



PLANNING COMMITTEE

| | |
|---------------|---|
| DATE: | Thursday, 1 September 2022 |
| TIME: | 6.00 pm |
| VENUE: | Committee Room - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE |

MEMBERSHIP:

Councillor White (Chairman)
Councillor Fowler (Vice-Chairman)
Councillor Alexander
Councillor Baker
Councillor Codling

Councillor V Guglielmi
Councillor Harris
Councillor Placey
Councillor Wiggins

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. 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.

This meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be filmed, except where there are confidential or exempt items, and the footage will be on the website for up to 24 months (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year). The Council will seek to avoid/minimise footage of members of the public in attendance at, or participating in, the meeting. In addition, the Council is obliged by law to allow members of the public to take photographs, film, audio record and report on the proceedings at public meetings. The Council will only seek to prevent this should it be undertaken in a disruptive or otherwise inappropriate manner.

If you have any queries regarding webcasting or the recording of meetings by the public, please contact Democratic Services on democraticservices@tendringdc.gov.uk.

DATE OF PUBLICATION: Tuesday, 23 August 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 - 6)

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on Tuesday 2 August 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 22/00688/FUL - Farm Land North of Glendenning, Tenpenny Hill, Thorrington, CO7 8JB (Pages 7 - 20)

The application is put before the Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any settlement development boundary, and is recommended for approval.

6 A.2 Planning Application 22/10052/FUL - Land adjacent to The Willows, Little Clacton Road, Great Holland, CO13 0ET (Pages 21 - 34)

The application is referred to Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any settlement development boundary, and is recommended for approval.

7 A.3 Report of the Assistant Director Planning - Revised (Planning) Enforcement Policy (Pages 35 - 66)

To seek the Planning Committee approval for the revised Planning Enforcement Policy document and note the content of the associated Harm Assessment Form. The policy document is contained at Appendix A and the Harm Assessment Form at Appendix B.

8 Exclusion of Press and Public

The Committee is asked to consider passing the following resolution: - "that under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during the consideration of Agenda Item 9 on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act.

9 Report of Assistant Director (Planning) - B.1 - Appeal by Churchill Retirement Living Ltd. against Tendring District Council's Failure to determine a Planning Application (Ref. 21/02027/FUL) for the Demolition of Existing Building and Redevelopment of the Site to form 61 No. Retirement Apartments for Older Persons with associated Communal Facilities, Car Parking and Landscaping - Land at Church Road (former Colchester Institute), Clacton-on-Sea (Pages 67 - 78)

The Chairman of the Committee has agreed that this matter can be brought before the Planning Committee, as an urgent item, in order to meet the Planning Appeal timetable relating to planning application 21/02027/FUL – LAND AT CHURCH ROAD (FORMER COLCHESTER INSTITUTE), CLACTON-ON-SEA.

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 Wednesday, 14 September 2022.

Information for Visitors

FIRE EVACUATION PROCEDURE

There is no alarm test scheduled for this meeting. In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

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

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

Your calmness and assistance is greatly appreciated.

This page is intentionally left blank

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,
HELD ON TUESDAY, 2ND AUGUST, 2022 AT 6.00 PM
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

| | |
|-----------------------|--|
| Present: | Councillors White (Chairman), Fowler (Vice-Chairman) (except Item 5), Alexander, Baker, Codling, Harris, McWilliams (except item 5), Placey, and Wiggins. |
| Also Present: | Councillors Coley and Davidson. |
| In Attendance: | Gary Guiver (Acting Director, Strategic Place and Planning), Graham Nourse (Assistant Director, Planning), Joanne Fisher (Planning Solicitor), John Pateman-Gee (Planning Manager), Jacob Jaasmar (Planning Team Leader), Keith Durran (Democratic Services Officer), Emma Haward (Leadership Support Officer), Hattie Dawson-Dragisic (Temporary Performance and Business Support Officer). |

24. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies were received from Councillors Placey and V Guglielmi (with Councillor McWilliams substituting).

25. MINUTES OF THE LAST MEETING

Subject to amending page 5, paragraph 3 to read 'Bill Marshall, a resident of the district, spoke *during* the application', it was moved by Councillor Baker, seconded by Councillor Alexander and **RESOLVED** that the minutes of the last meeting of the Committee held on Tuesday 5 July 2022 be approved as a correct record.

26. DECLARATIONS OF INTEREST

Councillor Fowler declared a personal interest in **A.2 Planning Application 22/01083/FUL – 618 MAIN ROAD UPPER DOVERCOURT CO12 4LS** due to being the Ward Member. She was pre-determined and therefore did not participate in the Committees deliberations and decision-making for this application.

Councillor McWilliams declared a non-pecuniary interest in **A.2 Planning Application 22/01083/FUL – 618 MAIN ROAD UPPER DOVERCOURT CO12 4LS** due to chairing and participating in deliberations at a previous Licensing and Registration meeting where a licence was granted for the premises. She was pre-determined and therefore did not participate in the Committees deliberations and decision-making for this application.

27. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were none on this occasion.

28. A.1 PLANNING APPLICATION 22/00633/FUL - TESCO, 32-34 HIGH STREET, MANNINGTREE CO11 1AJ

The application was referred to the Planning Committee using the powers delegated to the Assistant Director under the Constitution. The reason for referral followed the Planning Committee's decision to refuse planning permission reference 21/01270/FUL in January 2022 for retrospective planning permission for the CO2 gas cooler and timber enclosure.

Application 21/01270/FUL was referred to the Planning Committee by Councillor Giancarlo Guglielmi on grounds of the negative impact on the street scene and the Manningtree and Mistle Conservation as well as impact on amenity.

The application sought retrospective planning permission for the CO2 gas cooler with proposed additional acoustic panels, hit and miss fence and access gate and was recommended for approval subject to the necessary conditions set out below.

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 subject to conditions.

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 an additional letter of objection received from Manningtree Town Council due to the installation of the cooler prior to planning permission and the noise impact on residents.

Daniel Botten, the agent acting on behalf of the applicant, spoke in support of the application.

Mandy Rose, a local resident, spoke against the application.

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

| Matters raised by Members of the Committee:- | Officer's response thereto:- |
|---|--|
| A member of the Committee raised concerns regarding the position of the cooler and generated noise. | The Planning Officer advised that the application did not provide details of the reasons for the position of the cooler. Planning Services assessed the application and accepted the viability of the proposal. |
| The cooling systems booster was raised as an issue with regards to noise. | The Planning Officer responded and advised that the maximum noise levels were 44-48 decibels approximately 10m from the site. Moderate rainfall is estimated 40-50 decibels. Environmental Health advised that background noise levels were also considered. With mitigation, of acoustic fencing, the noise levels would have been reduced to between the region of 12-17 decibels. |
| Was there a reason why there was no more-efficient solution to minimise the noise such as a front-facing panel? | The Planning Officer advised that the relevant consultations were undertaken and considered acceptable. The application needed to be assessed as it stood and the Committee could recommend otherwise according to material considerations. |

| | |
|---|--|
| When was the noise survey carried out? | The Planning Officer informed members that the survey was carried out on 27-28 May 2021 between the hours of 7:30am and 12pm. |
| A member of the Committee also raised concerns regarding the road, how wide was the road to the rear of the site. | The Planning Officer informed the Committee that the access road at its narrowest was 2.55m and 5m at its widest point. An average road is 4.5m wide. |
| A councillor referred to the acoustic materials and asked the Planning Officer to clarify where the noise would in effect go. | The Planning Officer advised that the noise level would be reduced to 12-16 decibels as a result of the acoustic lining absorbing noise. |
| Did the noise survey give recommendations on the level of noise cover? | The Planning Manager advised that the noise survey took 3 receptors, positioned as close as 5m, and as far as 10m from the site. In terms of background noise, there was background noise of 43 decibels in the daytime, and at night 37 decibels. The Planning Manager advised that the mitigation measures were considered acceptable. |

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor Alexander and unanimously **RESOLVED** that, contrary to the Officer's recommendation of approval, the Assistant Director (Planning) (or equivalent authorised officer) be authorised to refuse planning permission for the development due to the following reasons:-

Conservation Area

The Local Planning Authority has a statutory duty to preserve or enhance the character and appearance of Manningtree and Mistley Conservation Area under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Policy PPL8 of the Tendring District Local Plan - Section 2 seeks to ensure that any new development within a designated Conservation Area, or which affects its setting, will only be permitted where it has regard to the desirability of preserving or enhancing the special character and appearance of the area, especially in terms of: any important views into, out of, or within the Conservation Area.

The CO2 gas cooler was installed in June 2021 as part of the refurbishment of the Tesco store. It is in a prominent position at the rear and is publicly visible from Stour Street and the neighbouring properties. It is considered that unit and proposed enclosure will by reason of appearance and siting cause harm to the significance of the conservation area and fail to enhance or preserve.

Noise

Policy SPL3 of the Tendring District Local Plan - Section 2 seeks to ensure that new development should be compatible with surrounding uses and minimise any adverse environmental impacts in terms of the amenities of occupiers of nearby properties, and unacceptable levels of pollution on: air, land, water (including ground water), amenity,

health or safety through noise, smell, dust, light, heat, vibration, fumes or other forms of pollution or nuisance.

The use of the application site remains as retail, with other retail uses, residential properties, and spaces for use by the wider community surrounding the application site. There is the potential for existing amenities to be harmed, especially at night, by unusual and unpredictable noise that the proposal can produce working against variable conditions in order to control the internal environment/function of the retail unit.

Notwithstanding Plant Noise Impact Assessment submitted, it is considered that the noise emitted from the CO2 gas cooler is unacceptable and has a significant impact on the residential amenity of the occupiers living in the properties nearby.

29. A.2 PLANNING APPLICATION 22/1083/FUL - UPPER DOVERCOURT METHODIST CHURCH, 618 MAIN ROAD, DOVERCOURT CO12 4LS

Councillor Fowler declared a personal interest in **A.2 Planning Application 22/01083/FUL – 618 MAIN ROAD UPPER DOVERCOURT CO12 4LS** due to being the Ward Member. She was pre-determined and therefore did not participate in the Committees deliberations and decision-making for this application.

Councillor McWilliams declared a non-pecuniary interest in **A.2 Planning Application 22/01083/FUL – 618 MAIN ROAD UPPER DOVERCOURT CO12 4LS** due to chairing and participating in deliberations at a previous Licensing and Registration meeting where a licence was granted for the premises. She was pre-determined and therefore did not participate in the Committees deliberations and decision-making for this application.

The application had been called in by Councillor Henderson due to concerns regarding Highways and Parking in the area and the impact of the proposal on neighbouring occupiers.

The proposal was for the change of use of the redundant Methodist Church and Hall (Class F1) to a member only community social club, comprising of a bar area for darts and pool within the main church building and a community/function events use of the rear hall. The site was located within the settlement development boundary of Harwich and Dovercourt.

The application was part retrospective as the majority of the works, mostly internal had been completed and the site had been operational. ECC Place Services had no concerns regarding the conversion or its impact on the neighbouring Grade II Listed Public House, The Trafalgar. Subject to conditions and mitigation to minimise the noise and disturbance to neighbouring occupiers there were no concerns raised regarding the impact neighbouring residential properties. Given its current use as a Church and function hall, it was considered a sustainable location along with its local Community.

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.

Councillors Fowler and McWilliams left the meeting during this application and Councillor Harris acted as Vice-Chairman of the Committee.

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 an additional 22 letters of support and 13 letters of objection received, and the Officer’s comments thereto. The officer’s recommendation remained unchanged subject to a minor amendment to condition 4 to read as follows:

With the exception of condition 3, no live music events or other noise generating entertainment shall take place in any part of the building until the full written approval of the noise assessment and noise management plan has been obtained by the Local Planning Authority.

Mrs Amy Wosko, the applicant, spoke in support of the application.

Nicky Sawyer, a local resident, spoke in support of the application.

Mrs C Richardson, a local resident, spoke against the application.

Parish Councillor Tanya Ferguson, representing Harwich Town Council, spoke against the application.

Councillor Davidson, a local Ward Member, against the application.

| Matters raised by Members of the Committee:- | Officer’s response thereto:- |
|---|---|
| A member of the Committee asked if the Committee could proceed in deliberations with the application before them. | The Planning Manager advised that in terms of the robustness of the proposal, the merits of the application were substantial. |
| Were there reasons to suspect that the site would in effect result in noise and disturbance? | The Planning Manager advised that he could not comment but that the Committee should consider the officers recommendation. If the application was taken to appeal for refusal due to the use of the site, there would not be a preferred outcome. |
| How would the site be managed? | The Planning Manager suggested that the Committee could recommend a condition whereby the management of the social club is monitored and controlled. |
| Would some of the issues raised be for the Licensing Section to consider rather than for the Committee to decide? | The Planning Officer advised that parking provisions and noise nuisance were material considerations for the Committee. |

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor Baker and unanimously **RESOLVED** that consideration of this application be deferred for the application to return to Committee within 3 months, having sought an Operational Management Plan and noise survey.

The meeting was declared closed at 20:36.

