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

2. All changes in ground levels, hard landscaping, planting, seeding or turfing shown the approved hard and soft landscaping drawing no's:
  - JBA 21/267 -01 B
  - JBA 21/267 -02 B
  - JBA 21/267 -03 B

- JBA 21/267 -04 B
- JBA 21/267 -05 B
- JBA 21/267 -06 B
- JBA 21/267 -07 B
- JBA 21/267 -08 B
- JBA 21/267 -09 B
- JBA/21/267 -10 A
- JBA/21/267 -11 A
- JBA/21/267 -12 A
- JBA/21/267 -13 A
- JBA/21/267 -14 A
- JBA/21/267 -15 A
- JBA/21/267 -16 A
- JBA/21/267 -17 A
- JBA/21/267 -18 A
- W2335 Hard Landscape Proposals - 1001
- W2335 Hard Landscape Proposals - 1002
- W2335 Infrastructure Landscape Proposals - 1004
- W2335 Infrastructure Landscape Proposals - 1005
- W2335 Industrial Landscape Proposals - 1007
- W2335 Industrial Landscape Proposals - 1008

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

Reason - To ensure the implementation of the approved scheme and adequate maintenance of the landscaping for a period of five years in the interests of amenity.

3. Prior to the first occupation of any of the phases of the approved Strategic Phasing Plan a landscape contractual arrangement must be in place to ensure the maintenance of all public soft landscaped areas on behalf of the residents, business and users of the development, for the lifetime of the development.

Reason: To ensure appropriate maintenance of the approved landscaping scheme, in the interests of visual amenity, the quality of the development and the character of the area.

4. Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Classes A, B and E of the Town and Country Planning (General Permitted Development) Order 2016 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwellings hereby approved, and no outbuildings shall be erected or carried out except in accordance with drawings showing the siting and design of such enlargement, improvement or other alteration which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason - In the interest of amenities of the occupants of the neighbouring and proposed properties.

5. Prior to above ground works in any phase identified within the approved Strategic Phasing Plan, a scheme for the provision of electric vehicle charging facilities for the dwellings, commercial, business, hotel, cinema, and industrial buildings hereby approved shall have first been submitted to and approved in writing by the local planning authority. Thereafter the charging facilities shall be installed in a working order prior to first occupation of the dwelling.

Reason: In order to promote sustainable transport.

6. No phase of the development identified within the approved Strategic Phasing plan shall be occupied until a scheme detailing how a minimum of 20% of the energy needs generated by the development can be achieved through renewable energy sources shall be submitted to and approved in writing by the local planning authority. The scheme shall detail the anticipated energy needs of the scheme, the specific renewable technologies to be incorporated, details of noise levels emitted (compared to background noise level) and how much of the overall energy needs these will meet and plans indicating the location of any external installations within the development. The development shall be carried out in accordance with the approved details and shall be retained as such thereafter

Reason: To ensure the development contributes to minimising the effects of, and can adapt to a changing climate.

7. Prior to the occupation of any phase of the proposed development the internal road and footway layouts shall be provided in principle and accord with Drawing numbers:
  - PH-165-002 Rev. B:- Master Plan.
  - PH-165-003 Rev. B:- Detail Layout
  - 19186-2044 P-04 :- Masterplan

- 19186-2045 P-03 :- Site Layout Plan – Business Units
- 19186-2049 P-03 :- Site Layout Plan – Public House
- 19186-2052 P-04 :- Site Layout Plan – Drive Thru
- 2046 P-02 - Amended warehouse units 1 and 2 - site layout plan
- 2047 P-02 - Amended warehouse units 3 - site layout plan
- 2048 P-02 - Amended warehouse units 4 - site layout plan
- 2051 P-02 - Amended hotel - site layout plan

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

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

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

9. Notwithstanding the details shown on drawing PH-165-003 Rev. B, prior to occupation, details of a type of bollards/barrier to be located across the private road between plots 15/16, 57/58, 95/96 and 229/230 shall be submitted for approval. The development shall be carried out in accordance with the approved details and shall be maintained for the lifetime of the development.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety in accordance with policy DM1.

10. Prior to the Drive-Thru Restaurants becoming operational a Delivery and Servicing Plan, and a Car Park Management Plan shall be submitted to, and agreed in writing with, the Local Planning Authority. The Plans to include the following, and be adhered to at all times:
  - i. Deliveries and refuse collection to the development to be managed in advance and limited to outside of operational hours only.
  - ii. An area to be kept clear outside operational hours to facilitate servicing and refuse collection.
  - iii. A parking management strategy to be in place limiting customers to a maximum 60-minute stay only.



- iv. All parking spaces to be provided for customers only. No staff parking to be permitted to park on site.

Reason: In the interests of highway safety to ensure accordance with Policy DM1 and DM19.

11. Prior to the first use of any external lighting / floodlighting within the development site, the light source shall be so positioned and shielded, in perpetuity, to ensure that users of the highway are not affected by dazzle and/or glare, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that users of the highway are not subjected to glare and dazzle from lighting within the development in the interest of highway safety in accordance with Policy DM1.

12. Any gates provided at any vehicular access points shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the footway / cycleway or where no provision of footway/cycleway is present, the carriageway.

Reason: To enable vehicles using the access to stand clear of the carriageway whilst gates are being opened and closed and to allow parking off street and clear from obstructing the adjacent footway/cycleway/carriageway in the interest of highway safety in accordance with policy DM1.

13. Prior to first occupation a scheme for the associated extractor / ventilation systems for any business units (where relevant) and or food outlets hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The scheme submitted shall include measures to control noise and odour from any extractor systems. The details shall thereafter be implemented in accordance with the approved details and retained as such

Reason: To ensure a satisfactory development in relation to external appearance and in the interests of residential amenity.

14. Prior to above ground works in any phase identified within the approved Strategic Phasing Plan the precise details of the manufacturer and types and colours of all the external facing materials and roofing materials to be used in the construction of all the buildings hereby approved shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure a satisfactory development in relation to external appearance and in the interests of residential amenity.

15. Prior to the occupation of any dwelling the details of the equipment used in the Locally Equipped Play area shall be submitted to and approved in writing by the

Local Planning Authority. The approved details shall be those used in the development and installed prior to the first occupation of any dwelling on site.

Reason: To ensure a satisfactory development in relation to public open space and in the interests of residential amenity.

16. Prior to the commencement of development in any phase identified within the approved Strategic Phasing Plan a Construction and Environmental Management Plan shall have first been submitted to and approved in writing by the Local Planning Authority. This shall include a method statement for the following (where applicable):

- i) Provision for: the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials storage of plant and materials used in constructing the development, and; wheel and underbody washing facilities
- ii) The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.
- iii) No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00(except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
- iv) The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228.
- v) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
- vi) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents. 6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.
- vii) Prior to the installation of any external lighting precise details shall have first been submitted to and approved in writing by the local planning authority. Any external lighting shall be designed so as to prevent any unnecessary light spill. Any lighting of the development shall be located, designed and directed or screened so that it does not cause avoidable intrusion to adjacent residential properties/ constitute a traffic hazard/cause unnecessary light pollution outside the site boundary. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers. Thereafter external lighting

shall only be installed in accordance with such details as may have been approved.

viii) All waste arising from any demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

ix) No materials produced as a result of the site development or clearance shall be burned on site.

x) All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.

xi) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Reason: In the interests of residential amenity and highway safety.

17. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure that the site is free from contamination.

18. Prior to the above ground works in any phase identified within the approved strategic phasing plan precise details of the decision, siting, design and materials of screen walls and fences shall have been submitted to and approved in writing by the local authority, including the specific boundary treatment details and landscaping between plots 254 and 255 and the pub garden to the north. All approved screen walls and fences shall be erected prior to the dwellings to which they relate being occupied and thereafter be retained in the approved form.

Reason - In the interests of visual and residential amenity.

19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road.

Reason - In the interests of visual and highway safety.

20. Before any specified plant and/or machinery is used on any of the A3 restaurant units or the Cinema building hereby approved, it shall be enclosed with sound-

insulating material and mounted in a way which will minimise transmission of structure-borne sound in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority. The measures implemented as approved shall be retained thereafter.

Reason - In the interests of visual and residential amenity.

21. Oak tree indicated as T11 in the arboriculture impact assessment dated 6 December 2021 (ref JBA 21/267/ AR01 Issue A) shall be retained and incorporated into open space/suds area to north of residential parcel.

Reason - In the interests of environmental, visual and residential amenity.

**205. A.2 PLANNING APPLICATION - 21/02097/FUL - HOLLAND FOOTBALL CLUB THE CLUBHOUSE DULWICH ROAD HOLLAND-ON-SEA ESSEX**

Members heard how this application was before them as Tendring District Council was the land owner and that the proposal involved the construction of an extension to the existing clubhouse building. The proposal would improve the facilities available, supporting the Holland-on-Sea Football Club and the wider community.

The Committee was informed that the proposals were considered by Officers to be of a size, scale and design in keeping with the existing building and there were no concerns raised regarding the impact on the neighbouring residential properties in the surrounding streets given the existing use of the site.

Following discussion by the Committee, it was moved by Councillor Bray, seconded by Councillor Fowler and unanimously:-

**RESOLVED** that the Assistant Director (Planning) (or equivalent authorised officer) be authorised to grant planning permission for the development, subject to the following planning conditions and reasons:-

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

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

2. The development hereby permitted shall be carried out in accordance with the following approved drawings:

0925\_A\_SC\_02/A - Proposed site plan

0925\_A\_SC\_04 - Proposed elevations and floor plans

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

**206. A.3 PLANNING APPLICATION - 21/01687/FUL - JUBILEE FIELD NAZE PARK ROAD WALTON-ON-THE-NAZE ESSEX CO14 8JZ**

The Committee heard how this application was before it as Tendring District Council was the land owner and applicant.

Members were informed that the proposal involved the temporary siting of 17 beach huts on Jubilee Fields in Walton-on-the-Naze. The huts had been located there in the summer of 2021 and as such the application was retrospective. The huts would be sited on Jubilee Fields whilst works took place to the sea wall at East Terrace, Walton-on-the-Naze. The huts were to be moved back to their original location on completion of the works which was expected to be in an estimated 12 months' time.

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

**RESOLVED** that the Assistant Director (Planning) (or equivalent authorised officer) be authorised to grant planning permission for the development, subject to the following planning conditions and reasons:-

1. The development hereby permitted shall be retained in accordance with the following approved drawings:

Site Location Plan

Existing Block Plan

Proposed Block Plan

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

2. The period of this permission shall expire on 16.08.2023 at which date the beach huts and fencing hereby permitted shall be removed.

**Reason** – This planning permission has been assessed and granted on a temporary basis. Permanent planning permission would require the circumstances of the development to be assessed on the basis of permanent, rather than temporary, impacts.

3. Upon the cessation of use, all beach huts and fencing shall be removed from Jubilee Ground and the site and its landscape features returned to its condition prior to the commencement of the approved development.

**Reason-** To ensure the reinstatement and protection of coastal views and landscape in the interests of visual amenity and local biodiversity.

The meeting was declared closed at 7.13 pm

**Chairman**

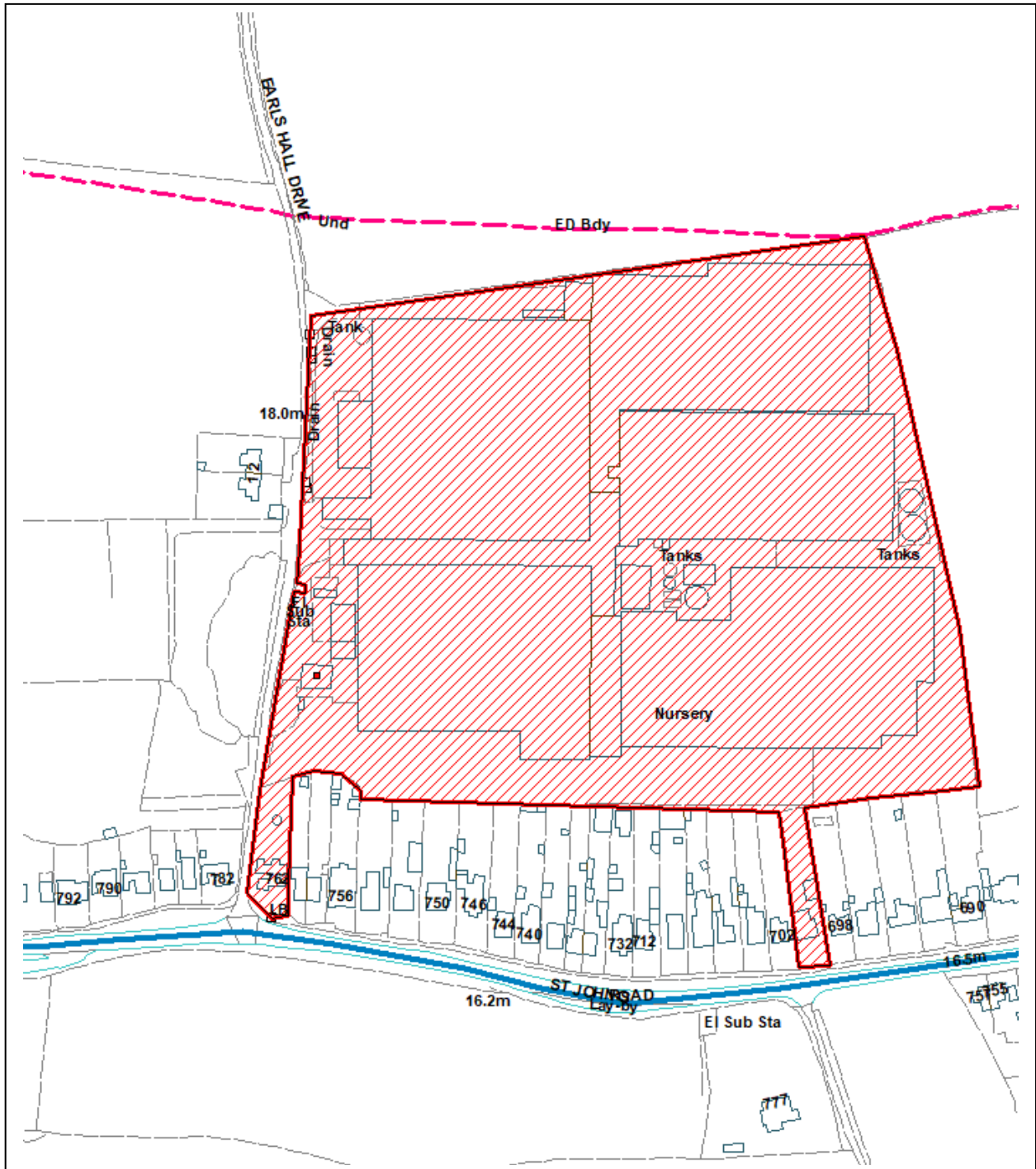
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## PLANNING COMMITTEE

30<sup>th</sup> March 2022

### REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

#### A.1 PLANNING APPLICATION – 21/01000/FUL – ST JOHNS PLANT CENTRE EARLS HALL DRIVE CLACTON ON SEA ESSEX CO16 8BP



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**Application:** 21/01000/FUL

**Town / Parish:** Clacton Non Parished

**Applicant:** Kelsworth Ltd

**Address:** St Johns Plant Centre Earls Hall Drive Clacton On Sea Essex CO16 8BP

**Development:** Proposed demolition of nursery buildings and dwelling house (700 St Johns Road) and erection of 180 residential units (including affordable housing) comprising 10 two bed houses, 83 three bed houses, 24 four bed houses, 15 five bed houses, 16 one-bedroom apartments and 24 two-bedroom apartments and 8 live work units (mixed commercial units totaling 1064 square metres with flats above); and roads, open space, drainage, landscaping and other associated infrastructure.

## **1. Executive Summary**

- 1.1. The application site comprises 7.6 hectares of horticultural land and is located approximately 300m to the western edge of Clacton on Sea, but now within the Parish of St Osyth. It is to the north of St. Johns Road (B1027), with the majority of the site being to the rear of a ribbon of residential development that fronts onto the road (even nos 690 – 762).
- 1.2. Currently the vehicular access to the site is off Earls Hall Drive, a private road which passes along its western boundary. It is proposed to provide a footpath/cycleway within the current curtilage of 762 St Johns Road adjacent to the existing lane. In addition, the application site also includes a chalet bungalow and its garden at 700 St Johns Road which it is proposed to demolish, in order to provide a new, replacement vehicular access to the site, in lieu of the Earls Hall Drive one.
- 1.3. The site lies within the settlement development boundary for Clacton where there is no principle objection to residential development.
- 1.4. This application seeks full planning permission for the demolition of the nursery glasshouses, buildings and structures and No. 700 St Johns Road and the redevelopment of the site with a predominately residential scheme. The proposed residential scheme comprises of: 180 Residential units comprising 10 no. 2 bed houses; 83 no. 3 bed houses; 24 no. 4 bed houses; 15 no. 5 bed houses; 16 no. 1 bed apartments; 24 no. 2 bed apartments and 8 no. live/work units (mixed commercial totalling 1064 square metres with flats above), with associated roads, open space, drainage, landscaping and other associated infrastructure.
- 1.5. 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 Clacton, 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.
- 1.6. The recommendation is therefore to approve planning permission, subject to the completion of a legal obligation under Section 106 of the Town and Country Planning Act 1990, a dormouse survey and the imposition of a number of controlling conditions.



**Recommendation:**

That the Assistant Director for Planning be authorised to grant planning permission for the development subject to:-

- a) **The submission and approval of a dormouse survey.**
- b) **Within 6 (six) months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters (where relevant):**
- **Financial Contribution towards RAMS - £22,914 (£127.30 per dwelling)**
  - **Affordable Housing Provision – 10% on site provision**
  - **Education – financial contribution towards early years and childcare (£233,118) and libraries (£14,004)**
  - **NHS – financial contribution TBA**
  - **Provision, specification and maintenance of on-site Open Space**
  - **Live/Work units to be constructed and marketed prior to 75% dwelling occupation**
  - **Highways and Transportation – a financial contribution of £104,000.00 pro-rata for procurement towards the local bus services operating on St Johns Road to serve the development; provision and monitoring of a Residential Travel Plan; Provision of 3 no. bus stops on St Johns Road; Provision/upgrade of a 3-metre wide shared footway/cycleway on the north side of St Johns Road from its junction with Earls Hall Drive eastwards to the main vehicular access to the site and beyond to tie in with the proposed footway/ cycleway for the Rouses Farm development south of St Johns Road (17/01229/OUT);**
- c) Subject to the conditions stated in section 8.2

That the Assistant Director for Planning be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a s106 planning obligation.

**2. Planning Policy**

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

NPPF National Planning Policy Framework July 2021  
National Planning Practice Guidance

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

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

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

SPL1 Managing Growth  
SPL2 Settlement Development Boundaries  
SPL3 Sustainable Design  
HP1 Improving Health and Wellbeing  
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  
PP6 Employment Sites  
PP12 Improving Education and Skills  
PPL1 Development and Flood Risk  
PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
PPL10 Renewable Energy Generation  
CP1 Sustainable Transport and Accessibility  
CP2 Improving the Transport Network

*Local Planning Guidance*

Essex Design Guide  
Essex County Council Car Parking Standards - Design and Good Practice  
Provision of Recreational Open Space for New Development

**Status of the Local Plan**

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

In relation to housing supply:

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

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021

measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

### 3. Relevant Planning History

91/00081/FUL	The siting of a mobile home for use by on site staff for security and supervision of the environmental equipment at the nursery on a 24 hour basis.	Approved	08.03.1991
91/00132/FUL	Replacement of fire damaged glasshouse.	Approved	08.03.1991
92/01307/FUL	(Earls Hall Nursery Ltd., Earls Hall Drive, St Johns) Siting of mobile home for use by on-site staff for security and supervision of the environmental equipment at nursery on 24 hour basis (renewal of TEN/91/0081)	Approved	23.12.1992
94/00448/FUL	(Earls Hall Drive, St Johns Road, Clacton on Sea) Continued use of building as office accommodation (Renewal of permission TEN/574/89)	Approved	10.06.1994
94/01303/FUL	(Earls Hall Nursery Ltd., Earls Hall Drive, St John's) Siting of mobile home for use by on-site staff for security and supervision of the environmental equipment at nursery on 24 hour basis (renewal of TEN/92/1307)	Approved	25.11.1994
96/00220/FUL	(St Johns Nursery, Earls Hall Drive, Clacton on Sea) Siting of a mobile home for use by on-site staff for the security and supervision of the nursery and environmental equipment, on a 24 hour basis	Approved	29.03.1996
98/01700/FUL	Demolish existing garages and replace with new with pitched roof and enlarged new roofs to porch and rear bedroom	Approved	12.02.1999
99/01444/FUL	Continued use of building as office accommodation (Renewal of TEN/94/0448) Continued use of mobile home for use by on site staff (Renewal of TEN/96/0220)	Approved	22.11.1999

04/01686/FUL	Demolition of existing glass house and erection of new glass house for horticultural purposes.	Approved	21.10.2004
13/00529/FUL	Demolition and rebuild of attached double garage to match existing on new piled raft foundations.	Withdrawn	23.05.2013
12/00771/AGRIC	Portal framed packing shed with profiled cladding walls/roof.	Determination	07.08.2012
16/00612/FUL	Proposed storage barn.	Approved	07.07.2016
17/01197/FUL	Improvements to Earls Hall Drive.	Refused/ Allowed at Appeal	13.09.2017
17/01198/ADV	1 No. directional sign.	Approved	13.09.2017
17/01770/FUL	Extension to car park.	Approved	08.12.2017
17/01775/FUL	Temporary use of part of nursery as "Christmas Wonderland" - seasonal sales event. Operating from 16th October 2017 to 6th January 2018 - to include a Santa's Grotto and miniature train.	Refused	21.12.2017
17/01935/FUL	Improvements to Earls Hall Drive.	Approved	16.05.2018
18/01779/FUL	Demolition of nursery buildings and dwellinghouse. Erection 195 residential units (comprising 6 two bed houses, 87 three bed houses, 33 four bed houses, 25 five bed houses, 12 one bedroom apartments and 24 two bedroom apartments), and 8 live work units (mixed commercial units measuring 1064 square metres in total with flats above). Associated roads, open space, drainage, landscaping, and other infrastructure.	Refused Dismissed at Appeal	19.02.2020

#### 4. Consultations

Tree & Landscape Officer  
18.08.2021

The main body of the application site is covered by glasshouses and buildings associated with the horticultural use of the land as a plant nursery and garden centre.

There are no trees or other significant vegetation in the main body of the land but the site boundaries are demarcated by, and contain, established trees and hedgerows.

Close to the entrance to the Plant Centre car park and

adjacent to Earls Hall Drive there are several ornamental trees that appear to have been planted to enhance the entrance to the garden centre/nursery. The trees comprise of Deodar and Atlantic Cedars as well as Silver Birch, Cupressus macrocarpa 'Goldcrest' and a single Cupressocyparis 'Castlewellan. Further to the north along Earls Hall Drive the boundary of the application site is planted with a coniferous hedge comprising Cupressocyparis 'Castlewellan.

The northern boundary is planted with a hybrid Poplar and is sparsely interspersed with hedging conifers (probably Cupressocyparis 'Leylandii.) These trees will almost certainly have been planted as a windbreak associated with the use of the land as a nursery

The eastern boundary and a short section of the eastern end of the northern boundary contains several mature Oaks that are prominent features in their setting although their amenity value is relatively low because of the limited extent to which they can be seen from a public place. The main viewpoint from which the trees can be seen is from the Public Right of Way that runs along Earls Hall Drive from St John's Road to Hartleywood Farm.

There are a few trees in the rear gardens of the properties in St Johns Road that back onto the application site but because of their location these have low amenity value.

In terms of the new access to the application site the demolition of 700 St Johns is required in order to achieve this. The front garden of the property contains 2 small Crab Apples and third situated in the rear garden close to the dwelling. None of these trees have such amenity value that they merit retention or protection by means of a Tree preservation order.

It should be noted that the initial site layout appears to show a good relationship between the proposed dwellings and retained trees but this can only be confirmed, or otherwise, by the provision of a tree survey and report.

In order to show that the development proposal can be implemented without causing harm to important trees on the land the applicant has provided an Arboricultural Impact Assessment (AIA). The AIA is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction; Recommendations.

The information contained in the AIA shows the extent to which the trees are a constraint on the development potential of the land and shows how retained trees will be physically protected for the duration of the construction phase of any planning permission that may be granted.

A Landscape Strategy submitted in support of the

application shows a good level of soft landscaping including tree planting and provides some details relating to structural planting and the palette of species to be incorporated into the soft landscaping scheme. If planning permission were to be granted the further details of new planting should be secured by way of a planning condition unless it is provided prior to the determination of the application.

## ECC Schools Service

A development of this size can be expected to generate the need for up to 13.5 Early Years and Childcare (EY&C) places; 45 primary school, and 30 secondary school places.

Please note that any developer contribution figures referred to in this letter are calculations only, and that final payments will be based on the actual dwelling unit mix and the inclusion of indexation.

### Early Years and Childcare

Essex County Council has a statutory duty under the Childcare Act 2006 to ensure that there is sufficient and accessible high-quality early years and childcare provision to meet local demand and parental choice. This includes provision of childcare places for children aged between 0-5 years as well as wrap around provision for school aged children (5-11 or up to 19 with additional needs).

The proposed development is located within St Osyth ward and according to latest available childcare sufficiency data, there are 3 early years and childcare providers within the ward. Overall a total of 13 unfilled places were recorded.

Although there is some EY&C capacity in the area, the data shows insufficient provision to meet the additional demand created by this development. It is thereby proposed that a developer contribution of £233,118 index linked to Q1-2020, is sought to mitigate its impact on local primary school provision. This equates to £17,268 per place.

### Primary Education

Due to surplus provision in the primary group, a contribution toward primary education will not be requested at this time.

### Secondary Education

Due to the completion of the Clacton County High project complete, there is sufficient space to meet the demand created from this development. A contribution toward secondary education will not be requested at this time.

### School Transport

Having reviewed the proximity of the site to the nearest primary and secondary schools, Essex County Council will not be seeking a school transport contribution at this time. However, the developer should ensure that safe direct walking and cycling routes to local primary and secondary schools are available

### Libraries

ECC may seek contributions to support the expansion of the library service to meet customer needs generated by residential developments of 20+ homes. The provision of a Library Service is a statutory duty under the 1964 Public Libraries and Museums Act and it's increasingly become a shared gateway for other services such as for accessing digital information and communications.

The suggested population increase brought about by the proposed development is expected to create additional usage of the nearest library. A developer contribution of £14,004.00 is therefore considered necessary to improve, enhance and extend the facilities and services provided. This equates to £77.80 per unit.

### Employment and Skills

Both Central and Local Government have a crucial role to play in identifying opportunities to maximise employment, apprenticeships, and to invest in skills to realise personal and economic aspirations.

ECC has a role to play in supporting Local Planning Authorities and helping to ensure that the development industry has the necessary skills to build the homes and communities the county needs. ECC supports Tendring District Council (TDC) in securing obligations which will deliver against this crucial role in supporting employment and skills in the district.

In the current economic climate and national skills shortage, ECC supports TDC in requiring developers to prepare an 'Employment and Skills Plan' (ESP) seeking to drive forward an increase in construction employability levels and workforce numbers. These plans will help to address negative perceptions of the sector and develop a strong future pipeline. This is referred to as the 'development phase'. ECC also supports TD in requiring landowners to produce an ESP for commercial developments, to enable wider employment opportunities for those requiring additional support to enter the job market. This is referred to as the 'end-use phase'. Additionally, ECC encourages TDC to consider the inclusion of other requirements, including financial contributions, to support appropriate employment and skills outcomes as a result of this development.

In view of the above, I request on behalf of Essex County Council that if planning permission for this development is granted it should be subject to a section 106 agreement to mitigate its impact on early years and childcare provision and libraries.

The contributions requested have been considered in connection with the CIL Regulations 2010 (as Amended) and are CIL compliant. Our standard formula s106 agreement clauses that ensure the contribution would be

necessary and fairly and reasonably related in scale and kind to the development are available from Essex Legal Services.

Essex County Council Ecology  
25.08.2021

Holding objection due to insufficient ecological information (out of date report)

We have reviewed the documents supplied by the applicant, relating to the likely impacts of development on Protected & Priority habitats and species, identification of proportionate mitigation.

We are not satisfied that there is sufficient ecological information available for determination of this application.

The Chartered Institute of Ecology and Environmental Management (CIEEM) advice note on the lifespan of ecological reports and surveys (April 2019) states that, for ecological reports that are 18 months- 3 years old, "a professional ecologist will need to undertake a site visit and may also need to update desk study information (effectively updating the Preliminary Ecological Appraisal) and then review the validity of the report. The professional ecologist will need to issue a clear statement, with appropriate justification, on; the validity of the report, which, if any, of the surveys need to be updated; and the appropriate scope, timing and methods for the update survey(s)."

As the Bat Survey Report, Preliminary Ecological Appraisal and Reptile Survey Report were all completed by Total Ecology in 2018, we therefore recommend an additional site visit should be completed by the applicant's ecologist. The report can be updated, or an addendum submitted to support the application. This should ascertain the validity of the existing ecological information and identify if any of the previously completed surveys require updating or if any additional surveys are now required.

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

We note that this application will require the LPA to prepare a project level HRA Appropriate Assessment as the development lies within the Zone of Influence (ZOI) for the Essex Coast RAMS, approximately 3.3km from the Colne Estuary SPA and Ramsar. We have reviewed the Shadow Habitats Regulations Assessment (Total Ecology, 2019) we note that delivery of mitigation measures in perpetuity will be necessary to ensure that this proposal will not have an adverse effect on the integrity of the above Habitats sites from recreational disturbance, when considered 'in combination' with other plans and projects. A proportionate financial contribution will need to be secured from the applicant under a legal agreement.



Holding objection due to insufficient ecological information on European Protected Species (Hazel Dormouse and Bats)

We are still not satisfied that there is sufficient ecological information available for determination of this application.

The eastern boundary comprises trees, hedgerow and dense scrub which provides suitable habitat for Hazel Dormouse. A mitigation licence for impacts including the destruction of a breeding and resting site for this species from 2013 was located 360m south-west of the site. It is considered possible that Hazel Dormouse could reach the suitable habitats on site from this location through the use of surrounding hedgerows and gardens. Given the scrub and hedgerow habitat is being removed there is potential for impacts upon Hazel Dormouse as part of the proposals. The LPA currently do not have certainty that Hazel Dormouse are not present on site or impacted by the proposals.

Although details in relation to the composition of the existing hedgerow along the eastern boundary have not been provided, and so it is unclear if the hedgerow is a Priority habitat, the 'Hedgerow Planting' along the eastern boundary, as shown in the Landscape Strategy, drawing no. 21.5142.01 (Andrew Hastings, May 2021) shows replacement/strengthening planting of a mixture of six native species along this boundary. This will also be outside the curtilage of the proposed gardens and so cannot be removed or inappropriately managed by the new homeowners. Management of this hedgerow should be for the benefit of wildlife.

Some of the retained trees along the eastern boundary are going to be incorporated into proposed gardens and so there is no guarantee that these features will be retained once new residents move into the properties. It should be confirmed that these trees, as well as any other proposed for removal (as seen within the Arboricultural Impact Assessment (EnviroArb Solutions Ltd., June 2021)), have been assessed for their potential to support roosting bats.

We recommend that details of survey methods, results and any necessary additional mitigation & enhancement measures are required to make this proposal acceptable and is provided prior to determination.

To fully assess the impacts of the proposal the LPA need ecological information for the site, particularly for Hazel Dormouse and bats, European Protected Species. These surveys are required prior to determination because Government Standing Advice indicates that you should *"Survey for Hazel Dormouse is distribution and historical records suggest dormice may be present or the development will affect an area of woodland, hedgerow or scrub suitable for dormice"* and *"Survey for bats if the area*

*includes buildings or other structures that bats tend to use or there are trees with features that bats tend to use nearby”.*

The results of these surveys are required prior to determination because paragraph 99 of the ODPM Circular 06/2005 highlights that: *“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”*

This information is therefore required to provide the LPA with certainty of impacts on legally protected and Priority species and be able to secure appropriate mitigation either by a mitigation licence from Natural England or a condition of any consent. This will enable the LPA to demonstrate compliance with its statutory duties, including its biodiversity duty under s40 NERC Act 2006 and prevent wildlife crime under s17 Crime and Disorder Act 1998.

Additionally, no biodiversity enhancement measures are identified in the documents provided although it is suggested that enhancements such as the installation of bird and bat boxes on the new buildings are considered. We recommend that, to secure measurable net gains for biodiversity, as outlined under Paragraph 174d and 180d of the National Planning Policy Framework 2021, further details for reasonable biodiversity enhancement measures will need to be provided.

We note that you have screened this proposed development and consider that it falls within the scope of the Essex Coast RAMS, and that you have undertaken a Habitats Regulations Assessment (HRA) (Stage 2: Appropriate Assessment) in order to secure any necessary recreation disturbance mitigation, and note that you have recorded this decision within your planning documentation. We are satisfied that the mitigation described in your Appropriate Assessment is in line with Natural England’s strategic-level advice. The mitigation should rule out an ‘adverse effect on the integrity’ of the European designated sites that are included within the Essex Coast RAMS from increased recreational disturbance. The LPA is therefore advised that a financial contribution should be sought in line with the Essex coast RAMS per dwelling/tariff, from the developer of this residential development. This contribution will need to be secured by legal agreement.