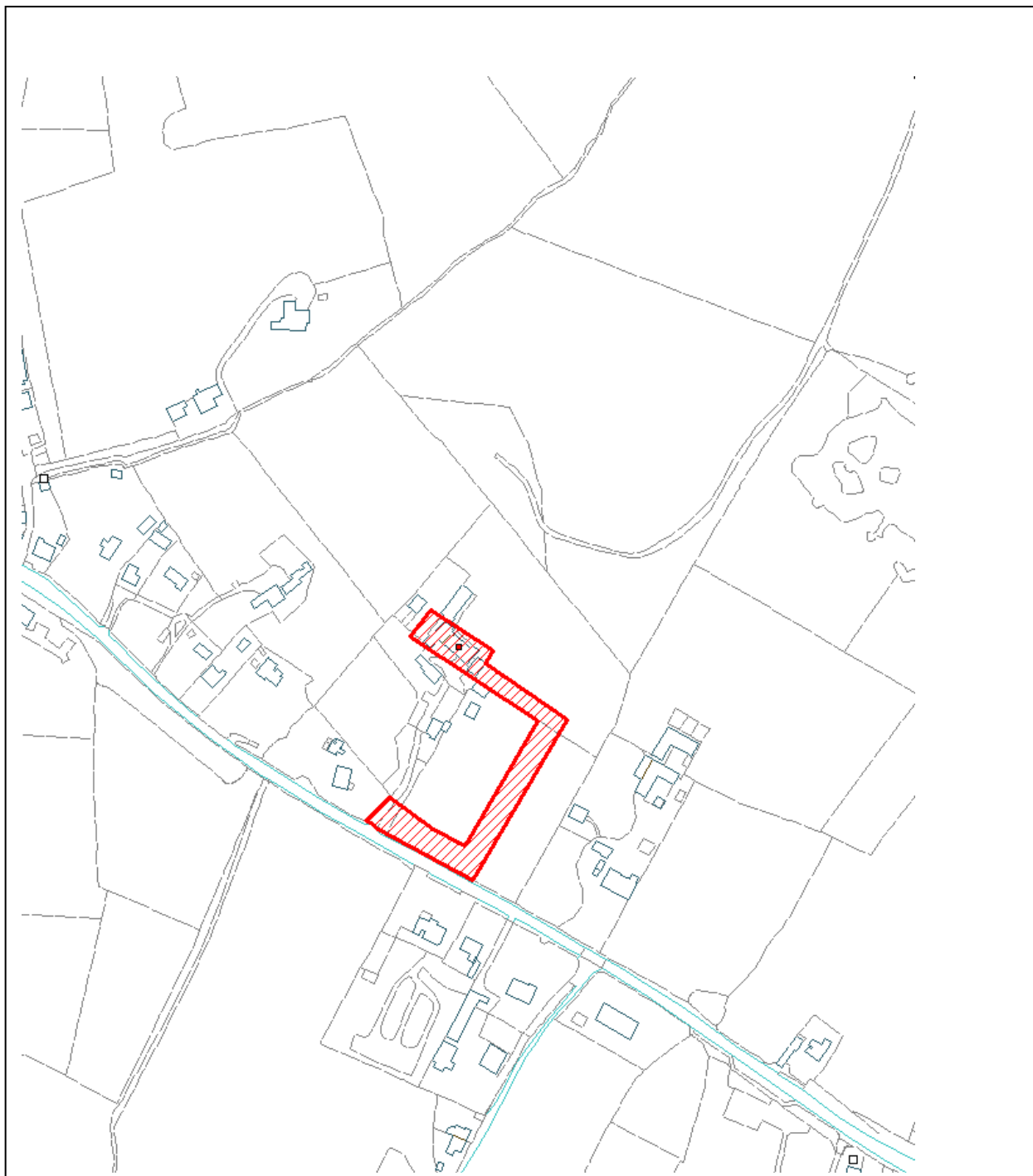
Chairman

PLANNING COMMITTEE

01st SEPTEMBER 2022

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.1 PLANNING APPLICATION – 22/00688/FUL – FARM LAND TO NORTH OF GLENDENNING TENPENNY HILL THORRINGTON COLCHESTER



DO NOT SCALE

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

Application: 22/00688/FUL

Town / Parish: Thorrington Parish Council

Applicant: Mr and Mrs Millard

Address: Farm Land to North of Glendenning Tenpenny Hill Thorrington Colchester
CO7 8JB

Development: Demolition of barn and extensive stables and replacement with a three bed bungalow (in lieu of deemed Prior Approval for conversion of a barn in to a dwelling subject of application 21/02133/COUNOT).

1. **Executive Summary**

- 1.1 The application is put before the Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any settlement development boundary, and is recommended for approval.
- 1.2 The proposed dwelling is not considered to be so materially different in regards to siting, height, footprint to the development approved under prior approval application 21/02133/COUNOT.
- 1.3 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 rural landscape, its impact on neighbours in regards to amenity and the parking provision, the application is recommended for approval.

Recommendation:

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

- the conditions stated in section 8.2

2. **Planning Policy**

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

NPPF National Planning Policy Framework July 2021

National Planning Practice Guidance

*Statutory guidance -Technical housing standards: nationally described space standard
Published 27 March 2015*

*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
- LP1 Housing Supply
- LP4 Housing Layout
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- CP1 Sustainable Transport and Accessibility
- DI1 Infrastructure Delivery and Impact Mitigation

Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

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.
- 2.3 In relation to housing supply:
- 2.4 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').

2.5 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

| | | | |
|-----------------|--|------------------------|------------|
| 21/02133/COUNOT | Proposed conversion of an agricultural storage building into a dwelling. | Determination Approved | 07.02.2022 |
|-----------------|--|------------------------|------------|

4. Consultations

ECC Highways Dept
13.07.2022

Refer to consultation response for 21/02133/COUNOT but please add the following conditions:-

- 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.

- 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.

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

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

Environmental Protection
18.05.2022

There are no indications of contamination from our potential contaminated land database register but due to previous use (agricultural activities) of the site there

might be some contamination.

Prior to the commencement of the proposed conversion, the applicant is advised to undertake a suitable and sufficient site investigation and any necessary risk assessment to ensure the land is free from significant levels of contamination. Therefore standard contaminated land condition is to be applied.

UU Open Spaces
15.06.2022

Response from Public Realm Open Space & Play

Current Position:-

There is currently a deficit of 0.4 hectares of formal open space in Thorrington.

Recommendation:-

It is felt that there will be no significant impact on the current open space and play facilities, just by this single dwelling, should any further development occur a contribution will become necessary.

5. Representations

5.1 No comments have been received in response to the publicity of the application.

6. Assessment

6.1 The main considerations in this instance are:

- Site Context;
- Material Considerations;
- Principle of Development;
- Development Proposal;
- Scale, Layout and Appearance;
- Highway Safety, Access and Parking;
- Landscaping;
- Water Conservation, Drainage and Sewerage;
- Residential Amenities;
- Financial Contribution - Recreational Disturbance;
- Financial Contribution - Open Space and Play Space; and,

Site Context

6.2 The locale is extremely verdant with sporadic housing on both the north and south sides of Tenpenny Hill; the focus for dwellings is however on the northern side of the road and tends to typically comprise single and chalet bungalows.

6.3 The first 18m or so of the driveway access/crossover from Tenpenny Hill is within the control of the applicant but used by the owners of Glendenning. Access to the farm buildings is obtained through a gated entrance around 9m back from Tenpenny Hill, via a track which leads around the south-east perimeter of land now owned in connection with the original farm house.

- 6.4 The site comprises a vast array of farm buildings which were associated historically with the main farmstead of Glendenning. They are located at the end of the driveway serving the existing dwelling, some 120m north from the main road. When the site was sold, the collection of buildings which remained on the site from the previous farming-activity were disassociated from the dwelling. The majority of the stables have now collapsed or are unsafe for use, although the principal barn still remains and is used for the storage of farm equipment and feed stuffs.

Material Considerations

- 6.5 Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. Material considerations are matters or issues which may be relevant to the decision. Principles of Case Law held through the Courts hold significant weight as a material consideration.
- 6.6 In this particular regard the Mansell v Tonbridge and Malling Borough Council 2017 judgement requires the Council to consider the 'fallback position' i.e. what development alternatives we are bound to consider relevant. It is for the decision-maker to make a comparison between the development already approved versus the development proposed. How to interpret the weight attributed to the fallback position is established in caselaw in the R v Secretary of State for the Environment and Havering BC (1998) EnvLR189 judgement.

Fallback Position

In paragraph 22 of the Mansell v Tonbridge judgement, it is stated that "It was not a precondition to the council's consideration of the fallback option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect." In direct comparison to the application under consideration, there *is* a formulated Class Q application. For this reason Officers are considered to have properly identified that there is a real prospect of a fallback development being carried out if planning permission were refused.

Attributing Weight to the Fallback Position

The three tests which are necessary to apply are as follows:-

- first, whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use;
- secondly, whether there is a likelihood or real prospect of such occurring.
- thirdly, if the answer to the second question is "yes" a comparison must be made between the proposed development and the fall-back use

The lawful ability to carry out the conversion of the existing building to a dwelling exists through the approval of prior approval application 21/02133/COUNOT (7th February 2022). The Council have no evidence before them to refute that there is a likelihood or real prospect of such occurring. The siting of the proposed dwelling is not materially different, the heights are comparable (4.5m versus 6.5m) and the proposed footprint is a nominal 10sqm greater than the existing approval. With the current application also proposing the demolition of all 600m² of the remaining buildings, these circumstances amount to a sufficient case of there being a fallback position.

Principle of Development

- 6.7 The current application seeks to demolish the agricultural building subject of 21/02133/COUNOT in addition to the vast array of dilapidated stabling. This scheme is the 'fall

back' scheme and for this reason the principle of the development for one dwelling has been established.

Development Proposal

- 6.8 The application seeks full planning permission for a dwelling in lieu of the prior approval issued for conversion of an agricultural building into a dwelling. Appropriate measures would be put in place which would prevent both schemes from being implemented (see Condition 7).
- 6.9 The existing building comprises the main barn and an extension. Both are single storey and constructed with a timber frame and clad in timber weatherboarding with a corrugated cement fibre sheet roof; they have a floor area in the region of 93m².
- 6.10 The dwelling's footprint would be of a simple rectangular form measuring 13m x 9m. The roof would be gabled-ended with eaves in the region of 2.6m and it would have a ridge of approximately 6.6m. The amenity area is proposed to the west and two off-street parking spaces to the east are provided. Access to the dwelling would be from Tenpenny Hill, following around the right-hand perimeter of the paddock area.
- 6.11 Whilst the footprint of the proposed dwelling would be around 11sqm greater than the extant permission, the application includes a commitment to demolish all of the existing buildings on the site. These buildings extend to approximately 600m² in addition to the existing barn and their removal will be controlled by way of a planning condition (Condition 8).

Scale, Layout and Appearance

- 6.12 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.
- 6.13 The proposed dwelling has parameters which closely match those of The Oaks which is around 140m away and would therefore correlate well with the broad range of scale of built form in the locale.
- 6.14 There is no locally-established palette of materials and dwellings/buildings are constructed in a range of finishes which include horizontal timber cladding, self-coloured render and render/brick combinations.
- 6.15 The dwelling would be of simple rectangular form with a semi-rustic external appearance. The external appearance of the replacement building will have a simple profile, clad in horizontal black weatherboarding, a brick plinth and with a red plain tiled roof. The walls would reflect the same material as agreed through the prior approval; the only change to external materials would be the roof having a red plain tile rather than profile sheeting, which is considered a visual enhancement.

Highway Safety/Parking

- 6.16 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.
- 6.17 In terms of access, the scheme follows the same arrangement as shown on the approved scheme although now provided with a consolidated surface. This access is taken from the existing entrance onto Tenpenny Hill which is provided with a bound surface treatment.
- 6.18 The Highway Authority comments that the site is located in the countryside; they do not consider that the use of the building as a dwelling would give rise to a significant increase in vehicle movements to and from the site or result in a material change in the character of the traffic in the vicinity of the site.
- 6.19 The Highway Authority have requested a condition pertaining to the reception and storage of building materials being identified clear of the highway; however this information is included in the Construction Management Plan and a separate condition to control this is not therefore deemed necessary.

Landscaping/Biodiversity

- 6.20 Section 2 Policy PPL3 of the Tendring District Local Plan 2013-2033 states that, in order to promote sustainable development, in considering where to select sites for new development in this Local Plan, the Council has taken particular care to assess the value of the landscape and, where practical, allocate sites with the lowest sensitivity, thereby helping to protect valued landscapes and the best and most versatile agricultural land. The Landscape Character Assessment (2001) identified 30 areas with different landscape characteristics and highlighted key sensitivities which need to be considered when assessing development proposals in the rural area. Proposals within the rural landscape should have regard to the Landscape Character Assessment (and any subsequent updates) and protect and re-inforce historic landscape features and important characteristics identified within it.
- 6.21 The Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance, including to estuaries, rivers and undeveloped coast.
- 6.22 The site is within one of the thirty such areas defined in The Landscape Character Assessment, being Alresford Valley System. The Alresford Valley System forms part of the Colne catchment. It is a series of distinct river valleys and is steep sided in places. The south-facing slopes below Thorrington are much less steep and unusual in that they support an area of large scale arable land. The Alresford valleys are sensitive to changes that would affect their rural character. However, their 'hidden' position and high tree cover provides some shelter and reduces visual sensitivity. The location of the development does not encroach any further in to the countryside than the existing expanse of built form; the commitment to demolish this widespread cluster of buildings is also considered to amount to a minor improvement to the rural character of the area.
- 6.23 The access crosses agricultural land that is currently set to pasture. Consideration has to be given to the fact that 21/02133/COUNOT has been approved for the vehicular access in the same location, similarly agricultural permitted development rights would permit the laying of such a hardstanding also and, finally, the south-west boundary of the pasture (fronting

Tenpenny Hill) comprises a dense and established tree-line. For these reasons, on balance, the visual impact of the access drive is not considered sufficient grounds for objection.

Water Conservation, Drainage and Sewerage

- 6.24 Paragraph 170 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Paragraph 180 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment. Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010. A completed Foul Drainage Assessment Form 1 (FDA1) form, or equivalent information, should accompany all planning applications where use of a non-mains system is proposed for foul drainage. The operation of small sewage discharges such as those from septic tanks or package treatment plants is regulated under the Environmental Permitting Regulations 2016 (EPR).
- 6.25 Policy PPL5 (Water Conservation, Drainage and Sewerage) of the Adopted Local Plan states private sewage treatment facilities will not be permitted if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour.
- 6.26 In relation to non-mains drainage from non-major development the Environment Agency's advice is that to comply with the Framework and PPG on foul drainage matters, an LPA needs to be satisfied that foul drainage can be provided without adverse impact on the environment. This requires ensuring that both those environmental risks outside of the control of the permit and the relevant considerations in the PPG are addressed. The LPA should also be mindful that the developer will need to address foul drainage matters to get their environmental permit and meet building control regulations. Therefore, they should be confident that it is likely that any necessary permits and approvals can be successfully obtained.
- 6.27 Question 11 of the application form states that it is not intended to connect to a mains sewer. Instead, foul sewage will be disposed of by way of a package treatment plant. Details of the proposed treatment plant have subsequently been received which shows that the system to be installed is a Kingspan Klargester, BioDisc Commercial sewage treatment plant.
- 6.28 Having regard to non-mains drainage, the site is not close to any dwelling and in an area where it is unlikely that mains drainage exists for any of the properties, the site is not close to any designated site of importance to biodiversity, is not located within a Drinking Water Safeguard Zone or a Source Protection Zone, and the site is sufficiently large enough to accommodate a soakaway. Furthermore, there is no evidence ground conditions would preclude such a solution. Access for maintenance would be achievable from the existing car park. Taking all these factors into account, the use of the package treatment plant is considered to be the only feasible option available.

Residential Amenities

- 6.29 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.

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 |
|-----------------|-------------------|---------|-----------------|-------------------|------------|
| 3 | 4 | 1 | 74sqm | 93sqm | yes |

- 6.30 Separation distances in excess of 50m would result from the development therefore no material harm to the amenity of the occupiers of the closest dwelling would ensue. The proposed dwelling exceeds the minimum internal space standards for a three-bedroom, four person single storey occupancy by some quite considerable amount. It is observed that whilst the amenity space is much smaller than those of properties in the immediate locale, at around 137sqm it is comparative to one dwelling (at 171sqm) within 180 linear metres and represents a usable area.
- 6.31 Overall the proposal is considered to secure a good standard of amenity for future occupants of the proposed dwelling.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

- 6.32 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.
- 6.33 The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 1,520 metres from Colne Estuary (Mid-Essex Coast Phase 2), SAC, SPA and Ramsar. However, new housing development within the Zol would be likely to increase the number of recreational visitors to the Colne Estuary; 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.
- 6.34 A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Public Open Space

- 6.35 Paragraph 56 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 57 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.

- 6.36 Policy DI1 states that all new development should be supported by, and have good access to, all necessary infrastructure. Permission will only be granted if it can be demonstrated that there is sufficient appropriate infrastructure capacity to support the development or that such capacity will be delivered by the proposal. It must further be demonstrated that such capacity, as is required, will prove sustainable over time both in physical and financial terms. Where a development proposal requires additional infrastructure capacity to be deemed acceptable, mitigation measures must be agreed with the Local Planning Authority and the appropriate infrastructure provider. Such measures may include financial contributions towards Open Space.
- 6.37 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 no contribution is being requested from Open Spaces on this occasion.

7. Conclusion

- 7.1 Whilst the location of the development is not supported by Local Plan policy - with regard to the scale, siting and form of development proposed, the similarities to the prior approval application 21/02133/COUNOT are deemed to hold significant weight as the fallback position. The proposal will have a neutral impact on the character of the landscape in comparison to the fallback scheme, and does not amount to sufficient 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 plan:- GDTP-02 A (received 11 May 2022)

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

- 3 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.
- 4 The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

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

- 5 Prior to occupation of the hereby approved development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council.

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

- 6 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.

- 7 No building or engineering operations authorised by this permission shall be commenced until the agricultural buildings (subject of 21/02133/COUNOT and shown as being demolished on drawing GDTP-02 A received 11 May 2022) on the site have been demolished and all materials resulting therefrom shall be cleared from the site.

Reason - The development hereby permitted has only been supported on the basis that the existing agricultural buildings be removed from the site to justify their replacement with a single dwelling which ordinarily would be contrary to the development plan which directs new development to sites within settlement development boundaries.

- 8 Prior to the occupation of the dwelling, the remainder of all buildings shown hatched on unnumbered plan, received 19th July 2022 shall be demolished and all materials resulting therefrom shall be cleared from the site.

Reason - The development hereby permitted has only been supported on the basis that the existing agricultural buildings be removed from the site to justify their replacement with a single dwelling which ordinarily would be contrary to the development plan which directs new development to sites within settlement development boundaries.

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.

Environmental Protection:-

In order to minimise potential nuisance to nearby existing residents caused by demolition/construction works, Environmental Protection ask that the following be adhered to:-

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 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.

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 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.

Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

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.

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.

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

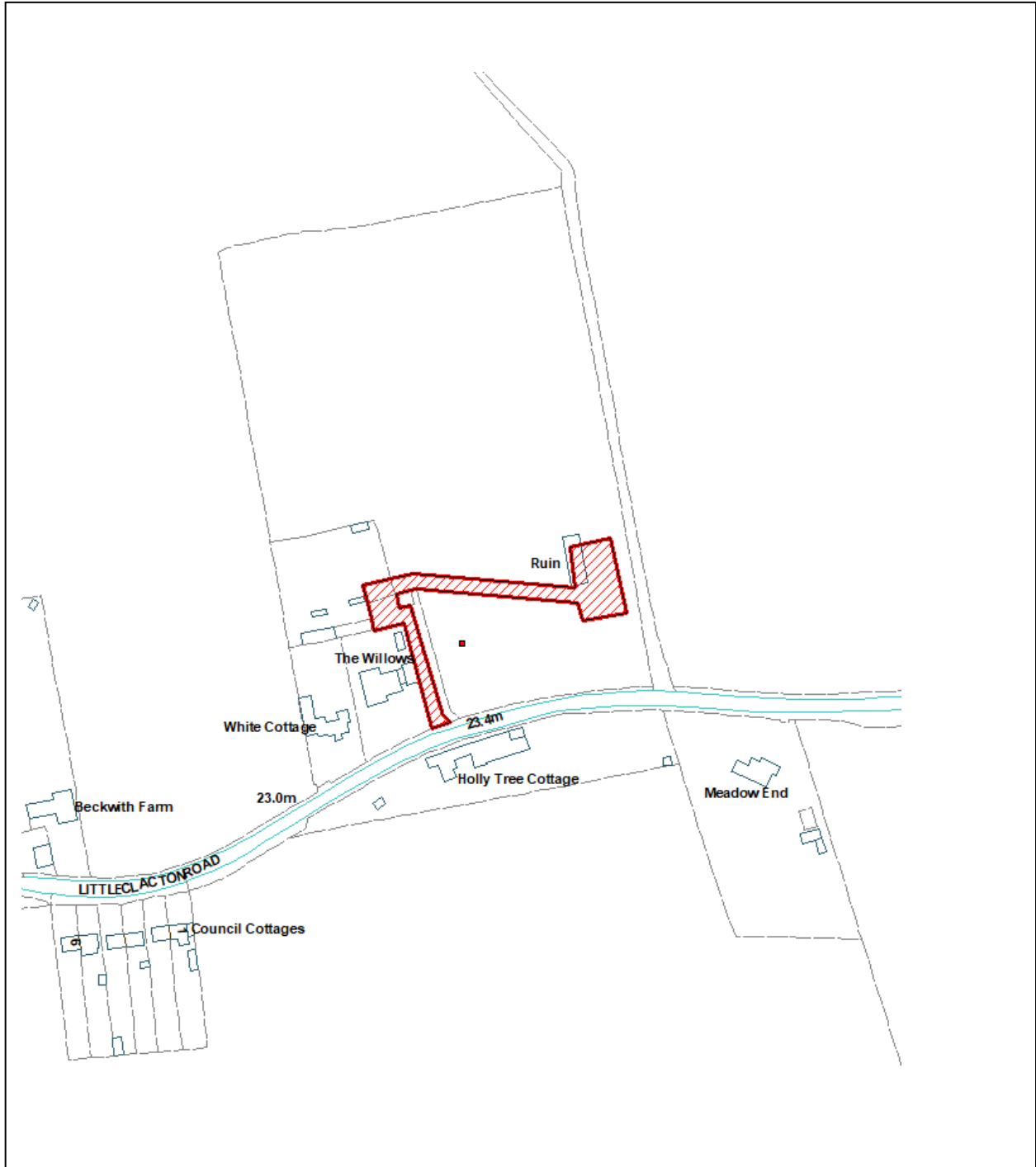
- 11.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) 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/>.

PLANNING COMMITTEE

01ST SEPTEMBER 2022

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.2 PLANNING APPLICATION – 22/01052/FUL – LAND ADJACENT TO THE WILLOWS LITTLE CLACTON ROAD GREAT HOLLAND CO13 0ET



DO NOT SCALE

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

Application: 22/01052/FUL

Town / Parish: Frinton & Walton Town Council

Applicant: Mr Stevens

Address: Land adjacent to The Willows Little Clacton Road Great Holland CO13 0ET

Development: Proposed demolition of former livestock building and replacement with a two bedroom bungalow (in lieu of Prior Approval for conversion of building into a dwelling subject of application 21/00460/COUNOT).

1. Executive Summary

- 1.1 The application is referred to Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any settlement development boundary, and is recommended for approval.
- 1.2 The proposed dwelling is not considered to be so materially different in regards to siting, height, footprint to the development approved under prior approval 21/00460/COUNOT.
- 1.3 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 rural landscape, its impact on neighbours in regards to amenity and the parking provision, the application is recommend for approval.

Recommendation:

That the Assistant Director for 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 matter:
 - Financial Contribution towards RAMS
- b) the conditions stated in section 8.2

2. Planning Policy

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

NPPF National Planning Policy Framework July 2021

National Planning Practice Guidance

*Statutory guidance -Technical housing standards: nationally described space standard
Published 27 March 2015*

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
- LP1 Housing Supply
- LP4 Housing Layout
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- CP1 Sustainable Transport and Accessibility
- DI1 Infrastructure Delivery and Impact Mitigation

Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

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.

2.3 In relation to housing supply:

- 2.4 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’).
- 2.5 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

| | | | |
|-----------------|---|------------------------|------------|
| 96/01537/FUL | (Land at Willow Farm (formerly piggeries), adjacent to The Willows, Lt Clacton Road, Gt Holland) Change of use of land to a 5 pitch transit gypsy site with new vehicular access | Refused | 04.03.1997 |
| 98/00019/FUL | (Land at Willow Farm, Little Clacton Road, Gt Holland) Change of use of land to a 5-Pitch transit gypsy site with altered vehicular access | Refused | 27.04.1998 |
| 19/00180/OUT | Proposed erection of 2no. Bungalows. | Refused | 26.04.2019 |
| 21/00460/COUNOT | Conversion of agricultural buildings into a dwelling. | Determination Approved | 22.04.2021 |

4. Consultations

ECC Highways Dept
18.07.2022

The information that was 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 assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated March 2010. The proposal is similar to application no. 21/00349/COUNOT and 21/00460/COUNOT. Again, the proposal will utilise an established vehicular access to the former farm which is located within an existing 30-mph speed limit; there are a

number of existing dwellings in the vicinity. When compared with the former agricultural use, the level of activity will be on a par or possibly reduced. It appears that the proposed dwelling will retain adequate off-street parking and turning, therefore, from a highway and transportation perspective, the impact of the proposal is acceptable to the Highway Authority subject to mitigation and conditions.

UU Open Spaces
28.07.2022

Response from Public Realm Open Space & Play

Current Position

There is currently a deficit of 14.12 hectares of equipped play in Frinton, Walton & Kirby and Great Holland

Recommendation

No contribution is requested on this occasion. However should the development increase in size a contribution maybe required.

5. **Representations**

5.1 The Parish Council recommends approval of the application.

6. **Assessment**

6.1 The main considerations in this instance are:

- Site Context;
- Material Considerations;
- Principle of Development;
- Development Proposal;
- Scale, Layout and Appearance;
- Highway Safety, Access and Parking;
- Landscaping;
- Water Conservation, Drainage and Sewerage;
- Residential Amenities;
- Financial Contribution - Recreational Disturbance;
- Financial Contribution - Open Space and Play Space.