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

02.08.2021

proposed development. These include settlement enclosures, trackways and linear features of probable agricultural origin. Previous investigation within the surrounding area have shown the field systems to be of Roman origin. The recorded cropmarks are immediately adjacent to the site and can be expected to continue into the development area. There is potential for previous disturbance to the site through quarrying activities and the existing glasshouses, the scale of the quarrying is unclear and the depth of disturbance should be established through a limited programme of archaeological investigation in the first instance.

The following recommendations are made in line with the National Planning Policy Framework:

**RECOMMENDATION:** A Programme of Archaeological investigation following demolition.

No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant, and approved in writing by the local planning authority.

Following demolition, no preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in 1 above.

The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Further Recommendations:

A professional team of archaeologists should undertake the archaeological work. A brief outlining the level of archaeological investigation will be issued from this office on request. Tendring District Council should inform the applicant of the recommendation and its financial implications.

Waste Management  
02.08.2021

No comments

ECC Highways Dept  
10.12.2021

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.

The information that was submitted in association with the application has been fully considered by the Highway Authority. A previous site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated April 2019. It is noted that this application is similar to a previous application; 18/01779/FUL for up to 196 residential units which the Highway Authority did not raise an objection to. A public inquiry was held in October 2020 for the previous application, whereby the Planning inspector concluded that the proposed development would not adversely affect the safety and free flow of traffic on the highway network. This application sees a slight reduction in the number of units proposed for this site, considering these factors:

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

#### Construction Management Plan

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

- the parking of vehicles of site operatives and visitors
- loading and unloading of plant and materials
- storage of plant and materials used in constructing the development
- wheel and underbody washing facilities
- vehicle routing to and from the site
- prior to the commencement of any work on the site, a joint inspection of the route to be used by construction vehicles should be carried out by the Applicant and the Highway Authority, including photographic evidence.

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

## Highway improvements

Where possible the provision/upgrade of a 3-metre-wide shared footway/ cycleway and associated tactile paving on the north side of St Johns Road from its junction with Earls Hall Drive eastwards to the main vehicular access to the site and beyond to tie in with the proposed footway/ cycleway for the Rouses Farm development south of St Johns Road (17/01229/OUT).

Prior to the occupation of the first residential dwelling, the upgrade of the three closest bus stops on St Johns Road nearest to the St Johns Road site access/ shared cycleway/ footway onto St Johns Road:

- North Side: outside house nos. 750/ 752; Stop Name: Earls Hall.
- South Side: (within lay-by) opposite house nos. 734/736; Stop Name: Earls Hall.
- North Side; outside house no. 692; Stop Name: Rouse Lane.

Details to be agreed with the Local Planning Authority to encourage use of the public transport network the provision of improvements to include timetable information, bus stop signage and raised kerbs and hardstanding. Including widening of the footway on the north west side; cantilever shelters; Kassel kerbs, bus stop flags/ timetable frames.

Prior to the occupation of 100 units the provision of a £104,000.00 pro-rata contribution (index linked) for procurement towards the local bus services operating on St Johns Road to serve the development.

Prior to occupation of the development, the road junction / access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 120 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

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

## Internal Layout

No occupation of the development shall take place until the following have been provided or completed:

The highway works as shown in principle on revised site plan drawing no. 4424/CA/PL1000 Rev. P but to include the following:

- A forward visibility splay of 25 metres needs to be provided on each corner of the development these will need to be hardened so they can be adopted.
- The raised table to be extended to include the drive to plot 173.
- The 2-metre-wide footway to continue round on the north side of the bend to tie into the footway at the junction outside plot 94 and from the north boundary to plot 97.
- Speed-restraint measures should be located at maximum intervals of 60m, starting within 50m of the entry junction or zone.
- The proposed build-out on the access road to the site would need to switch to the opposite lane to remove the potential traffic accessing the site backing up onto St Johns Road or change to a raised table.

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

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety and in accordance with Policy DM 1 and 6.

#### Residential Travel Plan

Prior to first occupation of the proposed development, the Developer shall submit a residential travel plan to the Local Planning Authority for approval in consultation with Essex County Council. Such approved travel plan shall then be actively implemented for a minimum period from first occupation of the development until 1 year after final occupation. It shall be accompanied by an annual monitoring fee of £1,533.00 per annum (80-449 dwellings) index linked, - dependant on size of development to be paid to Essex County Council.

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

The public's rights and ease of passage over public footpath / bridleway / byway no. 167\_1 (Great Clacton) shall be maintained free and unobstructed at all times.

Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

The Cycle / Powered Two-wheeler parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and

provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle / powered two-wheeler parking is provided in the interest of highway safety and amenity in accordance with Policy DM8

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

Notes:

- LTN 1/20 compliance table/report for cycle routes will be required for the development.
- DMRB compliance table, including any departures or relaxation from standards will be required.
- A RSA1 for each proposed access and off-site highway improvement scheme to be provided, ideally to be carried out by Essex Highways (to avoid the issue of additional items being identified at RSA2 stage which can then delay technical approval) [roadsafety.audit@essexhighways.org](mailto:roadsafety.audit@essexhighways.org)

Informative

- The above requirements should be imposed by way of negative planning conditions or a planning obligation.
- 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 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT
- 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.

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

As you will be aware, the Essex Coast RAMS is a large scale strategic project which involves a number of Essex authorities, including Tendring, working together to mitigate the recreational impacts that may occur on the interest features of the coastal European designated sites in Essex as a result of new residential development within reach of them; the European designated sites scoped into the RAMS are notified for features which are considered sensitive to increased levels of recreation (e.g. walking, dog walking, water sports etc.) which can negatively impact on their condition (e.g. through disturbance birds, trampling of vegetation, erosion of habitats from boat wash etc.). For further information on these sites, please see the Conservation Objectives and Information Sheets on Ramsar Wetlands which explain how each site should be restored and/or maintained

In the context of your 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 recreational pressure, either when considered 'alone' or 'in combination' with other plans and projects.

We therefore advise that you consider whether this proposal falls within scope of the Essex Coast RAMS. Where it does, you must undertake a Habitats Regulations Assessment (HRA) (Stage 2: Appropriate Assessment) to secure any necessary recreational disturbance mitigation and record this decision within your planning documentation. We have previously provided you with a suggested HRA Record template and associated guidance to help with this process where recreational disturbance to European sites is the sole HRA issue as appears to be the case in this instance (our ref: 244199, dated 16th August 2018, template and guidance shown within APPENDIX 1 of this letter); the use of this template is not mandatory but we provided it in an attempt to streamline the process and make it as straightforward and consistent as possible for the authorities involved in the RAMS.

Having reviewed the planning documents for this application, it appears that you have not yet undertaken an HRA (Stage 2: Appropriate Assessment) to consider this issue. We therefore advise that you do so now using our suggested template and that you should not grant permission until such time as the HRA has been carried out and the conclusions confirmed in line with the guidance. Please note that we will only provide further comment on your authority's HRA once completed and not a 'shadow'



Natural England  
03.12.2021

HRA provided by the applicant

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

As you will be aware, the Essex Coast RAMS is a large-scale strategic project which involves a number of Essex authorities, including Tendring, working together to mitigate the recreational impacts that may occur on the interest features of the coastal European designated sites in Essex as a result of new residential development within reach of them; the European designated sites scoped into the RAMS are notified for features which are considered sensitive to increased levels of recreation (e.g. walking, dog walking, water sports etc.) which can negatively impact on their condition (e.g. through disturbance birds, trampling of vegetation, erosion of habitats from boat wash etc.). For further information on these sites, please see the Conservation Objectives and Information Sheets on Ramsar Wetlands which explain how each site should be restored and/or maintained

In the context of your 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 recreational pressure, either when considered 'alone' or 'in combination' with other plans and projects.

**NO OBJECTION - SUBJECT TO APPROPRIATE  
MITIGATION BEING SECURED**

We understand that you have screened this proposed development and consider that it falls within scope of the Essex Coast RAMS, and that you have undertaken a Habitats Regulations Assessment (HRA) (Stage 2: Appropriate Assessment) in order to secure any necessary recreational disturbance mitigation, and note that you have recorded this decision within your planning documentation.

We consider that without appropriate mitigation the application would have an adverse effect on the integrity of European designated sites within scope of the Essex Coast RAMS.

We are satisfied that the mitigation described in your Appropriate Assessment is in line with our strategic-level advice (our ref: 244199, dated 16th August 2018 and summarised at Annex 1). The mitigation 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.

We advise that an appropriate planning condition or obligation is attached to any planning permission to secure the on-site mitigation measures, including links to footpaths in the surrounding area. The financial contribution (as index linked) should be secured through an appropriate and legally binding agreement, in order to ensure no adverse effect on integrity.

ECC SuDS Consultee  
27.08.2021

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, , we wish to issue a holding objection to the granting of planning permission based on the following:

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
- Although storage for 1 in 100 year plus 40% climate change event has been provided but no modelling calculations were provided.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event. In case the drain down time is more than 24hours then demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus climate change.
- Provide final modelling and calculations for all areas of the drainage system. Attenuation storage and pipe network should be modelled with critical 1yr, 30r and 100 plus 40percent climate change allowance. Attenuation storage should not flood in any event. The network should not predict surcharge in 1yr events, and should not predict flooding in 30year events. During 100 year plus 40pc cc event if any marginal flooding is predicted then it should be directed away from the building using appropriate site grading.
- Demonstrate the appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Provide engineering site layout of the proposed drainage network at the site. This should include the following details: manholes cover levels, invert levels, pipes dimensions, slopes, tank cover and invert levels both at inlet and outlets, outflow manholes and pipes levels, and top water level in the attenuation tank during 100year plus 40percent CC allowance.
- Provide a drainage plan which details exceedance and conveyance routes, FFL and ground levels.
- 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 should be provided.

- Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.
- The maintenance plan should state that 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.
- Provide an updated written report summarising the final strategy and highlighting any minor changes to the approved strategy.

ECC SuDS Consultee  
08.10.2021

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning application based on the following:

Condition 1

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

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
- Limiting discharge rates to 1:1 Greenfield runoff rates for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.
- In case the drain down time is more than 24 hours then Demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus climate change.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.

- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation.

#### Reason

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

#### Condition 2

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

- The National Planning Policy Framework paragraph 163 and paragraph 170 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution.
- Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development.
- Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating this should be proposed.

### Condition 3

Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

#### Reason

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

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

### Condition 4

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.

Housing Services  
10.08.2021

The Council's emerging Local Plan requires that, on sites delivering 11 dwellings of more, 30% of the dwellings on the site should be delivered as affordable housing. This application proposes the demolition of an existing residential building and the delivery of 180 dwellings thus making a net gain of 179 residential dwellings. There is therefore a requirement to deliver affordable housing under the terms of the emerging Local Plan and 30% of the site would equate to 53 dwellings in total. I note on their application that the applicant has proposed 18 dwellings for affordable housing (12 x 1 bed apartments and 6 x 2 bedroom apartments) but this falls short of the 53 required.

Clacton-on-Sea is the area with the highest demand and there are currently the following number of households on the housing register seeking affordable housing in the Clacton area:

1 bed - 383 households (197 of these households are aged 60 or over and therefore are likely to need accessible accommodation)  
2 bed - 206 households  
3 bed - 141 households  
4 bed - 73 households

Given the high demand for housing in Clacton-on-Sea, my department would like to see 53 dwellings delivered for affordable housing on site. Our preference would be that another registered provider be found to take on the affordable dwellings.

Building Control and Access  
Officer  
29.07.2021

Designer needs to ensure that the access roads have sufficient width and loadbearing capacity to ensure that a fire fighting appliance can meet the distances prescribed within Approved Document B.

Anglian Water Services Ltd  
06.08.2021

Our records show that there are no assets owned by Anglian Water or those subject to an adoption agreement within the development site boundary.

The foul drainage from this development is in the catchment of St Osyth Water Recycling Centre that will have available capacity for these flows

Environmental Protection  
06.08.2021

Contaminated Land  
It is noted from the Phase One Desk Top Study, dated March 2018, that a further Phase Two Intrusive Study is required, as well as an Asbestos Survey. We would request that this information is submitted in order for the evaluation of the potential harm impact and any recommended mitigation strategies are appropriate and reasonable. Therefore we are requesting the below be conditioned -

Development shall not begin until a comprehensive site investigation for contaminants or gases likely to be associated with previous uses of the land, in a form to be agreed in writing by the local planning authority, has been submitted and approved in writing by the local planning authority. Such a scheme shall include provision for further soil sampling after treatment in order to ensure compliance with local planning authority requirements. Such a scheme shall be implemented before any building operations begin on site. Where hazards are identified by the site investigation a suitable reclamation strategy shall be drawn up, approved in writing by the local authority and implemented prior to occupation. Such a scheme shall include measures to protect end users of the site, vegetation, services (particularly water pipes) and structures on the site as appropriate.

An Asbestos Survey should also be undertaken, and submitted to the Local Planning Authority for approval.

REASON: to protect the health of site workers, nearby residential dwellings and end users

#### Demolition & Construction Method Statement

The applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Environmental Protection, this document should include, but not be limited to the following information -

#### Noise Control

- The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.
- No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00(except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
- The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228.
- Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
- Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.
- If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.

#### Emission Control

- All waste arising from the demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
- No materials produced as a result of the site development or clearance shall be burned on site.
- All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter

emissions from the site whilst works of construction and demolition are in progress.

- All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974)

REASON: In the interest of protecting residential amenity

#### Lighting

The applicant / agent should ensure measures are taken to ensure that any lighting of the development will be located, designed and directed or screened so that it does not cause avoidable intrusion to adjacent residential properties/ constitute a traffic hazard/cause unnecessary light pollution outside the site boundary. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers.

REASON: In the interest of protecting residential amenity

UU Open Spaces  
08.09.2021

There is currently a deficit of 41.08 hectares of play in the Clacton/Holland area.

Any additional development in Clacton will increase demand on already stretched facilities.

#### Recommendation

It is noted that due to the size of the development site, on site provision of open space and play facilities to a LEAP standard have been included within the design.

NHS North East Essex CCG

No response received at the time of writing this report.

## 5. Representations

5.1. St Osyth Parish Council strongly object to the application for the following reasons:

- Whilst it is noted that the revised application is set on a brown field site, the Parish Council maintain the view that this would be an overdevelopment of a site, on which the layout and type of dwellings would have an adverse effect on the population density, and that the design remains 'unsympathetic' to the rural area. Additionally, the demolition and removal of the existing greenhouses, would cause considerable noise and disruption for residents
- The development will not meet the requirement of Policy LP5 of the emerging Tendring District Local Plan, in that only 18 properties have been allocated as being affordable housing. Although paragraph 5.2 of the applicants Planning Statement states that 'the



Council will accept a minimum 10% of new dwellings to be made available for use as Council Housing, with financial contributions towards the construction and acquisition of new council housing equivalent to delivering the remainder of the 30% requirement,' the Parish Council would, if the development were to be approved, seek assurance that if approved, the developer would have to commit to the building of a further 36 affordable housing units at the earliest opportunity.

- Given the significant increase in traffic along the B1027, especially during the summer months, the Parish Council does not agree with the Inspectors finding that the development would 'not unacceptably impact upon highway safety or severely impact on the road network.' Furthermore, given the number of pending developments within the Clacton and St Osyth area, the Parish Council remains convinced that the current road system will struggle to accommodate additional traffic, and that the mitigation measures expected to be provided as part of the implementation of the Rouses Farm development (17/01229/OUT refers), will do little to resolve the increase in vehicular movements, and subsequent delays along the B1027.
- Aspects of this revised application, remain in conflict with Policy QL9 (Design of New Development), Policy QL11 (Environmental Impacts and Compatibility of Uses) and Policy HG13 (Backland Residential Development) of the adopted 2007 Tendring District Local Plan, and the Parish Council would endorse the conclusions of the Secretary of State appointed Inspector, in that the matters weighing positively for the development are insufficient to outweigh the significant negative harmful effect.

5.2. A petition with 44 signatures has been received, in addition to 13 letters of objection which raise the following concerns:

- Tendring District Council can demonstrate that a 5 year housing land supply exists. As the Local Plan Part 1 has been approved this gives full weight for this application to be refused.
- The reasons listed for the refusal of the previous application are still relevant.
- Proposed access is not adequate for the volume of new traffic entering or leaving the site.
- Outside of Defined Settlement Boundary
- Traffic along St Johns Road continues to be very busy and often at a crawl due to high volumes of traffic. This can only increase with developments currently in progress and the proposed Rouses Farm Development.
- Since the last application there continues to be accidents/incidents along this stretch of road, two which have had a fatality.
- The three primary schools in the area are either full or very close to being so.
- Health care facilities in the area are already stretched, it is very hard to get an appointment to see a GP.
- As part of the previous application there was a requirement for any new application to incorporate bungalows in full or at least along the adjoining boundary of existing development.
- Site is located within the new boundary of St Osyth Parish yet not accessible by foot, application looks to have pedestrian access alongside Earls Hall Drive. Footpath along

St Johns Road towards St Osyth ends at Leisure Glade, with no footpath along a very busy road until the start of St Osyth bypass.

- Having mixed commercial units is totally out of keeping with the surrounding properties.
- There are already far too many new properties that have either just been built or are in the pipeline to be built along this road.
- There will be very few local people that will be able to afford the new houses so it would mainly be for the benefit of non-locals whilst all the local people have to put up with all the noise and inconvenience during the construction phase.
- Overlooking to neighbouring properties in St Johns Road.
- Increase in noise that will be generated by the additional traffic from this development.
- Sewerage system not able to cope with the additional dwellings.
- Development is an over development of the area with no infrastructure.
- The height of the proposed development is out of character with the surrounding area and would be prominent.
- If development were to be granted the Council or Developers should be expected to pay out for all residents cars to be cleaned weekly, carpets and floors cleaned or replaced regularly, just through, much, dirt and dust from the development and roads cleaned every day all year round.

## **6. Assessment**

### Site Context

- 6.1. The application site comprises 7.6 hectares of horticultural land which is located approximately 300m to the west of Clacton-on-Sea, within the Parish of St Osyth. It is to the north of St. Johns Road (B1027), with the majority of the site being to the rear of a ribbon of residential development that fronts onto the road (even nos 690 – 762).
- 6.2. Planning permission was granted in 1972 for the construction of glasshouses and ancillary structures, and the majority of the site is covered with pitched roof glasshouses; hardstandings, including car parking and service areas; water and fuel tanks; silos; and a variety of other buildings, including metal clad storage buildings and plant that has developed over the years to serve the nursery business. Currently the vehicular access to the site is off Earls Hall Drive, a private road which passes along the western boundary of the site.
- 6.3. To the northern and eastern site boundaries there are hedgerows with trees within them, which are of variable quality, beyond these are fields that are in agricultural use. To the north of the site, and within arable farmland, there is also the Earls Hall Wind Farm which contains five turbines. Along the southern boundary are the rear gardens of the dwellings that front St Johns Road, these all tend to be long with most being in excess of 40m deep. To the west of the site is Earls Hall Drive, with the site boundary comprising a mix of tall hedge and timber close boarded fencing where enclosed.
- 6.4. To the west of Earls Hall Drive, the ribbon of development fronting St Johns Road continues, but to the rear of these properties there is either existing development, such as the Leisure Glades Lodge Holiday Park, or land where the Council has previously

approved development, including: the grant of Outline planning permission for 14 dwellings (820 St Johns Road, ref. 18/00379/OUT); Outline planning permission for 34 dwellings (Land Forming Part of Earls Hall Farm, Earls Hall Drive, ref. 17/00826/OUT); and a change of use of land for the stationing of up to 62 holiday units was granted in April 2019, to allow an extension to the adjoining Leisure Glades Caravan Park (Land north of 782 and 828 St Johns Road, ref. 18/00952/FUL).

- 6.5. In addition to these developments, to the southern side of St Johns Road and to the east of Rouses Lane, Members of the Planning Committee at Tendring District Council resolved to grant permission for a development of up to 950 residential units, including a new Neighbourhood Centre comprising a local healthcare facility as well class E shops, food and drink establishments and/or D1 (community centre) and a 2.1ha site for a new primary school. This resolution is subject to the agreement and signing of a S106 agreement given the time taken in the completion of the S106 this application will be referred back to Planning Committee in due course.

#### Planning History

- 6.6. In February 2020 planning permission (18/01779/FUL) for the demolition of the nursery buildings and dwellinghouse and the erection of 195 residential units (comprising 6 two bed houses, 87 three bed houses, 33 four bed houses, 25 five bed houses, 12 one bedroom apartments and 24 two bedroom apartments), and 8 live work units (mixed commercial units measuring 1064 square metres in total with flats above). Associated roads, open space, drainage, landscaping, and other infrastructure was refused by Planning Committee and dismissed at appeal in January 2021.
- 6.7. The full appeal decision is attached but in summary the Inspector concluded the following:
- *'the development would have an unacceptable effect on the character and appearance of the area'*
  - *'the effects of the development on the safety and free flow of traffic on the local highway network would be acceptable'; and*
  - *'The development, through the planning obligations included in the UU, would have a neutral effect on local infrastructure'.*

#### Proposal

- 6.8. This application seeks full planning permission for the demolition of the nursery glasshouses, buildings and structures and No. 700 St Johns Road and the redevelopment of the site with a predominately residential scheme. The proposed residential scheme comprises of: 180 Residential units comprising 10 no. 2 bed houses; 83 no. 3 bed houses; 24 no. 4 bed houses; 15 no. 5 bed houses; 16 no. 1 bed apartments; 24 no. 2 bed apartments and 8 no. live/work units (mixed commercial totalling 1064 square metres with flats above), with associate roads, open space, drainage, landscaping and other associated infrastructure.
- 6.9. It is proposed to provide a footpath/cycleway within the current curtilage of 762 St Johns Road adjacent to the existing lane. In addition, the application site also includes a chalet bungalow and its garden at 700 St Johns Road which it is proposed to demolish, in order to provide a new, replacement vehicular access to the site, in lieu of the Earls Hall Drive one.
- 6.10. The proposed houses would variously be two, two and a half and three storeys in height, while the blocks accommodating the flats and live work units would be three storeys high.

6.11. The most significant changes proposed when compared to the scheme dismissed at appeal are as follows:

- The removal of a line of 22 dwellings and gardens on the northern boundary of the site and the creation of an area of planted public open space in their place
- The retention of the mature poplar trees planted on the northern boundary
- The homes nearest the new northern open space are all reduced from a mixture of two, two and a half and 3 storeys to two storeys.
- Reduction in height of central flat block C from four to three storeys.
- Two new 3 storey flat blocks within centre of site (blocks D and E)

6.12. In light of the above changes the housing mix has been amended, the following table shows the proposed housing mix compared to that of the dismissed appeal scheme.

#### Appeal Scheme (Dismissed)

Number of Bedrooms	1 Bed	2 bed	3 bed	4 bed	5 bed	Total
Houses		6	87	33	25	151
Apartments	12	24				36
Live/Work Units		8				8
<b>Total</b>	<b>12</b>	<b>38</b>	<b>87</b>	<b>33</b>	<b>25</b>	<b>195</b>

#### Proposed Scheme

Number of Bedrooms	1 Bed	2 bed	3 bed	4 bed	5 bed	Total
Houses		10	83	24	15	132
Apartments	16	24				40
Live/Work Units		8				8
<b>Total</b>	<b>16</b>	<b>42</b>	<b>83</b>	<b>24</b>	<b>15</b>	<b>180</b>

#### Principle of Development

6.13. The site is located within the Settlement Development Boundary for Clacton, therefore there is no principle objection to the residential development of this site.

6.14. The application site has been in employment use as a commercial nursery (horticultural use) for in excess of 40 years. Policy PP6 of the Tendring District Local Plan 2013-2033 and Beyond states that 'the Council will seek to protect existing employment sites, as shown on the relevant Policies Maps and Local Maps. Sites within use classes B2 and B8 will be safeguarded for these purposes. Employment sites falling within Use Class E (g) will be retained and will continue to provide for the employment needs of the district'. The site is not allocated for employment purposes on the Policies Map and Local Maps and therefore, if permitted, this development would not result in the loss of employment land as defined in the Local Plan. Furthermore, the site does not fall within any Use Class Order protected by Policy PP6 (B2, B8 or E(g)). It is therefore considered that there is no policy basis to object to the loss of the existing commercial nursery.

6.15. However, the applicant acknowledges the importance of presenting a scheme which also offers modern, purpose built employment space (circa 1000sq m) as part of a mixed use scheme. The applicant opines that if granted planning permission this purpose built business (live-work) accommodation would provide for up to 80 jobs. The business units would provide a valuable resource in the town where the Employment Study reports

good demand for such facilities, but which also reports a generally poor quality of accommodation currently available.

- 6.16. It is also relevant to note that Policy LP8 of the Local Plan seeks to guard against the development of inappropriate 'backland' residential development. 'Backland' developments are defined 'as the proposed erection of one or more dwelling houses on a parcel of land:
- Which lies generally behind the line of existing frontage development;
  - Has little or no frontage to existing public highway; and
  - Which would constitute piecemeal development in that it does not form part of a large area allocated for development.
- 6.17. Whilst the development would see residential development on land with little or no frontage to a public highway, as the site is included within the settlement development boundary, it effectively (by default) allocates this land for development. Furthermore, by the very nature of how settlements evolve, quite frequently new development finds itself situated behind existing housing and therefore in many cases a 'backland' scenario is inevitable. In addition, it is the intention of the applicant for the vast majority of the proposed road layout to be adopted by the Local Highway Authority.
- 6.18. Accordingly, it is considered that the proposal does not fall to be considered against Policy LP8, although many of the above considerations still apply to the detailed consideration of this application –the effect of the proposals upon the living conditions of occupiers of existing neighbouring dwellings; ensuring that a safe and convenient means of vehicular and pedestrian access can be provided; and ensuring that the scheme is in keeping with the character of the area.
- 6.19. For the above reasons the principle of development on this site is considered to be acceptable.

#### Landscape and Visual Impact

- 6.20. The NPPF at para. 174 stipulates that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.
- 6.21. The application site is located in a semi-rural area beyond the urban fringes of Clacton, however this is a brownfield site. Officers note that although the site is currently almost completely covered with buildings and hard-standing, it is not visually intrusive in the landscape. Although lying beyond the main urban area, there is a ribbon of development along St Johns Road that gives the area a partially residential character.
- 6.22. There are no trees or other significant vegetation in the main body of the site, but along the site's boundaries, there are some established hedgerows and trees which make some contribution towards screening the existing buildings in some views of the site. The trees are varied in species and quality, and include ornamental trees near the entrance on Earls Hall Drive; coniferous hedging and several mature Oaks that are prominent features in their setting, albeit peripheral location.
- 6.23. The northern boundary is planted with a hybrid Poplar and is sparsely interspersed with hedge conifers. These trees will almost certainly have been planted as a windbreak associated with the use of land as a nursery. The eastern boundary and a short section of the eastern end of the northern boundary contains several mature Oaks that are prominent features in their setting although their amenity value is relatively low because of the limited extent to which they can be seen from a public place. The main viewpoint

from which the trees can be seen is from the Public Right of Way that runs along Earls Hall Drive from St John's Road to Hartleywood Farm. There are a few trees in the rear gardens of the properties in St Johns Road that back onto the application site but because of their location these have low amenity value. The front garden of the 700 St Johns Road (proposed to be demolished) contains 2 small Crab Apples and a third situated in the rear garden close to the dwelling. None of these trees have such amenity value that they merit retention or protection by means of a Tree preservation order.

- 6.24. In order to show that the development proposal can be implemented without causing harm to important trees on the land the applicant has provided an Arboricultural Impact Assessment (AIA). The AIA is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction; Recommendations. The information contained in the AIA shows the extent to which the trees are a constraint on the development potential of the land and shows how retained trees will be physically protected for the duration of the construction phase of any planning permission that may be granted.
- 6.25. A Landscape Strategy submitted in support of the application shows a good level of soft landscaping including tree planting and provides some details relating to structural planting and the palette of species to be incorporated into the soft landscaping scheme. However, if planning permission were to be granted the further details of new planting would be secured by way of a planning condition.
- 6.26. The submitted report confirms that the retention of the trees with the greatest amenity value close to the western boundary, adjacent to the existing entrance to the garden centre. The tree report also demonstrates the retention and protection of the Oaks on the eastern and north eastern boundaries of the site. The existing Poplars along the northern boundary are also proposed to be retained.
- 6.27. As part of the proposal dismissed at appeal it was proposed that the Poplar trees along the northern boundary be removed as the Council's Tree Officer advised that it would be inadvisable for the Poplar trees to be retained given the proximity to the proposed residential dwellings. Whilst replacement planting along the northern boundary could have been secured by condition any meaningful planting providing visual screening for a row of houses two and three storey in height would take time to establish. The Inspector states that *'I consider it important that the treatment of the site's northern boundary should be handled so that the development would integrate well with its surroundings. I am not persuaded that the development would do that because of the juxtaposition of a row of rear gardens facing directly onto the open farmland to the north. I therefore consider that the appearance of this part of the development would be poor and would fail to provide an appropriate response to its context, at what would become a new point of transition between housing and the open countryside beyond'* (paragraph 20).
- 6.28. Since the appeal decision the scheme has been amended so that there is now an area of open space along the northern boundary measuring 260m by 30m, with the existing Poplar trees being retained, to provide screening. The nearest dwellings now have front or side elevations that face the public open space and will be located at least 32 metres from the northern boundary. The proposed dwellings will also be two storey in height rather than a mixture of two and three storey in height.
- 6.29. Officers consider that the proposed changes overcome the concerns raised by the Inspector. The changes mean that there will be a more gentle transition between the proposed new homes and the countryside to the north and that the actual and perceived impact of the development on the northern boundary will be significantly reduced.

## Design and Layout

- 6.30. Paragraph 126 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.
- 6.31. The applicant's Design and Access Statement states that the buildings have been designed to encompass modern design elements, such as deeper window recesses and feature brickwork panels to create a theme of contemporary design whilst using traditional materials. This approach is intended to produce dwellings that appear modern whilst also incorporating features that would assist the development in relating to the surrounding area.
- 6.32. The majority of dwellings on the site would be houses and these have been designed to be two or three storeys. Parking for the houses would generally be provided on-plot, although there are cul-de-sacs where parking is arranged in courts in front of houses. It is also proposed to construct five blocks of flats all of which are proposed to be three storey in height. Blocks A and B are located on the west side of the site and contain 6 no. flats in each block. Parking for these flats would be either in bays to the front of the block or small courts to the rear. Apartment Blocks C, D and E would all be three storey in height and be located more centrally within, but still to the west of the site.
- 6.33. Block C contains 16 no. flats while Blocks D and E contain 6 no. flats each. Parking for these flats would be provided by external parking courts with a ground floor undercroft car park for some of Block C.
- 6.34. With private rear gardens or communal garden spaces meeting or exceeding the standards set out within the Essex Design Guide (EDG), the scheme would not give rise to an over-development of the site.
- 6.35. Third party views with regard to the scale of the dwellings to the rear of the properties on St John's Road are noted, however the minimum building to building distances between the proposed development and existing dwellings may exceed the EDG standards and overall it is considered that the scheme would not over-dominate its built context.
- 6.36. Local Plan Policy HP5 states that 'all new residential developments of 11 or more dwellings on sites of 1.5 hectares and above will be expected to provide a minimum 10% of the gross site area as open space' and 'no single area of useable open space will be less than 0.15 hectares in size'. The proposal has 3 areas of open space in excess of 0.15 hectares and the amount of open space is in excess of 10% of the gross site area and equates to approx. 17%. Tending This provision must include appropriate equipment and be laid out to a specification agreed with the District Council; this can be secured through the S106 legal agreement, together with any required financial contribution towards maintenance if being transferred to the Council.
- 6.37. The revised site layout shows a good level of soft landscaping, including tree planting, precise details of which should be secured under condition. With no clearly discernible building form or architectural theme along St John's Road, and with the design of the proposal taking some cues from the Essex Design Guide, Officers consider that the scheme would respond positively to local character, provide buildings that exhibit individual architectural quality and house-types with well-defined public and private spaces.

- 6.38. Relevant to the design and layout in relation to the scheme dismissed at appeal the Inspector stated the following:
- *I accept that the site is of a scale that could accommodate some new buildings of more than two storeys in height without such buildings becoming disrespectful of the established suburban context. However, I consider it would be inappropriate to have some two and a half and three storey houses that were sited only around 12 metres from the northern boundary, paragraph 21.*
  - *Many of the houses and the flat blocks would be taller than the ribbon of dwellings on the northern side of St John's Road and some of those new dwellings would be visible through the roof level gaps between the existing dwellings. However, I consider that only fleeting or distant views of the new houses and flat blocks from St John's Road and further afield to the south would be possible. In that respect I am of the view that the new dwellings would not have an overt presence and that in the views from the south this development would not adversely affect the area's character and appearance paragraph 26.*
  - *I consider Block C would be of a scale that would be uncharacteristic of its surroundings, with there being a reliance on what for this area would be a unique flat roofed central spine. I consider that the inclusion of that flat roof element in Block C's design is indicative of this building being over scaled paragraph 27.*
- 6.39. The Appeal Inspector was clear that the only objection to the proposal was in relation to the northern boundary and the scale/design of Block C. The issue of the relationship with the northern boundary is covered in the section titled Landscape and Visual Impact. Block C has been reduce in height from four to three storey in height and the design has been amended so that there is no flat roofed section.
- 6.40. Officers consider that the proposed amendments overcome the concerns of the Appeal Inspector and that the scale, layout, density, height and massing of buildings and overall elevational design would harmonise with the character and appearance of the surrounding area.

#### Highway Safety/Parking

- 6.41. Paragraph 110 of the NPPF requires Councils when making decisions to ensure:
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - safe and suitable access to the site can be achieved for all users;
  - the design of streets, parking areas, other transport elements and the content of associated standard reflects current national guidance, including the National Design Guide and the National Model Design Code; and
  - any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 6.42. Policy CP1 of the Local Plan states that 'proposals for new development must be sustainable in terms of transport and accessibility and therefore should include and encourage opportunities for access to sustainable modes of transport, including walking, cycling and public transport'.