Site Context

6.2 Within a 180m distance there are three dwellings on the north side of Little Clacton Road with seven on the south side within the same linear measurement.

6.3 The Willows is a single-storey bungalow; its neighbour to the west is a full two-storey dwelling and Beckwith Farm (further westwards) is a chalet bungalow. Holly Tree Cottage is a single-storey dwelling and Nos 1-6 Little Clacton Road are three pairs of 1950's semi-detached agricultural workers' dwellings).

6.4 The land formed part of an extensive pig rearing farm known as Seven Acres Farm. Alongside the dwelling, an access leads to the one remaining building that formed part of the farm. Other remains including foundations and walls of numerous pig sties and farm storage buildings lie to

the north and east of the existing structure. The east and south boundaries comprise mature and established tree planting.

- 6.5 The building subject of this application dates from the early 1950's and comprises a substantial steel frame building which is braced and strengthened and formerly used as the principal farrowing unit. At the time of the site visit all that remained was the steel frame and a degraded profile-sheet roof.

Material Considerations

- 6.6 Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. Material considerations are matters or issues which may be relevant to the decision. Principles of Case Law held through the Courts hold significant weight as a material consideration.
- 6.7 In this particular regard the Mansell v Tonbridge and Malling Borough Council 2017 judgement requires the Council to consider the 'fallback position' i.e. what development alternatives we are bound to consider relevant. It is for the decision-maker to make a comparison between the development already approved versus the development proposed. How to interpret the weight attributed to the fallback position is established in caselaw in the R v Secretary of State for the Environment and Havering BC (1998) EnvLR189 judgement.

Fallback Position

In paragraph 22 of the Mansell v Tonbridge judgement, it is stated that "It was not a precondition to the council's consideration of the fallback option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect." In direct comparison to the application under consideration, there *is* a formulated Class Q application. For this reason Officers are considered to have properly identify that there is a real prospect of a fallback development being carried out if planning permission were refused.

Attributing Weight to the Fallback Position

The three tests which are necessary to apply are as follows:-

- first, whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use;
- secondly, whether there is a likelihood or real prospect of such occurring.
- thirdly, if the answer to the second question is "yes" a comparison must be made between the proposed development and the fall-back use

The lawful ability to carry out the conversion of the existing building exists through the prior approval of application 21/00460/COUNOT (22nd April 2021). The LPA have no evidence before them to refute that there is a likelihood or real prospect of such occurring. The siting of the proposed dwelling is not materially different – in fact the siting of the proposed dwelling partially overlaps the siting of the building subject of 21/00460/COUNOT. The heights are comparable (3.1m versus 5.8m) and the proposed footprint is a nominal 11.5sqm greater than the existing approval. These circumstances amount to a sufficient case of there being a fallback position.

Principle of Development

- 6.8 The current application seeks to demolish the agricultural building subject of 21/00460/COUNOT. This scheme is the 'fall back' scheme and for this reason the principle of the development for one dwelling has been established.

Development Proposal

- 6.9 The application seeks full planning permission for a dwelling in lieu of the prior approval issued for conversion of an agricultural building into a dwelling. As part of the existing and proposed overlap, it is not considered necessary to put measures in place which would prevent both schemes from being implemented as the two developments simply cannot co-exist in their proposed forms.
- 6.10 The existing building comprises the substantial steel frame and a degraded profile-sheet roof; the footprint beneath the roof is in the region of 131m².
- 6.11 The dwelling's footprint would be of a simple rectangular form measuring 15.5m x 9.2m. The roof would be gabled-ended with eaves in the region of 2.5m and it would have a ridge of approximately 5.9m. The amenity area is proposed to the north and two off-street parking spaces to the west (in close proximity to the garaging for The Willows) are provided. Access to the dwelling would be from Little Clacton Road, utilising the existing access which would be partially shared with The Willows.

Scale, Layout and Appearance

- 6.12 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.
- 6.13 The proposed dwelling has height parameters which closely match those of Holly Tree Cottage (around 63m to the south) and The Willows (around 80m to the west) – both of these dwellings have greater footprints; it would however have a greater footprint than the semi-detached properties 1-6 Little Clacton Road but a lower ridge height, it would therefore correlate well with the broad range of scale of built form in the locale.
- 6.14 There is no locally-established palette of materials and dwellings/buildings are constructed in a range of finishes which include self-coloured render and render/brick combinations.
- 6.15 The dwelling would be of simple rectangular form with a semi-rustic external appearance. The external appearance of the replacement building will have a simple profile, clad in horizontal weatherboarding and have a slate roof. The walls would reflect the same material as proposed through the prior approval; the only change to external materials would be the roof having slate tiles rather than profile sheeting which represents a visual enhancement.

Highway Safety/Parking

- 6.16 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.

- 6.17 In terms of access, the scheme follows exactly the same arrangement as shown upon the approved scheme. This access is taken from the existing entrance onto Little Clacton Road, although now provided with a consolidated surface which would be a bound surface treatment (controlled by way of Condition 6).
- 6.18 The Highway Authority comments that, when compared with the former agricultural use, the level of activity will be on a par or possibly reduced.
- 6.19 The Highway Authority have requested conditions pertaining to a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority and the areas within the curtilage of the site for the purpose of loading / unloading / reception and storage of building materials and manoeuvring of all vehicles, including construction traffic shall be provided clear of the highway. In response to this, the parking area would be located around 60m north of the crossover on to Little Clacton Road in a position where there is extensive space in the vicinity for vehicles to adequately turn. In response to areas set aside for storage of buildings materials etc, this information is included in the Construction Management Plan and a separate condition to control this is not therefore deemed necessary.

Landscaping/Biodiversity

- 6.20 Section 2 Policy PPL3 of the Tendring District Local Plan 2013-2033 states that, in order to promote sustainable development, in considering where to select sites for new development in this Local Plan, the Council has taken particular care to assess the value of the landscape and, where practical, allocate sites with the lowest sensitivity, thereby helping to protect valued landscapes and the best and most versatile agricultural land. The Landscape Character Assessment (2001) identified 30 areas with different landscape characteristics and highlighted key sensitivities which need to be considered when assessing development proposals in the rural area. Proposals within the rural landscape should have regard to the Landscape Character Assessment (and any subsequent updates) and protect and re-inforce historic landscape features and important characteristics identified within it.
- 6.21 The Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance, including to estuaries, rivers and undeveloped coast.
- 6.22 The site is within one of the thirty such areas defined in The Landscape Character Assessment, being Clacton and the Sokens Clay Plateau. The North Clacton and the Sokens Clay Plateau is a gently undulating agricultural plateau, divided in half by Holland Brook, in the south-east of Tendring. The landscape is a rural agricultural landscape composed of fields of various sizes and shapes. It is predominantly an arable landscape with a great sense of space where colours and textures in the fields change through the seasons. Low, gappy hedgerows with occasional hedgerow trees enclose the fields and small remnants of ancient woodland provide interesting features in an open arable scene. Ribbon development along the B1441 has almost totally joined the settlements of Great Clacton, Little Clacton and Weeley. The presence of extensive areas of built development, urban fringe land uses around Clacton and the merging of settlements has masked the rural character of the landscape and the historic settlement pattern. The overall landscape character is weak, although could even be considered to be poor in some urban fringe locations.
- 6.23 In terms of the Landscape Management Strategy which includes guidelines to conserve woodland sites, preserve hedgerows and consider the impact of any development on the margins of the plateau landscape where it would have the potential to be highly visible on the adjacent character areas of the Hamford Coastal Slopes, St. Osyth Coastal Slopes and/or

overlooking the Holland Valley System; the location of the development is nowhere near a woodland, does not propose the loss of hedgerows and would not have the potential to be highly visible from or within the context of the Slopes or Valleys.

Water Conservation, Drainage and Sewerage

- 6.24 Paragraph 170 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Paragraph 180 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment. Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010. A completed Foul Drainage Assessment Form 1 (FDA1) form, or equivalent information, should accompany all planning applications where use of a non-mains system is proposed for foul drainage. The operation of small sewage discharges such as those from septic tanks or package treatment plants is regulated under the Environmental Permitting Regulations 2016 (EPR).
- 6.25 Policy PPL5 (Water Conservation, Drainage and Sewerage) of the Adopted Local Plan states private sewage treatment facilities will not be permitted if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour.
- 6.26 In relation to non-mains drainage from non-major development the Environment Agency's advice is that to comply with the Framework and PPG on foul drainage matters, an LPA needs to be satisfied that foul drainage can be provided without adverse impact on the environment. This requires ensuring that both those environmental risks outside of the control of the permit and the relevant considerations in the PPG are addressed. The LPA should also be mindful that the developer will need to address foul drainage matters to get their environmental permit and meet building control regulations. Therefore, they should be confident that it is likely that any necessary permits and approvals can be successfully obtained.
- 6.27 Question 11 of the application form states that it is not intended to connect to a mains sewer. Instead, foul sewage will be disposed of by way of a package treatment plant. Details of the proposed treatment plant have subsequently been received which shows that the system to be installed is a Kingspan Klargestar, BioDisc Commercial sewage treatment plant.
- 6.28 Having regard to non-mains drainage, the site is not close to any dwelling and in an area where it is unlikely that mains drainage exists for any of the properties, the site is not close to any designated site of importance to biodiversity, is not located within a Drinking Water Safeguard Zone or a Source Protection Zone, and the site is sufficiently large enough to accommodate a soakaway. Furthermore, there is no evidence ground conditions would preclude such a solution. Access for maintenance would be achievable from the existing car park. Taking all these factors into account, the use of the package treatment plant is considered to be the only feasible option available.

Residential Amenities

6.29 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.

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 | 143sqm | yes |

6.30 Separation distances in excess of 78m ensure no material harm to the amenity of the occupiers of the closest dwelling would ensue. The proposed dwelling exceeds the minimum internal space standards for a two-bedroom, four person single storey occupancy by some quite considerable amount. It is observed that whilst the amenity space is smaller than those typical of properties in the immediate locale (at around 132sqm) it is comparable with the five dwellings 'Sunny' dwellings to the south east (at under 200sqm) within 200 linear metres. Further, the proposed dwelling is likely to benefit from uninterrupted views across farmland to the north.

6.31 Overall the proposal is considered to secure a good standard of amenity for future occupants of the proposed dwelling.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

6.32 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.

6.33 The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 4,152 metres from Hamford Water SAC 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.

6.34 The contribution is to be secured by unilateral undertaking to be completed prior to determination as detailed within the recommendation. Therefore there will be certainty that the development would not adversely affect the integrity of European Designated Sites in accordance with PPL4 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Public Open Space

6.35 Paragraph 56 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made

acceptable through the use of conditions or planning obligations. Paragraph 57 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.

- 6.36 Policy DI1 states that all new development should be supported by, and have good access to, all necessary infrastructure. Permission will only be granted if it can be demonstrated that there is sufficient appropriate infrastructure capacity to support the development or that such capacity will be delivered by the proposal. It must further be demonstrated that such capacity, as is required, will prove sustainable over time both in physical and financial terms. Where a development proposal requires additional infrastructure capacity to be deemed acceptable, mitigation measures must be agreed with the Local Planning Authority and the appropriate infrastructure provider. Such measures may include financial contributions towards Open Space.
- 6.37 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 no contribution is being requested from Open Spaces on this occasion.

7. Conclusion

- 7.1 Whilst the location of the development is not supported by Local Plan policy - with regard to the scale, siting and form of development proposed, the similarities to the prior approval application 21/00460/COUNOT are deemed to hold significant weight as the fallback position. The proposal will have a neutral impact on the character of the landscape in comparison to the fallback scheme, and does not amount to sufficient 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 plan:- STW-02 A and Construction Method Statement (received 20th June 2022)

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

- 3 There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage to the east of the existing vehicular access. Such vehicular visibility splays shall be provided before the road junction/access is first used by the proposed dwelling and retained free of any obstruction at all times.

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

- 4 The proposed dwelling shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, sealed and if required 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.

- 5 Cycle 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 parking is provided in the interest of highway safety and amenity.

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.

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

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.

Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

The applicant must ensure that no mud or detritus is taken onto the highway, such measures include provision of wheel cleaning facilities and sweeping/cleaning of the highway. Under Section 148 of the Highways Act 1980 it is an offence to deposit mud, detritus etc. on the highway. In addition, under Section 161 any person, depositing anything on a highway which results in a user of the highway being injured or endangered is guilty of an offence.

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:
- 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.

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/>.

**PLANNING COMMITTEE
1st SEPTEMBER 2022**

REPORT OF THE ASSISTANT DIRECTOR PLANNING

A.3 REVISED PLANNING ENFORCEMENT POLICY DOCUMENT

PART 1 – KEY INFORMATION

| PURPOSE OF THE REPORT |
|--|
| <p>To seek the Planning Committee approval for the revised Planning Enforcement Policy document and note the content of the associated Harm Assessment Form. The policy document is contained at Appendix A and the Harm Assessment Form at Appendix B.</p> |
| EXECUTIVE SUMMARY |
| <p>The National Planning Policy Framework 2021 requires local planning authorities to consider publishing a local planning enforcement policy or plan which describes how the Council will manage planning enforcement in a way which is appropriate to their specific area. The NPPF also makes clear that planning enforcement is discretionary and local authorities should act proportionately in responding to breaches of planning control.</p> <p>The attached Planning Enforcement Policy document is a revision to the original version published in 2010 and follows adoption of the Tendring District Local Plan 2013 -2033 and Beyond in January 2022. The purpose of the Enforcement Policy is to provide elected Members and the wider public with a clear understanding of how planning enforcement will be delivered and the criteria used in making assessment of potential breaches of planning law.</p> <p>The Council also has a Corporate Enforcement Plan adopted in 2017 which identifies on a corporate level how the local authority will implement its enforcement responsibilities.</p> |
| RECOMMENDATIONS |
| <p>That the Planning Committee:</p> <ol style="list-style-type: none">1. Adopt the revised version of the Planning Enforcement Policy document 2022 and note the content of the Harm Assessment Form. |
| |

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

A corporate priority of the Council is ensuring that as part of delivering high quality services the Council has a proactive planning service. This document contributes to that aim.

RESOURCES AND RISK

Resources: There are no direct resource implications in adoption of this document although clearly implementation relies on having a full complement of planning enforcement staff in place.

Risks: Adoption of the revised document sets down the standards the public can expect from the planning enforcement function of the Council. Delivery of the proposed standards of service is therefore essential.

LEGAL

As noted above the NPPF expects Councils to publish a planning enforcement policy or plan demonstrating how local authorities will manage planning enforcement in a way which is appropriate to their specific area.

The policy should be implemented in accordance with national legislation contained under the Town and County Planning Act 1990 along with policy contained in the NPPF and the adopted Local Plan.

OTHER IMPLICATIONS

Crime and Disorder: In some cases breaches of planning legislation can significantly impact on the local population and where appropriate such cases will be referred to court seeking full mitigation of the impacts of unauthorised development. Having an up to date enforcement policy document in place assists in supporting legal action.

Equality and Diversity: There are no equalities implications. All alleged breaches of planning enforcement will be investigated with complete impartiality and investigated in accordance with the standards and timescales set down with the adopted policy document.

Health Inequalities: Ensuring that breaches of planning control which adversely affect the local population are fully mitigated or removed clearly contributes to addressing issues of health inequality not least in improving the quality of the local environment.

Area or Ward affected: All.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The purpose of the Planning Enforcement Policy document is the establishment of a set of standards and procedures on how the Council will respond to suspected breaches of planning control, deciding on what action should be taken as well as monitoring the implementation of new development through conditions monitoring.

It perhaps should be noted that it is not a criminal offence to undertake unauthorised works but it remains open to the Council to take legal action against such works and refer matters to the Courts if necessary. As noted within the NPPF such action is discretionary and should be proportionate taking into account the impacts of the particular unauthorised development. Where at all possible negotiation should be used to remedy a particular case with formal enforcement action or legal action being a last resort. The majority of cases are resolved through negotiation.

It may be the case therefore that in minor cases where the impacts of development are negligible or have little adverse impact on the wider public realm that any further action following investigation is unnecessary. Often the Council will seek a retrospective planning application where the development is generally in compliance with planning policy but can then be subject to control by planning condition. On occasion however breaches of planning can be considered as having such a serious impact on amenity and the environment and cessation or removal of such development is the only option. Such cases may require determination by the courts.

It is important that cases are prioritised and that serious breaches of planning law or policy are dealt with quickly (i.e. unauthorised demolition of a listed building). How we prioritise such investigation is set down within the proposed policy along with a Harm Assessment Form (see Appendix B) which establishes a set of criteria for how officers prioritise case work.

The Planning Enforcement Policy document is an important guide to how the Council undertake enforcement action and how we prioritise such action. It provides transparency to the public as to how decisions on enforcement are reached and provides clarity to those involved in the enforcement process.

PLANNING ENFORCEMENT POLICY

Planning enforcement is a key function of the Development Management process and assists the Council in delivering a proactive planning service in line with Corporate priorities. It is a high profile element of the service and how the Council deal with enforcement issues should be clear and transparent.

The policy sets down how alleged breaches of planning control should be reported to the Council and how these will be dealt with in priority order. Where breaches do occur the Council will work with developers, businesses and individuals to ensure they seek compliance with planning policy or remedy the impacts of the development in question. In the majority of cases compliance is achieved through negotiation with formal enforcement action (i.e. serving of an enforcement notice or an injunction) as a last resort.

The types of development subject to planning control include building works, changes of use, works to listed buildings, trees and hedges, control of advertisements. Normally enforcement action should only be carried out in the public interest and where the impacts are 'material' such as loss of light/amenity, highway safety, adverse impact on the character of the area. The policy also lists the various options open to the Council in terms of the type of enforcement action to take – this can include the serving of Planning Contravention Notices, Stop Notices, Breach of Condition Notices and in rare cases the serving of injunctions.

The Enforcement Policy sets down how the Council will follow the 'principles of good enforcement' including establishing and following a set of service standards, being open and transparent, being helpful, consistent in decision making, making proportional decisions and being accountable.

In terms of service standards the Council have established a priority system for dealing with enforcement matters which reflects the level of seriousness of the complaint/breach reported. Priorities are listed 1 to 4 with 1 being the highest priority case and 4 the lowest (see paragraph 7.2 of the document).

A priority 1 case for instance requires officers to investigate the case within 2 days and preferably within 1 day particularly where the potential harm is irreversible such as demolition of a listed building or protected tree. Priority 2 cases which must be assessed within 5 working days include unauthorised development in a conservation area or non-compliance with a planning condition. Examples where the time frame for action can be extended (i.e. Priority 3 cases) might include display of unauthorised adverts, untidy land or minor infringements of policy or legislation.

The Council is committed to responding to complaints within 3 working days and ensuring that complainants are kept updated with progress on their specific case.

In addition to dealing with complaints made direct to the Planning Service enforcement officers also work with other teams across the Council in proactively seeking to improve specific locations or buildings particularly in cases where the development in question is in breach of different areas of legislation (environmental health or housing standards for instance) as well as planning law. This can include the serving of section 215 notices to remove adverts, untidy land and buildings in severe disrepair.

Attached at Appendix B is a revised Harm Assessment form which sets down the criteria for how officers prioritise the investigation of alleged breaches of planning control. As noted the scheme

provides a grade for the level of harm being caused – in the majority of cases enforcement action will be taken if the total harm score is 6 or more. The criteria used covers a wide range of development impacts including urgency (i.e. works to a listed building), highway safety impacts, policy compliance, extent of harm etc. This is a similar method also used by other Essex local planning authorities.

There will be occasion where a score might fall below 6 but officers may consider it still expedient to undertake enforcement action. However the Harm Assessment Form provides a useful guide to officers in making their initial assessment of a particular case and ensures that each case dealt with can be undertaken in an open and transparent manner, provides speed and flexibility of assessment and ensures equality of decision is made.

In conclusion the Planning Enforcement Policy establishes the framework of how the Council will deliver its planning enforcement function and will contribute to providing a proactive planning service. It establishes how cases will be prioritised and sets down standards of service that the public can expect when making an enforcement complaint. It is recommended that the Committee adopt the revised Planning Enforcement Policy document.

APPENDICES

Appendix A: Revised Planning Enforcement Policy 2022

Appendix B: Harm Assessment Form 2022

This page is intentionally left blank



*Local Planning Enforcement
Policy*

Tendring
District Council



Contents

1. Introduction
- 2 Purpose of planning enforcement
3. Policy and Guidance
4. Principles of good enforcement
5. Breaches of planning control
- 6 Reporting an alleged breach
- 7 Priorities for investigation
- 8 Harm Assessment
- 9 Types of enforcement action
- 10 A Complaint about your development
11. Listed buildings
- 12 Advertisement control
- 13 Prosecution
- 14 Protection of Trees

Contacts and further information
National Guidelines

Adopted Policy

This policy was adopted by Tendring District Council on (date to be confirmed) as working practice. It is complimentary to the Council's Corporate Enforcement Strategy adopted in September 2017 and replaces the Council's Planning Enforcement Policy dated 2010 and the Enforcement Manual dated July 2008.

Tendring District Council
Planning Enforcement
Town Hall
Station Road
Clacton-on-Sea
Essex CO15 1SE

Tel: 01255 686868
Email: planningenforcement@tendringdc.gov.uk

TENDRING DISTRICT COUNCIL - LOCAL ENFORCEMENT POLICY

1 INTRODUCTION

1.1 This Local Enforcement Policy relates to Tendring District Council's planning enforcement service. It describes the purpose of the service and how it will be delivered within Tendring District.

1.2 Tendring District Council is a local planning authority and has responsibility to investigate and enforce breaches of planning control in the public interest. The ability to remedy harmful breaches of planning control allows us to protect the quality of life for the people who live, work and visit Tendring, and the quality of the District's built and natural environment.

1.3 The decision whether to take enforcement action against breaches of planning control is discretionary. This Policy sets out the Council's policy and procedures for dealing with alleged breaches of planning control, including the principles adopted in the exercise of that discretion.

1.4 The Policy explains how alleged breaches of planning control should be reported to the Council. It also sets out how these will be prioritised, adopting a risk based approach, to ensure that the Council's resources are put to the best use in dealing with the most serious and harmful breaches of planning control. It also explains how alleged breaches will be investigated, and the options available to the Council to take action.

1.5 Effective and well-targeted enforcement is essential in promoting fairness and protection from harm, and the Council adopts a positive and proactive approach towards ensuring compliance, helping and encouraging businesses and individuals to understand and meet planning controls, and responding proportionately to breaches. There is significant public interest in the enforcement of planning control and effective enforcement is critical to the Council's reputation.

1.6 The Policy is intended to ensure that the public, councillors and officers are aware of the Council's approach to planning enforcement, and provide greater certainty for all parties engaged in the planning enforcement service process.

1.7 In this document 'enforcement' includes any action taken by the Council aimed at ensuring that individuals and businesses comply with planning regulations. The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities, so can include a range of interventions that seek to achieve compliance. 'Formal enforcement action' refers to the exercise of statutory powers to secure compliance, including but not limited to, the issue of an enforcement notice, a prosecution or injunction.

1.8 Trees protected by a Tree Preservation Order or in a Conservation Area, and the display of advertisements are also included in this Policy. The Policy also deals with protected hedgerows under the Hedgerows Regulations. However there is separate legislation and an application process to deal with issues concerning the impact of high hedges on neighbours. This Policy does not relate to high hedges. If you have a query concerning high hedges please refer to the following: 'High Hedges – A guide to the new High Hedges Legislation' and 'High Hedges – Criteria for resolving disputes' which are available on the Council website.

2. PURPOSE OF PLANNING ENFORCEMENT

2.1 Planning permission is required for the carrying out of the development of land under the Town and Country Planning Act 1990 (as amended). Development requiring planning permission includes:

- Many types of building works;
- Material changes in the use of land or buildings;
- Some types of engineering operations;
- Mining and other operations.

2.2 Planning permission may be granted by the Council on application or by a development order, known as 'permitted development'. The most common type of permitted development is granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 relating to minor development including house extensions, outbuildings, garages and fences.

2.3 Where development is carried out without planning permission, or in breach of a condition or limitation attached to a grant of planning permission, it involves a breach of planning control.

2.4 The Council's planning enforcement service is also responsible for the enforcement of other planning controls, including:

- works to listed buildings
- protection of trees and hedges
- control of advertisements

Planning enforcement ensures that breaches which have an unacceptable impact on amenity are dealt with effectively and proportionately.

2.5 The government's Planning Practice Guidance, "Ensuring effective enforcement" provides national guidance on responding to breaches of planning control:

Effective enforcement is important to:

- ***tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area;***
- ***maintain the integrity of the decision-making process;***
- ***ensure that public acceptance of the decision making process is maintained.***

Enforcement action cannot be taken where there has been no breach of planning control nor can enforcement action be taken to protect private interests or disputes but can only be exercised in the public interest.

3. POLICY AND GUIDANCE

3.1 Local planning authorities have discretion to take enforcement action when it is expedient to do so, having regard to the Development Plan and any other material considerations, including the adopted Local Enforcement Policy and the National Planning Policy Framework. The government has issued policy guidance on the adoption of Policies and the enforcement of breaches of planning control.

3.2 In paragraph 59 of the National Planning Policy Framework ('the NPPF', 2021), the government advises:

'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.'

3.3 The government's Planning Practice Guidance document "Ensuring effective enforcement" (2018) advises that the preparation and adoption of a Policy is important because it:

- *allows engagement in the process of defining objectives and priorities which tailored to local circumstances;*
- *sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
- *provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
- *provides greater certainty for all parties engaged in the development process.*

3.4 In preparing and adopting this Policy the Council had regard to the government's recommendations in paragraph 58 of the NPPF and the Planning Practice Guidance on effective enforcement

Local Plan policy

3.5 The Council's adopted 'development plan' is fundamental in guiding decisions relating to breaches of planning control. The current Development Plan is the 2021 Tendring District Local Plan 2013-2033 and Beyond and Section 1 was adopted on 26th January 2021. Section 2 of the Tendring District Local Plan 2013-2033 and Beyond was adopted on 25th January 2022 and provides the statutory framework for planning decisions in Tendring District until 2033. The Local Plan includes a wide range of policies relating to topics including housing, employment, transport, education, heritage and landscape. For example Policy SPL3, which relates to new development and its impact on the character and appearance of the locality.