- 6.43. In addition to the existing local services that exist within the west of the town (the applicant's Transport Assessment highlights that there is a nursery, local food shops, post office, community centre and healthcare centre within 15 minutes' walk of the site), the Rouses Farm development on the opposite side of St Johns Road proposes the provision of additional community facilities, which should include the provision of a new primary school, with early years and childcare facility and a new neighbourhood centre. Existing bus services also pass the site, along St John's Road. Consequently, along with other developments proposed to the west of Clacton there are opportunities to increase the attractiveness of more sustainable means of transport, including by walking, cycling and bus services.
- 6.44. Policy CP2 of the Local Plan states that 'proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe'.
- 6.45. It is acknowledged that some local residents and the Parish Council have objected to the proposal with concerns about the development's impact on St John's Road, general road safety and capacity. This was one of the main issues of the Appeal, where the Inspector concluded the following:
- *'The development would cause some additional use of St John's Road and that could affect the entry or exit to the existing dwellings in the vicinity of the appeal site. However, I consider the amount of additional traffic using this part of St John's Road associated with the development would not be so great as to cause unacceptable delays to the entry or exit to the existing nearby dwellings'* paragraph 59.
  - *'That the proposed development would not adversely affect the safety and free flow of traffic on the local highway network'* paragraph 65.
  - *'The access to the site would be practicable and the highway network would be able to safely accommodate the additional traffic the proposal would generate'* paragraph 65.
  - *'There would be no residual cumulative impacts on the road network that would be severe warranting the refusal of planning permission'* paragraph 68.
- 6.46. Since the appeal decision the number of dwellings has been reduced by the access points, pedestrian/cycle links remain the same. Therefore given the Inspector's conclusions it would be unreasonable to raise any objections on highway grounds.
- 6.47. The Essex County Council Parking Standards state that for a 1 bedroom dwelling, 1 vehicular parking space is required, for 2 bedroom dwellings, 2 vehicular parking spaces are required and 1 visitor parking space is required per 4 dwellings. Each parking space should measure 5.5m by 2.9m and garages should measure 7m by 3m. In terms of cycle parking 1 secure space per dwelling is required. The proposal provides adequate vehicle and cycle parking in accordance with the adopted standards.

## Ecology and Nature Conservation

### Protected Species

- 6.48. In support of the application the previous Phase One Habitat Survey was updated to identify potential habitats within the application site and establish whether there are habitats that might indicate the presence of protected species on it. The survey identified that the land surrounding the application site is dominated by both residential dwellings and arable land. Within the site, in areas not covered by buildings or other structures, the ground is varied in its structure and habitats within it form a mosaic, including bare

ground, semi-improved amenity grassland, scrub, intact hedgerow and spoil heaps. Having analysed the habitats present, further work was carried out in respect of the following species.

- 6.49. Badgers – As no evidence of badger was noted on site, no further surveys are recommended for this species, however as they are a highly mobile species it is recommended that a walkover survey should be carried out two weeks prior to works on site to ensure that the situation hasn't changed.
- 6.50. Bats – Updated nocturnal bat surveys were carried out in 2021 on the building and trees assessed as having low bat roost potential and originally surveyed, in 2018. No bats roosts were found in the trees and buildings E, I, O, M and N. Building J was confirmed as having roost for both common and soprano pipistrelles as bats were observed emerging from the main doorway on the northern elevation during the update nocturnal survey. Due to the discovery of 2 bat roosts, a European Protected Species Licence will be required prior to any works taking place on building J. Additionally, a further ten trees on the northern boundary have been assessed as having low risk for roosting bats, these trees are to be retained.
- 6.51. Birds – there are a number of nesting birds on the site which would mean that the site should not be cleared / demolished during the bird nesting season as a precautionary measure. To mitigate for the loss of nesting opportunities at the site, bird boxes should be erected at the site / incorporated within the fabric of buildings. Again, it is recommended that these matters are covered by condition.
- 6.52. Great Crested Newts – A small, drainage ditch is present just outside the eastern boundary of the site that was dry at the time of the survey. A total of 4 ponds were noted to be within 500m of the site boundary. Using Natural England's 'Rapid Risk Assessment Tool' the risk of an offence being committed has been assessed as highly unlikely and as a result no further survey work is deemed necessary. But it is recommended that generic precautionary measures are used during demolition and construction phases of development.
- 6.53. Reptiles – Although there is some limited suitable habitat on site, no evidence of native reptiles was recorded throughout any of the six surveys carried out on site. The survey did however highlight that the non-native European Wall Lizard is still present within 2 heated greenhouses on site, this finding is consistent with those made in 2018. The European Wall lizard is listed under the Wildlife & Countryside Act 1981 (as amended) under Section 14 as a non-native animal not normally resident in the UK and it is illegal to release these animals into the wild. The report recommends that prior to the commencement of development works the wall lizards should be removed from site and either humanely disposed of or re-homed in captivity in order to stop any animals escaping into the wider countryside.
- 6.54. Dormouse – The hedge and scrub habitats on site provide opportunities for Dormouse and given that a Natural England Licence was granted in 2013, 360m from the site boundary at the data search also returned records from 2003, they may utilise the site, although no signs were noted during the site visit. The current proposed plans for the site, includes the retention of the trees along the north and eastern boundary and therefore suitable habitat is retained. However as there are areas of overgrown scrub which will be cleared to make way for private gardens and there is a slight possibility that dormouse may utilise the habitat on site to forage the Council's Ecologist has recommended a Dormouse survey. Officer's views is that this should be carried out prior to the granting of any planning permission and this is included within the recommendation. Once a suitable survey has been carried out which either concluded

that dormouse are not present on the site or includes suitable mitigation measures it is considered that planning permission could be granted.

- 6.55. West European Hedgehog – Due to parts of the site providing suitable habitat for hedgehogs, it is recommended that the fences and walls of the gardens in the proposed development include hedgehog passes, both around the perimeter and between gardens.
- 6.56. Having reviewed the Ecology Surveys submitted with the application, it is considered that subject to a dormouse survey, there is sufficient survey & assessment information to determine the likely presence of, and impacts to, Protected & Priority species and internationally designated Habitats sites, to allow the Council to determine the planning application.
- 6.57. The report makes reference to potential ecological enhancements, such as installing bat and bird boxes on the new buildings, but no details of these are given. It is therefore recommended that a condition is imposed requiring details of ecological enhancement to be submitted and agreed.

#### *Habitat Regulations Assessment*

- 6.58. The development falls within the 'Zone of Influence' (Zol) for one or more of the European designated sites scoped in the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This residential development lies within the Zol for Hamford Water SPA and Ramsar, and Essex Estuaries SAC and Colne Estuary (Mid Essex Coast Phase 2) SPA and Ramsar site.
- 6.59. The Council has a duty as a competent authority under the Habitats Regulations, to consider the potential for there to be a significant effect on the sensitive features of European protected coastal sites. It is anticipated that without mitigation, new residential development such as this one 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'.
- 6.60. 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 appropriate mitigation.
- 6.61. One recommended way of trying to avoid increasing recreational pressures on the coastal European sites, is to encourage dog owners to exercise their dogs near their homes and not drive to the protected sites. The applicant has submitted details of the strategy that they propose to implement within a shadow Habitat Regulations Assessment (HRA). This highlights that the proposed development site itself contains public open space. Additionally, a PROW runs adjacent to the western boundary of the site, along Earls Hall Drive, this links up with further rights of way and provides circular walking routes of various lengths adjacent to the site. It is anticipated that the Rights of Way network and on-site open space would serve the majority of the everyday recreational needs of the residents.
- 6.62. Information leaflets would also be distributed to new householders highlighting local footpaths within the open countryside and alternative areas of green space including nearby country parks. Details of the information leaflets and dog waste bins can be secured by condition, with the provision of the latter being prior to first occupation of the development, and retained as approved thereafter. The information leaflet can be

included within the residents' welcome pack to every new dwelling. A Planning obligation can also secure the long-term maintenance and management of the green space.

- 6.63. The Council has produced a Habitat Regulations Assessment (HRA) setting out the mitigation that is proposed – namely the details contained within the strategy and a RAMS payment of £127.30 per dwelling, is proposed to be included within the S106 agreement, 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 them protected sites who will help manage and educate visitors, ) and be in line with the aspirations of the emerging RAMS.
- 6.64. Natural England are satisfied that the mitigation described in the Council's appropriate assessment is in line with their strategic-level advice; and advise that an appropriate planning condition or obligation is attached to any planning permission 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, in order to ensure no adverse effect on integrity i.e. the S106 agreement.
- 6.65. Subject to the mitigation being secured there would be certainty that the development would not adversely affect the integrity of European Designated Sites, in accordance with Policy SP2 and PPL4 of the Local Plan and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

#### Impact on Residential Amenity

- 6.66. Para.119 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. Para.130 of the NPPF also refers to the need to ensure a high standard of amenity for existing and future users.
- 6.67. The EDG sets out guidance on new development, which should be designed in order to provide a decent standard of amenity for future occupants of the development, as well as protecting the amenities of existing residents who live adjacent to the development. The EDG 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".
- 6.68. The proposed dwellings along the southern boundary are a mixture of two storey, two and a half storey and three storey houses. The existing dwellings on St Johns Road do however enjoy deep rear gardens and the new dwellings would be situated at least 15 metres from the boundaries of existing dwellings. Consequently, adherence to these standards would ensure that the living conditions of existing residents would be protected from a material level of overlooking; and no material loss of outlook or daylight/sunlight would ensue either.
- 6.69. With regard to the appeal scheme the Inspector concluded that '*with respect to the siting of the development relative to the existing dwellings in St John's Road I consider that there would be sufficient separation for there to be no unacceptable overlooking of the*

*adjoining homes.*’ However, it should be noted that the appeal scheme had only two and two and half storey along the southern boundary. The current scheme has two three storey properties (Plots 1 and 2). The proposed distance between these two properties is approx. 70 metres, which is well in excess of the 25 metres set out by the Essex Design Guide. It is therefore considered that the relationship between the three storey properties and existing properties in St Johns Road is acceptable.

### Heritage

- 6.70. Paragraph 189 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. In determining planning applications, NPPF Para.194 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.
- 6.71. The Planning (Listed Buildings and Conservation Areas) Act 1990 is concerned with the protection of the historic environment. Sections 66 of the Act imposes a statutory duty upon local planning authorities to consider the impact of proposals upon listed buildings and their settings, and to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses.
- 6.72. There are no listed buildings within the application site, but there are two Grade II listed buildings relatively nearby - Duchess Farmhouse approximately 110m east of the site and Earls Hall Lodge which is approximately 300m to the north of the site.
- 6.73. The Heritage Impact Assessment submitted by the applicant accepts that the application site is located within the wider setting of Duchess Farm and Earl’s Hall Lodge, but states that the impact of the proposed development on the special architectural and historic interest of these buildings and their settings is neutral.
- 6.74. The applicant argues that the proposed development would have little or no bearing on their setting due to screening by mature planting along the nursery site boundaries which would be retained or enhanced, and that where the development is visible in longer views, then this would be seen in the context of nearby 20th century housing along St John’s Road.
- 6.75. The redevelopment of the site, including the introduction of buildings that are taller than are currently characteristic of the area, would change the character of the site and would result in it having a more urban character.
- 6.76. As part of the previous application a condition was recommended pertaining to landscape planting to ensure the development is adequately screened from the north side in views from Earls Hall Lodge. Given the changes in the scheme with regard to the retention of the planting and the northern boundary and the area of open space proposed it is considered that this condition is no longer necessary and that the application is considered acceptable, and would preserve the setting of the listed buildings. Therefore no harm would be caused to these designated heritage assets.
- 6.77. Any surviving below ground heritage assets would be damaged or destroyed by the proposed development, much of the site is covered by glasshouses which would need to be demolished prior to an archaeological investigation to determine the potential for

survival of archaeological remains. It is recommended that a condition requiring a Programme of Archaeological trial trenching following demolition be imposed upon any grant of planning permission.

#### Drainage

- 6.78. Anglian Water raises no objection to the application and have confirmed that the St Osyth Water Recycling Centre would have sufficient capacity to deal with the foul drainage flows from the proposed development.
- 6.79. The applicant has submitted a Drainage Strategy which has been considered by Essex County Council who are the Lead Local Flood Authority (LLFA), who raise no objection to the granting of planning permission subject to conditions relating to the submission and subsequent approval of a detailed surface water drainage scheme, a maintenance plan, and a scheme to minimise the risk of offsite flooding and prevent pollution during construction.
- 6.80. From this basis it is considered that the Council could not substantiate reasons for refusal of planning permission in respect of drainage matters, and the proposal would not give rise to flood risk emanating from surface water generated by the proposal.

#### Energy Efficiency

- 6.81. Policy PPL10 of the Local Plan states that 'all development proposals should demonstrate how renewable energy solutions, appropriate to the building(s) site, and location have been included in the scheme and for new buildings, be design to facilitate the retro-fitting of renewable energy installations'. The policy also states that 'for residential development proposals involving the creation of one or more dwellings, the Council will expect detailed planning application to be accompanied by a 'Renewable Energy Generation Plan' (REGP) setting out the measures that will be incorporated into the design, layout and construction aimed at maximising energy efficiency and the use of renewable energy. Planning permission will only be granted where the applicant can demonstrate that all reasonable renewable energy and energy efficiency measures have been fully considered and, where viable and appropriate, incorporated into the design, layout and construction. The Council will consider the use of planning conditions to ensure the measure are delivered'.
- 6.82. This application was submitted prior to the adoption of the Local Plan and is not supported by a REGP. However, it is considered that this is an issue which can be reasonably covered by imposing two conditions. One to secure electric vehicle charging points and one to require the submission of an Energy Statement that requires a scheme detailing how a minimum of 20% of the energy needs generated by the development can be achieved through renewable energy sources. With such conditions in place, Officers believe the development can adequately comply with the requirements of Policy PPL10, therefore, no objections on these grounds are raised.

#### Planning Obligations and Viability

- 6.83. 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 sought where they meet all 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. These are set out and addressed below under the relevant sub-headings:

### *Recreational Disturbance (RAMS)*

- 6.84. Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.
- 6.85. The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zol) for Hamford Water SPA and Ramsar, and Essex Estuaries SAC and Colne Estuary (Mid Essex Coast Phase 2) SPA and Ramsar site. New housing development within the Zol would be likely to increase the number of recreational visitors to these designated sites; and, in combination with other developments it is likely that the proposal would have significant effects on the designated sites. Mitigation measures must therefore be secured prior to occupation. A financial contribution of £22,914 (£127.30 per dwelling) is proposed to be secured by a legal agreement which is still to be completed. This will provide certainty that the development would not adversely affect the integrity of Habitats Sites.

### *Open Space and Play Space*

- 6.86. Policy HP5 of the Local Plan states that 'all new residential developments of 11 or more dwellings on sites of 1.5 hectares and above will be expected to provide a minimum 10% of the gross site area as open space laid out to meet the Council's specifications having regard to the Council's Open Spaces Strategy and the requirements of any SPD. No single area of useable open space will be less than 0.15 hectares in size. Financial contributions will also be sought through s106 legal agreements (or an appropriate alternative mechanism) towards ongoing maintenance'.
- 6.87. The Council's Public Realm Officer has advised that there is currently a deficit of 41.08 hectares of play in the Clacton/Holland area. As the development will increase demand on already stretched facilities it will need to mitigate this impact. The applicant proposes on site provision of open space and play facilities to a LEAP standard have been included within the design. As referred to above, the proposed on-site provision works out to be around 17% of the site area, and this provision must include appropriate equipment and be laid out to a specification agreed with the District Council which can be secured through the S106 legal agreement.
- 6.88. As the level of provision on-site is considered appropriate, no contribution is being requested for off-site provision. The delivery of the Open Space and Play Area will need to be controlled through the S106 agreement, along with suitable arrangements for future ownership and maintenance. In this instance the Public Open Space and Play Area, the developer will need to arrange for this to be transferred to a private Management Company or to the Council with a financial contribution towards future maintenance.

### *Affordable Housing*

- 6.89. Policy LP5 of the Local Plan states that 'for development proposals outside of the Tendring Colchester Borders Garden Community, involving the creation of 11 or more (net) homes, the Council will expect 30% of new dwellings, (including conversions) to be made available to Tendring District Council (subject to viability testing) or its nominated partner(s) to acquire at a proportionate discounted value for use as affordable housing.'

- 6.90. The Council's Housing Officers confirm that Clacton is the area with the highest demand on the housing register within the District with a high level of demand for all sizes of dwellings. As the site is located in the area with the highest demand, there is a need for affordable housing to be provided on site and the Council's preference would be for 30% of the total number of homes to be provided as Affordable Housing on site.
- 6.91. However, due to the presence of the glasshouses that cover the majority of the site, there is a considerable cost to its re-development, taking into account the removal of glass, possible asbestos and the frames, this abnormally effects viability, to the tune of approximately £1.98m. The Council's appointed valuation consultants BNP Paribas Real Estate have liaised with the applicant, in order to ascertain what percentage of affordable housing the development can afford to provide. It has been concluded that the scheme cannot support any affordable housing as it generates a deficit of c. £0.47m. However, the applicants have offered to provide 10% shared ownership in line with the amount of affordable housing secured by the appeal S106. It is therefore proposed that the same is secured as part of this current application.

#### *Education*

- 6.92. Policy PP12 of the Local Plan states that 'planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions (potentially through the Community Infrastructure Levy) towards off-site improvements. Essex County Council as the local education authority will be a key consultee in this regard. Where appropriate, the Council will also consider the use of legal agreements to secure any necessary improvements in education provision arising as a result of development.'
- 6.93. Essex County Council request that if planning permission is granted it should be subject to a S106 agreement to mitigate its impact on early years and childcare provision and libraries.

#### *Early Years and Childcare*

Although there is some capacity in the area, the data shows insufficient provision to meet the additional demand created by this development. It is thereby proposed that a developer contribution of £233,118 index linked to Q1- 2020, is sought.

#### *Primary Education*

Due to surplus provision in the primary group, a contribution toward primary education will not be requested at this time.

#### *Secondary Education*

Due to the completion of the Clacton County High project complete, there is sufficient space to meet the demand created from this development. A contribution toward secondary education will not be requested at this time.

#### *School Transport*

Having reviewed the proximity of the site to the nearest primary and secondary schools, Essex County Council will not be seeking a school transport contribution at this time.

#### *Libraries*

The suggested population increase brought about by the proposed development is expected to create additional usage of the nearest library. A developer contribution of £14,004.00 is therefore considered necessary to improve, enhance and extend the facilities and services provided.



It is proposed that the required financial contributions will be secured by the S106 agreement.

#### *Healthcare*

- 6.94. Policy HP1 of the Local Plan states that 'the Council will work to improve the health and wellbeing of residents in Tendring by seeking mitigation towards new or enhanced health facilities from developers where new housing development would result in a shortfall or worsening of health provision'.
- 6.95. The Council are currently waiting for a consultation response from NHS North East Essex CCG. As a financial contribution was previously required, it is expected that a financial contribution will be required, however an update will be provided at the Planning Committee.

#### *Highways and Transportation*

- 6.96. ECC Highways state that they 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 3no bus stops on St Johns Road; a pro-rata financial contribution of £104,000 to bus services operating along St John's Road; and the provision/upgrade of a 3-metre wide shared footway/cycleway on the north side of St Johns Road from its junction with Earls Hall Drive eastwards to the main vehicular access to the site and beyond to tie in with the proposed footway/ cycleway for the Rouses Farm development south of St Johns Road (17/01229/OUT).

#### *Live/Work Units*

- 6.97. Paragraph 80 of the NPPF states that planning decisions should help create the conditions in which businesses can invest, expand and adapt. It goes on to state that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 6.98. The applicant acknowledges the importance of presenting a scheme which offers modern, purpose built employment space (circa 1000sq m) as part of a mixed use scheme. The business units would provide a valuable resource in the town where the Employment Study reports good demand for such facilities, but which also reports a generally poor quality of accommodation currently available.
- 6.99. In order to ensure that the live/work units are provided, it is recommended that a trigger of no more than 75% of open market dwellings should be occupied until the live/Work units have been constructed and actively marketed.

## **7. Conclusion**

- 7.1. It is considered that the development would provide the potential for a high quality residential layout that could create a good sense of place and appropriate character whilst complying with the standards for internal and external amenity, as well as the Council's adopted parking standards. The site could also reasonably be developed without material detriment to the occupants of neighbouring dwellings and heritage assets, and would retain the majority of existing trees considered of amenity value.

- 7.2. The site is also in a sustainable location, within the Settlement Development Boundary which would enable access by foot/cycle/bus to facilities in Clacton such as schools, the GP practice and the town centre, as well as the future development at Rouses Farm. Therefore, it is considered overall that there would be limited environmental harm connected with the development.
- 7.3. The applicant has submitted a suite of detailed documents which demonstrate that the site is free of any constraints to residential development which cannot be resolved by way of conditions or through planning obligations (the S106 Agreement).
- 7.4. It is considered that the proposal has been amended to overcome the concerns raised by the Inspector and therefore Officers are recommending approval of this application, subject to the specific mitigation set out within this report.

## 8. **Recommendation**

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

<b>CATEGORY</b>	<b>TERMS</b>
Financial contribution towards RAMS	£22,914 (£127.30 per dwelling)
Affordable Housing	10% on-site provision
Education Contribution	Early Years and Childcare (£233,118) Libraries (£14,004)
NHS Contribution	TBC
Open Space	Provision, specification and maintenance of on-site Open Space and Play Equipment
Live/Work Units	To be constructed and marketed prior to 75% dwelling occupation
Highways and Transportation	<ul style="list-style-type: none"> <li>• Financial contribution of £104,000 pro-rata for procurement towards the local bus services operating on St Johns Road to serve the development</li> <li>• Provision and monitoring of a Residential Travel Plan</li> <li>• Provision of 3 no. bus stops on St Johns Road</li> <li>• Provision/upgrade of a 3-metre wide shared footway/cycleway on the north side of St Johns Road from its junction with Earls Hall Drive eastwards to the main vehicular access to the site and beyond to tie in with the proposed footway/ cycleway for the Rouses Farm development south of St Johns Road (17/01229/OUT)</li> </ul>

## 8.2. Conditions and Reasons

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

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

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

PL LW-01 C  
PL LW-02 A  
PL LW-03 A  
PL LW-04 B  
PL ADE-01 B  
PL ADE-02 A  
PL ADE-03 A  
PL ADE-04 A  
PL ADE-05  
PL AC-01 E  
PL AC-02 B  
PL AC-03 B  
PL AAB-01 D  
PL AAB-02  
PL AAB-03 B  
PL AAB-04 C  
PL AAB-05  
PL 2A-01 A  
PL 2A-02  
PL 3A-01 C  
PL 3A-02 A  
PL 3B-01 A  
PL 3B-02  
PL-3B-10 C  
PL-3B-11  
PL 3B-21  
PL 3B-20 B  
PL 3C-01 A  
PL 3C-02  
PL 3C-10 D  
PL 3C-11  
PL 3D-20 D  
PL 3D-21 A  
PL 3D-22  
PL 3D-23  
PL 3E-01 C  
PL 3E-02 A  
PL 3E-03 A  
PL 4A-01 C  
PL 4A-02 A  
PL 4A-10 A  
PL 4A-11 A  
PL 4A-12 A  
PL 4A-20 A  
PL 4A-21  
PL 4B-01 C

PL 4B-02 B  
PL 5A-01 A  
PL 5A-02 A  
PL 5B-01 A  
PL 5B-02 A  
PL 5B-03 A  
PL 0001 B  
PL 0100 B  
PL 1000 P  
PL 1001 H  
PL 1002 H  
PL 1003 F  
PL 1004 M  
PL 1030 K  
PL 1050 E  
PL 1060 E  
PL 1070 E  
21.5142.1  
1040 F  
1041 F

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

3 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) the live-work premises on plots 203-201, shall be used as a mixed use of E(c) and/or E(g) at ground and first floor levels; and C3 at second floor level and for no other purposes.

Reason - To protect the amenities of the occupiers of the second floor flats and other nearby residential properties, and to ensure that an element of commercial activity is retained on the application site.

4 All garages and car parking spaces shall be kept available for the parking of motor vehicles at all times. The garages and car parking spaces shall be used solely for the benefit of the occupants of the dwelling/commercial unit of which it forms part/is intended to serve, and their visitors, and for no other purpose, and permanently retained as such thereafter.

Reason - To ensure adequate parking and garage space is provided within the site in accordance with the standards adopted by the local planning authority.

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

the parking of vehicles of site operatives and visitors;  
loading and unloading of plant and materials;  
access to/from the site, including the routing of construction traffic;  
construction working hours;  
storage of plant and materials used in constructing the development;  
the erection and maintenance of security hoarding, where appropriate;  
wheel and under-body washing facilities;  
prior to the commencement of any work on the site a joint inspection of the route to be used by construction vehicles should be carried out by the Applicant and the Highway Authority, including photographic evidence;  
measures to control the emission of dust and dirt during demolition and construction;

a scheme for recycling/disposing of waste resulting from demolition and construction works; a scheme to control noise and vibration during the demolition and construction phases, including details of any piling operations; and details of how the approved Plan will be implemented and adhered to.

6 The approved Plan shall be adhered to throughout the construction process.

Reason - To ensure that the development takes place in a satisfactory manner with regard to its impact on amenity and highways in the local area.

7 In accordance with the Summary and Recommendations of the submitted 'Phase 1 Desk Study Report', prior to the commencement of development a comprehensive survey shall be undertaken to assess the nature and extent of any contamination on the site (including Asbestos Containing Materials), a copy of the survey findings together with a remediation scheme to bring the site to a suitable condition in that it represents an acceptable risk shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of development. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. Further advice is available in the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers'. Such agreed measures shall be implemented and completed prior to the commencement of development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme agreed in writing with the Local Planning Authority, that contamination shall be made safe and reported immediately to the Local Planning Authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing with the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.

The developer shall give one-month's advanced notice in writing to the Local Planning Authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and in accordance with the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers' and the agreed remediation measures shall be submitted to the Local Planning Authority for approval. There shall be no residential occupation of the site (or beneficial occupation of the office building hereby permitted) until the Local Planning Authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the Local Planning Authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the Local Planning Authority.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

8 No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

Reason - To avoid the excessive raising or lowering of any building hereby permitted and the alterations of ground levels within the site which may lead to unneighbourly development with problems of overlooking and loss of privacy.

9 No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant, and approved in writing by the local planning authority.

Following demolition, no preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the written scheme of investigation.

The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

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

10 Prior to the occupation of the development hereby approved, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying where appropriate.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the local planning authority.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons after the commencement of the development unless otherwise previously agreed in writing by the local planning authority.

All hard surface areas agreed as part of the scheme shall be carried out before the first occupation of the buildings or upon the completion of the development whichever is the earlier. Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

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

11 The development shall be carried out in full accordance with the recommendations as set out within section 8 of the submitted 'Arboricultural Impact Assessment' report produced by EnviroArb Solutions Ltd, dated 3<sup>rd</sup> June 2021. No alterations or variations to the approved works or tree protection schemes shall be made without prior written consent of the local planning authority.

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

12 All ecological mitigation & enhancement measures and/or works shall be carried out in accordance with the details contained in the 'Extended Phase 1 Update Survey Report with Protected Species Surveys by Total Ecology dated October 2021 as submitted with the planning application and agreed in principle with the local planning authority prior to determination. This should include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out in accordance with the approved details.

Reason – To conserve and enhance Protected and Priority species and allow the LPA to discharge its duties under the UK Habitats Regulations, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and s17 Crime & Disorder Act 1998.

13 Prior to the first occupation of any dwelling hereby permitted, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

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

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

14 Prior to the first occupation of any dwelling hereby permitted, a Biodiversity Enhancement Layout for Protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Layout shall include the following:

Purpose and conservation objectives for the proposed enhancement measures;

detailed designs to achieve stated objectives;  
locations of proposed enhancement measures by appropriate maps and plans;  
persons responsible for implementing the enhancement measures;  
details of initial aftercare and long-term maintenance.

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

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

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

Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.

Limiting discharge rates to 1:1 Greenfield runoff rates for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change

Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.

Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.

In case the drain down time is more than 24 hours then Demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus climate change.

Final modelling and calculations for all areas of the drainage system.

The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.

Detailed engineering drawings of each component of the drainage scheme.

A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.

A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation.

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

16 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 mitigate against increased flood risk to the surrounding area during construction.

17 Prior to occupation 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, shall have been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

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

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

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

19 Prior to the 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.

20 No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times:

Monday to Friday 0800 hours - 1800 hours;  
Saturday 0800 hours - 1300 hours; and  
Sundays, Public and Bank Holidays - no work

Reason - To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

21 No burning of refuse, waste materials or vegetation shall be undertaken in connection with the site clearance or construction of the development.

Reason - To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

22 No dwelling or live-work unit shall be occupied until the refuse and recycling bins, and where applicable, storage areas and collection points, for that dwelling/unit have been provided and are available for use.

Reason - To ensure adequate facilities for refuse and recycling in the interests of residential amenity and in order to prevent the unsightly storage of refuse containers and in the interests of amenity.

23 Prior to the demolition of 700 St John's Road, details of the form of construction of the acoustic wall to be erected along its eastern and western boundaries, adjacent to nos 698 and 702 St John's Road respectively, shall be submitted to and approved in writing by the local planning authority. The walls shall be erected in accordance with the agreed details prior to the construction of the new access road.

Reason - To protect the amenities of the occupiers of nearby residential properties and the surrounding area.

24 Prior to first occupation of the development hereby approved, details of all gates, fences and other walls, or other means of enclosure, shall be submitted to and approved in writing by the local planning authority. The details shall include position, design, height and materials of the enclosures. The enclosures as approved shall be provided prior to the occupation of the development hereby approved and shall be permanently maintained as such.

Reason - To enhance the appearance of the development and in the interests of visual amenity and privacy.

25 Prior to the first occupation of the development hereby permitted, full details of the construction of the footpath/cycleway proposed to run through the existing curtilage of 780 St John's Road shall be submitted to and approved in writing by the local planning authority. The details shall include the extent of demolition of existing extensions/outbuilding/s and the method for making good, with full elevations and floor plans of the resultant works. The development shall be carried out in accordance with the agreed details.

Reason – To provide satisfactory pedestrian access to the development, in the interests of reducing the need to travel by car and promoting sustainable development.

26 The bicycle parking facilities as shown on the approved plan are to be provided prior to the first occupation of the development and thereafter retained at all times.

Reason - To ensure appropriate bicycle parking is provided in accordance with the Council's adopted Parking Standards.

27 No occupation of the development shall take place until the following have been provided or completed: The highway works as shown in principle on revised site plan drawing no. 4424/CA/PL1000 Rev. P but to include the following:

A forward visibility splay of 25 metres needs to be provided on each corner of the development these will need to be hardened so they can be adopted.

The raised table to be extended to include the drive to plot 173.

The 2-metre-wide footway to continue round on the north side of the bend to tie into the footway at the junction outside plot 94 and from the north boundary to plot 97.

Speed-restraint measures should be located at maximum intervals of 60m, starting within 50m of the entry junction or zone.

The proposed build-out on the access road to the site would need to switch to the opposite lane to remove the potential traffic accessing the site backing up onto St Johns Road or change to a raised table.

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

28 Prior to occupation of the development, the road junction / access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 120 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

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

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

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

30 The public's rights and ease of passage over public footpath / bridleway / byway no. 167\_1 (Great Clacton) shall be maintained free and unobstructed at all times.

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

31 Prior to commencement of above ground works, a scheme for the provision of electric vehicle charging facilities for the new dwellings hereby approved shall have first been submitted to and approved in writing by the local planning authority. Thereafter the charging facilities shall be installed in a working order prior to first occupation of the dwellings.

Reason: In order to promote sustainable transport.

32 Prior to the occupation of any dwelling a scheme detailing how a minimum of 20% of the energy needs generated by the development can be achieved through renewable energy sources shall be submitted to and approved in writing by the local planning authority. The scheme shall detail the anticipated energy needs of the scheme, the specific renewable technologies to be incorporated, details of noise levels emitted (compared to background noise level) and how much of the overall energy needs these will meet and plans indicating the location of any external installations within the development. The development shall be carried out in accordance with the approved details and shall be retained as such thereafter

Reason: To ensure the development contributes to minimising the effects of, and can adapt to a changing climate.

33 No development shall be commenced until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and agreed, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development.

Reason - To ensure that materials of an acceptable quality appropriate to the area are used and insufficient information has been submitted in this regard.

34 Prior to the first occupation of any dwelling hereby permitted, details of information leaflets to be distributed to new householders highlighting local footpaths within the open countryside and alternative areas of green space including nearby country parks shall be submitted to and agreed in writing by the Local Planning Authority. The agreed document shall be provided to all new households.

Reason – To ensure that the development will not have an adverse effect on the integrity of the European sites included within the Essex Coast RAMS.

35 Prior to the first occupation of any dwelling hereby permitted, details of the location and number of dog waste bins shall be submitted to and approved in writing by the Local Planning Authority. The dog waste bins shall be provided in accordance with the approved details and maintained in perpetuity.

Reason – To ensure that the development will not have an adverse effect on the integrity of the European sites included within the Essex Coast RAMS.

## Informatives

### Positive and Proactive Statement

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

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 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT

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

The applicant / agent should ensure measures are taken to ensure that any lighting of the development will be located, designed and directed or screened so that it does not cause avoidable intrusion to adjacent residential properties/ constitute a traffic hazard/cause unnecessary light pollution outside the site boundary. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers.