Human Rights

3.6 The provisions of the European Convention on Human Rights are relevant when considering enforcement action. There is a clear public interest in enforcing planning controls in a proportionate way. In deciding whether enforcement action is taken, the Council should have regard to the potential impact on the health, housing needs and

welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

4. PRINCIPLES OF GOOD ENFORCEMENT

4.1 The Council is committed to following good enforcement practice in accordance with current legislation, guidance and codes of practice, as set out in the Corporate Enforcement Strategy (2017).

4.2 In achieving compliance, the Council will work within the principles of good enforcement practice and exercise our regulatory functions in a way that delivers the following qualities:

Service standards:

4.3 The planning enforcement service standards are published in this Policy to ensure that it is clear what you can expect from the local planning authority responsible for planning enforcement.

Openness & transparency:

4.4 Information and advice on breaches of planning control will be provided in a timely manner and in plain language and any action which may be required to be taken to remedy the breach. The reasoning behind the decision will be explained, reasonable timescales for compliance set, and clear instructions given on what will happen if you do not comply.

The decision-making process will be transparent to ensure that everyone has confidence in the service. As part of this process of openness we will not usually deal with complaints from an anonymous source. We aim to publish details of the decision when a case is closed, when an Enforcement Notice is issued or other formal enforcement action is taken.

Personal details will not normally be made available unless the Council is ordered to do so by a Court. Where you feel intimidated in providing us with your name and address you can alternatively contact your local Councillor or Parish Council and ask them to raise the case on your behalf without providing your personal details.

Helpfulness:

4.5 To work with all parties to remedy breaches without taking formal enforcement action, if practicable, giving those responsible a chance to rectify matters quickly. We will tell you who is dealing with the investigation, how you can contact them and explain the actions we may take, and if formal enforcement action is taken, inform those concerned of any rights of appeal.

Consistency:

4.6 To carry out planning enforcement duties in a fair and consistent manner taking into account the particular aspects of each case, with the exercise of individual discretion and professional judgement. When deciding whether to take enforcement action, the Council must always consider meeting the objectives and policies of the development plan, the NPPF and other material considerations to ensure that development does not have an unacceptable impact.

Each decision will also take into account: the particular circumstances of the site and surrounding area; the level of harm being caused; and any relevant planning history,

including previous refusals, planning permissions or appeals. Where appropriate other Council departments may be involved in resolving breaches. Where there is a wider interest, we will liaise and co-operate with the appropriate agency.

Proportionality:

4.7 Enforcement action should be proportionate to the seriousness of the breach, including any harm caused by the breach. Where persons responsible are unwilling to remedy the breach voluntarily formal enforcement action will be necessary. Some breaches could cause serious risk to public health and safety, environmental damage or loss of amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment. We are also committed to dealing with those who deliberately or persistently fail to comply.

Enforcement action will only be taken in accordance with the law and after consideration of the provisions of the European Convention on Human Rights We will also examine any equalities issues in accordance with our duty under the Equalities Act 2010.

As resources are limited, it is essential to use the available resources to maximum effect. In planning terms this means where there is most harm to the public, amenity or the environment.

Enforcement action should focus on the most harmful breaches of planning control. It is not possible to take action against **all** breaches which do not cause significant harm. Reports of alleged breaches will be prioritised and assessed in accordance with this Policy. Where enforcement action is required, this should be proportionate to the harm and seriousness of the breach.

Accountability:

4.8 Planning enforcement service standards ensure that members of the public are aware of what to expect from this service. If you are not happy with the way an enforcement matter has been dealt with you can complain using this procedure using the following link:

<https://www.tendringdc.gov.uk/council/consultation-contact-and-complaints/how-complain>

5 BREACHES OF PLANNING CONTROL

5.1 Many types of development require planning permission before it can be carried out including building works, engineering and mining operations and material change of use of land or buildings.

5.2 A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- *the carrying out of development without the required planning permission; or*
- *failing to comply with any condition or limitation subject to which planning permission has been granted.*

5.3 A contravention of the conditions relating to permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, also constitutes a breach of planning control against which enforcement action may be taken.

5.4 Examples of breaches of planning control include:

- erection or extension of a building without planning permission;
- material change of use of a building without planning permission, for example a house to a shop;
- development not in accordance with the plans approved by the permission;
- not complying with the conditions of a grant of planning permission engineering works without planning permission for example, substantial raising of ground levels.

5.5 There may also be breaches of other special planning controls (not within the definition of a 'breach of planning control') for example:

- removal of trees protected by a Tree Preservation Order or trees in a conservation area;
- demolition or works to a listed building which affect its special interest without listed building consent;
- display of an advertisement without consent.

5.6 Certain minor works may not involve a breach of planning control such as:

- internal building works – but may require building regulations approval
- Civil matters such as boundary disputes, damage to private property or blocking rights of way
- fly tipping or rubbish deposited on the public highway
- adverts which are allowed to be displayed under the advertisement regulations;
- parking on grass verges or obstruction of the highway – dealt with by the Essex County Council as highway authority.

5.7 Development or use of a building within 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015 is not a breach of planning control.

Is a breach a criminal offence?

5.8 Most breaches of planning control are not criminal offences but may result in the Council taking enforcement action where this is justified in the public interest. If formal enforcement action is taken it is a criminal offence to fail to comply with the notice.

5.9 There are certain breaches of planning control and breaches of other special planning controls that are criminal offences, including:

- demolition of a listed building or the carrying out of works that affect its special interest without listed building consent;
- breaches of condition of listed building consent;
- demolition of an unlisted building in a conservation area without planning permission;
- felling or unauthorized works to trees protected by a Tree Preservation Order or within a Conservation Area or removal of a protected hedgerow.
- display of unauthorized advertisements;

Time limits

5.10 If no enforcement action is taken within specified time limits, development can become immune from action. If enforcement action is expedient it must be taken:

- within 4 years of substantial completion of building works, engineering works or similar operations;
- within 4 years of an unauthorised change of use of a building to a single dwellinghouse;
- within 10 years for any other unauthorised change of use of land or building.

5.11 In certain circumstances it is possible to take enforcement action after these time limits have expired. For example, in cases of deliberate concealment of a breach of planning control and the deception has not come to light until after the period for taking action has passed. A Planning Enforcement Order enables the Council to take action against an apparent breach of planning control when the time limit has expired. There is no time limit as to when enforcement action may be taken in respect of the unauthorised demolition of an unlisted building in a conservation area or unauthorised works to a listed building.

6 REPORTING AN ALLEGED BREACH

6.1 Breaches of planning control can be reported to the Council by letter, email or using the 'unauthorised development' form on the Tendring District Council website (Planning Enforcement – how to make your complaint.)

https://www.tendringdc.gov.uk:8443/ufs/ufsmain?formid=ENFORCEMENT_COMPLAINT

You can also contact us in person, by phone, e-mail or letter. If it is urgent, for example work is ongoing, please phone during office hours on 01255 686868 or email: planningenforcement@tendringdc.gov.uk

6.2 Where an alleged breach is reported but the web site form is not used, you will be asked to provide the information required before investigating further, or you may be asked to complete the form. We will ask you to provide sufficient information so that we can prioritise the action to be taken on the report, to give contact details so that we can keep you informed at key stages.

6.3 Please note that anonymous complaints will not usually be investigated unless there is sufficient evidence and the alleged breach is serious or readily apparent. Your personal details will be confidential and will not be revealed unless required by law. In exceptional cases we may be required to reveal your personal details to the police in connection with any associated investigation.

6.4 You can also speak to your local district councillor, town or parish council but advising them about your concerns is not a formal enforcement request for an investigation. Councillors, town and parish councils will decide whether they raise a matter with the planning enforcement team, but this will not be logged as a complaint from a member of the public. The priority given to an investigation is not affected by the source and whether it is received from a councillor, town or parish council. Whichever route you take, we will need enough information to complete the online complaint form before it is investigated further.

7 PRIORITIES FOR INVESTIGATION

7.1 Given the size of Tendring District and the wide range of planning issues it faces, the Council deals with a large number of enforcement cases at any one time. Because of this, it is not practical to treat every enforcement complaint as a top priority. Therefore to make the best use of its resources to maximum effect in the public

interest, the Council will prioritise the investigation of complaints having particular regard to the level of 'harm' being caused by the alleged breach.

7.2 The Council has established a set of priorities to reflect the importance it places on the quality of life for its residents and businesses, and the need to protect the special character of the built and natural environment. The performance standards set for the service are intended to encourage a more pro-active approach to enforcement. The Council aims to achieve these standards, monitoring progress regularly. The priorities are intended as a set of guiding principles, rather than attempting to take account of all eventualities. Regardless of who has made the complaint, it will be assigned a priority category which then sets a performance standard for the first site visit.

Priority 1 – first investigation within 2 working days of receipt of a completed complaint form. This category includes development which could cause irreversible or serious harm if the Council does not act immediately. Examples include:

- demolition of a listed building or unlisted building in a conservation area.
- works to a listed building (including development within its setting)
- removal of a protected tree or hedgerow.
- use of land which causes serious harm to the locality or the natural environment
- development which has been undetected and where the time limit for enforcement action will expire within six months.

Priority 2 – first investigation within 5 working days of receipt of a completed complaint form. This category includes likely significant public concern or where there is significant immediate harm to the amenity of the area. Examples include:

- Unauthorised development in the Dedham Vale AONB or a Conservation Area.
- Unauthorised development affecting designated sites including SSSIs, Ramsar sites, Special Areas of Conservation or Special Protection Areas.
- Unauthorised development affecting a non-designated heritage asset including a locally listed building.
- unauthorised development or non-compliance with a planning condition, which is causing immediate and significant harm to the public or amenity of the area.

Priority 3 – first investigation within 10 working days of receipt of a completed complaint form. Minor breaches which do not result in significant immediate or irreversible harm or public concern. Examples include:

- Display of unauthorised advertisements.
- Untidy sites
- All other complaints relating to unauthorised development not falling in any of the above categories.

Priority 4 - Complaints which do not involve unauthorised development or other breaches which cannot be investigated by Planning Services where the aim is to provide an initial response within 15 working days of a completed complaint form.

7.3 All complaints will be acknowledged within 3 working days and will provide the name and contact details of the officer who will be investigating the complaint. We ask that you provide us with a phone number or e-mail address as we no longer intend to respond via post. Complaints will be investigated according to their priority, within the periods set out above. Wherever possible we will investigate a Priority 1 complaint on the same day that we receive the request or the following day.

7.4 After an initial investigation if there is no breach of planning control you will be notified, and the complaint will be closed. Where a breach is found a harm assessment

will be carried out to determine whether or not the matter will be subject to further investigation (see section 8 below).

8. HARM ASSESSMENT

8.1 The decision whether to take enforcement action is discretionary and the Council has limited resources so a process to assess the degree of harm is carried out to assist in deciding whether it is expedient to take action and to decide how the case should be prioritised. Following an investigation in accordance with the priorities outlined above where a breach has been confirmed an assessment will be carried out to assess the degree of harm the breach is causing and determine whether it is in the public interest to take enforcement action.

8.2 The Council receives requests in excess of 350 enforcement investigations each year of which almost half are found to involve no breach of planning control whilst the others range from minor infringements to more serious breaches. Where it is decided that enforcement action should not be taken, for example where the breach is minor or results in no significant harm, the case will be closed and the reasons for the Council's decision recorded.

8.3 The degree of harm resulting from the breach is graded against a series of planning criteria. The level of harm to take enforcement action is currently a score of 6 and above. These breaches will be pursued by taking appropriate action until matters are resolved, either by negotiation or by taking enforcement action.

8.4 A cumulative score of less than 6 or will cause little or no harm to amenity or the environment and it will not be considered expedient to take enforcement action in the majority of cases. In these circumstances the case will be closed and advisory letters sent to the offender and complainant explaining the reasons for the decision. The owner will be advised of the need to rectify the situation, normally by the submission of a retrospective planning application.

8.5 Once the complainant and owner have been notified no further action will be taken unless circumstances change or new evidence is received. This will not apply to those cases with a harm score of less than 5 where agreed by the authorised officer. In cases where it is considered that the breach would not receive planning permission the enforcement action will be pursued to a successful conclusion.

8.6 Harm assessment will be applied to all cases involving alleged breaches of planning control. Cases involving Advertisement Control, Amenity Notices and Tree/Hedgerow matters have different legislative requirements and are dealt with separately. The harm assessment form sets out various planning "harm" factors dealing with the nature of the breach, policy matters, safety issues, degree of harm, etc.

8.7 The harm assessment form should be completed within 20 working days of receipt of a complaint. Where the breach relates to a change of use of land the site should be visited on at least 2 occasions in that twenty day period (if necessary) to confirm whether a breach of planning control is occurring. The result of the harm assessment by the twentieth day will allow the decision on "harm" to be incorporated in the 21 day letter to complainants informing them of the investigation findings and proposed action.

8.8 Harm assessment provides a quantitative and qualitative assessment to be made which is open, quick and effective. The criteria and scoring enables breaches of planning control to be assessed and for prioritising other breaches of planning control.

9. MATERIAL CONSIDERATIONS

9.1 Planning enforcement operates to protect the public rather than the private interest and certain factors should **not** be taken into account when assessing an alleged breach of planning control, such as:

- loss of value to property
- loss or trade or increased competition with other businesses
- loss of view
- breach of covenants
- land ownership disputes

9.2 When considering whether it is expedient to take enforcement action, the Council should have regard to the development plan and any other material considerations, including the adopted Local Enforcement Policy, the government's National Planning Policy Framework and planning practice guidance.

9.3 Those planning considerations which **are** material include:

- Overlooking/loss of privacy
- Loss of light/overshadowing
- Parking provision for development
- Highway safety
- Noise, dust and fumes
- Impact on listed buildings and conservation areas
- Layout and density
- Drainage and flood risk
- Design, appearance and materials
- Impact on character and appearance of the area
- Loss of trees
- Planning history (including appeal decisions)
- Impact on landscape and nature conservation
- Archaeological impact

9.4 Harm can result from a breach of planning control that has various adverse impacts including on residential amenity; highway safety; flood risk; damage to the historic environment, archaeology, conservation areas; the natural environment including protected species, designated landscapes and habitats. Unauthorised development which undermines the policies of the development plan, or could set a precedent which, if repeated, would undermine the policies of the development plan.

9.5 If the unauthorised development would have been permitted, had a planning application been submitted, it would be unlikely to be expedient to take enforcement action. A fundamental principle is that taking enforcement action must be in the public interest.

Other planning controls

9.6 There are other specific planning controls relating to the protection of trees, hedges and advertisements. Planning enforcement is also responsible for:

- statutory powers for the control of works to listed buildings
- protection of trees subject to Tree Preservation Orders or within Conservation Areas
- control of advertisements
- protection of hedgerows

9.7 Breaches which have an unacceptable impact on amenity will be dealt with effectively and proportionately. However it should be recognised that enforcement action will not be taken simply because a breach has occurred. It should be demonstrated that the breach results in harm which underlines the need to undertake an assessment of the degree of harm.

No breach and no further action

9.8 After undertaking an investigation in many cases it may be decided that no further action is appropriate. This may be because the breach is relatively minor and does not cause material harm or because there has been no breach of planning control. Alternatively, the works may be 'permitted development' which can be carried out without planning permission. The details of what is 'permitted development' are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015).

9.9 Similarly, it may be decided not to carry out an investigation, even if there is a clear breach of planning control, because it is not 'expedient' to take action. This might be because the breach does not cause any material harm and formal action would not be in the public interest. In reaching such a decision the harm must be balanced against the likely success of any formal action, the availability of resources, and other cases which might be causing a greater level of harm but whose progress might be delayed as a result.

9.10 Certain advertisements do not require Advertisement Consent because they are exempt from control or have "deemed" consent under the Town and Country Planning (Control of Advertisements) Regulations 2007. Unauthorised advertisements are assessed in terms of their harm to amenity and/or potential danger to highway safety and it may be decided not to take action against advertisements or signs which are not harmful or dangerous.

9.11 The timescale to resolve an enforcement investigation varies depending on a range of factors:

- nature of alleged breach;
- harm being caused
- extent of investigations
- planning history
- tracing ownership
- need to carry out more than one visit
- problems gaining access
- resources available.

9.12 Where an Enforcement Notice is issued there is a right of appeal to the Secretary of State which can add significantly to the overall timescale. Therefore, it is not possible to give an average time for resolving an investigation. Informants should be kept informed throughout the process both in writing at key stages and via our website where progress is monitored for each investigation.

9.13 To help meet these targets the Council has delegated certain powers to officers including whether to take enforcement action. This allows decisions to be made without having to refer matters to Committee. The reasons for taking any decision will be made clear to all parties.

9. TYPES OF ENFORCEMENT ACTION

9.1 When a complaint has been investigated and it has been established that there has been a breach of planning control, there are a number of options available to resolve the breach, although not all options will be suitable in each case.

Planning Contravention Notice (PCN)

9.2 This enables local planning authorities to obtain information about a suspected breach of planning control. It sets out a list of questions about the development or activity to establish whether a breach has occurred. The Council can offer a meeting to allow additional information to be provided. It is an offence not to comply with the requirements of the notice within the period set for its return or to make false or misleading statements.

Section 16 Notice (Local Government (Miscellaneous Provisions) Act 1976)

9.3 This is primarily intended to establish information about ownership and other interests in the land. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

Section 330 Town and Country Planning Act 1990

9.4 The Council can use this to obtain information, usually at an early stage of the enforcement process. It involves serving a Notice on occupiers of premises and/or person receiving rent. It is an offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

Breach of Condition Notice (BCN)

9.5 The Council can serve a BCN on the developer or occupier if they do not comply with conditions imposed on a planning permission. There is no right of appeal against a BCN but failure to comply within the specified period is a criminal offence and the Council can take legal action. It can only be used to secure complete compliance. It does not apply to breaches of control relating to listed buildings, advertisements or protected trees. The Council can use this procedure in preference to issuing an Enforcement Notice, where appropriate. However the penalties for non-compliance may be lower than if an Enforcement Notice is used to deal with the breach of condition.

Enforcement Notice

9.6 The Council may serve an enforcement notice when it is satisfied that there has been a breach of planning control and it is appropriate to take action. With an enforcement notice the recipient must take the specified steps within a specified time period, at least 28 days. Failure to comply with an enforcement notice is a criminal offence. The recipient of a notice has a right of appeal to the Secretary of State through the Planning Inspectorate. An appeal suspends the effect of the notice until it is determined. If the recipient lodges an appeal, the Council will let the informant know and how they can make representations to the Planning Inspectorate which will be available for public inspection.

Stop Notice

9.7 The Council can serve a Stop Notice with an Enforcement Notice where it considers that continuing unauthorised development is causing significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not usually come into effect until three days after it is served, although this can be reduced if necessary. Work must stop immediately the Notice

comes into effect. There are compensation liabilities if the Enforcement Notice is quashed, but these are not related to the planning merits of the case. There is no right of appeal and failure to comply with the notice is an offence.

Temporary Stop Notice

9.8 Where there has been a breach of planning control immediate action can be taken to safeguard the amenities of the area by a temporary stop notice. This differs from a normal Stop Notice as it has immediate effect and does not have to be accompanied by an Enforcement Notice but only lasts for 28 days. There is no right of appeal but judicial review can challenge the decision to issue the notice.

Injunction

9.9 The Council can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. An injunction can be sought whether or not other enforcement action has been taken. Failure to comply with an injunction can be contempt of court and can lead to an unlimited fine, confiscation of assets or imprisonment.

Untidy Site Notice (S215)

9.10 Under Section 215 of the Town and Country Planning Act, 1990 the Council has powers to require an owner/occupier to maintain land or buildings if their condition causes harm to the amenity of an area. In assessing the harm, consideration will be given to the appearance of the site and the impact on the amenities of the surrounding area. The Council will decide whether the extent of any harm to amenity of the area justifies the service of a Notice requiring the proper maintenance of land.

9.11 A Section 215 Notice will specify what steps the owner must carry out to improve the site to secure an improvement in its appearance in order to avoid further action or prosecution. The owner has a right of appeal to the magistrate's court but failure to comply with the notice is an offence. The Council may also carry out the works in default and recover the cost from the owner.

9.12 Section 215 Notices may be appropriate in connection with a prominent and derelict site, particularly if it has started to attract fly-tipping, or an important town centre street frontage has fallen into disrepair, particularly if it is within a Conservation Area. The Council may also serve a Notice where the condition of land impacts upon the wider landscape, particularly if it is in an area of countryside which is noted for its landscape value or natural beauty.

9.13 If a residential property is in a dilapidated condition due to lack of proper maintenance over a long period, or the garden is overgrown with domestic waste or abandoned vehicles left in the garden, an Untidy Site Notice may be an appropriate remedy. However, gardens which are merely neglected or a house that needs some cosmetic maintenance may not generally qualify for a Section 215 Notice. As with other enforcement investigations, the Council will allocate resources where they can be most effective and where the greatest harm is being caused. It will not use these Notices where there are other more specific and applicable powers available to address the concern.

9.14 Section 215 Notice will specify the steps required to maintain the land and buildings to a satisfactory standard. The scope of works which can be required may include making the site secure, external repairs, replacing roof tiles, repairs to guttering, repairs to doors and windows, redecoration, removing waste, and cutting

back overgrown vegetation. Works which require planning permission, for example the re-building of a garage or extension fall beyond the scope of a Section 215 Notice.

9.15 The owner will be notified before serving a Section 215 Notice advising that formal action will be taken unless the appearance of the site is improved. Where no action is taken by the owner and a Notice becomes effective but is not complied with, the Council may:

- ❖ prosecute in the Magistrates Court. A successful prosecution may result in a fine of up to £1,000 and a criminal record.
- ❖ direct action - carrying out the required steps in default and the costs incurred recovered from the owner. Where the costs cannot be recovered a charge on the property can be registered with the Land Registry, thus assuring full cost recovery plus base-rate interest.

The course of action will vary from site to site, and in some cases both direct action and prosecution may be appropriate. Where the costs cannot be recovered a charge on the property will be registered with the Land Registry, thus assuring full cost recovery plus base-rate interest.

10. COMPLAINTS ABOUT DEVELOPMENT

10.1 In many cases a breach of planning control is not intentional and can be the result of a misunderstanding or being unaware of the planning requirements. Therefore, if a letter is received from the Council or a visit made by an Enforcement Officer, you are encouraged to respond positively and provide the information needed to resolve the matter. It is beneficial to all parties if any breach is addressed at an early stage. In some cases a request to investigate may be made against your property. If it is possible to investigate the concerns without disturbing you and establish that there is no breach of planning control, there will be no need to contact you.

10.2 Depending on the level of harm caused the Council will discuss what alternative solutions might be acceptable, rather than the complete removal or rebuilding of the development. However, this does not mean that you can delay any action that you have agreed to do. You will be expected to respond within the stated timescales and the Council may prosecute for failing to respond to formal notices. Protracted negotiations which delay taking action to rectify the breach will not be encouraged. In many cases, particularly where the works are likely to be acceptable, perhaps with some minor changes, there will be an opportunity to submit a retrospective application. This will enable the development to be considered in more detail and, if appropriate, control it through planning conditions.

10.3 You should be aware that development which requires but does not have planning permission is unauthorised, and remains subject to potential enforcement action for a set number of years. In the case of building works, or the use of a building as living accommodation, the time period is 4 years after completing the works or occupying the accommodation. Where the breach is an unauthorised change of use of land or buildings, or breach of a planning condition, the time period is 10 years.

10.4 If you subsequently wish to sell a property, which has been subject to unauthorised works or a change of use, the sale could be delayed or lost as a result. Mortgage providers are normally made aware of breaches of planning control and will be sent a copy of any formal notice or decision about planning enforcement. The Council's Land Charges section will be advised where formal notices have been served, and where potential enforcement action remains outstanding.

10.5 Enforcement officers will try to make themselves known to the landowner/developer when they enter a site, but it is not always possible to give prior notice. Enforcement officers are legally entitled to enter land and property to investigate alleged breaches. You do not have to be present when an enforcement officer makes a site visit but if it is necessary to enter the house 24 hours notice must be given. If an officer is prevented from entering the land the Council can apply for a warrant and any obstruction to access the site will be considered a criminal offence.

10.6 The information from a site visit will be used to assess the harm being caused and what further action may be required. Allowing the enforcement officer to make a site visit and take photographs will help to reduce delays and any potential inconvenience. A senior officer then makes the decision to serve a formal notice with the recommendation of the enforcement officer.

10.7 Enforcement officers can explain the different notices and help you understand the implications. However, they will not act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own independent advice from a planning consultant or other property professional. If you cannot afford to employ a consultant you may wish to contact Planning Aid which is a voluntary service which offers free independent, professional advice (see contacts below).

11. LISTED BUILDINGS

Listed Building Enforcement Notice

11.1 Where there has been a breach of listed building control, such as unauthorised works which affect the special character and appearance of a listed building, a Listed Building Enforcement Notice can be issued. The recipient must take the specified steps within a set time period. Failure to comply with a notice is a criminal offence. The Notice will usually specify work required to remedy the breach of control which may include a requirement to restore the listed building to its condition immediately prior to the unauthorised work.

11.2 The recipient has a right of appeal to the Secretary of State through the Planning Inspectorate within 28 days. An appeal suspends the effect of the notice until it is determined. If the recipient lodges an appeal, we will notify neighbours of the appeal and how they can make representations to the Planning Inspectorate.

Listed Building Prosecution

11.3 Unlike standard enforcement notices the Council may commence Court proceedings for unauthorised works to a listed building without the need to serve formal Notices. These proceedings may include a prosecution or a formal caution. This is a formal process where the offence is formally admitted and may be referred to at the sentencing stage if you are found guilty of a subsequent offence it may also be taken into consideration when deciding whether to prosecute at a later stage for another similar offence.