## **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:
  - A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - 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

- C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.2. 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.
- 9.3. 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.
- 9.4. 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

- 9.5. 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.
- 9.6. 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).
- 9.7. 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

- 9.8. 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.
- 9.9. The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

### **10. Background Papers**

- 10.1. Appeal Decision (APP/P1560/W/20/3256190) - 700 St Johns Road and St Johns Nursery site, Earls Hall Drive, Clacton on Sea – dated 7<sup>th</sup> January 2021.
- 10.2. In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number

via the Council's Public Access system by following this link  
<https://idox.tendringdc.gov.uk/online-applications/>.



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## Appeal Decision

Inquiry held on 24 to 27 November 2020

Site visit made on 28 October 2020

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 7 January 2021**

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**Appeal Ref: APP/P1560/W/20/3256190**

**700 St Johns Road and St Johns Nursery site, Earls Hall Drive, Clacton on Sea**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Kelsworth Limited against the decision of Tendring District Council.
  - The application Ref 18/01779/FUL, dated 19 October 2018, was refused by notice dated 19 February 2020.
  - The development proposed is demolition of nursery buildings and dwellinghouse. Erection of 195 residential units (comprising 6 two bed houses, 87 three bed houses, 33 four bed houses, 25 five bed houses, 12 one bedroom apartments and 24 two bedroom apartments), and 8 live work units (mixed commercial units measuring 1,064 square metres in total with flats above). Associated roads, open space, drainage, landscaping and other infrastructure.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The planning application was amended by the appellant prior to its determination by the Council. The description of the development subject to this appeal (the development) appearing on the Council's decision notice is as stated in the banner heading above and that description is accepted by the appellant.
3. While the Inquiry finished sitting on 27 November, I adjourned it, rather than formally closing it to allow for the submission of:
  - A certified copy of an executed Unilateral Undertaking (UU) entered into under Section 106 of the Town and Country Planning Act 1990 (as amended).
  - A final version of a list of suggested planning conditions agreed between the appellant and the Council, which was submitted on 4 December 2020.
  - Clarification about the proximity of the appeal site to the various Special Protection Areas for birds (SPA) and Special Areas of Conservation (SAC) and details for the SPAs and SACs (designation citations, conservation objectives and condition). This information having been submitted by the

Council on 4 December 2020 and comprises inquiry core documents (CDs) CD8.20 to CD8.25.

- Copies of any exchanges of correspondence between the Council and the Office for National Statistics (ONS) or other documentation in the public domain concerning the matter of unattributable population change (UPC) in Tendring. A note addressing this matter was submitted by the Council on 4 December 2020 (CD13.13).
  - Clarification about the inclusion of housing sites with resolutions to approve within the Council's calculation of its five year supply of deliverable housing sites (5yrHS), as stated in the Tendring Strategic Housing Land Availability Assessment of May 2020 (SHLAA) (CD6.3). This clarification was provided by the Council on 4 December 2020 in CD13.11 and CD12, supplementing the information provided by the Council in CD13.10.
4. The Council refused planning permission for five reasons (RRs). However, at the pre-inquiry case management conference held on 24 September 2020 the Council advised that it would not be 'pursuing' (defending) the third RR (living conditions for adjoining residents). The Council in the proof of evidence (PoE) provided by its planning witness<sup>1</sup> restated its intention not to defend its third RR. Notwithstanding the Council's position with respect to the third RR I have had regard to the representations made by residents concerning their living conditions.
  5. The fourth and fifth RRs concerned the absence of planning obligations entered into under a legal agreement<sup>2</sup> relating to: the provision of affordable housing; financial contributions for local infrastructure provision and effects on the integrity of the SPAs and SACs, in particular, the Hamford Water SPA. The Council through the giving of its written and oral evidence, however, made it clear that in the event of the appellant entering into planning obligations relating to the matters referred to in the fourth and fifth RRs then the concerns raised in those RRs would become uncontentious.
  6. With respect to the development's effect on the Hamford Water SPA and further to a question I raised at the inquiry, the Council confirmed on 4 December 2020<sup>3</sup> that the appeal site had incorrectly been identified as being in the zone of influence (ZoI) for this SPA and that the development should be considered as being within the ZoI for the Colne Estuary SPA, the Blackwater Estuary SPA, the Dengie SPA and the Essex Estuaries SAC. I have therefore treated the wording of the fifth reason for refusal as though it related to the aforementioned SPAs and SAC.
  7. A UU was executed by the appellant on 14 December 2020<sup>4</sup>. The UU contains planning obligations binding upon the appellant and its successors in title that would secure the provision of: 23 affordable homes, open space on site and enhanced footway and cycle facilities; financial contributions for education, healthcare and bus facilities; and a financial contribution to assist with the operation of the Essex Coastal Recreational disturbance Avoidance and

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<sup>1</sup> Paragraph 1.10 of Mr Carpenter's PoE

<sup>2</sup> An agreement or unilateral undertaking entered into under Section 106

<sup>3</sup> Within the text of a covering email from the Council submitted to the Planning Inspectorate on 4 December

<sup>4</sup> A certified copy of the UU was submitted to the Planning Inspectorate on 15 December as per the timetable for its submission that was set while the inquiry was sitting



Mitigation Strategy (RAMS) to mitigate the effects of the development's occupation on the Colne Estuary SPA, the Blackwater Estuary SPA, Dengie SPA and the Essex Estuaries SAC.

8. As the planning obligations contained in the executed UU have addressed the concerns identified by the Council in its fourth and fifth reasons for refusal, I have treated those RRs as not being subject to any dispute between by the appellant and the Council. I return below to the planning obligations as other matters.
9. The adopted development plan, the Tendring District Local Plan of 2007 (TDLP), is in the process of being replaced by the emerging Tendring District Local Plan 2013-2033 (the eLP). The Council intends that the eLP will comprise two parts (sections). Section 1 of the eLP containing strategic policies and proposals that will '... apply to the whole of North Essex (including Tendring, Colchester and Braintree) ...', while Section 2 will contain policies and proposals specific to Tendring<sup>5</sup>. While the whole of the eLP has been submitted for examination, the two sections are being examined separately.
10. The examination of Section 1 of the eLP commenced in 2018 and was concluded on 10 December 2020 with the examining Inspector's (EI) report being made publicly available that day<sup>6</sup>. The EI has concluded that Section 1 of the eLP would be sound with the making of recommended main modifications and would be capable of being adopted by the Council. Further to the publication of the EI's report the appellant and the Council were given the opportunity to make written comments on any implications the EI's conclusions on the housing requirement for Tendring might have upon the cases that the parties made while the inquiry was sitting. In that regard the Council and the appellant both made comments on 18 December. The Council has advised it is expected that at a Full Council meeting on 26 January 2021 a decision will be made as to whether Section 1 of the eLP should or should not be adopted.
11. As Section 1 of the eLP has reached a very advanced stage in its preparation I consider it should be considered as being a material consideration of great weight for the purposes of the determination of this appeal.
12. The examination of Section 2 of the eLP is expected to commence following the completion of the examination of Section 1. Section 2 of the eLP therefore remains liable to change and I therefore consider that very little weight should be attached to the policies of Section 2 of the eLP for the purposes of the determination of this appeal.
13. The inquiry was formally closed in writing on 21 December 2020.

### **Main Issues**

14. Given the Council's position with respect to the third, fourth and fifth RRs referred to above, I consider the main issues are the effect of the development on:
  - the character and appearance of the surrounding area; and

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<sup>5</sup> Paragraph 20 of the Council's Statement of Case (CD12.2)

<sup>6</sup> The eLP examining Inspector's report and schedule of recommended Main Modifications were submitted as inquiry documents by the Council on 11 December 2020 as CD13.16 and CD13.17

- the safety and free flow of traffic on the local highway network.

## Reasons

### *Character and Appearance*

15. The site has an area of 7.6 hectares and the majority of it comprises the St John's Nursery. The nursery is occupied by glasshouses that can lawfully be used for horticulture, with the ancillary sale of produce 'grown on' at the site<sup>7</sup>. The site also includes a chalet bungalow and its grounds at 700 St John's Road (No 700) and part of the grounds of the bungalow at 762 St John's Road (No 762). The development would involve the removal of all of the glasshouses and the provision of a total of 195 dwellings comprising a mixture of houses, some blocks of flats and eight live work units. The proposed houses would variously be two, two and a half and three storeys in height, while the blocks accommodating the flats and live work units would be three and four storeys high. The chalet bungalow at No 700 would be demolished to provide a new vehicular and pedestrian access/estate road. In addition, there would be land take at No 762 to facilitate a new pedestrian and cycle link with St John's Road just to the east of Earls Hall Drive.
16. There is no dispute that the nursery's glasshouses are of no particular architectural merit, given their functional design. That said the glasshouses are low-rise buildings, which I found not to appear out of place, given their siting at the transition between Clacton's suburban area and the essentially open farmland characterising the area to the north of St John's Road. The proposed housing would lie behind the ribbon of bungalows, chalet bungalows and occasional two storey houses in this part of St John's Road. St John's Road at this point is generally characterised by road frontage development, with the St John's Nursery being a notable exception. The other exceptions being the Leisure Glades caravan park, benefitting from a planning permission for a 62 pitch extension<sup>8</sup>, and the development of houses and bungalows at and to the rear of 824 St John's Road granted planning permission under application reference 18/00379/OUT (appended to CD12.1) further to a similar proposal being allowed on appeal<sup>9</sup>.
17. Mr Thomas, in responding to one of my questions at the inquiry, confirmed that he was not asked by the appellant to consider redesigning the development's layout within the vicinity of the site's northern boundary, when it was decided that the thirty or so Poplar trees<sup>10</sup> along that boundary would not be retained as part of the development. That decision being made after the planning application's submission and further to the Council's tree officer advising that it would be inadvisable for the Poplar trees to be retained within the development.
18. Replacement tree planting along the site's northern boundary, secured by the imposition of a planning condition, could be undertaken. However, such planting would take time to become established and provide any meaningful visual screening for a row of 22 houses of between two and three storeys in height. That row of 22 houses being significantly taller than the glasshouses,

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<sup>7</sup> Paragraph 72 of enforcement appeal decisions APP/P1560/C/18/3214046 and APP/P1560/C/18/3214047 (CD7.5)

<sup>8</sup> Permission 18/00952/FUL granted on 15 April 2019 (appended to CD12.1)

<sup>9</sup> APP/P1560/W/15/3002161 (CD7.7.6)

<sup>10</sup> As identified in the submitted Arboricultural Impact Assessment (CD2.3)

with the appreciation of the mass of the glasshouses in part being mitigated by the screening afforded by the Poplar trees.

19. I share the concern expressed by the Council that there could be an incompatibility between the longer term retention of any new screen planting and the occupation of the dwellings adjoining the site's northern boundary. That being because the rear gardens adjoining the site's northern boundary would be of a limited depth and the presence of tall screen planting could affect the utility of those gardens, a number of which would serve four or five bedroom houses. The Council contends that relying on screen planting within back gardens would not be good practice, given the vulnerability of such planting to removal by the occupiers of individual properties. The imposition of a planning condition would be capable of securing the short term retention of any new tree planting. However, such a condition would not ensure that planting's retention in perpetuity, with their being no certainty that the retention of trees planted as part of the development could be secured through the making of a tree preservation order (TPO).
20. Although the development would be situated behind the existing frontage dwellings on St John's Road, it would be open to view to varying degrees by users of the public footpath running along Earls Hall Road. Given that and notwithstanding the fact that the area within the vicinity of the nursery is not subject to any special landscape designations, I consider it important that the treatment of the site's northern boundary should be handled so that the development would integrate well with its surroundings. I am not persuaded that the development would do that because of the juxtaposition of a row of rear gardens facing directly onto the open farmland to the north. I therefore consider that the appearance of this part of the development would be poor and would fail to provide an appropriate response to its context, at what would become a new point of transition between housing and the open countryside beyond.
21. I accept that the site is of a scale that could accommodate some new buildings of more than two storeys in height without such buildings becoming disrespectful of the established suburban context. However, I consider it would be inappropriate to have some two and a half and three storey houses that were sited only around 12 metres from the northern boundary. In that regard what is proposed at the nursery would depart from the approach that is expected to be followed in connection with the implementation of the 950 dwelling scheme at the nearby Rouses Farm, where built development within the vicinity of the long western boundary next to the retained farmland would mainly be of one or two storeys and no more than 10.5 metres in height<sup>11</sup>. Additionally, at Rouses Farm it is expected that a 20 to 30 metre wide landscape buffer would be provided along that development's countryside boundary<sup>12</sup>.
22. The absence of a freestanding landscape buffer along the northern boundary would also be at odds with the 'approach' promoted in the Council's landscape impact assessment for various sites, including the St John's Nursery that was

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<sup>11</sup> Subject to planning application 17/01229/OUT and as shown on the building heights parameter plan for that development (CD9.1) and which is subject to a resolution to grant planning permission made on 30 May 2018 (page 25 of CD6.3)

<sup>12</sup> Paragraph 5.14 of Mr Russell-Vick's PoE

undertaken in 2010 (the Amec report)<sup>13</sup>. In the Amec report it was suggested that along the nursery's northern boundary the existing hedges should be retained to form part of a 20 metre wide 'green buffer'. Within Appendix 4 of the Amec report site specific 'Potential Settlement Impact Mitigation' measures were identified and for sites 1/3 and 1/4 the provision of a '... strong defendable landscape boundary along the northern perimeter ...' was recommended.

23. While the Amec report does not have the status of formally adopted local planning policy or guidance, within the context of testing the capacity for potential new housing sites, it does outline an approach for how in very general terms the nursery might be redeveloped in a manner intended to be respectful of its context. Within the Amec report an indicative density of 25 dwellings per hectare (dph) was put forward for the nursery. The suggested approach for the nursery being outlined without being influenced by any particular proposal for this site and against the backdrop of Policy HG7 of the TDLP indicating that new housing should be provided at a minimum of 30 dph.
24. I recognise that in places the site's existing buildings and boundary treatments do not have an attractive appearance when they are viewed from Earls Hall Road. That said I am not persuaded that the development when viewed from Earls Hall Drive '... would offer a substantially improved visual experience for walkers and residents using the footpath'<sup>14</sup>.
25. It is proposed that eighteen houses would have rear gardens backing onto the site's eastern boundary. However, the site's eastern boundary is not as publicly visible as the northern one and here it is proposed that the existing trees would be retained. Those existing trees, predominantly Oaks ranging between 7.0 and 18 metres in height<sup>15</sup>, would be towards the ends of longer gardens, when compared with the garden depths proposed along the northern boundary. I therefore consider the well established trees adjoining the eastern boundary would be less susceptible to removal compared with the screen planting intended for the northern boundary, with there being scope to secure the former's retention through making TPOs. I therefore consider the layout and design of the development within the vicinity of the site's eastern boundary to be unobjectionable.
26. Many of the houses and the flat blocks would be taller than the ribbon of dwellings on the northern side of St John's Road and some of those new dwellings would be visible through the roof level gaps between the existing dwellings. However, I consider that only fleeting or distant views of the new houses and flat blocks from St John's Road and further afield to the south would be possible. In that respect I am of the view that the new dwellings would not have an overt presence and that in the views from the south this development would not adversely affect the area's character and appearance. Discounting any views from Earls Hall Road I am also of the view that the proposed development would not appear out of place when viewed from further afield to the east or west.

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<sup>13</sup> Identified as part of 'Land North of St John's Road and North of Cann Hall Estate, Clacton (Sites 1/3 and 1/4) in Appendix 3 of the Amec report submitted as Appendix 1 to Mr Robinson's PoE

<sup>14</sup> Paragraph 4.40 of Mr Robinson's PoE

<sup>15</sup> As identified in the Arboricultural Impact Report of December 2019 (CD2.3)

27. As I have indicated above, I consider buildings of more than two storeys need not necessarily be objectionable at the nursery. Block C would be a four storey building and this building was originally designed to have a fully flat roof. However, Block C's design was amended prior to planning permission being refused by the Council and it is proposed that it would have a mixed pitched and flat roof form. While the pitched roof elements of Block C would be in sympathy with the roof types characterising this suburban location, I consider Block C would be of a scale that would be uncharacteristic of its surroundings, with there being a reliance on what for this area would be a unique flat roofed central spine. I consider that the inclusion of that flat roof element in Block C's design is indicative of this building being over scaled.
28. The development because of its backland nature would be served by a comparatively long and eleven metre wide estate road, comprising a vehicular carriageway, footways along each side and planting on its eastern side. While such a long estate road approach into the heart of the development would be uncharacteristic of its surroundings, I do not find this aspect of the scheme of itself to be objectionable. That is because for vehicular users of St John's Road passing by, the length of the estate road would not be immediately apparent, while for pedestrians using St John's Road the length of the access would be of no particular consequence. For prospective occupiers of the development, should they find the appearance of the main access to be functionally disagreeable that would be a factor that they could take into account when making decisions about whether or not to live in the development.
29. The Council has expressed the view that it is unclear why Earls Hall Drive has not used as the vehicular access<sup>16</sup>. However, as part of the pre-application discussions that took place between the appellant, the Council and Essex County Council Highways (ECC), it appears that ECC was concerned by the prospect of Earls Hall Drive being used as the vehicular access, given its status as a public footpath, and promoted the formation of a new access to the east<sup>17</sup>. Even if Earls Hall Drive was to be used as the vehicular access for the development, it would still be served by a relatively long estate road and that would not overcome the Council's concern about the length of the access.
30. The first RR contends that should the development be granted planning permission that would set a 'precedent' for similar developments. However, individual developments should be considered on the basis of their individual circumstances and as no directly comparable sites have been identified by the Council, I consider there to be no merit in the precedent concern raised in the first RR.
31. For the reasons given above I conclude that the development, in particular, along its northern boundary would have an unacceptable effect on the character and appearance of the area. I consider that the harm I have identified would give rise to conflict with Policies QL9 and QL11(i) of the TDLP. That is because the development would not maintain or enhance the local character of the area, with the siting, height, scale and massing of the houses along the development's northern boundary being unacceptable, with the design and layout of those houses failing to incorporate existing site features of the landscape, namely the Poplar trees, while the replacement northern

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<sup>16</sup> Paragraph 5.13 of Mr Russell Vick's PoE and paragraph 6.8 of Mr Carpenter's PoE

<sup>17</sup> Letter of 9 February 2016 from the Council to the appellant forming Appendix 1B of the overarching SoCG (CD12.3A)

boundary planting has not been designed to function as an integral part of the new development.

32. I also consider that there would be some conflict with the seventh criterion of Policy HG13 of the TDLP. That is because as backland development, as defined for the purposes of Policy HG13, the northern part of the development would be out of character with the area. However, as I have found that the main estate road access would not cause visual detriment within the streetscene, I consider that this aspect of the development would accord with Policy HG13's third criterion.
33. Section 12 (Achieving well-designed places) of the National Planning Policy Framework (the Framework) addresses the quality and appearance of new development. Given the harm to the character and appearance of the area that I have identified, I consider that the development would be contrary to paragraphs 124 and 127 of the Framework insofar as it would not be of a good design, with it failing to add to the overall quality of the area and there being some potential for the landscaping and rear garden areas along the northern boundary not to function well together over the lifetime of the development. I also consider that there would be conflict with the National Design Guide, most particularly paragraphs 40 to 42, 51 and 52, because elements of the development's design would not relate well to its local context or respond to the existing local character.

### *Highways*

34. The second RR in essence identified a concern about the ability of the estate road's junction with St John's Road to operate in unison with the traffic light controlled junction proposed for Rouses Farm, which would be around 110 metres to the east<sup>18</sup>. The Council arguing as part of its appeal case that should these two junctions not operate in unison then there would be the potential for queuing right turning traffic waiting to enter the Rouses Farm to impede (block) right turning traffic from entering the development's estate road. Should such blocking arise it has been further submitted that would impede the flow of westbound through traffic on the B1027.
35. An additional limb to the Council's case advanced by its three highways witnesses is that during the summer months, June through to September<sup>19</sup>, there is a seasonal increase in the use of the B1027/St John's Road, which has not been adequately assessed by either the appellant or ECC as the local highway authority. It being submitted that a seasonal increase in the use of the B1027 arises from vehicular movements generated by the summertime occupation of the large number of static homes and other holiday accommodation in the area.
36. A local resident, Mr Everett, also made submissions at the inquiry raising concerns about: how the traffic arising from the development had been quantified and the effect of that traffic on the operation of the local highway network; and the design of the junction between the estate road and St John's Road, most particularly the absence of the provision of a right turning/ghost lane.

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<sup>18</sup> With there being 97 metres between the stop line for the signal controlled Rouses Farm junction and the appeal site's proposed junction with St John's Road (paragraph 4.1 of the Technical Note forming Appendix RF-D to Mr Fitter's PoE

<sup>19</sup> As clarified variously through the giving of the evidence of Mr Williams, Mr Cosier and Councillor Bray

37. The Council's inclusion of a highways reason for refusal was against a backdrop of there being no objection from ECC to the development. That said from the brevity of ECC'S formal consultation response of 29 January 2020 to the Council<sup>20</sup>, it is far from clear how the highway authority actually assessed the appellant's Transport Assessment (TA - CD1.88) and arrived at its conclusion that *'From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority ...'* subject to the provision of some mitigation measures.
38. A little more can be gleaned from ECC's letter of 1 May 2020 to St Osyth Parish Council<sup>21</sup> in which it commented *'As with all large planning applications the Highway Authority has undertaken extensive investigation and analysis of the submitted transport assessment and travel plan accompanying this planning application. This work has concluded that the proposal is not contrary to current National and Local policy and safety criteria and has been found acceptable to the Highway Authority in terms of its impact upon the local highway network'*. Mr Fitter in giving his evidence in chief for the appellant also remarked that ECC did ask 'searching questions' of him. Be that as it may, the absence of any meaningful reasoning in ECC'S consultation response I can appreciate was distinctly unhelpful to the members of the Council's planning committee.
39. The appellant's comparison of the existing and proposed trip rate generation in section 8 of the TA has been criticised. That criticism revolving around how the vehicular movements generated by the existing use of the nursery have been calculated<sup>22</sup>, given that the site was only partially in use when the TA was prepared and the TRICS database<sup>22</sup> does not address horticultural 'nurseries with ancillary garden centres' (paragraph 8.3 of the TA). Given those circumstances an existing trip generation calculation was performed by the appellant based on the expected trip rate for the use of the 253 space car park extension granted planning permission under file reference 17/01770/FUL on 8 December 2017. The results from that calculation are shown in Table 8.1 of the TA, with the number of movements (ie arrivals and departures) during the AM peak (08:00 to 09:00), PM peak (17:00 and 18:00) and the whole day, respectively estimated at 37, 18 and 1,841 movements.
40. While making comparisons between existing and proposed trip generation in TAs is well trodden ground, in this instance I do not consider that exercise to have been particularly informative. That is because the TA was written around a month after the issuing of an enforcement notice on 14 September 2018 requiring the cessation of various non-horticultural uses at the nursery. Those uses subsequently having been confirmed as being unlawful through the determination of the enforcement notice appeals on 5 December 2019. Consequently, the existing use estimate of 1,841 movements per day in the TA was excessive.
41. Given the brevity of ECC'S formal response to the Council, which post dated the determination of the enforcement notice appeals, it is very unclear what weight ECC may have placed on the existing and proposed trip generation

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<sup>20</sup> Letter contained in CD3.4

<sup>21</sup> Appendix 4 to Mr Williams PoE

<sup>22</sup> The recognised database used by transportation professionals to make predictions for trip rates and traffic generation for new developments

comparison made in the TA. That said, I consider what is of consequence in this instance, given the proposal to create an entirely new estate access, is the volume of vehicular traffic the development would be likely to generate and whether or not the local highway network could accommodate that traffic alone, as well as in combination with expected traffic growth in the area.

42. With respect to the assessment of the effect of the development's traffic on the operation of the local highway network, the appellant has placed reliance on an automated traffic count undertaken in April 2017. April being recognised as a 'neutral' month for the purposes of undertaking traffic surveys, ie one unaffected by school holiday periods. Mr Fitter in giving his evidence confirmed that the extant national guidance relating to the assessment of traffic flows is stated in the Planning Practice Guidance (PPG) and it states:

*'In general, assessments should be based on normal traffic flow and usage conditions (eg non-school holiday periods, typical weather conditions) but it may be necessary to consider the implications for any regular peak traffic and usage periods (such as rush hours). Projections should use local traffic forecasts such as TEMPRO drawing where necessary on National Road Traffic Forecasts for traffic data'<sup>23</sup>.*

43. There is therefore nothing unusual about the appellant relying on a traffic survey that was undertaken in April, as opposed to one conducted during a summer month. In that regard Mr Fitter commented that in some areas, such as Dorset and the Lake District National Park, applicants are required to undertake traffic surveys during the summer months. However, neither ECC nor the Council through their policy or guidance require summer surveys to be undertaken. If the seasonal increase in the use of the B1027 was at a level that had become a significant issue year on year, then I would have expected it to be something that ECC and/or the Council would be familiar with and would be a matter that all developers were being requested to take account of when submitting their TAs. However, there seems to be no history of this seasonality issue having been raised previously with developers, with the TAs for seven applications, including Rouses Farm, having been reviewed by the appellant in that regard<sup>24</sup>.
44. With respect to the operation of the junctions for the development and Rouses Farm with St John's Road, the appellant has undertaken sensitivity testing to indicate how much extra traffic attributable to a seasonal effect would be required for those junctions to exceed their 'functional' capacities and cause unacceptable levels of congestion. In the case of simple priority junctions, such as that proposed for the development, their operational capacity is measured in terms of the ratio to flow capacity (RFC), with the functional maximum for this type of junction considered to be an RFC of 0.85. For signal controlled junctions their operational capacity is measured by reference to the degree of saturation (DoS), with the functional capacity usually taken to be a DoS of 90%.

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<sup>23</sup> Paragraph: 015 Reference ID: 42-015-20140306

<sup>24</sup> Paragraph 3.5 of Mr Fitter's rebuttal statement



45. The results of the appellant's sensitivity testing are summarised in paragraph 3.10 of Mr Fitter's rebuttal statement as:

*'The baseline traffic flows could be increased by 15% in the AM peak and 38% in the PM peak before the proposed Rouses Farm traffic signals exceed 90% DoS on any approach. The baseline traffic flows could be increased by 31% in the AM peak and 41% in the PM peak before the proposed site access junction would exceed RFC 0.85.'*

46. The Council has provided no empirical evidence challenging the reliability of the appellant's sensitivity testing for the effects of seasonality on the flows of traffic. I therefore consider that I can only reasonably be guided by the appellant's sensitivity evidence.
47. On the evidence available to me, I consider that the appellant's reliance on a traffic survey conducted in April, rather than between June and September, reveals no significant deficiency in the appellant's TA and the conclusions drawn from it by ECC. What has also become apparent through the presentation of the Council's evidence is that throughout the whole of the period that ECC was considering the appeal development it had available to it the results from the traffic survey commissioned by it and undertaken during June and July 2018 concerning part of the B1027 to the west of the nursery<sup>25</sup>. Those survey results being for part of the summer period and appearing not to demonstrate to ECC that there was a seasonal traffic flow issue that the appellant needed to address before EEC could make its consultation response to the Council. Consequently, for the purposes of the determination of this appeal I consider the traffic seasonality issue that has been raised attracts little weight.
48. It has been contended that the absence of a right turning lane at the junction between St John's Road and the estate road would not comply with the design standards for such junctions, most particularly CD123<sup>26</sup> of the Design Manual for Roads and Bridges (DMRB)<sup>27</sup>. The DMRB being requirements and guidance published by Highways England (HE) primarily for the purposes of guiding the design of new or altered parts of the strategic highway network (motorways and some A class roads) for which HE is the highway authority.
49. Local highway authorities, such as ECC, do not have to apply the requirements and guidance contained in the DMRB to the roads they have jurisdiction over. In considering the effects of the development on the operation of the B1027 there is therefore no compulsion to apply the provisions of CD123, something Mr Fitter confirmed in response to a question I put to him.
50. To prevent queued vehicles waiting to turn right into the estate road from impeding the flow of westbound traffic on St John's Road it has been argued that a right turning lane, a 'major road central treatment' (which include 'ghost islands') in the language of CD123, should form part of the development's design. Paragraph 2.3.1 of CD123 states that *'The selection of priority junction and major road central treatment for single carriageway roads should be determined based on the standard of major road and traffic*

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<sup>25</sup> Pump Hill and Bypass Road contained in Appendix 6 of Mr Williams PoE

<sup>26</sup> 'Geometric design of at-grade priority and signal-controlled junctions'

<sup>27</sup> CD13.4

*flows on both the major and minor roads. Figure 2.3.1 illustrates approximate levels of provision for varying traffic flows*. Figure 2.3.1 indicates that below a flow of 13,000 two-way annual average daily traffic (AADT) on a junction's major road the provision of a 'simple' priority (T-type) junction would usually be appropriate. Figure 2.3.1 also indicates that ghost island provision would be appropriate where the major road has a two-way AADT of between 13,000 and 18,000.

51. Paragraph 2.3.1 and Figure 2.3.1 of CD123, however, need to be read in conjunction with the 'Note' immediately following them. That note states *'The 2-way AADT design year flows are used to determine the approximate level of junction provision prior to more detailed traffic modelling to check capacity'*. The note in CD123 indicates that a flow of over 13,000 AADT is not an absolute threshold for providing right turning lanes, with that AADT being a level at which more detailed traffic modelling should be undertaken to determine whether something other than a simple junction would be necessary. Mr Fitter in his rebuttal statement (paragraphs 7.9 to 7.11) explained that is the process that was followed.
52. The capacity for the estate road's junction with St John's Road was modelled by the appellant using the Transport Research Laboratory's 'PICADY' software. The results of that modelling in October 2018 were included as Appendix I in the appellant's TA and were therefore available to ECC when it was considering the proposed development. It is apparent from ECC'S email to the Council of 2 September 2019<sup>28</sup> that it was mindful of the possible need for a right turning lane to be provided because it commented:

*'The other key point is the dedicated run turn lane; I note from the Stage 1 Safety Audit there were concerns about potential rear end shunts if one was not provided and the designers comments appear to suggest that there is spare capacity not to warrant a dedicated right turn lane. At the very least we would like to see the Safety Audit recommendation: **to carry out further assessment and analysis of the traffic model to determine the appropriate level of right turn provision required.** The reason being due to the size of development and current attributes of the road we would normally have a dedicated right turn lane incorporated in the proposals.'* (The highlighting of text being as used by ECC)

53. It however appears that ECC in making the above quoted comments failed to recognise that when the safety audit findings of 14 February 2019 were submitted to it on 11 June 2019, the designer's (Mr Fitter) response (21 February 2019) to the audit's findings had been included<sup>29</sup>. It also appears that the appellant's safety auditors were unaware of a junction capacity analysis having been undertaken in advance of being instructed to conduct an audit, with neither the TA nor the PICADY output data being available to the auditors<sup>30</sup>.
54. The appellant has modelled the effect of the development's traffic on the operation of the Rouses Farm junction using 'LinSig' software. That modelling has identified a mean maximum queue for passenger car units (PCUs) turning

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<sup>28</sup> Appended to Councillor Bray's PoE

<sup>29</sup> Appendix C of Mr Fitter's PoE

<sup>30</sup> Appendix A of the Stage 1 Road Safety Audit in Appendix C of Mr Fitter's PoE

right into the Rouses Farm access of 22.1 vehicles<sup>31</sup>, assuming an average vehicle length of 5.5 metres. A queue of 22 vehicles waiting to enter Rouses Farm would extend back to the access for the development, with there being 97 metres<sup>32</sup> between the stop line for the traffic signals and the estate road for the development. 97 metres being sufficient to accommodate 17.6 PCUs. A queue of 22 vehicles could therefore block right turns being made into the development's estate road and go onto impede the flow of westbound traffic on St John's Road. However, for that to happen eastbound drivers would have to fail to observe Rule 151 of the Highway Code (Rule 151) and cause entry into a side road to become blocked<sup>33</sup>.

55. I consider a mean maximum queue length of 22 vehicles would be very much at the worst case end of possible queue lengths. That is because the figure of 22 vehicles would equate to the average of the maximum queue length, rather than the average of all queue lengths for vehicles turning into Rouses Farm.
56. A queue length of 22 vehicles in practice would therefore likely to be an exception and not the norm for vehicles seeking to enter Rouses Farm. Additionally, for queues of that length to actually block vehicles seeking to enter the development's estate road and also impede westbound through traffic, there would also need to be vehicles waiting to make a right turn into the development. So, for the mean maximum queue length to be of significance for westbound traffic on St John's Road it would need to coincide with times when there were also vehicles waiting to turn right into the development and Rule 151 was not being observed. The effect of the non-observance of Rule 151 being something that might be alleviated through the use of 'keep clear' markings or a 'box-junction' (yellow hatching), as alluded to in section 7 of Mr Fitter's rebuttal statement.
57. Mr Fitter has submitted in his evidence that the capacity analysis that has been performed is subject to some double counting of future traffic growth. That is because in line with standard practice the baseline (2017) traffic flow for the B1027 has been subjected to a growth multiplier (national road traffic forecast [NRTF]) to derive a flow for 2023, which is the development's notional completion year used in the TA. To that future year figure the predicted traffic from both Rouses Farm and the development has been added, even though Rouses Farm is a committed development and would be accounted for in the NRTF multiplier. Mr Fitter in his evidence in chief also advised that the nursery's existing traffic generation had not been deducted from the baseline traffic flow used to prepare the TA.
58. Additionally, all of the junction capacity modelling has been undertaken on the basis of the development being for 210 dwellings, as originally proposed, and not 195 dwellings as now proposed. Mr Fitter in giving his evidence in chief also advised that no trip rate distinction had been made between the market and affordable dwellings within the development, even though in TRICS it is recognised that affordable homes generate lower rates. I consider that when all of the foregoing factors are taken into account the assessment of the effects of the operation of the development's junction with St John's Road alone and in conjunction with the operation of the Rouses Farm junction has

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<sup>31</sup> Appendix E of Mr Fitter's PoE

<sup>32</sup> Paragraph 4.1 of the Technical Note included within Appendix D of Mr Fitter's PoE

<sup>33</sup> Paragraphs 7.13 and 7.14 of Mr Fitter's rebuttal statement

been undertaken on a reasonable and robust basis, with the traffic generation predictions for the development being subject to some double counting and overestimation.

59. The development would cause some additional use of St John's Road and that could affect the entry or exit to the existing dwellings in the vicinity of the appeal site. However, I consider the amount of additional traffic using this part of St John's Road associated with the development would not be so great as to cause unacceptable delays to the entry or exit to the existing nearby dwellings.
60. For the period between 2017 and 2019 there were seven personal injury accidents (PIAs) on St John's Road within the vicinity of the nursery and the appellant has submitted that accident rate is below average for a road of this type, with the available data showing '... no significant patterns or clusters'<sup>34</sup>. Mr Fitter in response to a question I put to him commented that the cause of the accidents between 2017 to 2019 were the result of driver error and/or interactions as opposed to the nature/condition of St John's Road. Regrettably there was a fatal accident in April 2020, however, the investigation into the cause of that accident is ongoing. I consider the available evidence has not demonstrated that the use of the development's access would adversely affect highway safety in the area.
61. Above I have referred to ECC'S formal consultation response to the Council being very brief. Notwithstanding that I consider there can be no doubt that ECC considered the need for the provision of a right turning lane and was satisfied, on the basis of the information available to it when it made its formal comments to the Council in January 2020, that the development could be granted planning permission without such a turning lane being provided. In that regard it is evident from the contents of the letter sent to St Osyth Parish Council on 1 May 2020<sup>35</sup> ECC made a conscious decision to require the provision of a combined footway and cycleway rather than a right turning lane, given that within the vicinity of No 700 there was insufficient highway land available to accommodate both, as confirmed by Mr Fitter at paragraph 4.29 of his PoE.
62. It has been contended that inadequate consideration has been given to the provision of a right turning lane. By extension it has been argued that ECC reached an incorrect conclusion about the need for a right turning lane. However, no empirical evidence has been submitted by the Council demonstrating that ECC should not have reached its conclusion on the adequacy of the development's junction and I am not persuaded that I should reach a contrary view to that held by the highway authority.
63. It is evident that the Jaywick Lane junction and some of the other junctions to the east of that junction are already operating above or close to their capacities, with some mitigation measures expected to be provided as part of the implementation of the Rouses Farm development<sup>36</sup>. Those junction capacity issues are likely to be contributing to the travel delays variously referred to by the Council's highway witnesses.

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<sup>34</sup> Section 5 of Mr Fitter's rebuttal statement

<sup>35</sup> Appendix 4 of Mr Williams' PoE

<sup>36</sup> Section 6 of Mr Fitter's rebuttal statement and the planning conditions expected to be imposed on the planning permission for Rouses Farm listed in the committee minutes of 12 March 2019 appended to CD12.1

64. The additional traffic generated by the nursery's redevelopment, on the face of it, could have the potential to exacerbate the congestion at the existing junctions to the east. That is because there is currently uncertainty about when the mitigation to be provided by the Rouses Farm development will be delivered, given the current absence of a planning permission for that scheme, and the appeal development could be occupied in part, if not wholly, prior to the junction improvements being delivered<sup>37</sup>. However, the appellant has argued that the traffic generated by the development would '*... result in a very low proportional increase in traffic at any other junction on the local highway network*'<sup>38</sup>. The peak hour proportional increases for the Jaywick Lane roundabout having been assessed as being no more than 3% for any arm, a net increase that would be less than the daily variation<sup>39</sup>. In the absence of any empirical evidence having been presented demonstrating that the development would generate anything other than a low proportional increase in traffic at the junctions to the east, I share the appellant's view that there would be a negligible effect on the operation of those junctions.
65. For the reasons given above I therefore conclude that the proposed development would not adversely affect the safety and free flow of traffic on the local highway network. I therefore consider that the development would accord with Policies QL10(i) and HG13(iii) of the TDLP because the access to the site would be practicable and the highway network would be able to safely accommodate the additional traffic the proposal would generate.
66. The second RR cites conflict with Policy TR1a (development affecting highways) of the TDLP. However, Policy TR1, rather than Policy TR1a, has been identified as a 'most relevant' development plan policy in the 'General' Statement of Common Ground (SoCG- CD12.3A). Mr Fitter at paragraph 3.21 of his PoE has referred to Policy TR1a as having been 'erroneously' referred to in the second RR and instead he has drawn attention to Policy TR1 (transport assessment) of the TDLP, without recognising that Policy TR1a is a policy in its own right.
67. Given the nature of objection to the development stated in the second RR and as Policy TR1a concerns development affecting highways, I am of the view that Policy TR1a was correctly cited in the RR. I consider there would be no conflict with Policy TR1a because there would be no unacceptable hazards and inconvenience to traffic. For completeness I also consider that the development would accord with Policy TR1, given that a TA has been submitted and it does not indicate that the development would have materially adverse impacts on the transport system.
68. I also consider that there would be no conflict with paragraphs 108, 109 and 127f) of the Framework because there would be no residual cumulative impacts on the road network that would be severe warranting the refusal of planning permission.

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<sup>37</sup> Based on Mr Robinson's response to the development timetabling question I raised with him at the inquiry and the initial build rate of 30 dwellings per year rising to 60 dwellings per annum as envisaged for Rouses Farm (Appendix 4 of the SHLAA)

<sup>38</sup> Page 8 of the appellant's closing submissions (CD13.15)

<sup>39</sup> Section 9 of the TA

## Other Matters

### *Living conditions*

69. With respect to the siting of the development relative to the existing dwellings in St John's Road I consider that there would be sufficient separation for there to be no unacceptable overlooking of the adjoining homes. In that regard there would be no conflict with Policy QL10 of the TDLP.

### *Affordable housing*

70. The submitted UU would require the provision of 23 affordable homes (approximately 12%) on site. While that level of provision would be less than the 40% expectation stated in Policy HG4 of the TDLP the Council is now promoting 30% affordable housing provision. In this instance the Council recognises that the demolition of the glasshouses would represent a significant abnormal cost affecting the development's viability and its ability to provide affordable homes.
71. The Council is content that for viability reasons the provision of 23 affordable homes would be appropriate and I see no reason to depart from that view. I therefore consider that the development would make adequate affordable homes provision under of Policy HG4 of the TDLP and would be consistent with the policy for the provision of affordable housing set out in the Framework.

### *Effects on infrastructure*

72. To mitigate the development's effects on local infrastructure the UU would secure:
- The provision of and the management for open space on the site, equivalent to at least 10 percent of the site's area.
  - The making of education contributions totalling £1,770,393 for early years/childcare, primary and secondary facilities in the area.
  - A healthcare facilities contribution of £67,666.
  - A bus services contribution of £104,000 and the upgrading of three bus stops on St John's Road.
  - The provision of a 3.0 metre wide shared footway and cycleway on the northern side of St John's Road between its junction with Earls Hall Road and extending eastwards to tie in with the footway and cycleway improvements proposed for the Rouses Farm development.
73. Those planning obligations would variously address infrastructure requirements covered by Policies QL12 (planning obligations), COM6 (provision of recreational open space), COM26 (education provision) and TR3a (provision for walking) of the TDLP. I consider that the planning obligations would be: 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. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them, as they would primarily neutralise the demand upon local infrastructure generated by the development's occupation.

*Effects on the designated habitats*

74. The appellant and the Council agree that the development's occupation would be likely to have an adverse effect on the integrity (AEOI) of the qualifying features (bird species) that frequent the Colne Estuary SPA, the Blackwater Estuary SPA and the Dengie SPA and the condition of the habitat within the Essex Estuaries SAC. Those effects arising from the making of additional recreational visits to the SPAs and the SAC. Having regard to the information about the SPAs and SAC available to me, I consider that this development in combination with others in the areas could give rise to AEOI for the SPAs and the SAC through additional recreational activity.
75. To avoid any increased recreational pressures causing AEOI for the SPAs and SAC the Council, along with other local planning authorities in the area, has developed and is implementing the RAMS (CD8.7). The operation of the RAMS includes the provision of a warden service with the purpose of managing and educating visitors to designated habitats. The UU would secure a RAMS' contribution of £23,848.50. I consider that the making of that contribution would be necessary to ensure that this development did not cause AEOI for the SPAs and SAC. The payment of that contribution would accord with Policy EN11a of the TDLP and the RAMS.

*Whether the most important development plan policies are out-of-date*

76. Paragraph 11 of the Framework indicates that the presumption in favour of sustainable development should apply. For decision taking that means:
- '... c) Approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting planning permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or*
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

Footnote 7 of the Framework states *'This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73) ...'*

77. Paragraph 73 of the Framework states:
- '... Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old<sup>37</sup>.'*

Footnote 37 of the Framework states:

*'... Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.'*

78. Paragraph 11d)i does not apply in this instance because the nursery is not situated in a protected area and does not form a protected asset for the purposes of footnote 6 of the Framework. Under the provisions of paragraph 11d) for the purposes of the determination of this application there are two routes under which the presumption in favour of sustainable development could be engaged. The first route being the absence of a 5yrHS, while the second would be because the most important development plan policies for the determination of the application are out-of-date.

#### Housing land supply route

79. On 16 December 2020 the Secretary of State made a Written Ministerial Statement (WMS) providing an update on the Government's proposals for changing the way in which the standard method (SM) is calculated. On the same day amendments to the 'Housing and economic needs assessment' section of the PPG were also published. The changes to the SM will apply to cities and towns that have been specified in the PPG. Tendring is unaffected by the recently made changes to the calculation of the SM and those changes are therefore not material to the determination of this appeal.
80. The strategic policies of the TDLP are more than five years old and the appellant and the Council agree that there is no 5yrHS with respect to the need using the SM of calculation. That being confirmed in the Council's Strategic Housing Land Availability Assessment of May 2020 (the SHLAA) (CD6.3), with a supply of 4.45 years being identified in section 7 of the SHLAA. A 5yrHS of 4.45 years being based on the SM generating a local housing need of 865 dwellings per year, giving an overall five year housing requirement of 4,541 dwellings, inclusive of a 5% buffer<sup>40</sup>.
81. I consider the appellant rightly questioned at the inquiry the inclusion of the delivery of housing from some sites that only had resolutions to grant planning permissions (resolution sites) within the 4.45 years of supply stated in the SHLAA for the period between 1 April 2020 to 31 March 2025. One such resolution site being Rouses Farm, which received its resolution to grant planning permission around two and a half years ago<sup>41</sup> and for which the SHLAA identifies 90 dwellings being delivered by 31 March 2025. At the inquiry's close Rouses Farm continued not to benefit from a planning permission.
82. For the purposes of the determination of this appeal I requested the Council to recalculate its 5yrHS excluding all of the resolution sites which have been identified in the SHLAA as delivering dwellings by the end of March 2025. The recalculation of the 5yrHS being set out in CD13.12. In addition to Rouses Farm there are three other resolution sites which the SHLAA has assumed

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<sup>40</sup> Tendring District Council having become a 5% buffer authority following the Government's publication of the Housing Delivery Test measurement for 2019 (CD6.3 and CD8.14)

<sup>41</sup> 30 May 2018 - Appendix 1 of the SHLAA



would deliver a further 135 dwellings by 31 March 2025<sup>42</sup>. When the 225 dwellings from the four resolution sites are deducted, then there was a 5yrHS of 4.20 years on 1 April 2020<sup>43</sup>, when measured against a local housing need derived from the SM. While planning permissions for two of the resolution sites have now been granted, I consider that the 94 dwellings predicted to be delivered from those sites by the end of March 2025, as identified in CD13.11, should not be treated as though permissions had existed on 1 April 2020.

83. However, under the provisions of Policy SP3 of Section 1 of the eLP an annual housing requirement of 550 dwellings a year for Tendring has been found to be sound by the EI. A housing requirement of 550 dwellings a year being significantly less than the SM derived local housing need figure of 865 dwellings per year. However, the EI at paragraph 52 of his report has commented:

*'The policy SP3 requirement for Tendring is not derived from the official household projections, due to the distorting effect of those projections of errors that gave rise to exceptionally large unattributable population change [UPC] in the district between 2001 and 2011 Censuses. In IED/012 and IED/022 I set out my reasons for endorsing the alternative approach used to derive the demographic starting-point for Tendring, which in turn underpins the housing requirement figure.'* (CD13.16)

84. At paragraph 54 of the eLP report the EI has further remarked that to counter the potential for worsening housing affordability in Tendring '*... the housing requirement for Tendring includes a substantial 15% affordability uplift ...*'.
85. Until Section 1 of the eLP is adopted then paragraph 73 (including footnote 37) of the Framework, advises that the SM should, rather than must, be used to establish a local housing need figure for Tendring. That national policy is a material consideration of great weight. However, the examination of Section 1 of the eLP has established that the official household projections for Tendring are subject to distortion due to errors arising from the UPC. In that regard there is evidence available demonstrating that the ONS recognises that for Tendring there is an error with the mid year estimates, which feed into the calculation of the household projections, with a '*migration error... likely to be in the range of 5-6,000 people*<sup>44</sup>. That migration error being thought to represent 47% to 57% of the UPC for Tendring<sup>45</sup>, with the positive UPC figure for Tendring being around 10,500 and '*... one of the biggest of any LPA in England*<sup>46</sup>.
86. With Section 1 of the eLP so recently having been found to be sound, it seems likely that this part of the eLP, including emerging Policy SP3, will imminently progress to adoption. I consider those circumstances to be a very important material consideration, outweighing the advice in paragraph 73 of the Framework that the SM should be used. That approach being consistent with the advice stated in paragraph 48 of the Framework, because Section 1 of the

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<sup>42</sup> South of Ramsey Road (41 dwellings), Former Martello Caravan Park, Walton on The Naze (53 units) and Land west of Church Road, Elmstead market (41 units)

<sup>43</sup> Ie the beginning of the five year period for the purposes of the SHLAA

<sup>44</sup> Email of 29 November 2017 from the ONS to a consultant instructed on the Council's behalf appended to CD13.13

<sup>45</sup> Paragraph 13 of the examining Inspector's IED012 of 27 June 2018 appended to CD13.13

<sup>46</sup> Paragraph 8 of IED/012

eLP has reached such an advanced stage in its preparation. When an annual housing requirement of 550 dwellings is used and a historic shortfall allowance of 212 dwellings and a 5% buffer are added, then a total five year requirement of 3,110 dwellings has been identified by the Council in the SHLAA.

87. Against a requirement of 3,110 dwellings the Council is able to demonstrate the availability of a 5yrHS of 6.14 years, including the deduction of 225 dwellings from the four resolution sites as set out in CD13.12. A 5yrHS of 6.14 years represents a surplus of around 20% when considered against a five year requirement of 3,110 dwellings.
88. Even if the adoption of Section 1 of the eLP does not happen in January 2021, as currently envisaged by the Council<sup>47</sup>, on the evidence available to me I consider that the SM derived local housing need figure of 865 dwellings per year is so erroneous it simply cannot be relied upon as the basis for assessing the current 5yrHS position for Tendring. That is because of the distortion caused by the UPC, with the 2014 based household projection for Tendring, an essential input into the SM, being subject to a significant statistical error that the ONS has recognised exists. Given those circumstances I consider the SM yields a deeply flawed local housing need figure for Tendring.
89. I recognise that my approach to the consideration of this matter differs to that of the Inspectors who have determined four other appeals in the Council's area drawn to my attention<sup>48</sup>. However, there has been a very recent material change of circumstances postdating the determination of those other appeals, namely the completion of the examination for Section 1 of the eLP. That means that what was an 'interim finding' of the EI that a housing requirement based on 550 dwellings per year was likely to be acceptable, as was for example the situation when the Mistley appeal was determined on 23 December 2019, has now become a firm conclusion.
90. As I am of the view that for the purposes of the determination of this appeal the Council can currently demonstrate that a 5yrHS exists, I consider this possible route to engaging the presumption in favour of sustainable development under paragraph 11d) of the Framework does not apply in this instance.

#### Non-housing land supply route

91. At paragraph 4.2 of the general SoCG (CD12.3A) a large number of TDLP policies have been identified as being relevant development plan policies. Later on in this SoCG Policies QL1, QL9, QL10, QL11, HG4, HG13, TR1, TR3a, COM6, COM26, ER3 and EN11a of the TDLP have been identified as being the 'most relevant development plan policies'. For the reasons I have given above I consider that Policy TR1a of the TDLP should be added to that group of policies. Of those development plan policies, I am of the view that a distinction can be made between those that are 'relevant' and those which are 'most important for determining the application'.

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<sup>47</sup> The Council's email of 18 December 2020 (CD13.20)

<sup>48</sup> APP/P1560/W/19/3239002 Land at Footh Farm, Thorpe Road, Clacton on Sea (CD7.1)  
APP/P1506/W/19/3220201 Land to the South of Long Road, Mistley (CD7.2), APP/P1560/W/18/3201067 Land off Grange Road, Lawford (CD7.3) and APP/P1560/W/18/3196412 Land west of Edenside, Bloomfield Avenue, Frinton-On-Sea (CD7.4)

92. While Policies HG4, TR3a, COM6, COM26, ER3 and EN11a are relevant policies I consider they do not come within the category of being the most important policies for the determination of this application because they relate to matters that would be addressed via the planning obligations contained in the UU or be capable of being addressed through the imposition of planning conditions, most particularly with respect to the provision of the live work units.
93. As the development would involve the redevelopment of a site that is not within the settlement boundary for Clacton there would be some conflict with Policy QL1 (spatial strategy) of the TDLP. As I have found that for the purposes of the determination of this appeal there is a 5yrHS, I consider Policy QL1 is not out-of-date. However, under Section 2 of the eLP the Council intends that the nursery will be included within the settlement boundary without being allocated for a specific form of development. Given the prospective change to the settlement boundary the Council has raised no in principle objection to the nursery's redevelopment<sup>49</sup> and because of that background I consider the conflict with Policy QL1 of itself should not be treated as being determinative. I am therefore of the view that while Policy QL1 is a relevant policy, it is not a most important policy in this instance.
94. Of the development policies identified by the appellant and the Council as being the 'most relevant', I consider that Policies QL9, QL10, QL11, HG13, TR1 and TR1a constitute the basket of the most important policies for the purposes of determining this application. That is because those policies address general design considerations for new development. The provisions of Policies QL9, QL10, QL11 are generally consistent with the policies contained within the Framework. In addressing backland development Policy HG13 contains seven criteria and the wording of some of this policy is not wholly consistent with the Framework. However, I consider insofar as Policy HG13 seeks to achieve well designed development it is consistent with the Framework. I consider Policies TR1 and TR1a are broadly consistent with paragraphs 108b), 109 and 127f) of the Framework because they seek to ensure that new development does not unacceptably impact upon highway safety or severely impact on the road network.
95. I consider the basket of most important development plan policies for the determination of this application are for the most part consistent with the Framework and are not out-of-date for the purposes of paragraph 11d) of the Framework.

### **Planning balance and overall conclusions**

96. For the reasons given above I have concluded that the development would have an unacceptable effect on the character and appearance of the area. I consider that harmful effect of the development is a matter of very substantial weight and importance in the planning balance. I have found that the effects of the development on the safety and free flow of traffic on the local highway network would be acceptable and that is something that weighs significantly for the development. The development, through the planning obligations included in the UU, would have a neutral effect on local infrastructure.

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<sup>49</sup> Paragraph 5.14 of Mr Carpenter's PoE and reiterated by Mr Carpenter when he gave his oral evidence

97. I have identified the most important development policies for determining this application. Of those policies the development would be in conflict with Policies QL9, QL11 and HG13, while there would be compliance with Policies QL10, TR1 and TR1a. Nevertheless, I conclude the proposed development would conflict with the development plan when taken as a whole.
98. Paragraph 11 of the Framework establishes the presumption in favour of sustainable development. What is frequently referred to as the “tilted balance” may be engaged via two routes. With respect to housing provision, for the reasons I have given above I have concluded that the Council can currently demonstrate a five year supply of deliverable housing sites to meet its local housing need. With respect to the basket of most important development plan policies, for the reasons given above I am of the view it is not out-of-date for this case. For those reasons I consider the tilted balance should not be engaged. Having regard to my conclusion in the preceding paragraph, I consider the presumption in favour of sustainable development does not apply to the proposed development under either the provisions of the Framework or Policy SP1 of the eLP<sup>50</sup>.
99. I have found the most important development plan policies with which the development would be in conflict, Policies QL9, QL11 and HG13, to be generally consistent with the Framework. Given that I consider significant weight should be attached to the conflict with those policies.
100. The development would provide a number of social, environmental and economic benefits. The provision of 195 dwellings, including 23 affordable homes and eight live work units, would assist in delivering new homes in the Council’s area and important social and economic benefits would arise through the construction and occupation of those dwellings. However, I consider the social and economic benefits of providing these dwellings should be tempered by the current availability of a six year supply of deliverable housing sites. I therefore attach moderate weight to the social and economic benefits arising from the provision of the proposed dwellings.
101. In visual terms there would be some environmental benefits arising from the removal of the glasshouses. However, I consider the removal of those buildings would not outweigh the harmful visual aspects of the development that I have identified. There would be some benefits arising from the provision of public open space and play space on site and the potential to enhance and create wildlife habitats on site. However, those benefits of the development would largely mitigate effects of the development and I therefore consider they attract little weight in the overall balance. While the site’s redevelopment would have the potential to remove contamination from it, there is no evidence of any such contamination being a significant issue. I therefore consider that matter attracts very little weight.
102. Overall, I consider that there are matters that weigh substantially for the development in the planning balance. However, as I have indicated above there would also be a very substantial harm. I am therefore of the view that the matters weighing positively for the development are insufficient to outweigh the significant negative harmful effect and do not indicate that a

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<sup>50</sup> As worded in the Schedule of Recommended Main Modifications under reference MM4 in CD13.17

decision should be made otherwise than in accordance with the development plan.

103. For this case it is unnecessary for me to undertake an Appropriate Assessment (AA) under the Habitats Regulations relating to the development's effects upon the SPAs and SAC, as I am dismissing the appeal. However, if I had done so and a positive outcome had flowed from such an AA that would not have affected the planning balance or my overall conclusions.
104. I consider that the harm I have identified could not be overcome through the imposition of reasonable planning conditions. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR TENDRING DISTRICT COUNCIL:

Robin Green	Of Counsel instructed by the Council's solicitor
He called	
Councillor Jeff Bray	Vice Chairman of Tendring District Council's Planning Committee, who gave highways evidence
Martin Carpenter BA (Hons) MRTPI	Director, Enplan
Ray Crosier	Local resident, who gave highways evidence
Philip Russell-Vick DipLA CMLI	Director, Enplan
Neil Williams	Local resident and Clerk to St Osyth Parish Council, who gave highways evidence

### FOR THE APPELLANT:

Clive Newberry	Of Queen's Counsel instructed by Michael Robinson of e3 Design
He Called	
Richard Fitter IEng FCILT FICE FIHE	Director of Entran Limited
Michael Robinson BA (Hons) Dip TP MRTPI	Planning consultant with e3 Design
Dominic Thomas BSc BArch	Director, Chetwoods

### INTERESTED PARTIES

Richard Everett	Local resident
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## **INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY**

CD8.20	Map of Colne Estuary Special Protection Area (SPA)
CD8.21	Citation document for Colne Estuary SPA
CD8.22	Conservation Objectives for Colne Estuary SPA
CD8.23	Colne Estuary SPA feature condition summary
CD8.24	Map of Blackwater Estuary SPA
CD8.25	Citation document for Blackwater Estuary SPA
CD8.26	Conservation Objectives for Blackwater Estuary SPA
CD8.27	Blackwater Estuary SPA feature condition summary
CD8.28	Map of Dengie SPA
CD8.29	Citation document for Dengie SPA
CD8.30	Conservation Objectives for Dengie SPA
CD8.31	Dengie SPA feature condition summary
CD8.32	Map of Essex Estuaries Special Area of Conservation (SAC)
CD8.33	Citation document for Essex Estuaries SAC
CD8.34	Conservation Objectives for Essex Estuaries SAC
CD8.35	Essex Estuaries feature condition summary
CD10.1	List of draft conditions with notes (4 December 2020)
CD11.1	Certified copy of Unilateral Undertaking executed on 14 December 2020
CD13.1	Mr Newberry's Opening Statement for the appellant
CD.13.2	Mr Green's Opening Statement for the Council
CD13.3	Richard Everett's speaking note
CD13.4	CD123 Design Manual for Roads and Bridges - Geometric design of at-grade priority and signal-controlled junctions
CD13.5	The TRICS Good Practice Guide 2016
CD13.6	The Council's Presentation for the Character and Appearance roundtable discussion
CD13.7	Images supporting LPA's Presentation for the Character and Appearance roundtable discussion
CD13.8	Appellant's Presentation for the Character and Appearance roundtable discussion
CD13.9	Images supporting Appellant's Presentation for the Character and Appearance roundtable discussion
CD13.10	Note on the effect of the removal of the Rouses Farm development from the five year housing land supply

- CD13.11 Note regarding sites identified in the SHLAA (May 2020) as having resolution to grant permission
- CD13.12 Note on the effect of the removal of developments without extant consent (when SHLAA published) from the five year housing land supply
- CD13.13 Note regarding correspondence on the Unattributable Population Change
- CD13.14 Mr Green's Closing submissions for the Council
- CD13.15 Mr Newberry's Closing submissions for the Council
- CD13.16 Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Local Plan (10th December 2020)
- CD13.17 North Essex Authorities' Shared Strategic Section 1 Local Plan Schedule of Main Modifications
- CD13.18 Email of 4 December 2020 from the Council accompanying the submission of various requested documents
- CD13.19 Email of 11 December 2020 from the Council accompanying the submission of CD13.16 and CD13.17
- CD13.20 Email of 18 December 2020 from the Council commenting on the receipt of the Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Local Plan
- CD13.21 Email of 18 December 2020 from the appellant commenting on the receipt of the Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Local Plan

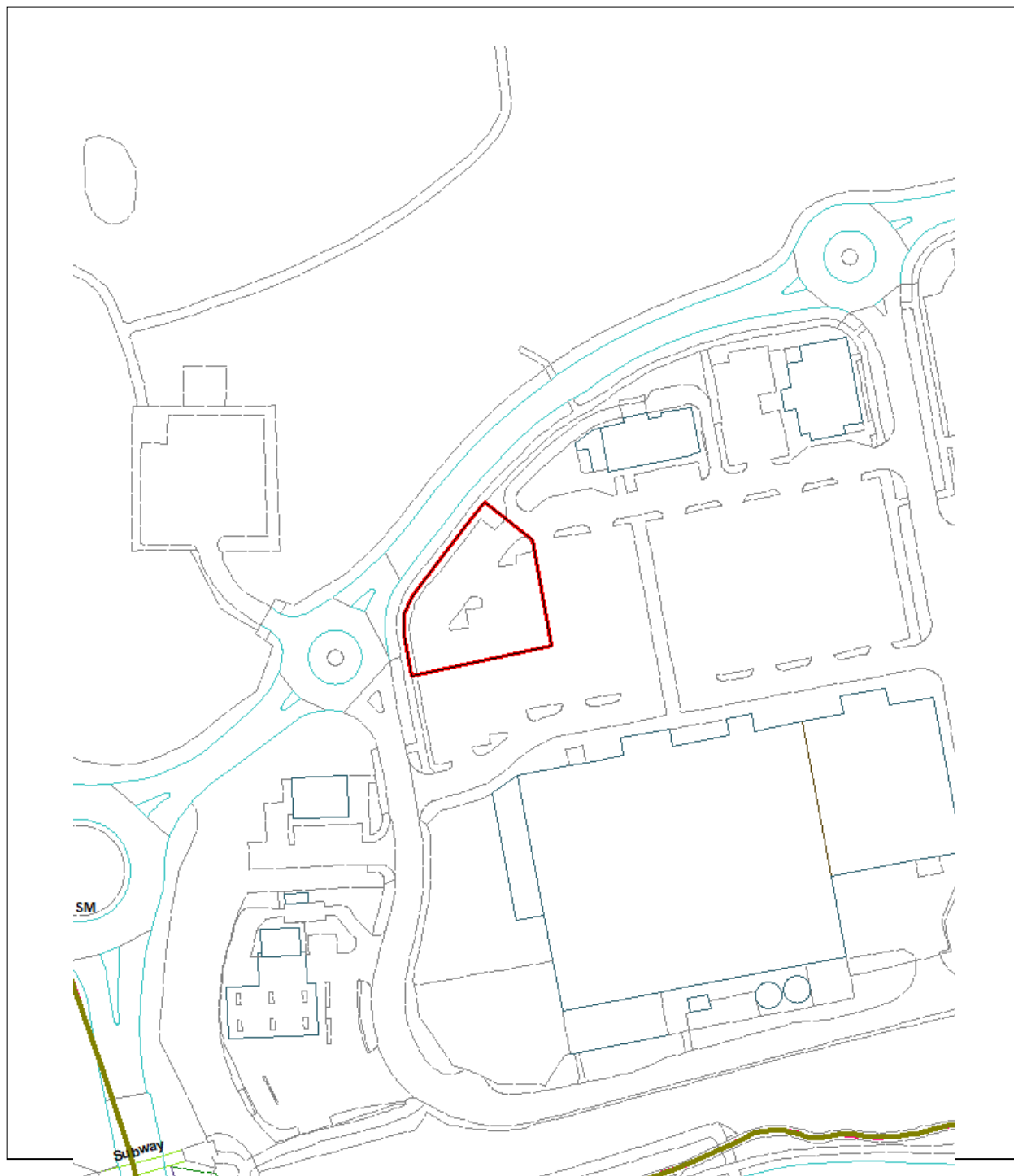


## PLANNING COMMITTEE

30<sup>th</sup> March 2022

### REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

#### **A.2 PLANNING APPLICATION – 20/00541/OUT – LAND WITHIN CAR PARK BROOK RETAIL PARK LONDON ROAD CLACTON ON SEA ESSEX**



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**Application:** 20/00541/OUT

**Town / Parish:** Clacton Non Parished

**Applicant:** Associated British Foods Pension Trustees Ltd

**Address:** Land Within Car Park Brook Retail Park London Road Clacton On Sea Essex  
CO15 3TP

**Development:** Outline application for the erection of a drive-thru coffee shop or restaurant selling food and drink for consumption on and off the premises (sui generis) and associated works

## 1. Executive Summary

- 1.1 The application is referred to the Planning Committee at the request of St John's Ward Councillor Mark Stephenson, due to concerns over the sequential test and the effect of the proposal on highways and parking considerations.
- 1.2 The proposal seeks outline planning permission with access to be considered. Appearance, landscaping, layout, and scale are reserved matters for consideration under a subsequent application.
- 1.3 The proposal is situated within the settlement development boundary of Clacton-on-Sea, which is a strategic urban settlement in the Local Plan settlement hierarchy. It is therefore an acceptable location for new development in principle. Because the proposal is for a town centre use in an out of centre, edge of settlement location, the retail sequential test has been carried out and passed; there is no sequentially preferable location for the development. The proposal is below the locally set threshold above which a retail impact assessment would be required and it would not therefore conflict with town centre first policy. Subject to conditions, it would also not conflict with Policy HP1 in terms of health considerations.
- 1.4 While the concerns of Councillor Stephenson and B&Q who object to the proposal are acknowledged, the technical evidence submitted with the application, together with the consultation responses of the local highway authority, conclude that the proposal would not have an adverse effect upon the road network or result in any unacceptable highway safety impacts. Therefore, in accordance with Policy CP2 and Paragraph 111 of the Framework, officers would advise that planning permission should not be refused for reasons related to highway matters.
- 1.5 Subject to conditions the proposal would comply with the requirements of the development plan and material considerations do not indicate that planning permission should be refused in this case. Significant weight should be given to the economic benefits and approval is therefore recommended.

### **Recommendation:**

That the Assistant Director for Planning be authorised to grant planning permission for the development subject to:-

- a) The conditions stated in section 8.2.

## 2. Planning Policy

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

*National Planning Policy Framework July 2021 (the Framework)*  
*National Planning Practice Guidance (The PPG)*

*Tendring District Shared Strategic Section 1 Local Plan (January 2021)*  
*Tendring District Section 2 Local Plan (January 2022)*

Relevant Section 1 Policies

SP1 Presumption in Favour of Sustainable Development  
SP3 Spatial Strategy for North Essex  
SP6 Infrastructure and Connectivity  
SP7 Place Shaping Principles

Relevant Section 2 Policies

SPL1 Managing Growth  
SPL2 Settlement Development Boundaries  
SPL3 Sustainable Design  
HP1 Improving Health and Wellbeing  
PP1 New Retail Development  
PP2 Retail Hierarchy  
PP4 Local Impact Threshold  
PP5 Town Centre uses  
PPL1 Development and Flood Risk  
PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
PPL10 Renewable Energy Generation and Energy Efficiency Measures  
CP1 Sustainable Transport and Connectivity  
CP2 Improving the Transport Network

Supplementary Planning Guidance

*Essex County Council Development Management Policies 2011 (the Highways SPD)*  
*Essex County Council Parking Standards Design and Good Practice Guide 2009*

**Status of the Local Plan**

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

**3. Relevant Planning History**

03/01413/DETAIL	Submission of amended reserved matters pursuant to planning permission 02/02418/DETAIL	Approved	15.10.2003
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02/02418/DETAIL	Comprehensive mixed use development comprising retail warehousing, 3 restaurants, car parking, access roads, junctions, footpaths and cycleways, country park, formation of Pickers Ditch walkway and TIC facility (part submission of reserved matters pursuant to planning permission 02/01974/FUL and conditions 6, 7, 8, 13 and 20 imposed upon planning permission 99/00523/OUT)	Approved	05.03.2003
02/00898/DETAIL	Reserved matters in respect of access arrangements in accordance with condition 01 of planning permission 99/0523/OUT	Approved	30.07.2002
99/00523/OUT	Comprehensive mixed use development comprising retail warehousing, restaurant/PH, car parking, access roads, junctions, footpaths & cycleways, country park, formation of Pickers Ditch walkway, park & ride car park & bus waiting area & TIC facility	Refused (Allowed on appeal)	29.10.2001
94/00384/OUT	Outline planning application for retail/leisure and park	Withdrawn	07.01.1999

#### 4. Consultations

ECC Highways Dept  
04.02.2021

[Following initial objection] The additional information that was requested and submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material.

The Transport Assessment accompanying the planning application has been considered in detail and the Highway Authority is satisfied that, the number of trips generated by the proposal on the highway network would be unlikely to be severe. Typically a roadside service facility does not generate many new trips to the network; the occasional customer will make a special trip, but generally people stop when already on-route (so called pass-by trips), so it is anticipated only some of these will be new to the network. Given these considerations:

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

conditions:

1. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
  - i. the parking of vehicles of site operatives and visitors
  - ii. loading and unloading of plant and materials
  - iii. storage of plant and materials used in constructing the development
  - iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

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

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety and in accordance with Policy DM 1 & 6.

3. The proposed amended island located on the corner of the proposed parking area shall be provided in accordance with drawing no. SP04.

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

4. The existing bollards at the KFC loading bay to be relocated further from the kerb to provide additional overhang space for the delivery vehicles accessing the loading bay and amendments to the lining at the loading bay.

Reason: To ensure that delivery vehicles using the site can do so in a controlled manner, allowing them to enter fully and improve on the existing layout in the interests of highway safety and in accordance with Policy DM1.

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

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

6. Prior to the development becoming operational a Delivery and Servicing Plan, and a Car Park Management Plan shall be submitted to, and agreed in writing with, the Local Planning Authority. The Plans to include the following, and be adhered to at all times:
  - i. Service vehicles servicing the site of maximum length 11.52 metres shall be used to service the coffee shop.
  - ii. Deliveries and refuse collection to the development to be managed in advance and limited to outside of operational hours only.
  - iii. An area to be kept clear outside operational hours to facilitate servicing and refuse collection for the coffee shop.
  - iv. A parking management strategy to be in place limiting customers to a maximum 90-minute stay only.
  - v. All parking spaces to be provided for customers only. No staff parking to be permitted to park on site.

Reason: In the interests of highway safety to ensure accordance with Policy DM1 and DM19.

7. Prior to the first use of any external lighting / floodlighting within the development site, the light source shall be so positioned and shielded, in perpetuity, to ensure that users of the highway are not affected by dazzle and/or glare, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that users of the highway are

not subjected to glare and dazzle from lighting within the development in the interest of highway safety in accordance with Policy DM1.

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

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

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

Notes:

- In making this recommendation the Highway Authority has treated all planning application drawings relating to the internal layout of the proposal site as illustrative only.
- Prior to any works taking place in the highway the developer should enter into an S278 agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works.
- All highway related details should be agreed with the Highway Authority.
- The development should be in accordance with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009.

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.
2. 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 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,

CO7 7LT

3. 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.

ECC Highways Dept  
07.02.2022

The Transport Assessment accompanying the planning application has been considered in detail and it is noted that a further car park survey was undertaken in December 2021. This indicates that there are over a hundred free spaces even with the reduced capacity with the introduction of the new unit. Based on the original and additional information provided, the Highway Authority is still satisfied that, the number of trips generated by the proposal on the highway network would be unlikely to be severe. As stated previously; typically, a roadside service facility does not generate many new trips to the network; the occasional customer will make a special trip, but generally people stop when already on-route (so called pass-by trips), so it is anticipated only some of these will be new to the network. Considering these factors:

The Highway Authority has nothing further to add to our previous comments dated 4 February 2021 for this application.

Building Control and Access  
Officer  
29.05.2020

Insufficient information to comment on for building regulation purposes.

Environmental Protection  
11.06.2020

Having examined the documents attached to the above planning application. I can inform you that I have no objection or request for further information regarding this application for outline planning permission. However when further information regarding the operation of the unit becomes available maybe in terms of a more detailed planning/building control application I would be grateful to be included in the consultees.

## 5. **Representations**

5.1 The application is reported to the Committee at the request of St John's Ward Councillor Mark Stephenson, due to concerns over the following:

- The site already has a KFC, Pizza Hut, Tesco Café, and an adjacent site has a McDonalds and a Public House (Smugglers Cove).
- The proposal is contrary to the sequential approach to considering mixed-use development proposal set out in [now superseded] Policy QL8.



- Access to the site is neither convenient nor attractive, contrary to [now superseded] Policy TR3A.
- Drive-thru proposals encourage the use of the car above other means of transport and this would be contrary to [now superseded] policies COM1, QL2 and QL10.
- The proposal would take up parking spaces used by customers of B&Q, KFC and Pizza Hut. Demand will increase and the proposal would conflict with [now superseded] Policies TR7 and TR8.

5.2 No public representations have been made.

5.3 On behalf of B&Q, RPS Consulting Services Ltd object on the following grounds:

5.4 *Access and Configuration*

- While submitted in outline permission for access is sought, yet two options are shown, neither of which reflect the arrangements for the KFC unit.
- The proposal would be likely to lead to traffic circling around the existing car parking spaces adjacent to B&Q and restrict the use of a large number of spaces available to the store close to its entrance, affecting circulation to the detriment of safety.
- B&Q have occupied the site for over 20 years and there is concern that the proposal could adversely affect the long term viability of the store.

5.5 *Parking*

- The car parking survey within the Transport Statement was undertaken in February 2020 which is not reflective of peak demand; B&Q is busiest at weekends, including Bank Holidays, typically Easter and Spring Bank Holidays when DIY and gardening activities peak.
- The applicant has not considered the impact of a reduction of 40 parking spaces and the provision of the proposal against the adopted Parking standards; the resultant effects would be contrary to Paragraph 109 [now Paragraph 111] of the Framework.
- Because the proposal is not located within a town centre or serviced by frequent bus services, a lower provision of parking is not appropriate in this location.

5.6 *Servicing and Deliveries*

- The Transport Statement does not include tracking or provision for deliveries or emergency vehicles.
- B&Q and Currys PC World benefit from rear service yards. The operator for the proposal has not yet been identified and there have been no discussions with B&Q.

5.7 *Traffic Impact*

- The Transport Statement utilises the TRICS data and trip estimates for a Costa drive-thru in Harwich, yet the proposal is for a coffee shop or a drive-thru restaurant. The surveys are therefore incomparable.
- No junction modelling has been undertaken to support the claims of the Transport Statement that it is unlikely to have a demonstrable impact on the public highway network.

5.8 *Sequential Test*

- The site is located in an out of centre location and the proposal does not support the viability and vitality of Clacton-on-Sea Town centre, which is identified as vulnerable in the Tendring District Council's Retail Study (2016).

- It is not clear if the Sequential Test has been undertaken on the smaller or the larger of the two built floor area figures supplied (between 150 – 380m<sup>2</sup>) and what flexibility has been applied.
- There are a number of opportunities to accommodate the development within the town centre – the sequential test has not been satisfied – the proposal conflicts with town centre first policy.

#### 5.9 *Locational Requirement*

- The Planning and Retail Statement identifies that the proposed development will meet a specific type of need. However, the A133 corridor is already well served by a range of food and beverage outlets – including a new McDonalds - the need is overstated.
- The Planning and Retail Statement does not thoroughly assess identified vacant premises within Clacton town centre, and Covid 19 is likely to mean more sites will become available in the short to medium term.

#### 5.10 *Old Gas Works Site*

- The applicant has failed to have regard to the fact that the Old Gas Works site benefits from planning permission for a comparable café/restaurant (167m<sup>2</sup> against the proposal for between 150-380m<sup>2</sup>) within a sequentially preferable town centre location. They fail to substantiate claims that it will not come forward within the next 12-18 months. With lead in times there is unlikely to be little difference between each site in terms of availability.

5.11 These objections are fully considered below.

### **6. Assessment**

#### 6.1 Site Context

6.2 Brook Retail Park is located to the east of the A133, approximately two miles north-west of Clacton-on-Sea Town Centre. Originally developed in the 2000's the retail park is occupied by B&Q, Currys PC World, a KFC drive-thru and a Pizza Hut Restaurant. To the east is a Tesco store with petrol filling station. On the opposite side of the A133 is Brook Park West, which contains a Lidl store, a McDonald's drive-thru restaurant and a public house. Beyond this is the Hartley Gardens mixed use allocation. Brook Country Park is located to the north on land designated as strategic green gap. To the south and east are residential areas located beyond landscape belts and Pickers Ditch.

#### 6.3 Planning History

6.4 The history of the retail park is set out above. No conditions within this history would preclude the proposal; Condition 19 of outline planning permission reference 99/00523/OUT simply sets a *maximum* provision of 600 parking spaces for the overall site which includes the Tesco store.

#### 6.5 Proposal

6.6 The proposal is in outline for the erection of a drive-thru coffee shop or restaurant, of between 150 – 380m<sup>2</sup>, selling food and drink for consumption on and off the premises (sui generis). Approval is sought for means of access only; permission for the appearance, landscaping, layout and scale of the development are not sought at this stage. Details supplied are indicative only and should be considered as such.

6.7 The application is supported by the following information:

- Application form and certificates;
- Site location plan;
- Block plan;
- Parameter plans (site and elevations, and 3D views);
- Planning Statement, incorporating a Sequential Test;
- Design & Access Statement;
- Transport Statement, incorporating Parking Survey (April 2020);
- Framework Travel Plan (April 2020);
- Technical Note – Response to Highways Comments (January 2021);
- Technical Note – Car Parking Survey (December 2021);
- Sequential test update March 2022;
- Drainage Strategy Report.

6.8 The supplied parameters plans show a maximum height of 6.5m and a minimum of 5.5m.

#### 6.9 Principle of Development

6.10 Strategic Section 1 Policy SP1 states that when considering development proposals the Local Planning Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework. They will always work pro-actively with applicants to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area. Development that complies with the Plan will be approved without delay, unless material considerations indicate otherwise.

6.11 The proposal is situated on an established retail park within the Settlement Development Boundary of Clacton-on-Sea, which is a Strategic Urban Settlement. While the site is not the subject of any specific allocation within the Local Plan the proposal accords with the broad spatial strategy to direct development to existing settlements, set out under Policies SP3, SPL1 and SPL2. The proposal is therefore acceptable in principle.

#### 6.12 Sequential Test

6.13 Policy PP1 New Retail Development states that town centres will be the main focus for new additional retail floor space. In order to plan positively to promote the vitality and viability of the town centres, Policy PP2 Retail Hierarchy establishes locations that should be considered as part of a sequential test. The presumption would be that any proposals for a main town centre use would only be permitted if, firstly, every effort had been made to locate it in the defined centres as a preference.

6.14 Paragraph 6.2.16 of the Section 2 Local Plan recognises that as well as the defined centres listed in Policy PP2, the District also contains a number of large modern retail parks or stand-alone supermarkets/retail outlets that are located in out-of-town centre (or edge-of-town centre) locations that often fulfil a need for bulky-goods retail that cannot be accommodated in town centres. Brook Retail Park is one such location.

6.15 The proposal is for a town centre use (as defined within Annex 2 of the Framework) outside of any defined town centre. In accordance with the above policies and Paragraph 87 of the Framework a sequential test should therefore be applied. Main town centre uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Where a proposal fails the sequential test planning permission should be refused (Paragraph 91).

- 6.16 Paragraph 88 of the Framework states that when considering edge of centre and out of centre proposals preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
- 6.17 As part of the submitted Planning Statement the applicant has carried out a sequential test. Because they state that the business requirement for the proposal is for a drive thru and is specific to the A133 corridor in north Clacton, and to serve an existing retail destination, neither Clacton Town Centre nor the district centres at Old Road or Great Clacton are considered suitable. Nevertheless, they have sought to identify and consider potential sites in and on the edge of Clacton Town Centre and the two district centres, to see if any are physically capable of accommodating the proposed development. If so, these sites were considered further. The identification of potential sites for assessment was based on site visits (February 2020), a review of the [then] adopted and emerging plans, and a review of premises being marketed where these were available. In view of the further objection received from B&Q highlighting the age of the sequential test and potential effect of Covid 19 on available sites, the applicant has refreshed their sequential test (March 2022).
- 6.18 The applicant has confirmed that the sequential test was carried out on the basis of the lower end of the floorspace figure (150 m<sup>2</sup>). They emphasise that the PPG and relevant case law makes clear that, in undertaking a sequential assessment, there needs to be a recognition that certain main town centre uses will have particular market and locational requirements which mean that they may only be located in a specific location (Paragraph: 012 Reference ID: 2b-012-20190722). They state that those sites identified by RPS / B&Q within Clacton Town Centre are unsuitable because they could not accommodate a drive thru lane.
- 6.19 The applicant states that none of the originally identified potential sites that were accessible on the edge of the two district centres were suitable for their requirements. In relation to Clacton Town Centre, the applicant considered the former M&S site. Also, the former Mothercare and Dorothy Perkins units. Neither were considered suitable due to their size, location and configuration. As part of their development plan review and having regard to the Clacton Town Centre Vision (2007), the applicant also considered the Jackson Road NCP car park site, the Civic Quarter, and the Station Gateway site.
- 6.20 Having regard to the Jackson Road site the applicant notes recent investment in signage and ticketing machines, and that there has been little indication from NCP that there is any appetite for redevelopment. Furthermore, deliverability of the Civic Quarter concept for land around the Library, Town Hall and High Street car park in the short to medium term is uncertain. The Station Gateway comprises land currently used by Fullers, the Sadds Yard industrial area and the railway station car park, where there has been no strong expression from owners to support redevelopment. In view of this, none of these sites have been considered to be available. Because a drive thru café/restaurant might sterilise the development potential of these sites and because they would not meet their locational requirement to the north of Clacton to serve existing facilities at Brook Retail Park, these sites have also been discounted as being unsuitable.
- 6.21 The applicant also identified the Old Gas Works site. However, due to the need for remediation and infrastructure works this was discounted as being unlikely to be available within a 12-18 month period. While the initial objection of B&Q states that the same timescales might be involved in development of the Brook Retail Park site, the passage of time has proved this to have been a reasonable conclusion to draw. Moreover, the Council is currently considering a variation of condition application for the Old Gas Works site (22/00200/VOC), which has not yet been decided, and ground has yet to be broken on the site. It would not therefore be unreasonable to assume that the Old Gas Works Site continues to be unlikely to become available within a reasonable period. Although B&Q state that the locational requirement for

the development is 'overplayed', the applicant justifies this by asserting that it does not meet their identified business need; The Old Gas Works site would not meet the operator's need which is in part to serve an established retail destination.

- 6.22 A further assessment of vacant units becoming available this year considered Jackson House, Edinburgh Woollen Mill, 2 Station Road and 40 Pier Avenue (the former GAME store) all within Clacton. Jackson House was too small, and none of the other sites could accommodate a drive thru lane.
- 6.23 B&Q is concerned with the degree of flexibility shown by the applicant in terms of format and scale. However, what is required by flexibility depends on the facts and circumstance of the case, and needs to be applied sensibly in the context of format and scale. Furthermore, the proposal is for between 150 – 380m<sup>2</sup> and the proposal is for a drive thru facility, and there is no requirement to disaggregate the proposal to the point where the business requirement would not be met.
- 6.24 From the above, officers are satisfied that the sequential test has been robustly applied and that there are no sequentially preferable sites that are available or suitable. As a result, there is no conflict with the above policies in this regard.
- 6.25 Retail Impact
- 6.26 Paragraph 90 of the Framework states that when assessing applications for retail and leisure development outside of town centres which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> gross floorspace).
- 6.27 Local Plan Policy PP4 Local Impact Threshold identifies the locally set floorspace thresholds above which a Retail Impact Assessment is required. Following the WYG Retail Study (2016) a tiered approach is set, with different thresholds based upon the location, role and function of the centre. For Clacton this is set at 929m<sup>2</sup> gross floorspace. Because the proposal is substantially below that (between 150 and 380m<sup>2</sup>), a retail impact assessment is not required. The proposal would not therefore conflict with Policy PP4 or the Framework in this regard.
- 6.28 Highway Safety/Parking
- 6.29 Paragraph 104 of the Framework states that transport issues should be considered from the earliest stages of development proposals, amongst other things, so that: a) the potential impacts of development on transport networks can be addressed; c) opportunities to promote walking, cycling and public transport use are identified and pursued, and e) parking and other transportation considerations are integral to the design of scheme. Paragraph 110 states that it should be ensured that appropriate opportunities to promote sustainable transport modes can be, or have been taken up. Also, that safe and suitable access to the site can be achieved for all users and that the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance. Paragraph 111 of the Framework makes clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.
- 6.30 National planning policy is reflected in Section 2 Policy CP2 Improving the Transport Network, which states that proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or if the residual cumulative impact on the road network would be severe. Amongst other things, Policy SPL3 requires that access to the site is practicable and the highway network will, following any required mitigation, be able to safely accommodate the additional traffic the proposal will generate and not lead to severe traffic

impact. The design and layout of the development should maintain and/or provide safe and convenient access for people with mobility impairments. Adequate vehicle and cycle parking should be provided.

- 6.31 The site is an established retail destination. It is therefore well served by the existing highway and footpath network and it is close to a bus stop which serves the retail park. Vehicular access to the site would be from Britton Way which links the A133 to London Road. Access from the west would be via the eastern arm of the roundabout off the A133. From the east, access would be via Britton Way from London Road. Both these junctions are of the requisite standard to serve the proposed development and no highway safety concerns are raised by the proposal in these regards. Because none of these roads are trunk roads and the proposal would not result in any adverse impact on the safety of, or queuing on a trunk road, Highways England are not statutory consultees.
- 6.32 B&Q expressed a legitimate concern, that while permission for means of access is sought two options were initially shown. In order to clarify the position a revised block plan was therefore requested and which fixes access to from the first aisle of the car park. Of the two options this would result in the least circuitous access route. Clearly the proposal will have an impact on the existing circulatory route around this part of the retail park as it was originally constructed. Furthermore, there may be some initial confusion by users of it. However, this has been considered and discussed at length with Essex County Council as Local Highway Authority (County Highways). They confirm that it would not result in conditions that would be prejudicial to highway safety and could be adequately addressed by a scheme of directional signage to manage traffic within the car park. Although B&Q are also concerned about the loss of parking to the front of store, where customers would wish to load bulky items into their vehicles, the proposal would still allow for adequate provision front of store, albeit reduced. These considerations are not therefore considered by officers to be a reasonable basis for refusal.
- 6.33 As originally constructed the retail park has 311 parking spaces. The proposal would reduce the number of parking spaces by around 40 spaces. However, a minimum of 271 will be retained for use across the retail units. The submitted Planning Statement cross-refers to the Transport Statement (April 2020) which included a parking survey. In response to an initial objection from County Highways a Technical Note was submitted in January 2021. The survey stated that the parking demand peaked at 134 cars on the Saturday surveyed, indicating that less than half the available spaces were being used even at the busiest time. The survey also indicated that parking for disabled people was more than adequate with no less than 6 free spaces available at any one time during the survey period.
- 6.34 However, because the initial survey was carried out between a Friday and Saturday during February 2020 and in view of the concerns of the adjacent Ward Councillor and the objector, officers felt that this timing was not representative of busier times when peak parking stress could be expected. The applicant was therefore asked to conduct a further parking stress survey which was duly carried out between Friday 3 and Saturday 4 December 2021. Although B&Q are concerned that their busiest times are during Easter and Christmas, this is considered to be more representative of times of increased parking demand.
- 6.35 The new parking survey data for the Saturday also shows a similar occupancy pattern to the February 2020 data; the maximum accumulation recorded in February 2020 was 134 vehicles with an occupancy of 141 recorded in December 2021. When compared to the future parking provision this results in a maximum parking stress of 52.0% across both surveys for a Saturday. The applicant asserts that based on the survey data the loss of parking resulting from the proposal would not impact on customers. County Highways have confirmed that they consider the level of parking provision with the development proposed would be sufficient to meet the needs of the retail park. There is no evidence to dispute this finding.

- 6.36 The submitted transport evidence considers notional queues length with reference to surveys at comparable Costa sites in Banbury and Didcot on a Wednesday and a Saturday, and concludes that the maximum queue observed of eleven vehicles could be accommodated within the retail park, and a maximum of eight vehicles within the site itself.
- 6.37 Due to COVID 19 existing traffic surveys were not possible. As such, traffic flows were obtained for a neighbouring application (as agreed with County Highways). The vehicular impact at the A133 / Britton Way / Little Ravens Way roundabout was considered and it was concluded that there would be a 'negligible impact' on the highway network; the maximum uplift was considered to be less than 1.4%. Of course, it is reasonable to expect many trips will be linked to existing visits to the retail park. Although the objector disputes the basis of trip generation calculations, in terms of the TRICS data studied, these concerns have not been validated by the County Highways response.
- 6.38 The submitted evidence also provides swept path analysis of existing loading bays and demonstrates that vehicles can continue to service KFC. Nevertheless, some minor amendment to bollards and road lining are required as reflected in the recommended highway conditions.
- 6.39 Notwithstanding the absence of objection from County Highways, in order to appreciate how the existing and resultant parking provision with the proposal would fit with current Parking Standards, officers requested an assessment. The assessment provided is as follows:

*Existing*

Land Use	Operator	Floor Area (m <sup>2</sup> )	Total Floor Area (m <sup>2</sup> )	Vehicular Parking Standard	Parking
A1 (Excluding Food Stores)	B&Q	4,862	6,319	Maximum 1 space per 20m <sup>2</sup>	316 Maximum
	Curry's / PC World	1,457			
A3 (excluding Transport Cafes)	Pizza Hut	355	355	Maximum 1 space per 5m <sup>2</sup>	71 Maximum
A5 Hot Food Takeaway	KFC	304.5	304.5	Maximum 1 space per 20m <sup>2</sup>	15 Maximum
<b>Total Permitted</b>					<b>402 Maximum</b>
<b>Parking Provision</b>					<b>311</b>
<i>Proportion of maximum standard</i>					<i>77.4%</i>

*Proposed:*

Development Scenario	Existing Parking Provision	Proposed Provision*	Maximum Standard for the Proposed use	Maximum Standard for the Existing use****	Future Maximum Parking Provision	Proportion of Maximum Standard
Development as A3	311	281	76 Maximum**	402 Maximum	478 Maximum	58.8%
Development as A5			19 Maximum***	402 Maximum	421 Maximum	66.7%

*Notes:*

- \* = loss of approximately 30 spaces based on ten spaces provided within the red line
- \*\* = based on 380m<sup>2</sup> and a maximum parking standard of 1 space per 5m<sup>2</sup>
- \*\*\* = based on 380m<sup>2</sup> and a maximum parking standard of 1 space per 20m<sup>2</sup>
- \*\*\*\* = as set out in Table 1

- 6.40 It is clear that at 77.4% of the maximum SPD requirement existing parking provision is lower than the maximum. Furthermore, that figure would be reduced to between 58.8% and 66.7% with the addition of the proposal. However, while that may be and although the concerns of B&Q and the St John's Ward Councillor are well understood, the technical evidence submitted

with the application, together with the consultation responses of County Highways, all lead officers to conclude, on the evidence, that the proposal would not result in residual cumulative impacts on the highway network that would be severe. There may also be additional queuing during busy periods within the car park and this may be inconvenient at times, and circulation routes around this part of the retail park would alter. Nevertheless, none of these considerations would result in unacceptable impacts on highway safety. Therefore, notwithstanding the resultant parking provision against the *maximum* provision set out in the Parking SPD, in accordance with Policy CP2 and Paragraph 111 of the Framework, Officers would advise that planning permission should not be refused on highway grounds.

#### 6.41 Public Health

6.42 Amongst other things, Paragraph 92 c) of the Framework states that planning decisions should aim to achieve healthy places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs. For example, through access to healthier food. Criterion d) of Policy HP1 Improving Health and Wellbeing states that the Council will work to improve the health and wellbeing of residents in Tendring, by working in collaboration with partners, including Public Health, to avoid a concentration of fast food takeaways where the number of outlets would be likely to harm public health objectives, particularly in deprived communities, local areas of poor health and near schools.

6.43 Within a short distance of the site there are existing Pizza Hut, KFC and McDonald's outlets, a public house and a Tesco Café. This is not however an uncommon arrangement on larger retail parks. While the applicant disagrees that the proposal would result in an over-concentration of fast food takeaways in this location, they have confirmed that their client would be happy to accept a condition to restrict the sale of hot food to ancillary sales, meaning that the premises could only be occupied by a coffee shop led operator, as opposed to one specialising in hot foot takeaways.

6.44 In terms of distance to schools the proposal is over 400m from the nearest – Cann Hall Primary to the south west and a similar distance from Great Clacton Junior School. The nearest senior school (White Hall Academy) is almost a mile away. Furthermore, the area in which the site is located is not especially deprived, and there is little evidence that it is an area of poor health. Moreover, healthier menus and nutritional information are commonly supplied by operators to ensure healthier diet choices can be made. Bringing all these considerations together, officers do not feel it would be reasonable to refuse planning permission due to public health concerns in this case.

#### 6.45 Visual Amenity

6.46 The proposal is for a small drive thru unit within an established retail park, adjacent to two structures that are similar in scale and form to the submitted broad parameter plans. The building would follow the peripheral siting of these smaller structures in an arc at the edge of the site. As such, the siting and indicative scale of building proposed would be appropriate to its context and it would not harm the character and appearance of the area. Detailed appearance is a matter that would be considered at reserved matters stage. As such, there is no conflict with Policies SP7 or SPL3 in this regard.

#### 6.47 Renewable Energy/Energy Efficiency Measures

6.48 Policy PPL10 requires that all development proposals should demonstrate how renewable energy solutions appropriate to the building's site and location have been included in the scheme. For new buildings, they should be designed to facilitate the retro-fitting of renewable energy installations. Measures to be considered include electric vehicle rapid charging points. Paragraph 112 e) of the Framework states that applications for development should be



designed to enable the charging of plug-in and other ultra-low emission vehicles in safe, accessible, and convenient locations.

6.49 The applicant has confirmed that they are content with a condition to require a scheme for the provision of electric vehicle charging points. Renewable energy and efficiency measures would be considered at reserved matters stage when detailed proposals would be drawn up, in order to fully comply with the requirements of Policy PPL10.

6.50 Drainage

6.51 The hard to soft landscaping ratio of the site would not change under the proposal (if anything it is likely to reduce) and the application is supported by a drainage strategy report which includes a preliminary foul and surface water drainage assessment. The report concludes that the proposal would not be at risk of flooding and that surface water could be managed by existing car park surface water infrastructure. Nevertheless, in order to comply with Policy SPL3 Part B criterion g), a condition should be attached to require precise details of a drainage scheme which incorporates sustainable drainage measures.

6.52 Other Matters

6.53 Amongst other things, Paragraph 81 of the Framework states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The proposal would create up to twelve full time equivalent jobs and there would be some limited economic benefits during construction. It would be right to attach substantial weight to these positive aspects of the development.

6.54 Because the site is remote from existing and planned residential development it would not give rise to harm to the living conditions of existing or future occupants, having regard to noise and disturbance. Nor would it therefore be necessary to restrict opening hours.

6.55 Conditions

6.56 If Members are minded to approve the application then standard time limits for outline permission/reserved matters submissions should be applied and the approved plans specified. The maximum gross floorspace should be restricted by condition. Appearance, scale, layout and landscaping are all reserved matters and so conditions are not necessary in these regards at this stage.

6.57 Pre-commencement conditions should require a Construction Management Plan, in the interests of highway safety. Delivery and Servicing and Car Park Management Plans should be required for the same reason. In order to prevent glare to road users and prevent unnecessary light pollution a condition is necessary to control external lighting. While appearance is a reserved matter, details of any external plant and/or machinery should be required in the interests of protecting visual and aural amenity.

6.58 A condition to require details of electric vehicle charging points has been agreed. The applicant is also agreeable to a condition to require the drive thru to be occupied by a coffee shop led operator with hot food sales being ancillary (as opposed to a hot food take-away led operator). While principally agreed in the context addressing policy HP1 health considerations as has been set out above, this is also necessary because County Highways confirm the application has been assessed on this basis, in terms of queuing and the effect upon the highway network.

6.59 In their consultation response County Highways also recommend conditions to require details of the internal parking layout and footways. However, layout is a reserved matter and so these details would fall to be considered under any subsequent detailed application. Cycle parking facilities should however be required to promote sustainable transport opportunities in order to comply with Policy CP1 and the Framework.

6.60 A condition is also recommended to require amendments to KFC's loading bay bollards/lining, in order to allow greater space for deliveries with the proposed development in the interests of highway safety. Amended kerbed islands as may be required should be required to be shown under any reserved matters layout.

## **7. Conclusion**

7.1 From the above the proposal is acceptable in principle. The sequential test has been passed and there is no requirement for an impact assessment. Subject to conditions, the proposal would not result in unacceptable impacts on highway safety, or residual cumulative impacts on the road network that would be severe. The proposal would not harm the character and appearance of the area, residential amenity, or public health considerations. As a result the proposal would not conflict with the provisions of the development plan or the Framework. There are economic benefits of the proposal that should be given significant weight, and no other material considerations indicate that planning permission should be refused.

## **8. Recommendation**

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

### **8.2 Conditions and Reasons**

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

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

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

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 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 appearance, landscaping, layout and scale have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

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

4. The development hereby permitted shall be carried out in accordance with the following approved plans (strict accordance with regard to the location, broad accordance with regard to the parameters):

Site Location Plan, Drawing No 0100 Rev C  
Parameter Plan – Site Plan, Drawing No 0150 Rev E

Parameter Plan – Site Elevations, Drawing No 0151 Rev C  
Parameter Plan – 3D Views, Drawing No 0152 Rev C

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

5. The gross floorspace of the development hereby approved shall not exceed 380m<sup>2</sup>.

Reason: For the avoidance of doubt and in the interests of highway safety.

6. The development shall be occupied by a coffee shop led operator and sales of hot food shall be ancillary only.

Reason: In the interests of public health in accordance with Policy H1, and in the interests of highway safety because the highway implications of the proposal have been considered on this basis.

7. Prior to the commencement of development, a Construction Management Plan shall have been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan 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, and;
- iv) Wheel and underbody washing facilities.

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

8. Prior to the commencement of development, details of electric vehicle charging points and cable enabled parking spaces to be provided shall be submitted to and approved in writing by the local planning authority. The charging points shall be installed in accordance with the approved details prior to first use and thereafter retained for the lifetime of the development.

Reason: In the interests of promoting sustainable travel opportunities and reducing carbon emissions in addressing climate change.

9. Prior to the commencement of development, a scheme for the disposal of foul and surface water shall have first been submitted to and approved in writing by the local planning authority. The scheme shall follow sustainable drainage principles and shall thereafter be installed prior to first use.

Reason: In order to ensure satisfactory drainage details, in the interests of reducing the risk of flooding elsewhere and to protect the water environment.

10. Prior to the commencement of development, the bollards at the KFC loading bay shall be relocated further from the kerb in order to provide additional overhang space for delivery vehicles, and amendments shall be made to the lining of the loading bay, in accordance with a scheme which shall have first been submitted to and approved in writing by the local planning authority. Thereafter, the scheme shall be implemented prior to the commencement of works.

Reason: In the interests of highway safety.

11. Prior to the above ground works, details of all external plant and equipment shall have first been submitted to and approved in writing by the local planning authority. The details shall include expected noise levels. Thereafter, external plant and equipment shall be installed only in accordance with the approved details.

Reason: In the interests of visual and aural amenity.

12. Prior to the first use, details of any external lighting shall have first been submitted to and approved in writing by the local planning authority. The scheme shall be so designed to ensure that lighting is shielded, and that users of the highway are not affected by dazzle and/or glare. Thereafter, external lighting shall be installed only in accordance with the approved details.

Reason: In the interests of highway safety and so as to prevent unnecessary light pollution.

13. As part of any reserved matters submission for the layout, any consequential changes required to kerbed parking islands shall be shown. Thereafter, kerbed parking islands shall be amended in accordance with the approved layout prior to first use.

Reason: In the interests of highway safety.

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

Reason: In order to promote sustainable transport.

15. Prior to first use, a Delivery and Servicing Plan and a Car Park Management Plan shall have first been submitted to and approved in writing by the Local Planning Authority. The Plans shall include the following and be adhered to at all times thereafter:

- a. Service vehicles servicing the site of maximum length 11.52 metres shall be used to service the coffee shop;
- b. Deliveries and refuse collection to the development to be managed in advance and limited to outside of operational hours only;
- c. An area to be kept clear outside operational hours to facilitate servicing and refuse collection for the coffee shop;
- d. A parking management strategy to be in place limiting customers to a maximum 90-minute stay only;
- e. All parking spaces to be provided for customers only. No staff parking to be permitted to park on site, and;
- f. Directional signage within the retail park.

Reason: In the interests of highway safety and protecting the amenity of the locality.

## 8.1 Informatives

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

2. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.
3. 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 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT

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

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

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

### Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a

public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.

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

#### Finance Implications

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

### **10. Background Papers**

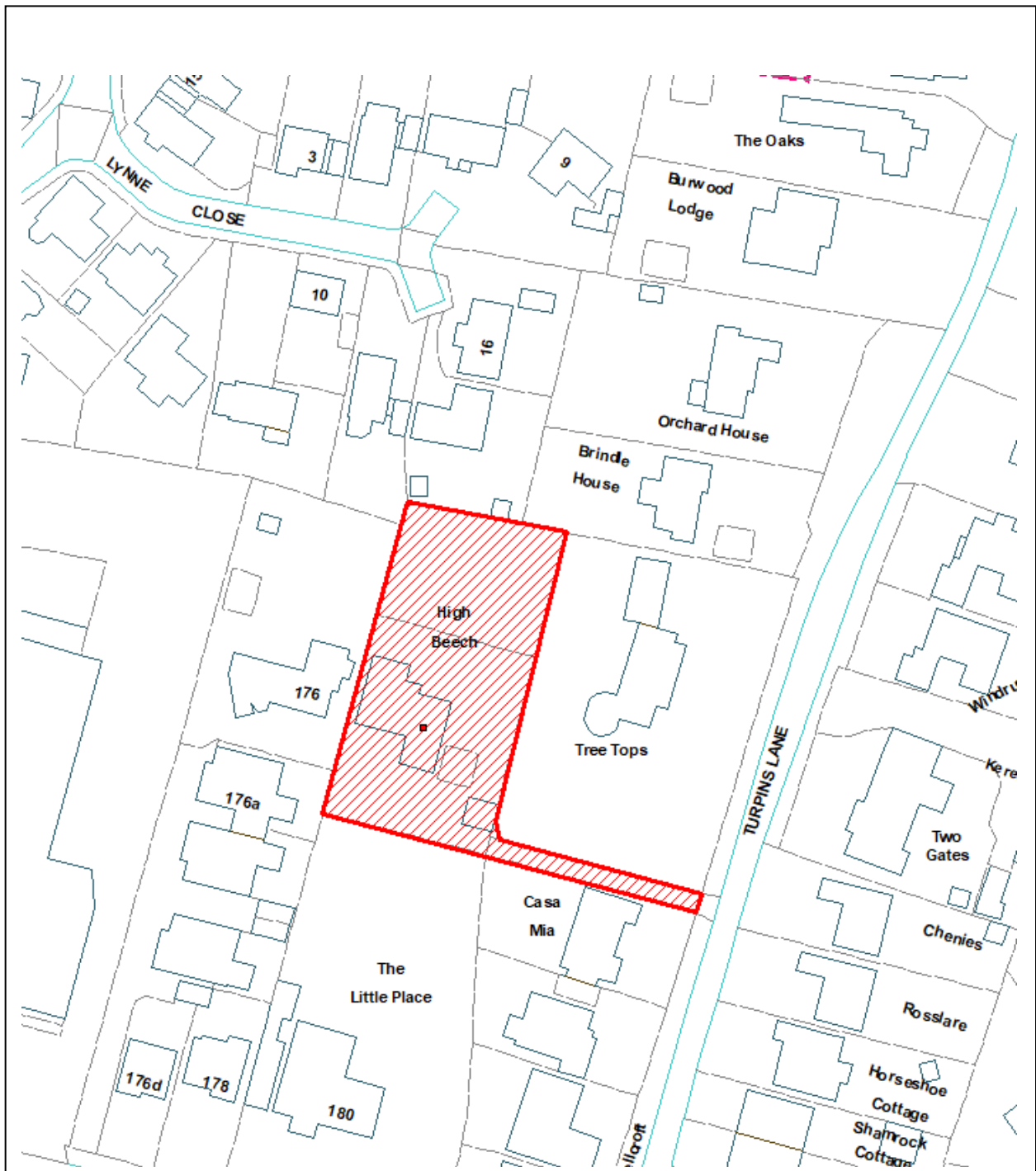
- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report)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

## PLANNING COMMITTEE

30<sup>th</sup> March 2022

### REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

#### **A.3 PLANNING APPLICATION – 21/00738/FUL – HIGH BEECH TURPINS LANE KIRBY CROSS FRINTON ON SEA**



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**Application:** 21/00738/FUL

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

**Applicant:** Mr and Mrs Swift

**Address:** High Beech Turpins Lane Kirby Cross Frinton On Sea Essex CO13 0PB

**Development:** Erection of 4 no. new bungalows with associated garages and landscaping (following demolition of existing bungalow)

## 1. **Executive Summary**

- 1.1 The application has been called in by Councillor Anne Davis.
- 1.2 The proposal is for the demolition of the existing dwelling and the construction of four detached bungalows with associated parking and landscaping. It is also proposed to increase the width of the main access way from Turpins Lane. The site is located within the defined Settlement Development Boundary of Frinton-on-Sea and is considered to be an existing backland site.
- 1.3 The proposal is considered to be of a size, scale and design in keeping with the overall grain of residential development in the surrounding area. There are no concerns raised regarding the impact on the neighbouring residential properties and subject to conditions is considered to be acceptable in regards to Highways and Parking impacts.
- 1.4 The application was withdrawn from the November Committee meeting due to concerns raised by Councillors regarding the ecology impacts of the development and more information was requested in regard to the protection measures proposed for the existing TPO tree located adjacent to the proposed accessway. An Arboricultural Impact Assessment and Preliminary Method Statement, Preliminary Ecological Assessment and a Construction Management Plan have now been submitted to support the application.

### **Recommendation:**

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

- a) Subject to the conditions stated in section 8.2

## 2. **Planning Policy**

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

*National Planning Policy Framework July 2021 (The Framework)*  
*National Planning Practice Guidance*

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

SP1	Presumption in Favour of Sustainable Development
SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP3	Spatial Strategy for North Essex
SP4	Meeting Housing Needs



SP7 Place Shaping Principles

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

SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
HP5	Open Space, Sports & Recreation Facilities
LP1	Housing Supply
LP3	Housing Density and Standards
LP4	Housing Layout
LP8	Backland Residential Development
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL10	Renewable Energy Generation
CP1	Sustainable Transport and Accessibility

Supplementary Planning Guidance:

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)  
Essex County Council Development Management Policies 2011  
Essex County Council Parking Standards Design and Good Practice Guide 2009  
Tendring Provision of Open Recreational Open Space for New Development SPD 2008 (Open Space and Play SPD)

**Status of the Local Plan**

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

In relation to housing supply:

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

2.4 The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021

measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

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

FRW/61/65	Refusal	15 flats. (Plan 6824)
FRW/84/57	Unconditional	(O/L) Erection of 2 det. houses fronting Turpins Lane
FRW/136/63	Refusal	(O/L) Erection of one dwelling. (Plan 6202) APPEAL DISMISSED 28/4/64
FRW/54/68	Unconditional	(O/L) Erection of single storey dwelling house. (Plan 7922)
FRW/54/68/1	Unconditional	Erection of bungalow and 2 garages. (Plan 8043)
FRW/235/72	Unconditional	Ext to bungalow. (Plan 9868)

### **4. Consultation Responses (Summarised)**

Frinton and Walton Town Council 24.05.2021	Objection to development due to backland development, cramped appearance and lack of amenity space, poor access for residents and other vehicles including refuse collection vehicles, lack of parking and impact on openness of streetscene.
ECC Highways Dept 14.07.2021	No objection - Subject to conditions A site visit was undertaken in conjunction with this planning application. The existing access to the host dwelling is a concrete driveway at a width of approximately 2.9 metres, this has been cleared of vegetation and provides a wider access of approximately 5 metres, with an existing pinch point of 3.7 metres adjacent to an established tree near the vehicle access. The verge width at the access is approximately 2.3 metres wide and Turpins Lane is a cul-de-sac classed as a local road in the County's Route Hierarchy and has an approximate carriageway width of 3.6 metres.  From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to conditions and mitigation regarding visibility splays, turning facility, no unbound material, width of private drive, surface water, vehicle and cycle parking, garage sizes, provision of travel packs and the submission of a Construction Management Plan
TDC Environmental Protection 26.05.2021	No objection subject to conditions regarding contaminated land and the submission of a Construction Method Statement, in order to minimise potential nuisance to nearby existing residents caused by construction works.
TDC Environmental Protection (after submission of CMS) 26.01.2022	The submitted CMS has been reviewed and can confirm that EP are satisfied with its contents.
TDC UU Open Spaces 09.06.2021	Contribution required There is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby, with one play area to serve Kirby Cross and Kirby Le Soken located in Halstead Road. This play area has very recently been refurbished. There is still a need to try to reduce the deficit within the catchment of Frinton, Walton & Kirby. The next closest play area is located at Park Playing Fields,

Frinton and is widely used by the whole community, and undoubtedly residents of Kirby will travel to this play area. This play area is in need of renovation to cope with any additional development with in this catchment area.

Due to the significant lack of play facilities in the area it is felt that a contribution towards play is justified and relevant to the planning application improvements to the open space and play area at Park Playing Fields Frinton.

TDC Building Control  
14.05.2021

No comments at this stage.

TDC Tree & Landscape  
Officer  
09.06.2021

No objections subject to conditions to protect the TPO tree on site.

The main body of the application site currently forms part of the residential curtilage of the host property. It is set out and is being used as garden.

The narrow access road serving the application site is within the Root Protection Area (RPA) of a mature Poplar previously situated within the grounds of an adjacent property. The position of the garden boundary fence has been re-positioned and the tree is now within the area of land forming the access to the main body of the application site. The tree is afforded formal legal protection by Tendring District Council Tree Preservation Order (TPO) - 13/06/TPO Tree Tops, Turpins Lane, Frinton on Sea.

Any work to the surface of the access road within the Root Protection Area (RPA) of the Poplar has the potential to cause damage and harm to the tree, therefore any proposed works to improve the surface of the access road should be supported by technical details of the construction method to ensure that the roots of the preserved tree are not harmed by the development. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations. The use of 'No-Dig' construction techniques with a permeable finish to the surface to allow movement of water and gaseous exchange should be sufficient to avoid causing harm to the tree.

It is considered that the stem of the tree is not at great risk of harm or damage by vehicles using the access road as vehicles will be travelling at low speeds. The RPA of the Poplar should be physically protected for the duration of the construction phase of any consented development. This information should be in accordance with BS5837; 2012 Trees in relation to design, demolition and construction - Recommendations'

The garden of the existing dwelling contains several established shrubs and a few small trees however their position and amenity value is such that they do not merit retention or formal legal protection by means of a TPO.

As the site does not feature in the public realm there is little public

benefit to be gained by securing soft landscaping of the site. Nevertheless, it may be desirable to secure details of soft landscaping for the benefit of any future residents of the dwellings.

TDC Tree & Landscape Officer (After submission of AIA)  
28.01.2022

The information provided, by the applicant, is in accordance with BS5837; 2012 Trees in relation to design, demolition and construction – Recommendations and adequately demonstrates that the development proposal could be implemented without causing harm to the retained tree as long as the requirements of the Arboricultural Impact Assessment (AIA) and Preliminary Arboricultural Method Statement (AMS) are complied with fully.

TDC Waste Management  
15.06.2021

No objection - Access road to be wide enough to allow full access to 2.5 meter wide waste collection vehicles. Access road to also be constructed to suitable standard to withstand weight of 26 tonne waste collection vehicles.

## 5. **Representations**

5.1 Eight representations have been received following a public consultation which included a site notice posted at the site and neighbouring consultation letters sent out to the adjacent properties.

### 5.2 **Summary of Matters Raised**

- Area not included in Tendring new Local Plan
- Disruption for residents during construction
- Access for waste vehicles is too narrow
- Habitat destroyed and damage to TPO tree
- Increase in cars using the existing narrow Turpins Lane and accessing site causing congestion. No footpaths and very little space to pass other vehicles
- Overdevelopment of site and unsuitable backland development
- Increase in traffic in area and exiting onto B1033
- Detrimental impact on residents of Casa Mia and Tree Tops adjacent to site
- Impacts on local infrastructure
- Suitable boundary treatments required to site to screen the development from neighbouring properties and retain privacy as existing trees/vegetation has been removed
- Vehicle parking within site is inadequate, no provision for visitors parking

5.3 All material planning considerations raised will be taken into account within the following assessment of the proposal.

## 6. **Assessment**

### **Site Context**

6.1 The application site is located on the western side of Turpins Lane, and is a backland site, with vehicle access from Turpins Lane, running between the properties 'Tree Tops' and 'Casa Mia'. The site currently comprises of a detached bungalow and detached garage set within a plot of some 0.17 hectares, which is laid out as amenity space for the property.

6.2 The surrounding area is residential in nature with a mix of dwellings of varying styles and designs along Turpins Lane. Turpins Lane is a fairly narrow road, despite comprising of a

number of residential properties. Small high density cul-de-sacs comprising primarily of bungalows with modest sized rear gardens are seen within the surrounding area, particularly along Hunt Way, The Warrens, Lynne Close, Village Close and between Nos 176 and 178 Frinton Road which are all in close proximity to the site. To the east of the site along Turpins Lane, more two storey dwellings are present. Overall, the surrounding area is considered to be to be very mixed in terms of designs and styles of dwellings.

- 6.3 The application site lies within the Defined Settlement Development Boundary of Frinton-on-Sea within both the adopted Tendring District Local Plan (2007) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). The site is not located with a Conservation Area and is within Flood Zone 1, which has a low risk of flooding.

#### Proposal

- 6.4 The application seeks full planning permission to demolish the existing dwelling and garage and construct 4 detached bungalows along with associated parking and landscaping and to widen the existing access road from Turpins Lane.

#### Principle of Development

- 6.5 The development plan for Tendring Council comprises of the adopted Tendring District Local Plan 2013-2033 and Beyond Sections 1 and 2. The site lies within the Frinton-on-Sea Settlement Development Boundary as established within the adopted local plan.
- 6.6 Policy SPL2 supports new development within defined settlement development boundaries which would encourage sustainable patterns of growth and carefully control urban sprawl. Within a defined Settlement Development Boundary, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.
- 6.7 Specifically Policy LP8 is relevant due to the nature of the development constituting additional backland development in this residential location. LP8 states that proposals for the residential development of “backland” sites must comply with the following criteria:

- a. where the development would involve the net loss of private amenity space serving an existing dwelling, that dwelling must be left with a sufficient area of private amenity space having regard to the standards in this Local Plan;

#### **Not applicable in this case as the existing dwelling is to be demolished**

- b. a safe and convenient means of vehicular and pedestrian access/egress must be provided that does not cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will not be permitted;

**The existing driveway is to be widen and the existing hedge to the front of Tree Tops is to be cut back in line with the boundary of the highway verge providing the required visibility splays (see plan: 937/01 Rev C) . Therefore it is not considered that the proposal would result in undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Matters of highway safety are also addressed satisfactorily (Discussed in further detail within the main body of the report)**

- c. the proposal must avoid “tandem” development using a shared access;

**The development has its own existing access and is therefore not considered to be tandem development.**

- d. the site must not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution;

**The development proposed would see the demolition of the existing dwelling and provide 4 dwellings, making good use of the whole site.**

- e. the site must not be on the edge of defined settlements where likely to produce a hard urban edge or other form of development out of character in its particular setting;

**The site is within a residential area, surrounded by other residential properties and within the settlement development boundary of Frinton-on Sea**

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

**The site is considered to be an existing backland site and therefore the development is not deemed to be out of character with the area or would set a harmful precedent for similar forms of development in the immediate locality. (Discussed in further detail within the main body of the report)**

- 6.8 Given the overall grain of the surrounding built environment and regard to the siting of the existing dwelling to the rear of the properties fronting Turpins Lane, there is no objection to additional dwellings in this backland location. Similar forms of development can be seen in Village Close, Wellfield Way and Lynne Close which are all in close proximity to the application site to the north and back onto the rear gardens of properties in Turpins Lane. These areas and that opposite the site, adjacent to Two Gates, include dwellings fronting the highway with further dwellings to the rear set back in secondary locations with their own access points. This very much forms part of the established built up residential character of the area and therefore the proposal would not significantly alter or harm the current pattern of residential development in the locality.
- 6.9 Furthermore, there can be no objection to the single storey scale of the proposed dwellings having regard to the mixed character of the area which includes both bungalows and two storey dwellings directly adjacent to the site. The single storey scale is an appropriate response to the character of the area will in fact minimise the visual and neighbouring impact of the development.
- 6.10 Therefore the site is considered to be an appropriate location for additional backland development. As such the principle of residential development on the site is acceptable subject to the detailed considerations relevant to this proposal which are set out below.

#### Appearance, Layout and Scale

- 6.11 The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. (Para 126 NPPF).
- 6.12 Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness. The development should relate well to its site and surroundings

particularly in relation to its siting, height, scale, massing, form, design and materials and should respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features.

- 6.13 The proposed development comprises of four detached modest bungalows, which are considered to be of a size, scale and design in keeping with the bungalows to the rear of the site. The external materials are facing brickwork, horizontal boarding, coloured render and clay and blue black slate tiles. The specific details have not been submitted with this application, but can be secured by condition and are considered to harmonise with the mixed palette of external materials and finishes in the surrounding area. The bungalows would be well balanced in terms of symmetry and the hipped-roof design would reduce the bulk and mass of the development in this backland location. The submitted plans demonstrate the layout of the proposed bungalows which allows for a well-spaced development retaining at least 1 metre distance to both side and rear boundaries when bordering neighbouring dwellings.
- 6.14 All new dwellings must also accord with the Technical housing standards – nationally described space standards (2015) which sets out minimum gross internal floor space for new dwellings. A two bedroom, one storey dwelling requires a minimum of 61-70sqm of Gross Internal Floorpace (GIA). There are also requirements for storage and bedroom sizes. From the plans submitted the proposed bungalows meet these requirements. It is also considered that the internal layout is appropriate with all habitable rooms having adequate natural light.
- 6.15 Policy SPL3 requires that all new development makes provision for adequate private amenity space. Policy LP4 seeks provision of private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area. The amenity space provided is of a size considered to be appropriate for each of the 2 bed dwellings proposed and forms a well laid out and usable space for future occupants.
- 6.16 Therefore, having regard to the above policy considerations, the proposal is considered to be policy compliant in terms of its scale, layout, appearance and design. The proposal would make more efficient use of the site, consistent with Paragraph 124 of the Framework, and, because it would not be at odds with the character and appearance of the area it would accord with the overall thrust of Policy LP3 in relation to density.

#### Impact on Residential Amenity

- 6.17 The NPPF, Paragraph 130 maintains that policies and decisions should result in new development that creates 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.
- 6.18 Policy SPL3 seeks new development that is designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents, provision is made for adequate private amenity space, waste storage and recycling facilities and the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.
- 6.19 The application site is neighboured by a number of residential dwellings on all sides and the existing access runs between Casa Mia and Tree Tops, both of which front Turpins Lane.
- 6.20 The proposed development has been designed to minimise any overlooking or loss of privacy issues, with all main habitable rooms located to the front and rear elevations, therefore separated from the shared boundaries by the rear amenity areas. Any side windows which are close to the shared boundaries serve the bathrooms and en-suites to the bungalows and also comprise of a back door to the kitchen. These windows can be conditioned to be obscure glazed to reduce any overlooking or loss of privacy impacts. Given the current sitting of the

existing bungalow, the proposal moves the built form further away from the shared boundary with Nos. 176 and 176a Frinton Road, which are the closest dwellings to the development.

- 6.21 The proposed garages to Plots 3 and 4 are set back within the site and as a result are closer to the rear boundary of No 14 Lynne Close, however the garage building is separated from the main bulk of this dwelling by its amenity area.
- 6.22 Therefore, given the proposed orientation of the bungalows, their single storey nature and the existing residential use of the site it is not considered that this development would impact on the residential amenities of these neighbouring occupiers in any regard.
- 6.23 Garden sizes and internal floorspace would be sufficient to meet the needs of future occupants and provide a good level of amenity. Overall, the proposal would comply with Policies LP3 and LP4, and the relevant policies of the Framework.

#### Trees Protection Measures

- 6.24 Policy SPL3 seeks new development that respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. The design and layout of the proposed development should maintain or enhance important existing site features of landscape, ecological, heritage or amenity value.
- 6.25 A large part of the application site makes up the residential curtilage of the host property. It is set out and used as residential amenity space/garden, however the site has been vacant for some time and the site is rather untidy in this respect.
- 6.26 The proposed widening of the existing access road to serve the proposed dwellings is within the Root Protection Area (RPA) of a mature Poplar, which is subject to a TPO (13/06/TPO). Any works to the surface of the access road within the Root Protection Area (RPA) has the potential to cause damage and harm to the tree.
- 6.27 A full Arboricultural Impact Assessment including preliminary method statements has now been submitted in support of the application and assesses three trees and the hedgerow within the development site which are all to be retained.
- 6.28 Recommendations include hand dig and excavation methods within sections of the RPA of T1 (Poplar) and T2 (Horse chestnut) to prepare levels for the proposed widening of the existing access and for the new access/upgraded crossover. A suitable method statement has been provided to limit the impact that may otherwise occur from deep subbase support (no-dig construction), mechanical excavation and tearing of roots.
- 6.29 No further tree works are required to facilitate construction of the proposal or access to the site and the trees can be adequately protected using temporary barriers in accordance with BS 5837. Following development, the trees will not be further obscured, the development is therefore considered to have a low impact upon visual amenity value.
- 6.30 The Tree protection and method statements that have been provided within this AIA are considered to reduce the risk of direct and indirect development related damage that may otherwise occur to the retained trees. In conclusion, the method statements and tree protection proposals as outlined in the AIA must be implemented as part of the development, as to construct the proposed dwellings with limited disturbance to the trees, in particular the Poplar which is prominent within the site and the subject of a TPO protection order. The Council's Tree Officer also concurs with this view. A condition can therefore be added to any grant of planning permission to secure this.



- 6.31 Post construction it is not considered that the stem of the tree is at great risk of harm or damage by vehicles using the access road as it is considered that the vehicles will be travelling at low speeds and movements would be minimal in relation to the dwellings on the site.
- 6.32 The garden of the existing dwelling is to be cleared to make way for the development and details of the landscaping proposed is shown on the submitted landscape plan (937 07B). Details have been included for the new access way and the landscaping scheme is considered to be acceptable.

#### Ecology and Biodiversity Implications

- 6.33 Policy PPL4 seeks to protect and enhance the local biodiversity and geodiversity. Whilst the site is not of any specific designation or is it considered to be within a rural setting, the site has been vacant for some time and is somewhat overgrown. Therefore a Preliminary Ecology Assessment has been undertaken and the report has been submitted to support the application.
- 6.34 The PEA concluded that the site contains limited habitats that are common and widespread, and no evidence of legally protected species was found and therefore no further surveys are required. There is a reasonable likelihood of nesting birds being present in trees. To mitigate, any work that could impact an active nest should be carried out between October and February inclusive. To discourage the possible colonisation of legally protected species including reptiles, it is recommended that the site is maintained (e.g. through mowing) until any development commences, subject to planning permission being granted. The development has scope to include wildlife friendly, native planting and habitat boxes for roosting bats and nesting birds. These measures will contribute to biodiversity net-gain in accordance with Paragraph 174(d) of the NPPF (2021).
- 6.35 These measures can be adequately secured by suitable conditions to any grant of planning permission.

#### Highway Safety/Parking

- 6.36 Paragraph 110 of the Framework seeks to ensure that safe and suitable access to a development site can be achieved for all users. Policy SP7 seeks new development to include parking facilities that are well integrated as part of the overall design. The sentiments of this policy are carried forward within Policies SPL3 and CP1. Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new development.
- 6.37 The Local Highway Authority has been consulted on this application and subject to conditions and mitigation regarding visibility splays, turning facility, no unbound material, width of private drive, surface water, vehicle and cycle parking, garage sizes, provision of travel packs and the submission of a Construction Management Plan, the proposal is considered to be acceptable. An additional site plan (Plan No 937/01 Rev C) has been submitted following further consultation with the Highways Authority, which shows the existing hedge in front of Tree Tops which is very overgrown, cut back to the boundary with the property Tree Tops and the highway verge. This property is in the same ownership as the application site, therefore this can be a condition of any planning permission granted, including a requirement for the hedge be maintained in accordance with the plan referenced above to ensure suitable visibility splays, and a safe egress point, can be achieved and maintained. These arrangements will allow for the provision of the required 2.3m wide visibility splays to ensure safe access when entering and exiting the site.
- 6.38 The existing access has been widened to some 5m in width, however a pinch point does exist of some 3.7 metres in width adjacent to the Poplar tree. However forward visibility along the

access way leading to the 4 dwellings and indeed when driving out, is considered to be very good and the access way is considered to be wide enough to accommodate construction vehicles. Highways have asked for the first 6 metres of the access road, with its junction with the highway to be some 5m in width. This has been indicated on submitted plan and this is sufficient to allow vehicles turning into the accessway adequate passing space for vehicles exiting the site before the pinch point of the tree. Due regard is also given to the fact that proposal will result in a nett increase of 3 dwellings which is not considered to be significant in the context of the site and surrounding area. A dedicated paved refuse area is located to the northern side of the accessway and is outside of the visibility splays and would not therefore impact on highway safety of vehicles existing the site on refuse collection days.

- 6.39 The Essex County Council Parking Standards 2009 require that dwellings with 2 or more bedrooms be served by a minimum of 2 parking spaces. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied upon to provide a parking space, should measure 7 metres by 3 metres internally. The submitted plans show that each dwelling would be served by a garage and parking space that meets policy requirements. A size 3 turning head is provided to ensure that vehicles entering and leaving the site can do so in a forward gear in the interests of highway safety. Given only the minimum level of parking is proposed, it is considered appropriate to condition the garages to be used for parking purposes only and not converted to habitable accommodation.
- 6.40 Subject to the use of conditions, the proposal would accord with Policies SPL3 and CP1 and the Highways and Parking SPDs. The proposal is not therefore considered to result in any unacceptable harm to highway safety or result in residual cumulative impacts on the highway network that would be severe. According to Paragraph 111 of the Framework, planning permission should not therefore be refused on highways grounds.

#### Legal Obligations - Recreational Impact Mitigation

- 6.41 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.
- 6.42 This new residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites, but is approximately 1800 metres from Hamford Water SAC, SPA and Ramsar. The Council's Habitats Regulation Assessment has concluded that, with the proposed mitigation (which has been secured by means of an executed Unilateral Undertaking), the project would not have an Adverse Effect on the Integrity of the sites included within the Essex Coast RAMS and therefore the proposal is in accordance with the Essex Coast RAMS SPD.

#### Legal Obligations - Open Space/Play Space Contribution

- 6.43 In regard to proposals for new residential development, Policy HP5 seeks contributions to the provision and/or enhancement of open space in areas where there is a deficiency in provision, or poor quality of, open spaces. This provision can be either on or off-site depending on the scale and nature of development and the level and quality of existing facilities in the local area.
- 6.44 The Council Open Space's officer has identified a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby. There is currently one play area to serve Kirby Cross and Kirby Le Soken which is located in Halstead Road. Although this play area has very recently been refurbished, there remains a need to reduce the deficit within the catchment area of Frinton, Walton & Kirby. The next closest play area is located at Park Playing Fields in Frinton and is considered to be widely used by the whole community. This play area is in need of renovation

in order to deal with the increase use from the additional development in this catchment area. Therefore, a financial contribution is recommended.

- 6.45 Such a contribution meets the tests under Paragraph 57 of the Framework and the necessary Unilateral Undertaking has been completed. The proposal therefore complies with saved Policy HP5 along with the Open Space and Play SPD.

#### Contaminated Land

- 6.46 It has been identified that there may be potential contamination on the site. The applicant is therefore required to undertake a suitable and sufficient site investigation and any necessary risk assessment to ensure proposed site is free from contamination. This can be secured by the standard contaminated land condition added to any grant of planning permission. Subject to the verification report the site would be suitable for the proposed use, and the development would therefore accord with Policy SPL3 and Paragraph 183 of the Framework.

#### Environmental Protection

- 6.47 The applicant has submitted a Construction Method Statement, outlining measure to minimise potential nuisance to nearby existing residents caused by the construction works. This CMS has regard to noise control, vehicle movements and working hours, use of machinery and mobile plant, piling works and both emission and dust control and has been found to be acceptable by the Council's Environmental Protection Officer.

#### Renewable Energy

- 6.48 Emerging Policy PPL10 addresses the renewable energy generation and energy efficiency measures for residential development involving the creation of one or more dwellings. Measures including electric car charging points should be considered. Paragraph 112 e) of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. This can reasonably be dealt with by the use of a planning condition.

### **7. Conclusion**

It is considered that the proposed development is consistent with the National and Local Plan Policies identified above. In the absence of material harm resulting from the proposal the application is recommended for approval.

### **8. Recommendation**

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

#### **8.2 Conditions and Reasons**

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

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

2. The development hereby permitted shall be carried out in strict accordance with the following approved plans and reports:

- Drawing No 937/01C – Proposed Site Layout (with Highway visibility splays)
- Drawing No 937/02 – Plot 1 Proposed Elevations and Floorplan
- Drawing No 973/03 – Plot 2 Proposed Elevations and Floorplan
- Drawing No 973/04 – Plot 3 Proposed Elevations and Floorplan
- Drawing No 973/05 – Plot 4 Proposed Elevations and Floorplan
- Drawing No 973/06 – Plots 3 & 4 Garage Elevations and Floorplan
- Drawing No 937/07C – Proposed Landscaping Plan

Arboricultural Impact Assessment and Preliminary Method Statements prepared by Tree Planning Solutions dated 20th January 2022 Reference No. TPSarb5511221  
 Preliminary Ecological Appraisal Version 1 prepared by Hybrid Ecology Ltd, dated December 2021

Reason: In the interests of proper planning and for the avoidance of doubt.

3. Prior to the commencement of development hereby permitted, the specific requirements of paragraphs numbered 1 to 3 below must have been undertaken. If unexpected contamination is found after development has commenced, no further development shall be carried out on that part of the site affected by the unexpected contamination until the requirements of paragraph 4 have been complied with in relation to such contamination.

1. Site Characterisation - An investigation and risk assessment, in addition to any assessment provided within the planning application, shall be carried out in accordance with a scheme to assess the nature and extent of any contamination of the site. The investigation and risk assessment shall be undertaken by a competent person and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority. The report shall include:

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments; and

(iii) an appraisal of options for remediation and a proposal with preferred option(s). This appraisal shall be conducted in accordance with the Environment Agency Model Procedures for the Management of Land Contamination (CLR 11).

2. Submission of Remediation Scheme - A detailed Remediation Scheme to ensure that the site is suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works of remediation to be undertaken, remediation objectives and criteria, timetable of works and related site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the use of the land after remediation.

3. Implementation of Approved Remediation Scheme - The Remediation Scheme required under paragraph 2 above shall be carried out in accordance with its terms prior to the commencement of any works of construction on site unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be notified in writing a minimum of two weeks prior to commencement of the remediation scheme works of the date that the remediation works will commence. Following completion of the measures identified in such approved Remediation Scheme, a verification report to demonstrate the effectiveness of the remediation carried out shall be submitted to the Local Planning Authority.

4. Reporting of Unexpected Contamination - In the event that contamination is found which was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall then be undertaken in accordance with the requirements of paragraph 1 above and, where remediation is necessary, a new Remediation Scheme shall be prepared in accordance with the requirements of paragraph 2 above and submitted to and approved in writing by the Local Planning Authority. Following completion of all necessary measures identified in such Remediation Scheme as may be approved, a verification report shall be submitted to and approved in writing by the Local Planning Authority in accordance with paragraph 3 above. In such circumstances, no further works of development shall be carried out to that part of the site until such time as the requirements of this paragraph have been satisfied.

Reason - To ensure that any risks (to future users of the land and neighbouring land and to controlled waters, property and ecological systems) arising from any land contamination are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

4. Prior to the commencement of development the tree protection measures outlined in the submitted AIA must be in place. All other requirements of the Arboricultural Impact Assessment (AIA) and Preliminary Arboricultural Method Statement (AMS) must be complied with fully, prior to, during and after construction of the development hereby approved.

Reason - To ensure that the roots of the preserved tree are not harmed by the development.

5. The submitted Construction Method Statement dated Jan 2022 shall be adhered to throughout the construction period for the development.

Reason - In the interests of residential amenity and highway safety and to reduce the likelihood of complaints of statutory nuisance.

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

Reason - To ensure the adequate retention and maintenance of the approved landscaping scheme for a period of five years in the interests of visual amenity, the quality of the development and the character of the area.

7. Prior to first occupation of the development hereby approved, all mitigation and enhancement measures and/or works must be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Hybrid Ecology dated December 2021) submitted with the application.

Reason: To conserve and enhance the biodiversity of the site

8. Prior to the commencement of above ground works precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction must be submitted to and agreed, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development.

Reason - To ensure the development is carried out in accordance with the consent sought, has an acceptable design, having regard to Policy SPL3 of the Tendring District Local Plan 2013-33 and Beyond.

9. Prior to above ground works, a scheme for the provision of electric vehicle charging facilities for each dwelling shall have first been submitted to and approved in writing by the local planning authority. Thereafter the charging facilities shall be installed in a working order, prior to first occupation of the respective plot.

Reason: In order to promote sustainable transport.

10. Notwithstanding the provisions of Schedule 2 Part 1 Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extensions, additions, porches or alterations to the dwellings or their roofs shall be carried out and no outbuildings, enclosures, swimming or other pools shall be erected except in complete accordance with details which shall previously have been approved, in writing, by the Local Planning Authority following the submission of a planning application for such development.

Reason - To ensure that sufficient private amenity space for the dwelling is retained in the interests of residential amenities.

11. All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling.

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

12. There should be no obstruction above ground level within a 2.3 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway either side of the existing vehicle access from Turpins Lane as shown on Site Plan 937/01 Rev C. Such vehicular visibility splays shall be provided before the road junction/access is first used by any vehicular traffic associated with the development hereby approved, including construction traffic, and retained free of any obstruction at all times.

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

13. The hedge/boundary treatment to the property known as Tree Tops as shown on Plan No. 937/01 Rev C, must be maintained as such and in accordance with this plan at all times to prevent the hedge/boundary treatment encroaching on the Highway verge boundary.

Reason: To ensure the required visibility splays are maintained free of obstruction in the interests of highways safety.

14. Prior to occupation of the development the vehicular turning facility, as shown on Approved Plan: 951/01A shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

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

15. No unbound material shall be used in the surface treatment of the vehicular access

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

16. Prior to the occupation of any of the proposed dwellings hereby approved, the proposed private drive shall be constructed to a minimum width of 5.0 metres for at least the first 6 metres back the Highway Boundary with Turpins Lane, as shown on plan and agreed with the Highway Authority.

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

17. 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

18. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, and sealed. The vehicle parking area and garages shall be retained in this form at all times and not used for any purpose other than the parking of vehicles that are related to the use of the development.

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

19. All single garages should have a minimum internal measurement of 7m x 3m

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

20. The ground floor windows and door on the flank elevations of the dwellings hereby approved, must be obscure glazed to a minimum of Level 4 on the Pilkington scale of privacy or equivalent, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Reason: To protect the residential amenities of the neighbouring occupiers

### 8.3 Informatives

#### Positive and Proactive Statement

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

#### Highways Informatives

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 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT

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

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

## **9 Additional Considerations**

### Public Sector Equality Duty (PSED)

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

### Human Rights

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



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

#### Finance Implications

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

### **10 Background Papers**

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

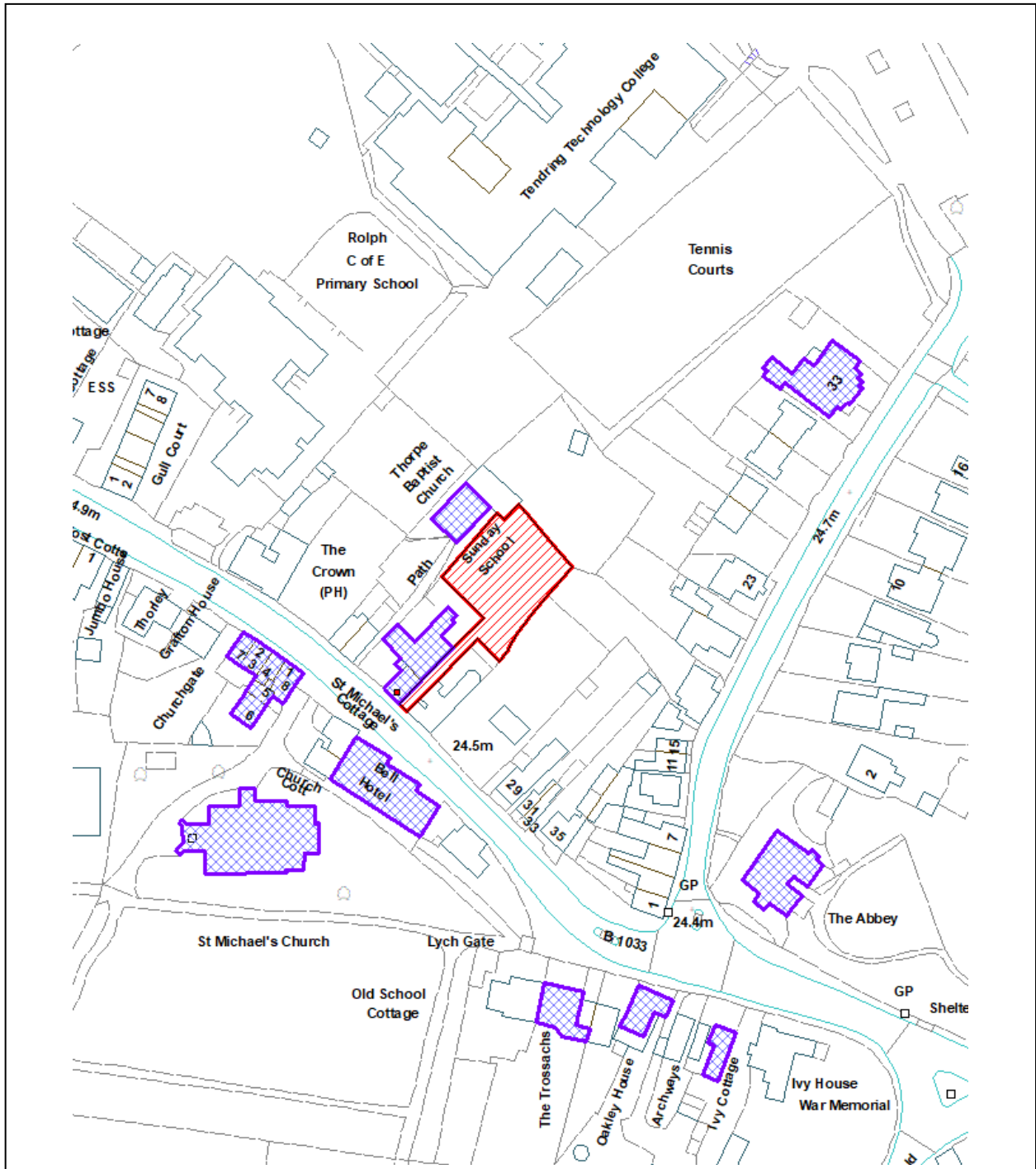
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## PLANNING COMMITTEE

30<sup>th</sup> March 2022

### REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

#### **A.4 PLANNING APPLICATION – 21/02022/FUL – CHINESE COTTAGE RESTAURANT HIGH STREET THORPE LE SOKEN CLACTON ON SEA ESSEX**



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**Application:** 21/02022/FUL

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

**Applicant:** Bocking Homes Limited

**Address:** Chinese Cottage Restaurant High Street Thorpe Le Soken Clacton On Sea Essex CO16 0DY

**Development:** Proposed erection of two-bedroom bungalow together with carport, further car parking space, refuse provision and amenity space on land associated with the Chinese Cottage Restaurant.

## 1. Executive Summary

- 1.1 This application is before Members at the request of Councillor Land, for concerns regarding the development's impact on urban design/street scene, highways impact and/or other traffic issues and positive/negative Impact on neighbours.
- 1.2 The application seeks full planning permission for the erection of a single storey dwelling, with an attached car-port to the right hand side. The dwelling's footprint would be a reversed L-shape with a rear-gable projection and a feature oversail porch roof to the front elevation. Both the main roof and that of the car-port would be gabled-ended. The eaves of the dwelling would be in the region of 2.7m and it would have a ridge of approximately 5.5m. Areas of hardstanding are proposed to the perimeter of the dwelling, along with a grassed back garden with bin-storage to the rear right hand boundary.
- 1.3 Thorpe Le Soken High Street has the character of a typical village high street with a number of eating establishments, boutique shops and a small supermarket. In terms of the surroundings, the scale of development which has a direct relationship with the street scene comprises a variety of two and 1.5 storey buildings with the odd-example of very low-key 1.5 and single storey buildings. The character of the locale is evidentially of a historic core which is demonstrated by the number of listed buildings and the conservation area designation.
- 1.4 The area behind the Chinese Cottage restaurant neither enhances nor contributes to the character of the conservation area, comprising a fairly large informal (untidy) un-marked out area for vehicles using the restaurant.
- 1.5 It is considered that the low-key scale of the proposal will preserve the character of the conservation area. Sufficient space is retained around the dwelling and to neighbouring properties to not appear cramped or result in any material harm to residential amenities. The proposed dwelling provides ample parking and retains at least seven (marked-out) spaces for the restaurant.
- 1.6 In the absence of any material harm resulting from the development in regards to its individual appearance, its impact on the wider streetscene, its impact on the character of the Conservation Area, its impact on neighbours in regards to amenity and the parking provision for both the new dwelling and existing restaurant, the application is recommend for approval.

**Recommendation:**

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

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

**2. Planning Policy**

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

**National:-**

*NPPF National Planning Policy Framework July 2021*

*National Planning Practice Guidance*

**Local:-**

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

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

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

- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- HP5 Open Space, Sports & Recreation Facilities

- LP1 Housing Supply
- LP4 Housing Layout
- LP8 Backland Residential Development
- PPL4 Biodiversity and Geodiversity
- PPL8 Conservation Areas
- CP1 Sustainable Transport and Accessibility

#### *Supplementary Planning Documents*

Tendring Provision of Recreational Open Space for New Development SPD 2008

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

#### *Local Planning Guidance*

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

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

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

In relation to housing supply:

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

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021

measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

### 3. Relevant Planning History

DP/V/9D(6)	Unauthorised works to trees	Current	
TPC/94/34	Yew hedge reduce	Current	10.08.1984
01/00064/TCA	Trim Yew trees adjacent to Baptist Church Listed Building to fence level to prevent structural damage	Approved	07.02.2001
01/01752/LBC	Repair fire damaged roof with replacement concrete Norfolk Pantiles	Refused	28.03.2002
07/00443/TCA	2 No. Yew Trees - lop/trim back	Approved	17.04.2007
20/01293/FUL	Construction of a new 3 bedroom dwelling with associated garage.	Withdrawn	24.03.2021
21/02022/FUL	Proposed erection of two-bedroom bungalow together with carport, further car parking space, refuse provision and amenity space on land associated with the Chinese Cottage Restaurant.	Current	

### 4. Consultations

Essex County Council Heritage  
23.12.2021

The application is for the proposed erection of two-bedroom bungalow together with carport, further car parking space, refuse provision and amenity space on land associated with the Chinese Cottage Restaurant

Heritage assets affected by this proposal:

- Bell Inn, Grade II\*
- Thorpe Baptist Church, Grade II
- Loblollies, Grade II; and
- Thorpe-le-Soken Conservation Area

I advise that this application should demonstrate that the development of the car park to the existing restaurant (in a listed building) will not hinder this structure remaining in its optimum viable use. It is unclear if this has been resolved.

I recommend at least one roof light is removed from the rear pitch as this is an over fenestration of an incongruous characteristic.

It should also be confirmed that new windows will be in timber.

Aside from the notes above I have no objection to this application.

I recommend conditions are attached to any permission requiring samples of all new external materials and surface materials. Detailed drawings should also be provided, by condition, of all new windows, rooflights and external doors.

ECC Highways Dept

A site visit was undertaken in conjunction with the previous planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated April 2019. It is noted that this application is similar to previous application 20/01293/FUL which was for a 3-bedroom dwelling with associated garage and is also similar to an application (18/01388/FUL) on an adjoining site that was granted planning permission in 2018 for a pair of semi-detached properties. The proposal is at the end of a private road with an established vehicular access and retains adequate room and provision for off-street parking and turning, for the proposed dwelling and retained parking spaces for the host site, The Chinese Cottage. The host site is in a central location, and it is noted that the restaurant is relatively small, considering these factors the need for a large area of car parking is not essential and the applicant has demonstrated that the retained spaces will be adequate to cater for the restaurant:

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

Tree & Landscape Officer  
23.12.2021

The application site is currently set out as a car park and appears to be being used in association with the Chinese Cottage Restaurant.

The main body of the land does not contain any trees or other significant vegetation however there are several trees on and close to, the boundary of the application site.

If planning permission is likely to be granted a condition should be attached to secure compliance with the recommendations contained in the AIA to ensure that retained trees are physically protected for the construction phase of any development for which planning permission may be granted.

There appears to be little scope or opportunity for new



soft landscaping to soften and screen the appearance of the development.

Building Control and Access  
Officer  
21.12.2021

Agent needs to demonstrate how access for a fire fighting vehicle is to be provided that meets the requirements of Approved Document B.

UU Open Spaces  
17.01.2022

Response from Public Realm  
Open Space & Play

There is currently a deficit of 2.43 hectares of play and formal open space in Thorpe-le-Soken.

The Parish have recently developed another area of open space known as Lockyer Wood. They have included some play provision but this is an ongoing project to provide reduce the deficit of play facilities in Thorpe.

Due to the significant lack of provision in the area if it felt that a contribution, is justified and relevant to the planning application and that this money would be used towards providing additional facilities at Lockyers Wood.

Essex County Council Archaeology  
12.01.2022

The Essex Historic Environment Record (HER) shows that the proposed development lies within an area of archaeological interest and within the Thorpe le Soken Conservation Area. The proposed development is located in the core of historic Thorpe-le-Soken. The proposed development is therefore likely to impact on late medieval or post-medieval archaeological remains relating to the historic settlement of Thorpe-le-Soken.

RECOMMENDATION: A Programme of Trial Trenching followed by Open Area Excavation

## 5. **Representations**

5.1 The Parish Council objects to the development, particularly:-

- Highways safety as Thorpe high street is already a significantly overburdened and congested part of the highway
- Access to the site via an extremely narrow driveway and is located at where the road narrows, often creating a 'pinch point' for traffic.
- Construction traffic accessing the site would prevent a significant safety risk to existing road users and pedestrians.
- The loss of the car parking facilities for the restaurant would push customer traffic onto the high street, further adding to the parking issues which contribute to the existing safety issues.
- The harms the development would cause to nearby heritage assets and character of the area.

5.2 One letter was received which objects to the landscaping scheme, particularly:-

- The proposed double thickness hedge of Pyracantha has very sharp thorns

- If this proposal is approved I am assuming that the Church would be responsible for keeping our side trimmed which would be at considerable cost to us
- It would not stop people brushing against it accidentally and receiving scratches
- one plant can spread 1-3 metres any access to those walls would be unobtainable
- If we needed to do repairs to these walls how would we be able to get to them through a thorny double hedge
- Proposed Planting of one Acer tree appears very close to our building it could restrict our light into the building it is also near to where our drains are situated.

Member call-in

5.3 This application is before Members at the request of Councillor Land for the following reasons:-

- Impact on urban design/street scene
- Highways impact and/or other traffic issues
- Positive/Negative Impact on neighbours

## **6. Assessment**

6.1 The main considerations in this instance are:

- Site Context;
- The Proposal;
- Relevant Planning History and Principle of Development;
- Scale, Layout and Appearance;
- Backland Residential Development
- Highway Safety, Access and Parking;
- Trees and Landscaping;
- Conservation Area
- Residential Amenities;
- Financial Contribution - Recreational Disturbance;
- Financial Contribution - Open Space and Play Space; and,

### Site Context

6.2 The site is in the region of 0.1 hectare and comprises an unmade hardstanding, boundary hedges and trees. The land is associated with The Chinese Cottage (a restaurant fronting the main High Street) and provides the informal parking for the restaurant.

6.3 The character of the surrounding area is heavily urbanised, with a number of residential and commercial properties to all sides.

6.4 There are a number of Grade II Listed Buildings in proximity; Thorpe Baptist Church to the north-east and adjacent to the application site. Loblollies to the south-west and adjacent to the application site. Bell Inn due south on the south side of the High Street.

6.5 The site is located within the Thorpe-le-Soken Conservation Area. The special quality of Thorpe-Le-Soken Conservation Area derives, in the main, from its importance in medieval times, indicated by the wealth of historic buildings lining a sinuous main street.

6.6 The site is also located within the Thorpe-le-Soken Settlement Boundary.

### Relevant Planning History

- 6.7 In September 2020 application 20/01293/FUL was submitted which sought planning permission for a two-storey 3 bedroom dwelling with associated garage.
- 6.8 The application was withdrawn in March 2021.

#### Proposal

- 6.9 The application seeks planning permission for one two-bedroom bungalow with an attached car-port to the right hand side.
- 6.10 The dwelling's footprint would be a reversed L-shape with a rear-gable projection and a feature oversail porch roof to the front elevation. Both the main roof and that of the car-port would be gabled-ended.
- 6.11 The eaves of the dwelling would be in the region of 2.7m and it would have a ridge of approximately 5.5m.
- 6.12 Areas of hardstanding are proposed to the perimeter of the dwelling, along with a grassed back garden with bin-storage to the rear right hand boundary.

#### Principle of Development

- 6.13 Thorpe Le Soken is classified as a Rural Service Centre in the Local Plan to 2033. The site is located within the Development Boundary therefore there is no principle objection to the proposal, subject to the detailed considerations discussed below.

#### Scale, Layout and Appearance

- 6.14 Section 1 Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Section 2 Policy SPL3 of the 2013-33 Local Plan also requires, amongst other things, that the development respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Section 2 Policy LP4 requires that the design and layout of new residential and mixed-use developments in the Tendring District will be expected to deliver new dwellings that are designed to high standards of architecture, which respect local character and which together with a well-considered site layout, create a unique sense of place. Paragraph 130 of the Framework requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place.
- 6.15 Scale is the height, width and length of each building proposed within a development in relation to its surroundings. The area immediately surrounding the application site is characterised by a mixture of 1 and 2 storey buildings.
- 6.16 Whilst it is acknowledged the dwelling would be sited further to the rear of the existing pattern of development along this section of High Street, the approval of application 18/01388/FUL which is immediately adjacent the application site, holds significant weight as a material consideration. There are further notable examples of development similarly set back to the north-west, whilst the overall character of the immediate surrounding area is not particularly well defined.
- 6.17 For these reasons, the scale and siting of the proposed development is considered to be acceptable.

#### Backland Residential Development

- 6.18 “Backland” developments are, for the purposes of Policy LP8 below, defined as the proposed erection of one or more dwelling houses on a parcel of land:
- which lies generally behind the line of existing frontage development;
  - has little or no frontage to existing public highway; and
  - which would constitute piecemeal development in that it does not form part of a large area allocated for development
- 6.19 Typical sites include the back gardens of existing dwellings, “tandem” development sites of the kind found in Jaywick Sands, smallholdings, yards, or small vacant sites. On these sites, it will often be difficult to achieve the design requirements of this Local Plan due to a combination of location, restricted access and intensity of residential use in the vicinity.
- 6.20 The main problems that can arise as a result of backland development include: undermining the established character of an area (especially if similar schemes were to be repeated elsewhere in a locality); dwelling plots appearing cramped relative to their surroundings; the fragmentation of established gardens with a loss of mature landscaping; and the infringement of neighbouring residents’ amenities. Development behind an established building line can also appear incongruous, particularly isolated dwellings. To avoid these problems, backland development requires particularly thorough planning, and Policy LP8 provides specific criteria that the Council will apply in such proposals.
- 6.21 There must also be proper means of access to backland development, which is safe and convenient for both drivers and pedestrians, with a turning area where necessary to avoid the need for vehicles to reverse onto a public highway. A proposed access should avoid excessive disturbance or loss of privacy to neighbouring residents through, for example, an access drive passing unreasonably close to an adjoining dwelling. The likely frequency of use by vehicular traffic and the suitability of the access for service vehicles and the emergency services will also be relevant material considerations.
- 6.22 Proposals for the residential development of “backland” sites must comply with the following seven criteria:-

where the development would involve the net loss of private amenity space serving an existing dwelling, that dwelling must be left with a sufficient area of private amenity space having regard to the standards in this Local Plan	Not applicable; there is no loss of private amenity space serving an existing dwelling
safe and convenient means of vehicular and pedestrian access/egress must be provided that does not cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will not be permitted	The proposed dwelling would be accessed utilising the existing access and drive; as such it is already in use. From a highway and transportation perspective, the impact of the proposal is acceptable to Highway Authority subject to mitigation and conditions (see section below)
the proposal must avoid “tandem” development using a shared access	The development is for one dwelling only
the site must not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution;	The site does not contain an awkwardly shaped development or parcel of land. The host site is a large rectangular parcel of land with ample space for such a redevelopment of the site. The properties retain sufficient spacing between each other to ensure that the development would not appear overly cramped. There is not a sense of ‘over

	development' within the layout proposed.
the site must not be on the edge of defined settlements where likely to produce a hard urban edge or other form of development out of character in its particular setting; and	The site is not on the edge of a defined settlement.
the proposal must not be out of character with the area or set a harmful precedent for other similar forms of development.	The dwellings constructed as a result of 18/01388/FUL are in a similar location; there are further notable examples of development similarly set back to the north-west.

- 6.23 The proposal complies with all relevant criteria (six of the seven) and for this reason is considered an appropriate form of Backland Development.

#### Highway Safety/Parking

- 6.24 Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Paragraph 112 states that applications for development should (a) give priority first to pedestrian and cycle movements and (c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter. Paragraph 130 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. These objectives are supported adopted Policy SP7 of the Tendring District Local Plan 2013-2033.

- 6.25 It is noted that this application is similar to previous application 20/01293/FUL which was for a 3-bedroom dwelling with associated garage and is also similar to an application (18/01388/FUL) on an adjoining site that was granted planning permission in 2018 for a pair of semi-detached properties. The proposed dwelling will be located at the end of a private road with an established vehicular access and retains adequate room and provision for off-street parking and turning, for the proposed dwelling and retained parking spaces for the host site, The Chinese Cottage. The host site is in a central location, and it is noted that the restaurant is relatively small, considering these factors the need for a large area of car parking is not essential and the applicant has demonstrated that the retained spaces will be adequate to cater for the restaurant.

- 6.26 The restaurant is relatively small, having a maximum of 60 covers. The application is accompanied by an informal parking survey taken at 18.23 and 19.41 on a Friday evening; the maximum number of cars parked was eight. The facility is a local restaurant predominantly serving the local population of Thorpe Le Soken and a significant proportion of customers arrive on foot due to the nature of the facility. It is also considered that the highly sustainable location of the restaurant, in conjunction with the retention of at least seven spaces (with potential provision for a further two) will not diminish the viability of the restaurant in any way.

#### Trees and Landscaping

- 6.27 Policy LP4 states that, to ensure a positive contribution towards the District's 'sense of place', the design and layout of new residential will be expected to promote health and wellbeing by incorporating and maximising the use of green infrastructure, verges, trees and other vegetation. In order to show the extent of the constraint that the trees are on the development potential of the land the applicant has submitted an Arboricultural Impact (AIA) as part of a tree survey and report. This information is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction'.

- 6.28 The AIA contains an accurate description of the health and vitality of the trees as well as setting out the extent to which they constrain the development potential of the land. It identifies the need to remove T1 ' Yew, T2 ' Yew and T3 Yew as well as T6 Magnolia. The removal of

the above trees will not have a significant adverse impact on the character or appearance of the conservation area. In terms of the retained trees the information provided shows that the development proposal could be implemented without an incursion into the Root Protection Area (RPA) of T4 which is the large Sycamore to the rear of the proposed dwelling although it will rather overshadow the garden of the proposed dwelling. Notwithstanding this, the Sycamore does not hold a high amenity value in the context of the streetscene of the Conservation Area.

- 6.29 The proposal does however require the removal of four trees. T1 (Yew); this tree is located to the rear of the site and is growing within dense vegetation, has some browning foliage and minor deadwood. T2 (Yew); this tree is located to the rear of the site, the eastern stem is dead, some bark loss to the base of main stem on east side and Lopsided crown – it is proposed to remove the eastern stem only. T3 (Yew) this tree is located to the rear of the site and is dead. T6 (Magnolia); this tree is located to the west corner of the site and ivy beginning to climb tree and slightly curved form to base of main stem. T11 (Sycamore); this tree is located against the south-west boundary and the tree appears to have little actual canopy and is mostly an etiolated stem covered in ivy. The removal of the above trees will not have a significant adverse impact on the character or appearance of the conservation area.
- 6.30 There will be a minor incursion into the RPA's of the Sycamore on the south eastern boundary of the site although these trees are self-sown trees growing along the boundary fence line and are unlikely to be adversely affected by the development.

#### Conservation Area

- 6.31 Heritage assets range from sites and buildings of local historic value to those of the highest significance. These 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. The character of an area is made up not only by individual buildings but also their relationship to each other and the sense of place that they create. The setting of a building is therefore a material consideration when assessing the suitability of development proposals in Conservation Areas.
- 6.32 Paragraph 197 of the NPPF requires the Local Planning Authority, when determining applications for development, to take account of the desirability of sustaining and enhancing the significance of heritage assets, the positive contribution that conservation of heritage assets can make to sustainable communities and the desirability of new development making a positive contribution to local character and distinction.
- 6.33 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 6.34 Policy PPL8 (Conservation Area) requires that development must preserve or enhance the character or appearance of the Conservation Area, especially in terms of scale and design, particularly in relation to neighbouring buildings and spaces; and materials/finishes.
- 6.35 The special quality of Thorpe-Le-Soken Conservation Area derives ultimately from its importance in medieval times, indicated by the wealth of historic buildings lining a sinuous main street. Neighbouring parts of the village that relate to the medieval core in plan form and in the intrinsic interest of their buildings are also included in the Area because of their supporting role. The Area contains a wealth of mature trees which frame buildings and spaces and contribute to its character and appearance.

- 6.36 Thorpe's High Street is a classic example of the visual benefits in townscape of a balance between unity and variety. Designs of considerable ingenuity and interest are created within tightly-defined constraints concerning massing, height, materials and colour finishes.
- 6.37 High Street: "crossroads" to The Rose and Crown is the heart of the Conservation Area. It contains the majority of older properties and listed buildings, arranged on either side of the gently sinuous High Street. The predominant building style in this character area is the individual house, either detached or physically attached to its neighbours, and rising from the back of the pavement. Massing is simple and uncomplicated, with roofs characteristically pitched parallel to the main road.
- 6.38 Special note can be made of the following, beginning on the north side of High Street at its east end:-
- The group opposite the Bell Hotel, consisting of a small cottage on the highway edge with a prominent rendered gable, a small gabled shop finished in deep Suffolk pink, the Chinese Cottage Restaurant, listed and set back behind an attractively-detailed forecourt, and the house fronting the Baptist Church, of brick under a hipped slate roof though with some modern replacement windows;
  - While the majority of properties in this part of the High Street are on or closely related to the road frontage, mention must be made of the Baptist Church of 1823, set at the back of a deep plot but now most obvious from the adjacent car park of the Crown Hotel.
- 6.39 The Heritage Officer makes the following observation(s):-

This application should demonstrate that the development of the car park to the existing restaurant (in a listed building) will not hinder this structure remaining in its optimum viable use.	The Bell Inn opposite the application site is also a Grade II listed building which has a restaurant, offers evening entertainment and also provides bed and breakfast. The Bell Inn establishment has no parking at all. The proposal will retain 7 car parking spaces for the restaurant.
at least one roof light is removed from the rear pitch	Such a nominal development could be carried out without an express grant of planning permission and for this reason it is unlikely the LPA could substantiate an amendment to the plans.
It should also be confirmed that new windows will be in timber	Agreed; a similar requirement was imposed on application 18/01388/FUL [see condition 10].
I recommend conditions are attached to any permission requiring samples of all new external materials and surface materials. Detailed drawings should also be provided, by condition, of all new windows, rooflights and external doors.	It is agreed that a condition should be attached to any forthcoming approval requiring submission of a brick sample [see condition 9].

- 6.40 Have regard to the above it is considered that the proposal will have a neutral impact on the character and appearance of the Thorpe le Soken Conservation Area, therefore resulting in no conflict with any of the stated local or national conservation themed policies.
- 6.41 The Historic Environment Consultant comments that the Essex Historic Environment Record (HER) shows that the proposed development lies within an area of archaeological interest and within the Thorpe le Soken Conservation Area. The proposed development is located in the core of historic Thorpe-le-Soken. The proposed development is therefore likely to impact on late medieval or post-medieval archaeological remains relating to the historic settlement of Thorpe-le-Soken. The protection of any potential archaeological remains will be secured by planning conditions [see conditions 11, 12 and 13].

### Impact on Residential Amenity

6.42 The NPPF, at paragraph 130 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Section 1 Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking. Section 2 Policy LP4 requires that new residential developments will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area.

6.43 Space Standards:-

In March 2015, the government launched a new approach to housing standards and published a new set of streamlined national technical standards. This included publication of Technical housing standards – nationally described space standard.

No. of Bedrooms	No. of Bed Spaces	Storeys	Min Requirement	Actual Floorspace	Compliance
2	4	1	70sqm	80sqm	yes

6.44 The ridge of the car-port is around 3m from the boundary with Darcy Cottage (the left hand plot of 18/01388/FUL) to the south east and there is one ground-floor side facing window which would not only be contained entirely beneath the canopy of the car-port but, in serving a bathroom, would be obscurely glazed also.

6.45 There are first floor windows in the south east elevation of the Sunday-School building; however as this building is not used in the same intense manner as a residential dwelling the potential views from these windows across the amenity space of the new dwelling are likely to be of limited occurrence.

6.46 In regards to the private amenity space; this is a little under 154sqm and comprises part paved patio and part lawned. The configurations and sizes of gardens in the vicinity are extremely varied – comprising both awkwardly-shaped small plots at 11 and 15 Landermere Road, long narrow plots at 31 and 33 High Street. Both new dwellings resulting from 18/01388/FUL provided a comfortable 100sqm.

6.47 Overall the new development would provide a high standard of amenity for existing and future users and would protect the amenity of existing residents and users with regard to loss of light, overbearing and overlooking.

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

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

6.49 The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 2,332 metres from Hamford Water SPA and Ramsar. However, new housing development within the Zol would be likely to increase the number of



recreational visitors to Hamford Water; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

- 6.50 A unilateral undertaking has been requested to secure this legal obligation and is currently being prepared.

### Public Open Space

- 6.51 Paragraph 54 of the National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.
- 6.52 Section 2 Policy HP5 states that The Council will work with partners and sports providers across the district to maintain, expand and improve the quality and accessibility of public open space, sports and recreational facilities of different types and will aim to achieve and exceed standards set out in the Council's 2017 Open Spaces Strategy or any future update. Financial contributions will also be sought through s106 legal agreements (or an appropriate alternative mechanism) towards ongoing maintenance.
- 6.53 In line with the requirements of Section 2 Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space. The outcome of the consultation is that there is currently a deficit of 2.43 hectares of play and formal open space in Thorpe-le-Soken.
- 6.54 The Parish have recently developed another area of open space known as Lockyer Wood. They have included some play provision but this is an ongoing project to provide reduce the deficit of play facilities in Thorpe.
- 6.55 Due to the significant lack of provision in the area it is felt that a contribution, is justified and relevant to the planning application and that this money would be used towards providing additional facilities at Lockyers Wood.
- 6.56 A unilateral undertaking has been requested to secure this legal obligation and is currently being prepared.

## **7. Conclusion**

- 7.1 The principle of residential development in this locality is supported by Local Plan policy. The proposal will have a neutral impact on the character and appearance of the conservation area and does not amount to any visual harm, harm to residential amenities nor harm to highway safety that would warrant refusal of planning permission. The application is therefore recommended for approval.

## **8. Recommendation**

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

## 8.2 Conditions and Reasons

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

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

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: 001, 110, 112, 210 and 211; received 26th November 2021 and OS 2015-20.2 REV A, OS 2015-20.3; received 26th November 2021 and the recommendations contained within the Arboricultural Impact Assessment, OS 2015-20-Doc1 Rvs A; received 26th November 2021.

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

- 3 Prior to occupation of the development a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

Reason - To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety.

- 4 For the existing parking spaces to the rear of the Chinese Cottage Restaurant shall as per the Essex Parking Standards (Parking Standards: Design and Good Practice, Sept 2009) have a minimum 6 metres provided behind each parking space to allow for manoeuvring.

Reason - To ensure that vehicles can enter and leave in forward gear in the interest of highway safety.

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

Reason - To ensure adequate space for parking off the highway is provided in the interest of highway safety.

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

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

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

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

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

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

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

- 9 Sample panels of the exterior brickwork demonstrating the colour, texture, face bond and pointing are to be erected on site and approved in writing by the Local Planning Authority before the relevant parts of the work are commenced. The development shall be completed in accordance with the approved details before the building is occupied.

Reason - The development is publicly visible and therefore sympathetic materials are a visually essential requirement.

- 10 Before the installation of all external windows/doors, details which confirm that the frames will be timber (indicating the colour and finish), shall be submitted to and approved in writing by the local planning authority. The development shall be carried out and retained for the lifetime of the development in accordance with the approved details.

Reason - The development is publicly visible and therefore sympathetic materials are a visually essential requirement.

- 11 No development or preliminary ground-works can commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved by the planning authority. Following the completion of this initial phase of archaeological work, a summary report will be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ through re-design of the development, shall be submitted to the local planning authority.

Reason - The Tendring Historic Environment Characterisation project and Essex HER show that the proposed development is located within an area with potential for below ground archaeological deposits. The development could result in harm to non-designated heritage assets with archaeological interest.

- 12 No development or preliminary ground-works can commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved by the planning authority.

Reason - The Tendring Historic Environment Characterisation project and Essex HER show that the proposed development is located within an area with potential for below ground archaeological deposits. The development could result in harm to non-designated heritage assets with archaeological interest.

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

Reason - The Tendring Historic Environment Characterisation project and Essex HER show that the proposed development is located within an area with potential for below ground archaeological deposits. The development could result in harm to non-designated heritage assets with archaeological interest.

### 8.3 Informatives

#### Positive and Proactive Statement:-

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

#### Legal Agreement Informative - 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. Please note that any subsequent variation / removal of condition applications (s73 applications) will require a new legal agreement to secure this obligation unless the development has commenced (subject to all necessary condition discharges) and the contribution has already been paid.

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

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: Public Open Space financial contribution in accordance with Policy COM6 of the adopted Tendring District Local Plan (2007) and Policy HP5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft. Please note that any subsequent variation / removal of condition applications (s73 applications) will require a new legal agreement to secure this obligation unless the development has commenced (subject to all necessary condition discharges) and the contribution has already been paid.

#### Highways:-

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)

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

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

## **9. Additional Considerations**

### 9.1 Public Sector Equality Duty (PSED)

9.2 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:

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

9.3 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.

9.4 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.

9.5 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

9.6 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.

9.7 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).

9.8 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.

## **10. Finance Implications**

10.1 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.

10.2 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.

**11. Background Papers**

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