In order to bring a successful prosecution it must be proved that:

- the building is listed;
- there has been a breach of a formal notice if one has been issued
- you have carried out, caused, or permitted the works
- the works were carried out without consent
- the works were not exempt

Warning

11.4 It should be noted that in serious cases the Magistrates Court and the Crown Court have power to impose custodial sentences on offenders carrying out unauthorised work to a listed building in addition to substantial fines. You are advised to discuss the need for planning permission and/or listed building consent with the Council before carrying out any works to a listed building. Contractors and workers may be at risk of prosecution as well as owners or occupiers.

12. ADVERTISEMENT CONTROL

12.1 It is a criminal offence to display an advertisement without Advertisement Consent or Deemed Consent although there is an exception for certain exempt advertisements such as road signs.

12.2 Where an advertisement is considered to be illegal or harmful the advertiser will be advised to remove it within 14 days. In certain cases the period for removal may be shorter, for example where the advert is a danger to road safety. Adverts on a listed building will often need listed building consent as well as advert consent and the advertiser may be advised to remove it within a shorter period if it is causing harm to a listed building.

12.3 The content of an advert is not usually a material consideration but it could be a factor in reducing the timescale for removal of illegal adverts which are offensive. Lawful adverts on legal advertising sites may still give offence which is a matter for the Advertising Standards Authority rather than the Local Planning Authority. An example might be an advert on a bus shelter near a primary school for a particularly violent or explicit film. A link to the Advertising Standards Authority web site appears at the end of this Policy.

12.4 Where prior warnings are ignored and an advertisement remains on display legal proceedings can be taken in the form of a prosecution and a formal caution. In order to bring a successful prosecution it must be proved that the advertisement did not have the required Consent, Deemed Consent or an exemption and was therefore illegal. It must also be proved that the advertisement was displayed on the date of the offence. Each day on which an advert is displayed whilst being illegal gives rise to a separate offence.

12.5 The Council will also work with Essex County Council as highway authority to remove unauthorised advertisements on the highway under the Highways Act 1980. Advertisers may be charged a fee (currently £40) for the return of adverts which are removed. The advert should not be replaced and if it is it may be confiscated.

13. PROSECUTION

13.1 The Council may commence legal proceedings where a formal notice has been breached. In some cases legal proceedings can be taken against unauthorised works without the need to serve any formal Notices, for example unauthorised works to a listed building, a protected tree, or an unauthorised advertisement. These proceedings can include:

- prosecution
- formal caution - this is a formal process where the offence is admitted. It may be referred to at the sentencing stage if the offender is ever found guilty of a subsequent offence. It may also be taken into consideration when the Council decides whether or not to prosecute at a later stage for a similar offence.

13.2 In order to bring a successful prosecution, the Council will need to prove that:

- a building or tree was protected;
- someone has breached a formal notice (Listed Building);
- someone has carried out, caused, or permitted the works
- the works were carried out without consent
- the works were not exempt

13.3 The Council will apply two tests in cases where a prosecution appears likely in consultation with its legal advisors:

The evidential test:

The Council will not start a prosecution unless there is sufficient admissible and reliable evidence that the offence has been committed, and there is a reasonable prospect of conviction.

The public interest test:

The Council will only bring a prosecution where this is in the public interest. It may apply cautioning in cases where a prosecution can properly be brought, but where it is not considered such action is appropriate in the circumstances of the case. Cautions will be used in accordance with Home Office guidance. People who have previously received a formal caution will normally be dealt with by prosecution.

14. PROTECTION OF TREES

14.1 Trees which are subject to Tree Preservation Orders or trees within Conservation Areas are protected by planning legislation. In general, authorisation is required from the Council before you do any work. This includes cutting down, uprooting, lopping or topping a protected tree. It is a criminal offence to wilfully damage or destroy a protected tree. .

14.2 Hedgerows which are ancient and within the scope of the Hedgerows Regulations are also subject to special protection. The removal of a protected hedgerow may be a criminal offence. Anyone who contravenes the Hedgerow Regulations may also be prosecuted and liable to a fine of up to £2,500 if convicted.

14.3 Any proceedings for these offences must be brought within six months of the date the offence was committed. In prosecuting we will need to decide if:

- the tree or hedgerow was protected;
- you have carried out, caused, or permitted the works
- the works were carried out without consent
- the works were not exempt

14.4 When a protected tree is damaged or destroyed two offences may apply:

- Anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000 (the fine is unlimited if there is a trial in the Crown Court). The Courts have decided that it is not necessary for a tree to be obliterated for it to be “destroyed”, it is sufficient for the tree to have been rendered useless as an amenity.

- Anyone who carries out unauthorised works to a tree which are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2500.

Investigations

14.5 The initial investigation will involve a site visit to establish:

- whether the tree is protected;
- whether any consent has been granted; and
- who is carrying out the work.

Unauthorised works to Trees

14.6 As with planning enforcement complaints, officers investigating unauthorised works to protected trees have rights to enter land to carry out investigations and will take photographs which may later be used as evidence. The property owner/occupier will have an opportunity to give their version of events during the investigation. However, if it appears that they did carry out the works then a caution will be given under the Police and Criminal Evidence Act 1984 because it may involve a criminal offence.

14.7 If trees are removed through unauthorised works (or because they are dead, dying or dangerous) the onus is on those carrying out the work to prove that the tree was in such a condition to warrant its removal. The landowner has a duty to plant a replacement tree of a suitable size and species in the same position as soon as reasonably possible (unless the Council waives that requirement). The replacement tree is then subject to the same protection as the tree that was removed. The Council can serve a Tree Replacement Notice within a period of four years to ensure the landowner complies and there are rights of appeal against Tree Replacement Notices.

Whether to take action

14.8 The Council will decide what action to take in cases of unauthorised works on trees based on the public interest test and each case will be considered on its merits. The Council would not normally prosecute unless the unauthorised works have resulted in a loss of public amenity. In most cases, prosecution will not be pursued if the Council would have granted consent (or raised no objection) for the works if they had been properly applied for.

14.9 In considering whether to bring a prosecution, the Council will have regard to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. It will also have regard to any financial advantage perceived to have been gained by carrying out the unauthorised works, and whether prosecutions, cautions or warnings have been issued to the offender for similar offences in the past. The Council will take into account any expression of regret, helpfulness and co-operation with the investigation and any evidence that the offender was acting in good faith.

14.10 The Council will normally require the planting of replacement trees, irrespective of a prosecution or caution. When replacement planting is required, the situation will be monitored to make sure it is undertaken. If necessary the Council will serve a Tree Replacement notice to secure replacement planting, which can be invoked if the landowner does not voluntarily carry out replacement planting.

CONTACTS AND FURTHER INFORMATION

You can contact the Council's planning enforcement team at the following address:

Planning Enforcement,
Tendring District Council,
Planning Enforcement
Town Hall
Station Road
Clacton-on-Sea
Essex CO15 1SE

Tel: 01255 686868

Email: planningenforcement@tendringdc.gov.uk

For further information on planning enforcement contact:

Department for Levelling Up, Housing and Communities

(The Government Department with overall responsibility for planning)

<https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities>

Planning Inspectorate

(The independent body responsible for planning and enforcement appeals.)

Registry/Scanning,
Room 3/01, Kite Wing,
Temple Quay House,
2 The Square,
Temple Quay,
Bristol, BS1 6PN.

www.planning-inspectorate.gov.uk/pins/index.htm

Planning Portal

(The Government's online planning resource where you can learn about the planning system and research the latest government policy.)

www.planningportal.gov.uk/

Planning Aid

(Provides free, independent, professional town planning advice to communities and individuals who cannot afford to pay planning consultant fees.)

PO Box 37,
Freshwater,
Isle of Wight, PO40 9ZR
Phone: 0870 240 7552

www.planningaid.rtpi.org.uk/

National Policy and Guidelines:

- National Planning Policy Guidance (2021)
- Planning Practice Guidance (2018)

<https://www.gov.uk/government/collections/planning-practice-guidance>

- Town and Country Planning (General Permitted Development) (England) Order 2015,
- Enforcement Concordat, published by the Department for Trade and Industry

<http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

- RTPI | Planning Enforcement Handbook for England

<https://www.rtpi.org.uk/practice/2020/may/planning-enforcement-handbook-for-england/>

- Advertising Standards Authority

https://www.asa.org.uk/make-a-complaint.html?gclid=EAlaIQobChMImbTLh-2y5gIVSrTtCh2edwXMEAAAYASAAEglqoPD_BwE

'High Hedges – A guide to the new High Hedges Legislation' and
'High Hedges – Criteria for resolving disputes'
available on the Councils website

Tendring District Council Planning Enforcement

HARM ASSESSMENT – PRIORITISATION SCHEME

Purpose

This document sets out the Council's Harm Assessment procedure to prioritise the investigation of alleged breaches of planning control. It assesses the degree to which the breach is perceived to cause harm and provides a process for the closure of minor breaches of planning control.

One of the Council's responsibilities is to protect the public and prevent harm to the environment. There may be occasions when a breach of planning regulations will justify enforcement action. Any such action will only be taken in accordance with the law and the relevant policies and guidance and after due consideration has been given to any Rights under the Human Rights Act 1998 that may be affected by such action. However, the Council's resources are limited and this assessment of harm will assist in maximizing the use of available resources.

Harm Assessment

The Harm Assessment Scheme is applied to breaches of planning control following a site inspection. The scheme grades the "harm" of that breach against a series of scored planning criteria. The agreed level of harm (the score) to take enforcement action is 6 and above.

Where the cumulative score is 5 or less it will generally not be considered expedient to take action as the impact on public amenity or public interest will be negligible. The case will be closed and advisory letters will be sent to both the offender and complainant. The land owner/occupier will also be advised of the need to rectify the situation, most usually through the submission of a retrospective planning application, or the compliance with any conditions attached to a planning approval. The submission of an application will not, however, be monitored or pursued. Once all parties have been notified no further action will be taken.

This will not apply to those cases with a Harm Assessment Score of 5 or less where it is agreed by the Assistant Director (or equivalent authorised officer) that the breach would not receive an unconditional grant of planning permission. In these instances the breach will be pursued to a successful conclusion. Breaches of planning control which score 6 or more will be pursued until matters are resolved either by negotiation or by taking formal action.

Harm Assessment will be applied to all incidents involving development. Fifteen planning "harm" factors are set out in the harm assessment form dealing with factors such as, the nature of the breach, safety issues, policy matters, degree of harm etc.

Operational Aspects

The Harm Assessment Form will be completed by the enforcement officer within 20 working days of receipt of an incident. Where the alleged breach of control relates to a change of use of land the investigator should visit the site a minimum of three times in that twenty day period (if necessary) to establish if a breach of control is occurring (if the initial or second visit are inconclusive). The result of the harm assessment by the twentieth day will allow the decision on "harm" to be incorporated in the Service's normal 21 day letter to complainants informing them of the Services findings and intended action or, where applicable, that no additional action is to be taken.

Conclusion

The Harm Assessment scheme provides:

- A quantitative and qualitative assessment of harm to public amenity/interest

- A procedure that is open and transparent
- Quick and effective processing of incidents
- A flexible system to make efficient use of resources
- Equality of treatment of dealing with incidents

The harm assessment criteria and scoring is an effective means of identifying minor/trivial breaches of planning control, as well as providing an opportunity for it to be used in prioritising of other breaches of planning control to be investigated.

TENDRING DISTRICT COUNCIL

PLANNING SERVICES - HARM ASSESSMENT FORM

TO BE COMPLETED BY OFFICER WHO HAS INSPECTED SITE

Each new complaint will be allocated a score as set out below to assess its degree of harm. The priority of each case will be based on the total score.

Where no breach of planning control is found, the file will be closed.

| Points Allocation | | Score |
|-------------------|--|---|
| 1 | Urgency - Is the breach: | Ongoing (1) Getting worse(2) Stable (0) |
| 2 | Highway safety issues: | Yes (2) No (0) |
| 3 | Danger to public safety: | Yes (2) No (0) |
| 4 | Does it cause a statutory or serious environmental issue | Yes (2) No (0) |
| 5 | Complainant: | TDC Member (2) Member of public (2) Statutory agency (2) Member of staff (1) Parish Council (2) Anonymous/malicious(0) |
| 6 | Timescale ie, (period left before enforcement action can no longer be taken and lawful use rights exist) | Less than 6 Months (2) More than 1 year (1) Less than 3 months old (0) Not applicable (0) |
| 7 | Contrary to Local Plan policy: | Yes (2) No (0) |
| 8 | Extent of harm: | Widespread(2) Local(1) None (0) |
| 9 | Is harm irreversible? | Yes(2) No (0) |

| | | | |
|----------------------------------|--|--------------------------------------|--|
| 10 | Intensity of activity | High(2) Low (1) Negligible (0) | |
| 11 | Breach of planning condition | Yes(1) No (0) | |
| 12 | Impact on amenity | Long term (2) Short term(1) | |
| 13 | Previous enforcement action/planning history | Yes(1) No (0) | |
| 14 | Safety hazards (specify) | Yes(1) No (0) | |
| 15 | Undesirable precedent (please provide details) | Yes(1) No(0) | |
| Case Officer | Sign..... Date..... | | |
| TOTAL POINTS (HARM SCORE) | | | |

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank