



## PLANNING COMMITTEE

<b>DATE:</b>	<b>Tuesday, 8 July 2025</b>
<b>TIME:</b>	<b>5.00 pm</b>
<b>VENUE:</b>	<b>Committee Room, Town Hall, Station Road, Clacton-on-Sea, CO15 1SE</b>

### MEMBERSHIP:

**Councillor Fowler (Chairman)**  
**Councillor White (Vice-Chairman)**  
**Councillor Alexander**  
**Councillor Everett**

**Councillor Goldman**  
**Councillor Smith**  
**Councillor Wiggins**

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**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.**

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DATE OF PUBLICATION: Monday, 30 June 2025

## 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 11 - 16)**

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on Tuesday, 10 June 2025.

### **3 Declarations of Interest**

Councillors are invited to declare any Disclosable Pecuniary Interests, Other Registerable Interests of Non-Registerable Interests, 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 Report of the Corporate Director (Planning and Community) - A.1 - 24-00560-OUT - Wellwick, Colchester Road, St Osyth, CO16 8HS (Pages 17 - 66)**

Outline Planning Application (Access only to be considered and all other matters reserved) – Outline planning application for the erection of 37 dwellings, with all matters reserved other than the use of access from Colchester Road (as consented under 20/01124/OUT), associated public open space, landscaping and all associated ancillary works.

### **6 Report of the Corporate Director (Planning and Community) - A.2 - 25-00755-FUL - Land to The North-east of Bloomfield Cottage, Grange Road, Lawford (Pages 67 - 96)**

Construction of new single storey dwelling with associated three bay cart lodge, parking and turning area.

### **7 Report of the Corporate Director (Planning and Community) - A.3 - 24-01890-FUL - Land at High Street Car Park, Carnarvon Road, Clacton-on-Sea, CO15 6QF (Pages 97 - 148)**

Demolition of existing multi-story car park and clearance of site. Construction of replacement multi-story car park, 28no. residential (Class C3) apartments, and 5no. flexible units (Class E, F1, F2 and related Sui Generis uses).

### **8 Report of the Corporate Director (Planning and Community) - A.4 - Revised Planning Service Enforcement Policy and the Associated Harm Assessment (Pages 149 - 208)**

To seek the Planning Committee's approval to adopt the revised Planning Service Enforcement Policy and the associated Harm Assessment.

**9      Report of the Corporate Director (Planning and Community) - A.5 - Biodiversity Net Gain (BNG): Delegation and Consultation Arrangements in Respect of Proposals for Habitat Banks (Pages 209 - 234)**

To seek the Planning Committee's agreement to delegate future decision making powers to the Head of Planning and Building Control in respect of proposals for 'Habitat Banks' including their approval, entering into legal agreements and future enforcement. To also seek the Committee's agreement to consultation arrangements for the processing of Habitat Bank proposals. These matters are referred to the Planning Committee at the request of the Cabinet, following its decision on 21 October 2024 to adopt an interim planning policy on Biodiversity Net Gain (BNG).

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

*The next scheduled meeting of the Planning Committee is to be held in the Town Hall, Station Road, Clacton-on-Sea, CO15 1SE at 5.00 pm on Tuesday, 5 August 2025.*

## **INFORMATION FOR VISITORS**

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

Welcome to this evening's meeting of Tendring District Council's Planning Committee.

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

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

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

Under The Openness of Local Government Bodies Regulations 2014, which came into effect on 6 August 2014, any person is permitted to film or record any meeting of the Council, a Committee, Sub-Committee or the Cabinet, unless the public have been excluded from the meeting for the consideration of exempt or confidential business.

Members of the public also have the right to report meetings using social media (including blogging or tweeting).

The Council will provide reasonable facilities to facilitate reporting.

#### **Public Behaviour**

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

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

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

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

Filming by the Council 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 four years (the Council retains three full years 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.

# *Tendring* **District Council**



## **PLANNING COMMITTEE MEETINGS PUBLIC SPEAKING SCHEME March 2021**

This Public Speaking Scheme is made pursuant to Council Procedure Rule 40 and gives the opportunity for a member of the public and other parties identified below to speak to Tendring District Council's Planning Committee when they are deciding a planning application.

### **TO WHICH MEETINGS DOES THIS SCHEME APPLY?**

Public meeting of the Council's Planning Committee are normally held every 4 weeks at 5.00 pm in the Committee Room at the Town Hall, Station Road, Clacton-on-Sea CO15 1SE.

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

1. The applicant, his agent or representative; or (where applicable) one person the subject of the potential enforcement action or directly affected by the potential confirmation of a tree preservation order, his agent or representative. A maximum of 3 minutes to speak is allowed;
2. One member of the public who wishes to comment on or to speak in favour of the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes to speak is allowed;
3. One member of the public who wishes to comment on or speak against the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes to speak is allowed;
4. Where the proposed development is in the area of a Parish or Town Council, one Parish or Town Council representative. A maximum of 3 minutes to speak is allowed;
5. All District Councillors for the ward where the development is situated ("ward member") or (if the ward member is unable to attend the meeting) a District Councillor appointed in writing by the ward member. Member(s) of adjacent wards or wards impacted by the proposed development may also speak with the

agreement of the Chairman. Permission for District Councillors to speak is subject to the Council's Code of Conduct and the declarations of interest provisions will apply. A maximum of 5 minutes to speak is allowed;

In accordance, with Council Procedure Rule 36.1, this Public Speaking Scheme takes precedence and no other Member shall be entitled to address or speak to the Planning Committee under Rule 36.1; and

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

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

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

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

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

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

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

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

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

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

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

You can:-

Telephone the Committee Services Officer ("CSO") (01255 686587 or 686584) during normal working hours on any weekday after the reports and agenda have been published; or

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

### **OR**

On the day of the Planning Committee meeting, you can arrive in the Committee Room in the Town Hall at least 15 minutes before the beginning of the meeting (meetings normally begin at 5.00pm) and speak to the CSO.

If more than one person wants to speak who is eligible under a particular category (e.g. a member of the public within the description set out in numbered paragraphs 2 or 3 above), the right to speak under that category will be on a "first come, first served" basis.

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

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

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

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

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



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

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

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

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

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

Tendring District Council, Planning Services,  
Town Hall, Station Road, CLACTON-ON-SEA, Essex CO15 1SE  
Tel: 01255 686161 Fax: 01255 686417  
Email: [planningservices@tendringdc.gov.uk](mailto:planningservices@tendringdc.gov.uk) Web: [www.tendringdc.gov.uk](http://www.tendringdc.gov.uk)

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

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

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**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON TUESDAY, 10TH JUNE, 2025 AT 5.00 PM  
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,  
CO15 1SE**

<b>Present:</b>	Councillors Fowler (Chairman)(except item 13), White (Vice-Chairman)(in the Chair for item 13), Alexander, Everett, Goldman, Smith and Wiggins
<b>Also Present:</b>	Councillor J Henderson (except item 14)
<b>In Attendance:</b>	John Pateman-Gee (Head of Planning & Building Control), Michael Pingram (Senior Planning Officer) (except item 14), Joanne Fisher (Planning Solicitor), Bethany Jones (Democratic Services Officer) and Katie Koppenaar (Democratic Services Officer)

**9. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were no apologies for absence nor substitutions on this occasion.

**10. MINUTES OF THE LAST MEETING**

It was moved by Councillor Smith, seconded by Councillor Goldman and:-

**RESOLVED** that the minutes of the meeting of the Committee, held on Tuesday, 13 May 2025, be approved as a correct record and be signed by the Chairman.

**11. DECLARATIONS OF INTEREST**

Councillor Smith declared for the public record in relation to Planning Application **25/00337/FUL – Holland-on-sea Bowls Club, Maderia Road, Holland-on-Sea** that he was one of the Ward Members. Councillor Smith stated that he was not predetermined on this application, and that he therefore would remain in the meeting and take part in the deliberations and decision making on that application.

Councillor Fowler (Chairman) declared for the public record in relation to Planning Application **24/01922/VOC – Land to Rear of 135 and 137 Fronks Road, Dovercourt, CO12 4EF** that she was one of the Ward Members. Councillor Fowler stated that she was predetermined and that therefore she would not participate in the Committee's deliberations and decision making for this application and that Councillor White (Vice-Chairman) would take over as Chairman for that item.

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

There were no such Questions on Notice submitted by Councillors on this occasion.

**13. REPORT OF THE CORPORATE DIRECTOR (PLANNING & COMMUNITY) - A.1 - 24/01922/VOC - LAND TO REAR OF 135 AND 137 FRONKS ROAD, DOVERCOURT, CO12 4EF**

Earlier on in the meeting as reported under Minute 11 above, Councillor Fowler (Chairman) had declared for the public record that she was one of the Ward Members. Councillor Fowler had further stated that she was predetermined, and she therefore

withdrew from the meeting at this juncture and took no part whilst the Committee deliberated and made its decision on this application. The Chair was thereupon occupied by the Vice-Chairman (Councillor White).

Members were told that the application sought planning permission for the variation of the approved conditions under 24/00254/FUL, in order to facilitate alterations to the ground levels across the site in comparison to what had been previously approved. The level changes ranged across the site between -0.6 metres (towards the northern section of the site by Plot A) and 1.5 metres (to the southern section of the site by Plot E). The design, scale and layout of the development otherwise remained unaltered. Officers considered that the proposed changes would not result in a significant detrimental impact to the street scene or character/appearance of the surrounding area, and that, on balance, the harm to neighbouring amenities was not considered so significant that a recommendation of refusal would be justified.

The Committee was informed that the application was before Members because Councillor Jo Henderson had called the application in.

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

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

There were no updates circulated to Members on this occasion.

Robert Pomery, the agent for the applicant, spoke in favour of the application.

Mr St Clair Pearce, a member of the public, spoke against the application.

Councillor Jo Henderson, one of the Ward Councillors and Caller-in, spoke against the application.

<b>Matters raised by Members of the Committee:-</b>	<b>Officer's response thereto:-</b>
<i>What date did it become apparent to the Planning Department that the building was not being built within the spirit/intention of the planning permission given?</i>	<i>Officers cannot give an exact date, it was around the beginning of October, the Council's Enforcement Team visited the site around that time. December 23<sup>rd</sup> was when the application was then submitted.</i>
<i>Would advice have been given to the applicant from Planning Enforcement as to what to do to rectify this situation and what was that advice?</i>	<i>The Enforcement Team was spoken to and at the time, the advice that was given to the applicant was to stop work. The applicant was told that a planning application would be submitted and therefore it was not appropriate for the Council to issue a stop notice. The advice given was that the applicant was doing the work at their own risk.</i>
<i>If Councillor Jo Henderson had not called this application in, would the Planning Committee have seen this application?</i>	<i>No, the application would not have come to the Planning Committee.</i>

<i>Would Officers say that the fencing as a composite is acceptable or would have the Officer recommended a different material?</i>	<i>The fencing is standard, but the issue is what is sitting underneath the fencing. The materials itself are not inappropriate. Whether the degree of the extent of materials is in debate as acceptable or whether and if it contributes to a harm to amenities, that is a judgement for Members going forward. If Officers were saying that the boundary treatment in itself was a sole reason for refusal, Officers have not put that in front of Members. Officers are recommending that this is acceptable.</i>
<i>Who would own and have to maintain the fencing?</i>	<i>The ownership would be the future occupants.</i>
<i>To reach what is in front of Members here, Members are looking at something that is being artificially built up at that level at the top of the sleepers, is that correct?</i>	<i>Yes, the green line is what the original ground levels were, and the above line is the difference which is the artificial increase.</i>
<i>Does this application set a precedent?</i>	<i>Retrospective applications in planning law are acceptable; Officers cannot treat them any differently to one that is not retrospective. In terms of setting a precedent, every case is case-by-case and Officers would have to assess that when the cases came in, but it would not be suggested that going through this process and risk of refusal would set a precedent.</i>
<i>Is what Members saw, the same fencing but at different stages of structure?</i>	<i>The bit underneath the fencing was already there.</i>
<i>Could Members have guidance from the Legal Officer on whether this application would be setting a precedent or not?</i>	<i>Each case is looked at on its own merits and facts. When dealing with works that have been carried out in breach of planning control (whether that is without permission or breach of a condition) every case that would be looked at by the Enforcement Officer has to be guided by the Local Development Plan Policy to determine whether it is something that might have been granted permission had it been an application and not being looked at retrospectively. Officers would also have to look at the National Planning Policy guidance which has particular guidance on enforcement, and Officers would also consider the National Planning Policy framework. Each case is individual; there may be factors about the amenity or duties that apply in planning law at times. This case would not set a precedent because it is not an unusual thing for an unauthorised development to take place. Officers are saying in the Officer report that it is in accordance with the Local Development Plan Policy and other material planning considerations. As Members of the</i>

	<i>Committee, Members will need to look at all of the planning considerations and decide for themselves whether retrospective permission can be granted in this particular case.</i>
<i>If this was a fresh application starting from scratch, advice from Essex County Council would be expected in terms of drainage, there is nothing mentioned in the Officer report about this, can Officers tell Members what ECC advice has been given?</i>	<i>The original application was for 5 dwellings and that did not reach the threshold of being a major development so Officers would only consult them at the time of a major development. On the original application it was proposed to connect to the existing mains. With this current application, Officers have not consulted ECC because it is a variation but the original application, they would not provide comments because it is a minor development.</i>
<i>Are Officers saying that Members do not have that information about the potential damage this application could do to the surrounding buildings because of the original sustainable drainage scheme was not kept to?</i>	<i>There was no original sustainable drainage scheme because this application was underneath the threshold consultation on that basis. Essex County Council will not look at anything unless the development is 10 houses or more. This was an additional section of 5 houses so therefore they are not involved and not commented on the original application either. It does get covered by building regulations.</i>
<i>So, Members do not know what the effect of this development will be regarding the drainage?</i>	<i>In terms of where the water goes, without getting building control records up, no, Members do not have that information as a planning authority.</i>
<i>When this was originally built, were the properties supposed to be so high?</i>	<i>Within the original application, there was no mention of an increase in ground levels at all so Officers were approving based on what was there previously. Officers assumed that it would be built on the green line. During construction the ground levels have been raised and that is essentially what Members are dealing with today.</i>
<i>So, the developers must have thought something was wrong to increase the grounds levels?</i>	<i>Officers cannot answer as to why the ground levels were increased as that is not a material planning consideration.</i>
<i>Are building control happy with the very high fencing and the wall to retain the soil?</i>	<i>Officers do not know if the wall/fence itself is part of the building control application. Members are dealing with a different regime, and Members have to deal with the planning application that is here today.</i>
<i>If this application went to appeal, do Officers think the Council would win the appeal and do Officers think costs would be given to the Council?</i>	<i>The recommendation before Members is for approval, on that basis, Officers have considered partly whether the Committee were to refuse the application. In the report, it has been debated the degree of harm but the weight that Members apply to that judgement is for Members to decide. As long as Members adequately explain their judgement of refusal</i>

	<i>then there should not be much risk of costs. It is a matter of planning judgment and as long as Members are exercising their view of whether there is harm. Harm has been identified. If Members were to refuse today and this application went to appeal, the planning inspector would exercise their judgement as well. Cost liability comes in when the decision maker has been acting unreasonably such as taking something into account that they should not have done or that there is no evidence to support refusal. Costs do not come into it when it is an exercise of planning judgement which is reasonable.</i>
<i>In respect of the building total, are there any provisions for soakaways?</i>	<i>Soakaways are not before Members. Building control have looked at this and it is presumed they are okay with this as it is connected to the mains and Officers could not consult Essex County Council as it is not a major scheme.</i>
<i>Are the trees to the rear cutting out any light to the properties?</i>	<i>The trees are in the neighbouring boundary; there will be a degree of sunlight loss but not a significant amount. The site does have permission for 5 dwellings regardless of how Members determine the variation.</i>

Following the debate, it was moved by Councillor Everett, seconded by Councillor Goldman and:-

**RESOLVED** that consideration of this application be deferred to enable the following to be carried out/investigated:-

- Officers to review any drainage matters resulting from land level changes; and
- Review the boundary treatment with the applicant to consider any alternatives.

**14. REPORT OF THE CORPORATE DIRECTOR (PLANNING & COMMUNITY) - A.2 - 25/00337/FUL - HOLLAND-ON-SEA BOWLS CLUB, MADERIA ROAD, HOLLAND-ON-SEA, CO15 5HZ**

Members heard that the application sought full planning permission for the erection of a replacement timber shed. The shed was considered to be of a minor scale and traditional in design with no significant harmful impacts on the visual or residential amenities of the area.

The Committee was made aware that the application was before Members as the site was owned by Tendring District Council.

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

At the meeting, an oral presentation was made by the Council's Head of Planning and Building Control (JP-G) in respect of the application.

There were no updates circulated to Members on this item.

There were no speakers on this item on this occasion.

There were no questions from Members on this occasion.

It was moved by Councillor Alexander, seconded by Councillor Wiggins and unanimously:-

**RESOLVED** that:-

- 1) the Head of Planning and Building Control be authorised to grant planning permission subject to the conditions as stated at paragraph 10.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and
- 2) the sending to the applicant of any informative notes as may be deemed necessary.

The meeting was declared closed at 6.12 pm

**Chairman**

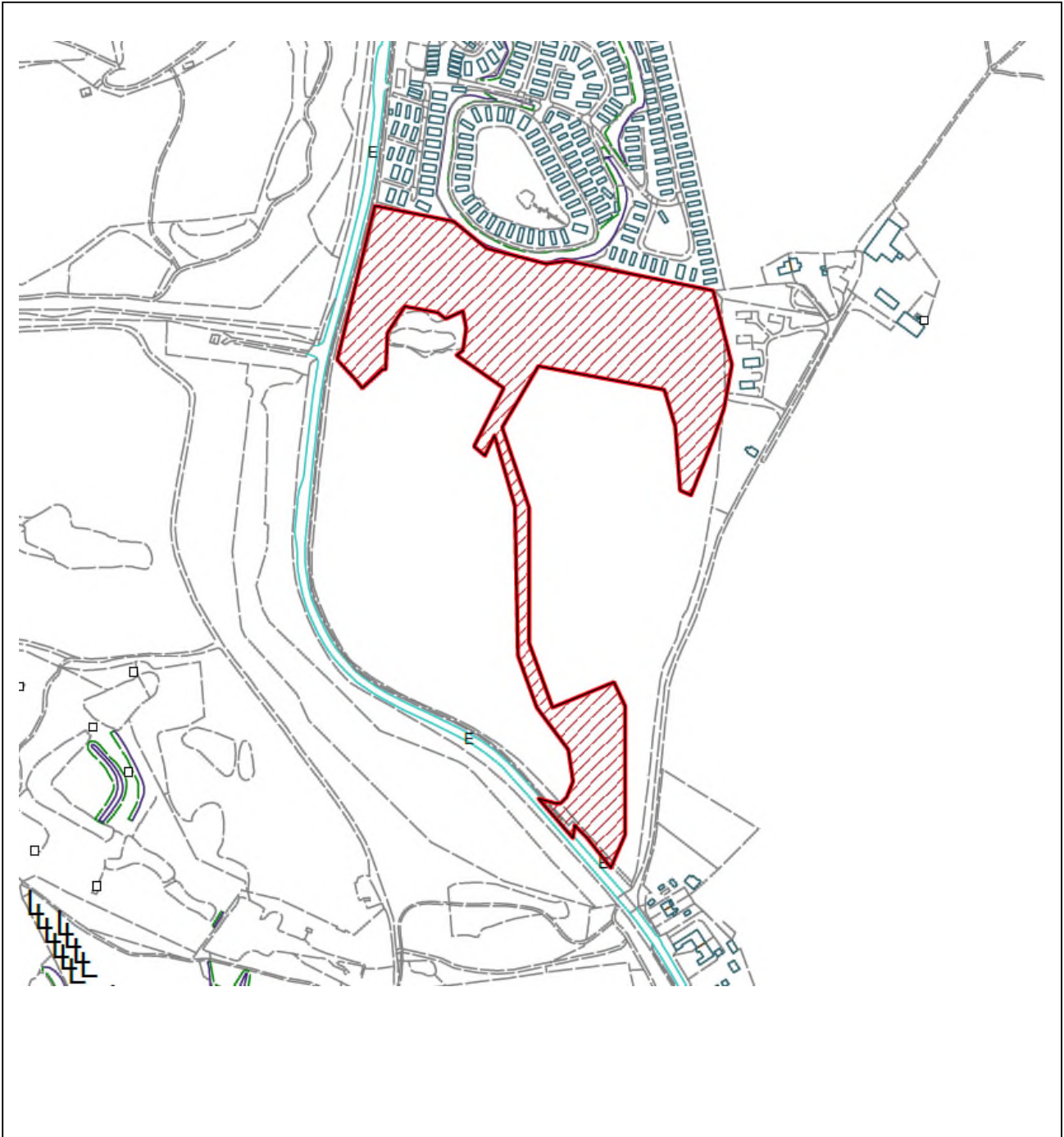


## PLANNING COMMITTEE

8 JULY 2025

### REPORT OF THE CORPORATE DIRECTOR OF PLANNING AND COMMUNITY

#### **A.1 - PLANNING APPLICATION – 24/00560/OUT – WELLWICK SITE COLCHESTER ROAD ST OSYTH CO16 8HS**



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<b>Application:</b>	24/00560/OUT	<b>Expiry Date:</b>	12th August 2024
<b>Case Officer:</b>	Matthew Lang		
<b>Town/ Parish:</b>	St Osyth Parish Council		
<b>Applicant:</b>	Wellwick Farms Ltd		
<b>Address:</b>	Wellwick Site Colchester Road St Osyth Essex CO16 8HS		
<b>Development:</b>	Outline Planning Application (Access only to be considered and all other matters reserved) - Outline planning application for the erection of 37 dwellings, with all matters reserved other than the use of access from Colchester Road (as consented under 20/01124/OUT), associated public open space, landscaping and all associated ancillary works.		
<b>Recommendation:</b>	Outline Approval subject to S106		
	<ol style="list-style-type: none"> <li>1) On appropriate terms below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control to secure the completion of a legal agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 dealing with the matters as summarised at paragraph 10.2:</li> <li>2) That the Head of Planning and Building Control be authorised to grant outline consent subject to the agreed section 106 agreement and conditions as stated at paragraph 10.3, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,</li> <li>3) The informative notes as may be deemed necessary.</li> </ol>		
	<b>Or;</b>		
	<ol style="list-style-type: none"> <li>4) That in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months that the Head of Planning and Building Control be authorised to refuse the application on appropriate grounds at their discretion.</li> </ol>		

## 1. Executive Summary

- 1.1 This application seeks outline planning permission (with all matters reserved aside from access) for the erection of 37 dwellings at the Wellwick Site, Colchester Road, St Osyth. The application comes before the planning committee as the proposal represents a departure from local plan policies which govern the location of new housing development.
- 1.2 The wider site has planning permission 190 dwellings, as part of an enabling scheme associated with the restoration of nationally important heritage assets located at the nearby St Osyth Priory complex.
- 1.3 This application proposes a further 37 dwellings on two parcels of land, which formed part of the

previous consented scheme. Again, the development is promoted as enabling development to fund further works, particularly to the Abbot's Lodgings at St Osyth Priory.

- 1.4 In summary, the principle of resident development in this location is already established and the access point is already consented. The proposal would represent a sustainable and proportionate development which, like the consented scheme, would serve as enabling development to fund further restoration works at St Osyth Priory. In this respect there is an identified and agreed need for such enabling development.
- 1.5 There are no overriding objections from any statutory consultees and no objections from St Osyth Parish Council or third parties.

## **2. Status of the Local Plan**

- 2.1 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 Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

In relation to housing supply:

- 2.2 The Framework requires Councils to significantly boost the supply of homes to meet the District's housing need. Paragraph 78 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 5% to ensure choice and competition in the market for land, unless the Housing Delivery Test (HDT) demonstrates significant under delivery of housing over the previous 3 years - in which case a higher buffer is required.
- 2.3 On 12th December 2024 the Government published the Housing Delivery Test: 2023 measurement. Against a requirement for 1,466 homes for 2020-2023, the total number of homes delivered was 2,343. The Council's HDT 2023 measurement was therefore 160%, and a buffer of 5% is to be used when calculating the Council's five year land supply position.
- 2.4 The Council demonstrates its supply of specific deliverable sites within the Strategic Housing Land Availability Assessment (SHLAA), which is published annually. The most recent SHLAA was published by the Council in July 2024, and demonstrates a 6.26-year supply of deliverable housing sites against the annual requirement of 550 dwellings per annum set out within the adopted Local Plan, plus a 5% buffer. The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>
- 2.5 As a result, the 'titled balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

## **3. Neighbourhood Plans**

- 3.1 A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic

policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

3.2 There are no neighbourhood plans in place that are relevant to this location.

#### **4. Planning Policy**

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

##### **National:**

National Planning Policy Framework 2025 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

##### **Local:**

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

SP 1 Presumption in Favour of Sustainable Development

SP 2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)

SP 3 Spatial Strategy for North Essex

SP 4 Meeting Housing Needs

SP 7 Place Shaping Principles

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

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP1 Improving Health and Wellbeing

HP3 Green Infrastructure

HP5 Open Space, Sports and Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable Housing

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL8 Conservation Areas

PPL9 Listed Buildings

PPL10 Renewable Energy Generation and Energy efficiency Measures

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

DI1 Infrastructure Delivery and Impact Mitigation

##### Supplementary Planning Documents

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

Tendring Provision of Recreational [Open Space for New Development SPD](#) 2008

[Essex Design Guide](#)

[Technical housing standards](#): nationally described space standard Published 27 March 2015

##### Local Planning Guidance

[Essex Parking Guidance](#) Part 1: Parking Standards Design and Good Practice 2024

#### **5. Relevant Planning History**

11/00333/OUT	Erection of 190 dwellings on 16.3 hectares of land; new junction and access roads; driveways; parking; footpaths; landscaping and all ancillary works; use of land as an archery range; construction of access drive and layout of parking area including siting of storage container for archery equipment. The proposals also include for a new footway to be built along a section of Colchester Road, south of the Wellwick.	Approved	18.03.2016
18/01476/DETAIL	Erection of 190 dwellings on 16.3 hectares of land; new junction and access roads; driveways; parking; footpaths; landscaping and all ancillary works; use of land as an archery range; construction of access drive and layout of parking area including siting of storage container for archery equipment. The proposals also include for a new footway to be built along a section of Colchester Road, south of the Wellwick.	Approved	01.07.2020
19/01171/OUT	Variation of conditions 18 and 30 for application 11/00333/OUT to amend wording of condition 18 to 'Land as identified on drawing RW007-008 Rev D to be used for the relocated Bowmans Archery range shall be retained for that use with any ancillary buildings.' and amend wording of condition 30 to only include the following plans Site Plan showing Application Boundary - CC-0175-ABP010-6, Building Envelope/Use Plan - RW007-008 Rev D and Building Storey Heights Plan - RW007-009 Rev E.	Approved	22.06.2020
20/01099/DISCON	Discharge of condition 4 (strategic phasing plan) of approved application 19/01171/OUT.	Approved	09.09.2020
20/01124/OUT	Variation of conditions 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27 and 28 of approved application 19/01171/OUT to allow for the discharge of conditions in a phased manner.	Approved	19.10.2020
21/01425/DISCON	Discharge of condition 5 (hard and soft landscaping), condition 15 (ecological survey), condition 22 (bat survey) and condition 25 (contamination scheme) of application 20/01124/OUT	Approved	16.09.2021
21/01611/DISCON	Discharge of conditions 10 (Wheel	Approved	26.05.2022

washing), 17 (CEMP) and 18 (Energy efficiency) of application 20/01124/OUT.

22/00082/DISCON	Discharge of condition 21 (SUDS Scheme) of application 20/01124/OUT.	Approved	12.04.2022
24/00560/OUT	Outline Planning Application (Access only to be considered and all other matters reserved) - Outline planning application for the erection of 37 dwellings, with all matters reserved other than the use of access from Colchester Road (as consented under 20/01124/OUT), associated public open space, landscaping and all associated ancillary works.	Current	
24/00673/VOC	Application under Section 73 of the Town and Country Planning Act for Variation of Conditions 1 (Approved plans) and Condition 3 (Car parking and turning areas) of application 18/01476/DETAIL.	Approved	02.08.2024
24/01414/VOC	Application under Section 73 of the Town and Country Planning Act for Variation of Condition 1 (Approved Plans); Condition 2 (Landscaping Scheme); Condition 4 (Parking and Turning Areas) of application 24/00673/VOC to make changes to the layout and housetypes within phase 1, and to adjust the phasing plan.	Approved	21.11.2024
24/01894/DISCON	Discharge of conditions application for 20/01124/OUT - Condition 19 (Wastewater Strategy); Condition 20 (Foul Water Strategy); Condition 21 (Surface Water Strategy) - Phase 1A only.	Approved	21.01.2025
24/01925/DISCON	Discharge of conditions application for 20/01124/OUT - 27 (Recruitment Strategy).	Approved	06.01.2025
25/00022/DISCON	Discharge of conditions application for (24/01414/VOC) - Condition 2 (Landscaping Scheme) - Phase 1A only.	Approved	13.01.2025
25/00023/DISCON	Discharge of conditions application for (20/01124/OUT) - Condition 5 (Hard and Soft Landscaping Works) - Phase 1A only.	Approved	13.01.2025
25/00183/DISCON	Discharge of conditions application for 20/01124/OUT - Condition 8 (Landscape Management Plan) for Phase 1A.	Approved	11.02.2025

## 6. Consultations

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), 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/>.

<b><u>ECC SuDS Consultee</u></b>	<b>25.06.2024</b>
<p>As the Lead Local Flood Authority (LLFA) this Council provides advice on SuDS schemes for major developments. We have been statutory consultee on surface water since the 15th April 2015.</p>	
<p>In providing advice this Council looks to ensure sustainable drainage proposals comply with the required standards as set out in the following documents:</p>	
<ul style="list-style-type: none"><li>- Non-statutory technical standards for sustainable drainage systems</li><li>- Essex County Council's (ECC's) adopted Sustainable Drainage Systems Design Guide</li><li>- The CIRIA SuDS Manual (C753)</li><li>- BS8582 Code of practice for surface water management for development sites.</li></ul>	
<p>Lead Local Flood Authority position:</p>	
<p>Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission based on the following:</p>	
<p>Condition 1</p>	
<p>No works except demolition shall takes place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:</p>	
<ul style="list-style-type: none"><li>- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.</li><li>- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 45% climate change event.</li><li>- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 45% climate change critical storm event.</li><li>- Provision of 10% urban creep allowance applied to the impermeable areas used to calculate the required storage, in accordance with BS8582,</li><li>- Final modelling and calculations for all areas of the drainage system.</li><li>- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.</li><li>- Detailed engineering drawings of each component of the drainage scheme.</li><li>- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.</li><li>- An updated drainage strategy incorporating all of the above bullet points including matters already approved and highlighting any changes to the previously approved strategy.</li></ul>	
<p>The scheme shall subsequently be implemented prior to occupation. It should be noted that all</p>	



outline applications are subject to the most up to date design criteria held by the LLFA.

#### Reason

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

#### Condition 2

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

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

#### Reason

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

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

#### Condition 3

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

#### Reason

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

We also have the following advisory comments:

- We strongly recommend looking at the Essex Green Infrastructure Strategy to ensure that the proposals are implementing multifunctional green/blue features effectively. The link can be found below.

<https://www.essex.gov.uk/protecting-environment>

- Please note that the Environment Agency updated the peak rainfall climate change allowances on the 10 May 2022. Planning applications with outline approval are not required to adjust an already approved climate change allowance, however, wherever possible, in cases that do not have a finalised drainage strategy please endeavour to use the updated climate change figures Flood risk assessments: climate change allowances - GOV.UK ([www.gov.uk](http://www.gov.uk))

- Please note that where discharge is to a public sewer, consent from the relevant authority will be required. The links can be found below.



<https://www.anglianwater.co.uk/developing/drainage-services/sustainable-drainage-systems/>  
<https://www.thameswater.co.uk/developers>

- Any works to a ditch may require a S23 Ordinary Watercourse Consent. Please see the below link for more information and how to apply.

<https://flood.essex.gov.uk/maintaining-or-changing-a-watercourse/>

#### Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- Sequential Test in relation to fluvial flood risk;
- Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- Safety of the building;
- Flood recovery measures (including flood proofing and other building level resistance and resilience measures);
- Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

Please see Appendix 1 at the end of this letter with more information on the flood risk responsibilities for your council.

#### **Historic England**

**13.06.2024**

Thank you for your letter of 10 May 2024 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

#### Historic England Advice

##### Significance - St Osyth's

St Osyth's Priory comprises an exceptional historic site of outstanding significance. Established circa 1120 for the Augustinian Canons by the Bishop of London it was, throughout the 12th to the 16th centuries, one of the largest religious houses in Essex until its dissolution in 1539, when it was transferred into private ownership.

The outstanding archaeological, architectural and historic significance of the site is reflected in its multiple designations which encompass the scheduled remains of the Priory and mid-C16 mansion, alongside 22 listed buildings - 7 of which are afforded the highest degree of protection and are listed at grade I. The grounds of the Priory and Park are also a registered Park and Garden, and the complex is a key asset of St Osyth Conservation Area.

Historic England have been involved in extensive discussions alongside other stakeholders to find new uses for the Priory that would address the repair and conservation needs of these important assets, many of which are included in Historic England Heritage at Risk Register.

##### The Wellwick Site

The Wellwick site, to which the present application is related to, is located immediately outside of the northern end of the registered historic park and is distant from the village. The site

comprises an area lowered by gravel extraction and sits outside of the Conservation Area and Settlement Development Boundary; it is not an allocated site in the Local Plan (2013-2033).

The site has an extant permission (2016) for the erection of 190 dwellings (app.no.11/00333/OUT). The application was part of a battery of applications put forward by the applicant as enabling development as part of the vision for St Osyth's Priory.

#### Impact of the proposals

The present application seeks permission to increase the amount of development on the Wellwick Site. It proposes to introduce 37 additional dwellings. 24 would occupy the area initially envisaged for the archery range, the remainder 13 would be located to the south, near the site entrance.

It was accepted in the 2016 permission that the development of this site for residential would harm the significance of the Priory and conservation area. This was due to the erosion of the open rural setting that contributes positively to the character of these heritage assets. The proposed additional development in this area would result in greater suburban layout and more dense development, cumulatively adding to its negative impact and harm introduced to the significance of the Priory and conservation area.

The Planning Design and Access Statement submitted with this application indicates that the additional development would primarily focus on funding 'further works to the Abbott's Lodgings' (para. 1.31). Further viability information and details of the proposed enabling works were shared with us on 30th May. The latter give indication of the surplus the works are expected to generate and outline what works they would be funding.

However, it is unclear how the proposed additional 37 units relate to the existing consent and to the overall proposals for St Osyth Priory. As noted above, permission had been granted for 190 units on this site with the areas now proposed for the units being an archery range and open space and thereby benefits for that scheme. These benefits though would be removed by the proposed insertion of the units. We would also raise a query as to the potential implications arising from the Hillside case in relation to this proposal and the 2016 permission and this would need to be considered by the Council.

#### Planning Policy Considerations, Local Plan Policy and Guidance

The statutory requirement to have special regard to the desirability of preserving a listed building, its setting and any features of special interest (s. 66(1), Planning (Listed Building and Conservation Areas) Act 1990) must be taken into account by your authority when making its decision.

The National Planning Policy Framework sets out the objectives and policies against which all development must be assessed. Fundamental to the Framework is the presumption in favour or sustainable development (section 2 of the NPPF, 2023 update). The protection of the historic environment is a key environmental element of the policy.

In particular, paragraph 205 states that harm of any level requires clear and convincing justification, with great weight being given to the conservation of the heritage assets in question.

Paragraph 206 goes on to say that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Paragraph 214 requires local planning authorities to assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies, but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

The Tendring District Local Plan (2013-2033) in its Section 2 - adopted on 25th January 2022 - establishes the vision and objectives for the District; the conservation and enhancement of Tendring's District historic environment is listed as Objective 7, under Protected Places/Sustainable Places. We also draw your attention to policies PPL 3 The Rural Landscape, PPL 7 Archaeology, PPL 8 Conservation Areas and PPL 9 Listed Buildings.

Historic England's GPA 4, Enabling Development and Heritage Assets (2020), sets out advice on enabling development against the background of the National Planning Policy Framework and Planning Practice Guidance. Paragraph 14 is of particular relevance to this application.

The sums of money generated through enabling development are provided to directly solve the conservation needs of the place, not to solve the financial needs of the present owner, to support/finance a business or to compensate the purchase price for the site. The amount of enabling development that can be justified will be the minimum amount necessary in order to address the conservation deficit and to secure the long-term future of the assets.

#### Historic England Position

The site has not been allocated in the Local Plan. Its development for residential would be contrary to policy and harm the significance of the Priory and conservation area. This harm was acknowledged in the previous application, and the introduction of further units would cumulatively add harm to these assets. The alleged benefits this proposal would deliver need to be appropriately understood.

Enabling development is development that would not be in compliance with local and/or national planning policies, and not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset.

Further clarity is required regarding the elements that this development would provide for and the basis upon which it is being proposed as enabling development.

Consequently, Historic England cannot support this application. We consider further detail is necessary to assess the case against the requirements of enabling development guidance. A joint meeting with the applicant alongside the local authority to discuss these matters could be a suitable starting point to understand the situation and help the applicant in progressing matters. The applicant may consider appropriate to withdraw the application to aid discussion.

#### Recommendation

Historic England has concerns regarding the application on heritage grounds.

We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 205, 206 and 214.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If, however, you propose to determine the application in its current form, please treat this as a letter of objection, inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

#### **Historic England**

**06.12.2024**

Thank you for your letter of 10 May 2024 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your

authority in determining the application.

#### Historic England Advice

This letter follows our previous advice dated 13 June 2024, in which we raised queries on how the proposed additional 37 dwellings related to the existing consent and the overall proposals for St Osyth's Priory. In particular, we queried the elements this development would provide for and the basis upon which it is being proposed as enabling development.

The applicant has provided additional detail on their response uploaded to the planning portal on 16 August 2024. In it, they explain that the additional enabling development proposed at the Wellwick site would fund specific restoration works that had been forward funded via a family loan on a 0% interest basis until such time that further enabling development is secured.

We have also met with the applicant and the Council on 20th August, and then with the applicant and the Trust on site on 26th September. The purpose of these meetings was primarily to understand the background leading to the present application, including the status of the s106 agreements resulting from the three granted enabling development schemes, the plans for the repair of some of the key assets within the site, such as Abbot's Tower or the Tithe Barn, as well as to discuss some currently live applications, such as the proposals for the Bury.

We have also requested clarity from the Council regarding the status of the Business Strategy, and the documents relevant to the enabling development calculations. Copies of the approved Business Strategy, 2009 Condition Survey and 2013 and 2016 Conservation Deficit and Enabling Development Reports were shared with us in October and November.

Historic England were involved on discussions during 2017 and 2018 regarding the wider strategy for the site but have not been consulted or provided comments on the Business Strategy submitted to the Council on 14th May 2019. We understand from an email from Matt Lang dated 1st November 2024 that this document has been approved by the Council. We have not been party either to any discussions regarding the family loan.

From the information shared with us, we understand the conservation deficit figures that have informed the Business Strategy were based on a Conservation Deficit and Enabling Development Report produced in November 2016 by Anthony Lee, BNP Paribas Real Estate. The latter is in turn informed by the 2009 Condition Survey and a Cost Plan produced by McBains Cooper in 2011 and updated in 2012.

There appear to be discrepancies between the conservation deficit estimates in the 2016 Conservation Deficit Report shared with us and those reflected in the Business Strategy and CIL Regulations Note: the former identifies a total CD of £36.3M compared to the £33.70M considered in the two latter documents. It is also unclear whether all the commercial uses that form the basis of the current Business Strategy were considered in the 2016 report; we note for example, the proposed spa in the walled garden.

It is also unclear where some of the works included in the Darcy House Accelerated Works, for which the family loan was agreed, are on the agreed Cost Plan; we refer, in particular, to the internal fit outs/improvements.

The information provided raises further questions and does not therefore address our concerns regarding this application. Consequently, our views and position on the scheme and approach to the site remain unchanged.

This is that we strongly support the aim and ambitions for the site to be brought into its optimum viable use, its principal buildings repaired and sympathetically reused. Based on the information shared with us, however, we continue to have serious concerns about the approach to and management of enabling development and how this meets established guidance.

Historic England cannot support this application. We ask the Council to carefully consider whether it is satisfied that the information before them aligns with Enabling Development guidance and secures the long-term future of the place. You may wish to obtain your own legal advice on this matter, should you be minded to grant permission to this application.

**Recommendation**

Historic England objects to this application on heritage grounds.

We consider the application does not meet the requirements of the NPPF. In particular paragraph numbers 205, 206 and 214.

In determining this application, you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

Your authority should take these representations into account in determining the application. If there are any material changes to the proposals, or you would like further advice, please contact us. Please advise us of the decision in due course.

**Historic England**

**18.03.2025**

Many thanks for consulting us on the additional information submitted in support of this application. We do not wish to make any further comments and refer you to our previous advice.

**Environmental Protection**

**20.05.2024**

Thank you for your consultation regarding the proposed development above. The Environmental Protection Team's comments are given below:

If this application is to proceed to a full application, Environmental Protection would recommend the following:

**Construction Method Statement**

In order to minimise potential nuisance to nearby existing residents caused by construction and/or demolition works, Pollution and Environmental Control ask that the following is submitted:

Prior to the commencement of any construction or demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Pollution and Environmental Control. This should at minimum include the following where applicable.

**- Noise Control**

1) 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.

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

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

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

5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

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

- Emission Control

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

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

3) 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.

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

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

REASON: to protect the amenity of nearby residential dwellings

Lighting

Any external lighting on the proposed development shall be located, designed and directed [or screened] so that it does not cause avoidable intrusion to neighbouring residential properties. The applicant shall demonstrate compliance with the Institute of Lighting Professionals code of practice. ([www.theilp.org.uk](http://www.theilp.org.uk)).

Reason: to avoid any unnecessary light intrusion on existing and future residential properties and residents.

**Essex County Fire Officer**

No comments received

**Affinity Water**

No comments received

**ECC Schools Service**

No comments received

**North Essex Parking Partnership**

No comments received

**The Gardens Trust****28.05.2024**

Thank you for consulting the Gardens Trust in its role as Statutory Consultee on the above application which affects St Osyth's Priory, an historic designed landscape of national importance which is included by Historic England on the Register of Parks and Gardens of Special Historic Interest at Grade II.

We have considered the information provided in support of the application and liaised with our colleagues in Essex Gardens Trust. On the basis of this we confirm we do not wish to comment on the proposals at this stage. We would however emphasise that this does not in any way signify either our approval or disapproval of the proposals.

**Anglian Water Services Ltd****31.05.2024****ASSETS****Section 1 - Assets Affected**

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

**WASTEWATER SERVICES****Section 2 - Wastewater Treatment**

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

When assessing the receiving water recycling centre's(WRC) dry weather flow(DWF) headroom we take an average flow over the past 5 years to take account of changing weather patterns. Where the average exceeds the WRC's permitted allowance, we also take account of the following Environment Agency enforcement trigger - "has the DWF permit been exceeded in 3 of the last 5 years" - this must include non-compliance from the last annual data return. Based on the above assessment St Osyth WRC is within the acceptance parameters and can accommodate the flows from the proposed growth.

**Section 3 - Used Water Network**

This response has been based on the following submitted documents: Flood Risk Assessment and Drainage Strategy 217/2023/FRAADS Dated March 2024 Part 1 and 2 The sewerage system at present has available capacity for these flows. The proposed connection point to the manhole TM12163201 located in Colchester Road as the applicant quoted in the Flood Risk Assessment and Drainage Strategy is acceptable to Anglian Water. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. We will then advise them of the most suitable point of connection. 1. INFORMATIVE - Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact

Development Services Team 0345 6066087. 2. INFORMATIVE - Protection of existing assets - If a public sewer is shown on record plans within the land identified for the proposed development. It is recommended that the applicant contacts Anglian Water Development Services Team for further advice on this matter. Building over existing public sewers will not be permitted (without agreement) from Anglian Water. 3. INFORMATIVE - Building near to a public sewer - No building will be permitted within the statutory easement width of 3 metres from the pipeline without agreement from Anglian Water. Please contact Development Services Team on 0345 606 6087. 4. INFORMATIVE: The developer should note that the site drainage details submitted have not been approved for the purposes of adoption. If the developer wishes to have the sewers included in a sewer adoption agreement with Anglian Water (under Sections 104 of the Water Industry Act 1991), they should contact our Development Services Team on 0345 606 6087 at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with Sewers for Adoption guide for developers, as supplemented by Anglian Water's requirements."

#### Section 4 - Surface Water Disposal

The preferred method of surface water disposal would be to a sustainable drainage system (SuDS) with connection to sewer seen as the last option. Building Regulations (part H) on Drainage and Waste Disposal for England includes a surface water drainage hierarchy, with infiltration on site as the preferred disposal option, followed by discharge to watercourse and then connection to a sewer.

From the details submitted to support the planning application the proposed method of surface water management does not relate to Anglian Water operated assets. Please note Anglian Water has no designated surface water sewers in the area of the proposed development. As such, we are unable to provide comments in the suitability of the surface water management. The Local Planning Authority should seek the advice of the Lead Local Flood Authority or the Internal Drainage Board. The Environment Agency should be consulted if the drainage system directly or indirectly involves the discharge of water into a watercourse.

#### **Essex County Council Heritage**

No comments received

#### **ECC Highways Dept**

**24/06/2025**

The information submitted with the application has been assessed by the Highway Authority and conclusions have been drawn from a desktop study with the observations below based on submitted material. No site visit was undertaken in conjunction with this planning application. It is noted that the consented application, under 20/01124/OUT is for 190 units, while this proposal is seeking to add an additional 37 residential units, which would be accommodated within the area of the site previously set aside for the archery club and at an area at the southern corner of the approved site. Access to this proposal being accessed from the permitted development via the proposed dedicated right turn junction off B1027 Colchester Road. The proposed additional 37 residential units will generate up to 16 two-way trips in the AM peak hour and 17 in the PM peak hour. This represents just one additional vehicle every 3.5 minutes, as such this will therefore not result in unacceptable impact. The site location in terms of access to public transport and connectivity has already been assessed and the residential use was deemed acceptable in this location as part of the consented application, considering these factors:

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

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



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

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

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

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

a) The priority junction off the B1027 Colchester Road with dedicated right turn lane at the priority junction, to include 2no. central islands, the island to the south-east of the development access road to be constructed as a pedestrian refuge island with pedestrian tactile and including the associated 3-metre-wide footway works consented as part of application: 20/01124/OUT.

b) A new footway connection from the proposed northern development, with a maximum of 2-metre-wide footway provided on the east side of the B1027 Colchester Road providing a connection to the existing bus stops north of the proposal site.

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM1, DM9 and DM10.

3. Prior to occupation of the proposed 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, (to include six one day travel vouchers for use with the relevant local public transport operator)

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

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance and National Planning Policy Framework.

**Essex County Council Ecology**

**12.09.2024**

Recommend approval subject to attached conditions

**Summary**

We have reviewed the newly submitted document titled: Great Crested Newt DNA Testing Result of the Pond (Hopkins Ecology, July 2024).

We have also re-reviewed the Ecology Assessment (Hopkins Ecology, April 2024).

We are now satisfied that there is sufficient ecological information available to support determination of this application.

This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in the Ecology Assessment (Hopkins Ecology, April 2024) should be secured by a condition of any consent and implemented in full. This is necessary to

conserve and enhance protected and Priority species particularly those recorded in the locality.

We also support the proposed reasonable biodiversity enhancements for protected and Priority species, which have been recommended to secure net gains for biodiversity, as outlined under Paragraph 180d and 186d of the National Planning Policy Framework (December 2023). The reasonable biodiversity enhancement measures should be outlined within a separate Biodiversity Enhancement Strategy and should be secured by a condition of any consent.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 (as amended) and delivery of mandatory Biodiversity Net Gain.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013. We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

Please note that we do not provide comments on Biodiversity Net Gain as we have been instructed to leave comments on this matter to the Local Planning Authority.

#### Recommended conditions

##### 1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecology Assessment (Hopkins Ecology, April 2024) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details."

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (as amended).

##### 2. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

"A Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter."

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (as amended).

##### 3. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

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

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

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (as amended).

**Arch. Liaison Off, Essex Police**

**13.06.2024**

The Essex Police Designing Out Crime Office (DOCO) welcomes the opportunity to make comment planning application 24/00560/OUT.

We recognise that communities where safety and security has been addressed and designed in at the earliest planning stages, will enhance the health and wellbeing of its residents. Perception of crime and fear of crime can be an influential factor in determining the synergy and ongoing sustainability of a community.

An integrated approach to crime prevention at an early stage is necessary to all significant components of its design, planning, and layout. Good design and early co-ordination, incorporating 'Crime Prevention Through Environmental Design' (CPTED), can avoid the conflicts that may be expensive or impossible to resolve once the construction is complete. Essex Police would like to see this applicant incorporate CPTED in respect of this development pursuant to the NPPF.

Whilst there are no apparent concerns with the proposed layout of this site, Essex Police would request consultation with the applicant to discuss:- (Officer note: this would be a matter for the applicant at reserved matters stage should they decide to take this offer).

## **7. Representations**

### **7.1 Parish Council**

**St Osyth Parish Council**

Whilst in principle the Council would have no objections to this application, there are concerns that the area in which the proposed three storey dwellings are to be built is already raised. The Parish Council would therefore request sight of the full planning application before being able to comment further.

Further to its comments of 25th October 2018, in respect of 18/01476/DETAIL, highlighting concerns over road safety, the Parish Council fully supports the recommendation of Essex Highways dated 12th July 2024.

### **7.2 Neighbour / Local Representations**

No third-party letters of representation have been received.

## **8. Assessment**

### **Site Context**

- 8.1 The application site forms two parcels of land at the northern and southern end of the 'Wellwick' site, in the parish of St Osyth. The parcels of land are situated within a wider site ('Wellwick' site), which is situated to the north-eastern side of the B1027 Colchester Road. The wider site benefits from an implemented detailed planning consent for 190 dwellings, with the consented scheme serving as enabling development to help close the conservation deficit at St Osyth Priory by funding restoration works. In this respect, the application site falls wholly within the approved red line site of the consented scheme.
- 8.2 The site is not of heritage significance although it is opposite to the St Osyth Priory Park Estate, which is Grade II on the register of parks and gardens and part of the designated St Osyth Conservation Area. The site falls outside the settlement development boundary of St Osyth, of which the northern boundary is located approximately 300 metres to the south-east of the site.
- 8.3 The wider site is formed of a 12-hectare crater resulting from gravel extraction undertaken in the 1970s and now lies around 4/5 metres lower than its surroundings. The area is generally flat with steep verges at the sides. To the southern and western boundaries there are patches of vegetation running alongside Colchester Road. A caravan holiday park lies to the north. To the south are several properties situated on the eastern side of Colchester Road which leads to the main built-up area of St Osyth. To the east of the site is an existing Public Right of Way which extends northwards out into open countryside and the nearby Riddles Wood. The site is situated in a flood zone 1 (lowest flood risk zone) and is not located within a conservation area.
- 8.4 Significant ground works have commenced on site, alongside the construction of the vehicular access serving the consented scheme, which have secured the implementation of the approved housing development.

### **Planning History**

- 8.5 Outline planning permission, under reference 11/00333/OUT, was granted on 18th March 2016, for the erection of 190 dwellings on 6.3 hectares of land; new junction and access roads; driveways; parking; footpaths; landscaping and all ancillary works; use of land as an archery range; construction of access drive and layout of parking area including siting of storage container for archery equipment. The development also proposed a new footway to be built along a section of Colchester Road, south of Wellwick, to provide pedestrian infrastructure links into the village of St Osyth to the south and associated highway works, including bus stops and traffic islands.
- 8.6 The development was approved as part of an enabling development to fund works to be undertaken at the nearby St Osyth Priory Estate, including works to the Bailiffs Cottage, West/East Darcy House, West Gatehouse, Central Gatehouse and East Gatehouse as part of a holistic vision to see the Estate run on a commercial basis made up of two main business components: a function (wedding and events) offering and a visitor attraction.
- 8.7 Reserved matters consent pursuant to 11/00333/OUT was secured on 1st July 2020 (18/01476/DETAIL). This consent was subsequently implemented via the construction of the site access and ground level works.
- 8.8 A variation to the outline planning consent was then granted to vary Conditions 18 & 30 of the original permission to regularise the parameter plans (19/01171/OUT). This was followed by a further Section 73 consent which allowed the variation of conditions 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27 and 28 of 19/01171/OUT to allow for the discharge of such conditions in a phased manner (20/01124/OUT).

8.9 Further Section 73 applications have been approved, under references 24/00673/VOC and 24/01414/VOC, to revise the approved Reserved Matters consent by making various changes to the layout and house types proposed within Phases 1 and 1a of the wider consent.

#### Proposal

- 8.10 Outline planning consent is sought for the erection of 37 dwellings; with all matters reserved other than the access from Colchester Road (as consented under 20/01124/OUT); associated public open space; landscaping and all associated ancillary works.
- 8.11 This application proposes 24 dwellings within the northern parcel, plus deliver a further 13 dwellings to the south of the site near the consented scheme's site entrance, thus raising the total number on the Wellwick site to 227 dwellings with a mix of 2, 3, 4 & 5 bed homes (11 x 2 bed, 15 x 3 bed, 7 x 4 bed and 4 x 5 bed).
- 8.12 As part of the previous consent the northern parcel of land granted permission for the siting of a private archery club. This club has since found an alternative site in Little Clacton and therefore no longer requires the site. The application proposes to reduce the level of this parcel of land to bring it down in line with the remainder of the site. A landscape buffer is proposed between the new development and the holiday park to the north. The southern parcel of land formed part of the open space serving the 190 unit scheme.
- 8.13 The outline consent, like the consent on the wider site, is proposed as enabling development to provide additional funding for works to the historic assets on the St Osyth Estate. The supporting documentation outlines that the additional enabling development proposed will primarily focus on funding works to the Abbott's Lodgings. The table below outlines the extent of the enabling works to be funded alongside agreed costings (Index Linked) which are informed by BNP Paribas' 2016 Conservation Report dated 17th November 2016;

Darcy House Loan Accelerated Works	Condition Survey References	2016 BNP Agreed Works Costs (281)	BCIS All-in TPI Indexation (to 370)	Deterioration Costs (2016-2022) Condition Survey Works Only	Total Indexed Works Cost to 4Q 2022	% of Works to be undertaken	Estimated Total Works Cost to be undertaken	Plan ref/Shading
<b>Abbott's Lodgings (Johnson Wing)</b>		<b>A</b>	<b>B</b>	<b>C</b>	<b>D (A+B+C)</b>	<b>E</b>	<b>F (E x D)</b>	
		£	-	£	-			
Abbotts Internal fitout/improvement works	Abbotts Internal fitout/improvement works	£ 282,189	£ 89,376	£ 14,300	£ 385,865	100%	£ 385,865	Plans 1&2 - shaded Orange
<b>East Wing</b>								
2.2.2.2 East Wing North Wall	East Wing North Wall 2.2.2.2a to 2.2.2.2f	£ 60,666	£ 19,214	£ 4,793	£ 84,673	100%	£ 84,673	Plans 1&2 - dotted line in Pink
2.2.2.5 East Wing Interior Repairs	East Wing Interior Repairs 2.2.2.5 - proportion only	£ 79,162	£ 25,073	£ 6,254	£ 110,489	49%	£ 54,140	Plans 1&2 - shaded Pink
East Wing Internal fitout/improvement works	East Wing Internal fitout/improvement works - proportion only	£ 925,886	£ 293,252	£ 26,718	£ 1,245,856	60%	£ 747,514	Plans 1&2 - shaded Pink
<b>South Wing Sub-total</b>								
2.3.2.1 South Wing Roof	South Wing Roof 2.3.2.1a to 2.3.2.1k - proportion only	£ 397,341	£ 125,848	£ 31,391	£ 554,580	18%	£ 99,824	Plan 3 - shaded Brown
2.3.2.2 South Wing West Wall NORTH	South Wing West Wall North Section 2.3.2.2a to 2.3.2.2j - proportion only	£ 131,165	£ 41,543	£ 10,362	£ 183,070	43%	£ 78,141	Plans 1&2 - dotted line in Brown
2.3.2.9 South Wing Interior Repairs	South Wing Interior Repairs 2.3.2.9a to 2.3.2.9e - proportion only	£ 300,755	£ 95,257	£ 23,761	£ 419,773	10%	£ 40,298	Plans 1&2 - shaded Brown
South Wing Internal fitout/improvement works	East Wing Internal fitout/improvement works - proportion only	£ 1,008,576	£ 319,442	£ 34,244	£ 1,362,262	12%	£ 163,471	Plans 1&2 - shaded Brown
		£ 3,185,740	£ 1,009,005	£ 151,823	£ 4,346,568	38%	£ 1,653,926	

- 8.14 In summary, the works proposed equate to approximately £1.65m in total and cover or contribute towards a host of repair works to the east and south wings of the Abbott's Lodgings (Grade 1 Listed) alongside internal fitout and other repairs. Elements of these works have already commenced as they have been forwarded funded via a family loan, on a 0% interest basis, to cover the works until such a time that further enabling development is secured.

#### Principle of Development

- 8.15 The development plan comprises the Tendring District Local Plan (LP) 2013-2033, Section 1 which was adopted on 26 January 2021 (TDLP1) and Section 2 of the Tendring District Local Plan 2013-2033 and Beyond which was adopted on 25 January 2022 (TDLP2).
- 8.16 TDLP1 Policy SP3 provides the spatial strategy for North Essex, including Tendring, whereby existing settlements will be the principal focus for additional growth within the plan period. It states that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role and beyond the main settlements the diversification of the rural economy and conservation and enhancement of the natural environment will be supported.
- 8.17 TDLP1 Policy SP3 relies on the TDLP2 to identify a hierarchy of Tendring settlements. New development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs. TDLP2 Policies SPL1 and SPL2 provide for this by establishing the Tendring settlement hierarchy and address development outside of settlement development boundaries.
- 8.18 Adopted Local Plan Section 2 (TDLPS2) Policy SPL2 states that, within the defined SDBs, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies. Outside of SDBs, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in TDLPS2 Policy SPL1 and any other relevant policies in this plan.
- 8.19 Insofar as the high-level principle of residential development is concerned, the location and scale of development is generally in conflict with the Council's Housing Strategy because the proposal would result in further housing growth in a location outside of any settlement development boundary at odds with the relevant spatial planning policies as set out above.
- 8.20 However, as noted above, the application site forms part of a wider consented residential development in relatively close proximity to the settlement of St Osyth. Moreover, the consented scheme proposes infrastructure works, including the provision of a new pedestrian footpath into the village and bus stop provision, that would help to improve connectivity with St Osyth to the south and direct pedestrian access for future occupants to the various facilities contained within the village.
- 8.21 Delving down to the detail, policy SPL1 categorises St Osyth as a 'Rural Service Centre'. The policy explains that settlements such as St Osyth will accommodate a modest increase in housing stock, where appropriate, within the plan period. The policy goes on to add such developments could make a meaningful contribution toward addressing local housing needs, supporting the village economy and assisting with the overall housing growth proposed for the District. In this respect, the proposal to increase the 'Wellwick' development by an extra 37 dwellings is considered to represent a relatively modest sized increase to the consented scheme of 190 dwellings and would positively contribute towards the Council's housing supply figures, at a time when the NPPF dictates that a higher need will be required in the near future.
- 8.22 Notwithstanding the above, Section 70(2) of the Town and Country Planning Act 1990 ("the 1990 Act") which provides that "in dealing with an application for planning permission... the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations" the decision-maker shall have regard to the provisions of the development plan, so far as material to the application.

- 8.23 Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") which provides that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 8.24 In this respect, it is acknowledged that the proposals are being promoted as part of an enabling development associated with the renovation and increased public access at the St Osyth Priory Estate. The 2019 St Osyth Priory Business Plan (June 2019) sets out the agreed vision for the Estate, with the overall aim to bring back into long term viable use the heritage assets, which includes 16 separate Grade I and Grade II \* listed buildings.
- 8.25 Enabling development is development that would not be in compliance with local and/or national planning policies, and not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset.
- 8.26 The case for enabling development rests on there being a conservation deficit. Simply put, this is the amount by which the cost of repair (and conversion to optimum viable use if appropriate) of a heritage asset exceeds its market value on completion of repair or conversion, allowing for appropriate development costs.
- 8.27 The enabling development to be secured as part of this application submission will fund identified restoration works at St Osyth Priory (Abbot's Lodgings) to put back into beneficial use to sustain them for future generations. It is agreed in the St Osyth Priory Business Plan that enabling development sites are likely to be necessary in order to fund the extensive restoration works. To this end the BNP 2016 Conservation Report dated 17<sup>th</sup> November 2016, which is underpinned by the business plan, identifies a current conservation deficit of approximately £33.70m.
- 8.28 The National Planning Policy Framework (NPPF) at paragraph 221 states that local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies, but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.
- 8.29 To meet the requirements of the NPPF, an enabling development proposal can only be considered for approval if it provides benefits that outweigh the disbenefits, and where the decision-maker is confident that the scheme would secure the conservation of the heritage asset(s) – this involves assessing the position now and considering the asset's future. Whether the complete solution deals with the conservation of the totality of the heritage asset(s), or with a core group, it is good practice to take the decision in the light of a realistic view of the consequences of refusal. Equally, a proven conservation deficit may not automatically lead to a grant of consent, where the disbenefits of failing to comply with other planning policies are considered to outweigh the benefits of conserving the asset.
- 8.30 In this context, the Council acknowledges that the agreed business plan states that funding via further enabling will be required to meet the funding gap and close the identified conservation deficit.
- 8.31 The existence of a substantial Conservation Deficit has been established, and this is not in doubt. The value generated by the converted heritage buildings at the Priory Estate, the costs of an agreed package of works and the value of enabling development already agreed are all common ground. The applicant has identified an additional £1.6 million of works that were not funded by the original Enabling Development (both at Wellwick and the West Field Site), which are listed as priority works within the agreed Business Plan.
- 8.32 Given that these costs have been subject to extensive scrutiny and agreed as part of the original Section 106 agreement for the wider enabling scheme, they are common ground between the applicant and the Council. The applicant has subsequently identified a relatively modest amount of



additional development at Wellwick and they have agreed to a further package of works to heritage assets totalling circa £1.6 million.

- 8.33 These works have been forwarded funded via a family loan, on a 0% interest basis, to cover the works until such a time that further enabling development is secured. This arrangement was agreed via a letter from TDC dated 27th March 2023 as it was recognised that this would facilitate the delivery of the works earlier than would otherwise be achievable without the loan.
- 8.34 Overall, the principle of a development funding identified enabling works at St Osyth Priory is accepted and underpinned by the agreed business plan and corresponding condition survey, that confirms the current conservation deficit position. Moreover, the financial information provided has been independently assessed by BNP Paribas (who were heavily involved previously as part of the original 'Wellwick' enabling scheme) and they have confirmed that the applicant's proposed development of 37 additional units will generate a residual surplus of £1.4 million, which is marginally lower than the £1.6 million of heritage works that they will be required to provide. However, they conclude that the proposed development provides the minimum number of units necessary to address the further heritage works to be undertaken.
- 8.35 Therefore, whilst there is conflict with the Council's housing settlement strategy, and this is given weight in the overall planning balance, a full weighing up of the benefits against disbenefits of the development is required by the NPPF.
- 8.36 In this respect, it is acknowledged that the proposed development is to be located on part of a wider residential scheme that has consent in place. Furthermore, the development would provide for the construction 37 dwellings which contributes positively to the Council's housing supply numbers at a time when a higher need is being pursued as part of the Local Plan Review process. The development is also relatively modest in size and is located in a sustainable location, where, as part of the wider development for 190 dwellings, highway infrastructure works are secured to provide a safe pedestrian access into the village to the south, so future residents can access facilities and services available in St Osyth on foot.
- 8.37 Therefore, whilst it is acknowledged there is a conflict with the Council's current housing settlement strategy, taking the considerations above into account, alongside the merits of the enabling element of the scheme, the benefits of the proposal are significant and the disbenefits at principle level are fairly moderate.
- 8.38 At principle level therefore the development is acceptable and considered sustainable. Consideration therefore turns to other material planning considerations, which are covered below, and help to inform the concluding weighing up of the merits of the scheme v's the disbenefits, as required by paragraph 221 of the NPPF.

#### Scale, Layout & Appearance

- 8.39 Paragraph 135 of the NPPF 2025 requires that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, are sympathetic to local character and history, maintain a strong sense of place and create places that are safe, inclusive and accessible.
- 8.40 Adopted 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 Policies SPL3 and LP4 of the Local Plan also require, amongst other things, that developments are designed to high standards and which, together with a well-considered site layout, create a unique sense of place.
- 8.41 The application is in outline form, so the layout, scale and appearance of the development proposals are indicative at this stage. However, the indicative plans submitted show that 24 dwellings will be

sited within the northern parcel and 13 units at the southern end adjacent to the vehicular access into the wider residential scheme.

- 8.42 The northern parcel is located at a higher level than the land to the south, so it is proposed that the land is reduced in height. A landscaped area is shown on the north of the properties to provide a strong buffer to the existing caravan site to the north. The plans show a mix of detached and linked detached dwellings set within good sized plots and interspersed amongst proposed planting. The properties all are shown to retain sufficient spacing between each other and those proposed dwellings to the south.
- 8.43 The 13 proposed properties to the south are indicatively shown to be smaller units helping to provide an active frontage along the eastern side of the proposed vehicular access into the wider scheme. Again, the properties are shown to be served by sufficient amenity spaces, parking and supplementary planting. Sufficient spacing would be retained to those proposed units to the north and existing residential dwellings to the south-east.
- 8.44 The application documents outline that all the new properties will be of the same type and materiality of those dwellings proposed within the 190 unit scheme ensuring consistency across the whole development.
- 8.45 In summary, the indicative plans sufficiently demonstrate that the proposed additional housing can be accommodated on the site in a manner that can provide a good level of amenity for future and existing residents whilst respecting the character, form and spacing of the consented scheme.
- 8.46 As noted above, the development does sit within the red line site of the consented development, and due to this, the archery club is no longer taking on the northern parcel of land (they have found an alternative site nearby) and the public open space to be sited within the southern parcel would be removed. In this respect, Local Plan Policy HP 5 states a requirement for a minimum of 10% of the gross site area being open space. This is comfortably achieved with the consented scheme and the proposal for an additional 37 units serves to increase the amount of public open space across the site by 1.14ha. To reiterate that this is due to the loss of the archery club, making more of the northern area of the site publicly accessible. When considering the proposals alongside the wider consented scheme, a total of 6.74ha of POS is set to be delivered (if including the banks) which equates to 43.5% of the total site area. As such there is no concern regarding the loss of open space across the wider development site.

#### Visual Impacts/Landscaping

- 8.47 Paragraph 187(b) of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
- 8.48 Adopted Policy PPL3 confirms the Council will look to protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance. Adopted Policy SPL3, Part A (c) requires that development respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features.
- 8.49 The application site is currently being worked with ground levels being altered. There are no trees in the main body of the site. In terms of the impact of the development proposal on the local landscape character the development has the potential to have an adverse impact on the character and appearance local landscape.
- 8.50 The application site forms part of the St Osyth and Bentley Heaths Landscape Character Area (LCA). The LCA is a landscape generally situated on elevated land with highly productive arable fields on the open plateau divided by low, gappy hedgerows with hedgerow trees. Ancient Woodlands, such as Riddles Wood to the north, form a backdrop to views and often comprise of Sweet Chestnut

coppice with Oak standards. It is acknowledged that the low-lying land comprising the application site is not typical of the LCA however any development has the potential to adversely affect both the character and visual qualities of the local landscape.

- 8.51 The land immediately adjacent and to the west of the application site falls within the St Osyth Coastal Slopes LCA. The LCA is a narrow strip of land forming the setting to St Osyth and Brightlingsea Marshes. The wider landscape is dominated by large scale regimented fields divided by intermittent hedges. However, the application site and the land closest to the application site within the St Osyth Coastal Slopes LCA is heavily influenced by historical quarrying works. Tree cover is restricted to shelter belts, small mixed farm coppices and the designed landscape of St Osyth Priory and that of Martins Farm Country Park.
- 8.52 To show the impact of the proposed development on the local landscape character the applicant has provided a detailed Landscape and Visual Impact Assessment (LVIA). The LVIA sets out the baseline qualities of the landscape and quantifies the likely effect on both the character and visual qualities of the landscape. The LVIA has been carried out in accordance with guidance contained in the Guidelines for Landscape and Visual Impact Assessment Third Edition 2013 produced by the Landscape Institute and Institute of Environmental Management and Assessment.
- 8.53 The information contained in the LVIA is considered to accurately reflect the current condition, quality and value of the landscape as well as its capacity to absorb the proposed development.
- 8.54 The receptor viewpoints selected show both internal views of the site (viewpoints A to F) and views from the wider landscape showing the degree to which the site can be seen from the surrounding area (viewpoints 1 to 16).
- 8.55 In terms of its impact on the local landscape the site is actually and potentially most visible from viewpoints 1 to 5. Considering the extant planning permission to develop much of the adjacent land it is considered that views of the proposed development from viewpoints 1 and 2 will be seen against development that has already been granted planning permission and consequently the additional proposed development will not cause significant harm to the local landscape character.
- 8.56 Views from viewpoints 7a and 7b are from the highway and will also be seen against consented development. Views will be both fleeting and partially screened by boundary vegetation and will not cause significant harm to the local landscape character.
- 8.57 Regarding views into the site from viewpoints 3, 4 and 5, to the north of the site, the Council's Trees and Landscaping Officer originally stated that it is not quite clear to what extent the proposed dwellings will be seen above Wellwick Farmhouse, associated buildings and boundary vegetation, due to changes in ground levels. Section 4.1.2 of the LVIA states that 'the majority of the site will be lowered to match the ground level of the consented scheme, and section 4.1.1 states that buildings will be up to 14m tall.
- 8.58 Subsequently, computer generated images have been produced with the proposed dwellings superimposed to show the extent to which dwellings are visible on the skyline. This shows that the dwellings area would only be partially visible in limited views over the existing buildings and mature vegetation present on the perimeters of the site.
- 8.59 Although the site is just about visible from viewpoint 6, views are distant, and any development would form only a small part of the overall view. From the remainder of the viewpoints, it is accepted that views are either totally obscured by intervening vegetation or buildings or are so distant that the proposed development will be barely discernible in the landscape.
- 8.60 In terms of soft landscaping precise details will be secured as part of the reserved matters submission. In this respect any soft landscaping should aim to soften, screen and enhance the appearance of the development. A scheme consistent with the consented scheme will be advised,

whist having regard to the increased public open space across the northern development parcel.

- 8.61 In conclusion, it is considered that the application site is considered to contribute in a limited way to the local landscape character, given that the parcels of land are situated between an existing caravan site to the north, the consented scheme and further linear development along Colchester Road to the south-east. As such it is considered that the outline proposals would not cause material harm to the local landscape character or views and visual amenity of the area.

#### Heritage Considerations

- 8.62 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest.
- 8.63 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on the Local Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 8.64 Paragraph 212 of the NPPF 2025 confirms that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 8.65 Paragraph 215 of the National Planning Policy Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 8.66 Policy PPL9 of the Tendring District Local Plan 2013-2033 and Beyond Section 1 states that proposals for new development affecting a listed building or its setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric.
- 8.67 As outlined above, the enabling development proposed at the Wellwick site, i.e. the 37 units, will effectively fund specific restoration works to the Abbott's Lodgings, East Wing and South Wing of Darcy House within the Priory precinct area, costing circa £1.6m. These works have however been forwarded funded via a family loan, on a 0% interest basis, to cover the works until such a time that further enabling development is secured. This arrangement was agreed via a letter from TDC dated 27th March 2023 as it was recognised that this would facilitate the delivery of the works earlier than would otherwise be achievable without the loan, facilitating the opening up of Darcy House for wedding and events to generate revenue as part of the overall business plan for the Priory, noting the difficulties experienced to date in securing grant funding.
- 8.68 Historic England have raised several concerns and queries over certain aspects of the enabling development and the wider approach to restoration work at St Osyth Priory, alongside the impacts of the development itself.
- 8.69 In particular Historic England have raised the following concerns and queries, which have in turn been responded to by the developer (response in brackets);

- Discrepancies between the conservation deficit estimates in the 2016 Conservation Deficit report and those reflected in the Business Strategy - i.e. £36.3m in the former compared to £33.7m in the later document.

*(Officer Response - As this relates to the wider conservation deficit for the St Osyth Priory, it is not strictly relevant to the application currently under consideration. However, the developer has confirmed that the correct figure is £33.7m which was contained within the final version of the report provided by BNP Paribas 2016. Again, this is not relevant to the*

*determination of the current application, as the figures pertaining to the enabling works identified as part of this proposal are not questioned and have been the subject of a detailed viability appraisal).*

- Whether all commercial uses that form the basis of the agreed Business Strategy were considered in the 2016 Conservation Deficit Report, i.e. the proposed walled garden spa.  
*(Officer Response - Again, not strictly relevant to the enabling development now under consideration, however, the 2016 report considered various commercial ventures including the wedding venue, events, bed and breakfast, glamping, café and visitor centre. The inclusion of the spa was made after the 2016 report was completed and therefore formed part of the Business Plan from 2019 onwards initially contributing £461k gross profit).*

- It is unclear whether some of the enabling works secured as part of this proposal form part of the overall conservation deficit, as outlined within the agreed cost plan – i.e. internal fit out works / improvements.

*(Officer Response - The enabling works contained within the Darcy House Accelerated Works Table are contained within the agreed cost plan, which informs the overall conservation deficit for St Osyth Priory).*

8.70 In summary, officers are satisfied that the forwarded funded works directly support the agreed Business Plan, specifically the functions and accommodation offering element, which forms one of the three key business functions for the Priory Estate alongside a holiday cottage offering and a visitor attraction. Moreover, officers are satisfied that the works assist in preserving a Grade I listed building and help to deliver the optimum viable use for that building, which facilitates public access and delivery of the agreed Business Plan.

8.71 Having regard to the impacts of the development upon the setting of nearby heritage assets, namely the St Osyth Conservation Area and St Osyth Priory Registered Historic Park, which are situated to the immediate south and west of the site, Historic England have raised concerns over the erosion of the open space around the edge of the wider consented development and the cumulative negative impact and harm this introduces to the significance of the assets named above.

8.72 In response to these concerns, there is a development of 190 houses that will continue and has already changed the setting to these heritage assets. The site no longer forms an area of restored gravel works, but rather a housing development adjacent to The Priory Park. The additional 24 units located on what was proposed to be the archery area is to the rear of the site and it is a piece of land that is sandwiched between the large caravan park to the north and the consented scheme for 190 units to the south. Furthermore, the 13 houses to the southern of the site will consist generally of terrace housing and have been designed to fit in this rural setting looking like farm cottages closer to the road and then blending into the detached vernacular housing contained within the 190 unit scheme. These front 13 units harmonise with the scheme of 190 and the adjacent farm cottages, farm buildings and farmhouse that are located to their east.

8.73 In this respect, officers consider that in reality there is negligible change to the setting of the heritage assets as a result of this development of 24 units, given that proposed units will be located between the approved development, existing Oaklands caravan site and two farmsteads, including existing associated cottages to the south-east.

8.74 The development is therefore, considered to preserve the special character of the St Osyth Priory Registered Historic Park and St Osyth Conservation Area. Notwithstanding this view, the development is considered to demonstrate sufficient public and heritage benefits that would outweigh any 'less than substantial harm' identified by Historic England, namely; enabling development to help to deliver the optimum viable use for the Darcy House (Abbott's Lodgings) building at St Osyth Priory (which facilitates increased public access), 37 dwellings to contribute towards the Council's housing supply and national housing shortage and increased public open space provision across the wider site due to the removal of the private archery club and replacement with areas of public open space.

8.75 Overall, it is considered that, for the reasons outlined above, the development proposed would assist in directly funding priority works at St Osyth Priory, whilst having limiting impacts upon the nearby designated heritage assets. Further, when considered in conjunction with the other public benefits listed, the advantages of the development would outweigh the relatively low level of harm identified and therefore accords with the requirements of the NPPF and local policies outlined above.

#### Highway Safety/Parking

8.76 Paragraph 115 of the NPPF 2025 requires Councils, when making decisions to ensure:

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

8.77 Paragraph 116 goes on to say, development should only be prevented or refused on highways rounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.

8.78 Paragraph 109 requires that streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places.

8.79 TDLP2 Policy CP1 in the Local Plan states that developments will only be acceptable if the additional vehicular movements likely to result from the development can be accommodated within the capacity of the existing or improved highway network or would not lead to an unacceptable increase in congestion.

8.80 TDLP2 Policy SPL3 Part B of the Local Plan seeks to ensure that access to a new development site is practicable, and the highway network will be able to safely accommodate the additional traffic the proposal will generate.

8.81 The proposed site access is off the B1027 Colchester Road, a Priority 2 route within the Essex Functional Hierarchy. The permitted development of 190 units conditioned the delivery of a priority junction off the B1027, to include a right turn lane (Condition 11, Part iii of 20/01124/OUT). This also included the provision of new or upgraded existing bus stops, traffic islands and an upgrade pedestrian footpath linking the development with the village of St Osyth.

8.82 The applicant's transport statement outlines that the proposed additional 37 residential units will generate up to 16 two-way trips in the AM peak hour and 17 in the PM peak hour. This represents just one additional vehicle every 3.5 minutes. This will be imperceptible and will not therefore result in a severe impact upon the highway network.

8.83 ECC-Highways have reviewed the application details and have no objections. They state that the site location in terms of access to public transport and connectivity has already been assessed and the residential use was deemed acceptable in this location as part of the consented application. They request conditions securing the submission of a construction method statement, no occupation of the development until the proposed access works and associated highway improvements are completed (including a 2 metre wide footpath link from the northern development parcel to upgraded bus stops to the north) and the provision of residential travel information packs. These requirements are accepted and will be secured via appropriately worded conditions.

8.84 The request for a 2 metre wide footpath on the eastern side of Colchester Road, to link in with the upgraded bus stops to the north, was initially queried with ECC-Highways. However, they have

confirmed that the highway works package, secured as part of the consented 190 unit scheme, does not include new bus stops to the south but instead proposes upgrades to the existing bus stops to the north, which are adjacent to Oaklands Caravan Park.

- 8.85 Consequently, it is agreed that a 2 metre wide footpath link from the northern development parcel is required to provide improve pedestrian connectivity to these stops.
- 8.86 ECC-Highway also originally requested a condition to secure a reduced speed limit of 40mph along this section of Colchester Road. However, changes to speed limits are part of a separate legal process and, therefore, cannot be secured via the planning process. As such this is now being secured via the S278 Highway Works agreement related to the consented scheme.
- 8.87 The Essex Parking Standards set out the parking requirements for new development. This document dictates that for areas with low connectivity, such as this, 2 and 3 bedroom properties need to be served by 2 parking spaces and 4 bedroom and over will need to be served by 3 spaces. Whilst in outline form, the indicative plans demonstrate that the properties can comfortably achieve this standard either through garages or open bays. There is also a requirement for visitor's spaces which will be secured at reserved matters stage.

#### Impact on Residential Amenity

- 8.88 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.
- 8.89 Section 1 Policy SP7 of the Local Plan requires that the amenity of existing and future residents is protected. Section 2 Policy SPL 3 Part C seeks to ensure that development will not have a materially damaging impact on the privacy, daylight, or other amenities of occupiers of nearby properties. Section 2 Policy SPL 3 Part B requires that new development meets practical requirements and that structures should be designed and orientated to ensure adequate daylight, outlook, and privacy for future and existing residents.
- 8.90 Furthermore, Policy LP4 j. states that new development must 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.
- 8.91 In this instance the two development parcels are considered to be located a sufficient distance from nearby residential properties as to not cause adverse harm to amenity. In respect of the southern development parcel, the indicative layout shows a gap of approximately 65 metres to the nearest properties to the south-east, with intervening vegetation. To the north, the proposed properties would sit approximately 45 metres from caravans located within Oaklands Holiday Park to the north. Again, there is intervening vegetation in this location to provide screening, and the ground levels have been reduced, which would further reduce any impact to occupiers of the caravans.
- 8.92 In summary, whilst the application is in outline form where layout and scale of the development is yet to be confirmed, it is considered that due to the likely degree of separation between the development and nearby properties, intervening screening vegetation and changes in ground levels, a detailed scheme could be designed to minimise any impact upon amenity to acceptable levels.

#### Drainage

- 8.93 Paragraph 181 of the NPPF 2025 states that, when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 182 goes on to say that developments should incorporate sustainable drainage systems. The systems used should, amongst other things, take account of advice from the lead local flood authority and have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.

- 8.94 Adopted Local Plan Policy PPL5 requires that all new development must make adequate provision for drainage and sewage treatment and should include sustainable drainage systems (SuDS). Policy SPL3, Part B criterion g), requires that development reduces flood risk and integrates sustainable drainage within development.
- 8.95 It is proposed that the development surface water runoff will be discharged via a piped network to an infiltration swale system at the wider site boundary (within the site ownership), which will provide attenuation storage, cleansing and infiltration of the runoff. The swale will also have an overflow to the existing basin at the northern end of the site, where the runoff will discharge to the ground.
- 8.96 The Lead Local Flood Authority (ECC-SUDs) have reviewed the proposed drainage strategy and have no objections subject to the inclusion of condition securing technical details of the final drainage strategy and maintenance arrangements of the scheme.
- 8.97 In respect of foul drainage, there are no existing public foul sewers located within the immediate site vicinity. However, Anglian Water have assessed the capacity of their network to accept the foul flows from the development. Based on the Anglian Water Assessment Report, it is proposed that the foul discharge from the development will discharge to a proposed pumping station located in the south-west of the site from where it will be pumped to the existing Anglian Water network further south of the site in Colchester Road.

#### Sustainability Credentials

- 8.98 Paragraph 117 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.
- 8.99 Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.
- 8.100 The submitted planning statement confirms that the development is intended to include solar panels, high levels of insulation and air source heat pumps to minimise the impact on the environment. Precise details of the package of sustainability features, including the provision of EV charging points, will be secured via condition.

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

- 8.101 As an enabling scheme the accepted approach is to minimise normal s106 policy requirements to maximise land value capture towards restoration of the heritage asset. Consequently, there would be no requirement for contributions towards healthcare/education enhancements or affordable housing provision. However, a S106 will be required to secure those identified enabling works and details of the proposed public open management and on-going maintenance.

#### *Public Open Space*

- 8.102 TDLP Policy HP5 requires major new residential development to provide a minimum 10% of the gross site area as open space. The development would provide for in excess of the 10% requirement and it is the developer's intention to transfer this area onto a management company to maintain once implemented. The associated S106 will therefore need to include a clause to secure the details and timings of implementation and transfer of the public open alongside associated maintenance responsibilities thereafter.



### *Enabling Works*

- 8.103 As noted above the development is proposed as part of an enabling scheme (i.e. to utilise resulting funds to contribute towards restoration works at the St Osyth Priory). These works include repair, and renovation works to the Abbot's Lodging (East and South Wings) and are listed at section 8.13 above. An appropriately worded clause will be required to secure the necessary trigger points and timings of these works (where not already forward funded) against appropriate stages of occupation of the approved development.

### Ecology and Biodiversity

- 8.104 This report addresses the distinct legal requirements, ensuring a comprehensive analysis of the ecology and biodiversity impacts of the proposal in line with regulatory standards.

### General duty on all authorities

- 8.105 The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.
- 8.106 This development is subject to the general duty outlined above. The following features underscore how the proposal positively impacts biodiversity, offsetting requirements necessary for the development to take place;
- Bird and bat boxes proposed for dwellings.
  - Hedgehogs access to the completed scheme.
  - Native species landscaping outside the development areas and within the developmental area species of recognised wildlife value to be used.

- 8.107 Therefore, the development on balance and with consideration of the impact of the development and baseline situation on site, does conserve and enhance biodiversity interests.

### Biodiversity net gain

- 8.108 Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. The minimum requirement is for a 10% net gain in biodiversity value achieved on a range of development proposals (excluding Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Certificates, householders, self builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow).
- 8.109 The statutory framework for BNG applies. This involves the imposition (automatically applied as a deemed condition) of a planning condition on approvals to ensure the objective of at least 10% net gain over 30 years. The determination of the Biodiversity Gain Plan (BGP) under this planning condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the BGP, via planning condition discharge, is approved.
- 8.110 Given this position, the government strictly provides it would generally be inappropriate for decision makers to refuse an application on the grounds that the biodiversity gain objective will not be met. It

is considered logical to confirm this closer to commencement of development, given the potential number of options available. This further supports the position that the biodiversity gain objective can always be met in some form.

- 8.111 An indicative biodiversity net gain plan has been provided which concludes that, against the baseline position, to achieve a gain of 0.94 (10.05%) habitat units on site, the creation of 2.1 hectares of moderate condition modified grassland, 0.085 hectares of moderate condition mixed scrub, and the planting of 72 small trees within the areas of Public Open Space will be required. Moreover, to achieve a gain in 0.27 hedgerow units (10.36%) on-site, the report recommends the retention of the existing hedgerow and treeline on site as well as the creation of 0.035 km of species-rich native hedgerow in good condition within open space. The precise details of the BNG gain plan, including its implementation and monitoring will be secured by condition and/or legal agreement where relevant.

#### Protected Designated Habitats

- 8.112 The site falls within the recreational Zone of Influence (ZOI) of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). 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.
- 8.113 A Habitat Regulations Assessment has been completed for the proposal. The new development would be likely to increase the number of recreational visitors to the designated area and, in combination with other developments, it is likely that the proposal would have significant effects on the designated site. As such a condition (or via a legal agreement, whichever is relevant) is recommended to secure the necessary financial contributions for RAMS to 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.

#### Protected Species

- 8.114 In accordance with Natural England's standing advice the application site and surrounding habitat have been assessed for potential impacts on protected species.
- 8.115 Many species are scoped out of the submitted Ecology Assessment (Hopkins Ecology, July 2024) based on habitat conditions and / or direct survey evidence, including:
- Great crested newts, based on distances from ponds within the Priory Estate and the negative e-DNA test results from the pond within the Wellwick Land.
  - Reptiles, based on the patches of scrub and cover being outside of the works area.
- 8.116 The species scoped into the present survey area are:
- Bats (roosting). A single tree in the northern hedgerow has low roost potential.
  - Bats (foraging). A small assemblage of foraging individuals is likely to be present.
  - Nesting birds. Common and widespread species in the hedgerow, scrub and longer sward.
  - Hedgehogs. Present locally and may forage over the Site and shelter in the denser scrub.
  - Invertebrates. The sloping bank is likely to be of value to species requiring hot open swards, but the species-poor herb component limits its likely value.

- 8.117 Based on the loss of semi-improved (species-poor) grassland, albeit including areas previously proposed for the archery club, the current proposals are therefore considered to be of minor

ecological significance.

- 8.118 Given that the areas of denser scrub lie outside of the works area, the recommendation for construction phase mitigation is:
- Nesting birds. Vegetation clearance should either be outside of the nesting bird season which runs from March to August inclusive or otherwise follow an inspection no more than 48 hours prior to works commencing, to confirm nesting birds are absent.
- 8.119 Place Services (Ecology) have reviewed the submitted document titled: Great Crested Newt DNA Testing Result of the Pond (Hopkins Ecology, July 2024) and the submitted Ecology Assessment (Hopkins Ecology, April 2024) and have confirmed that they are satisfied that there is sufficient ecological information available to support determination of this application.
- 8.120 This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable. Moreover, the mitigation measures identified in the Ecology Assessment (Hopkins Ecology, April 2024) will be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly those recorded in the locality.
- 8.121 Place Services also support the proposed reasonable biodiversity enhancements for protected and Priority species, which have been recommended to secure net gains for biodiversity. The reasonable biodiversity enhancement measures will be outlined within a separate Biodiversity Enhancement Strategy and are to be secured by a condition on the planning permission.
- 8.122 This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 (as amended) and delivery of mandatory Biodiversity Net Gain.
- 8.123 In compliance with relevant wildlife legislation and planning policies, the development will adhere to best practices to protect and enhance the habitat for these protected species.

#### *Ecology - Conclusion*

- 8.124 In accordance with the overarching duty outlined above, this development is committed to actively contributing to the conservation and enhancement of biodiversity as set out above and within the planning conditions. The development aligns with the statutory framework for biodiversity net gain, striving to achieve a 10% net gain in biodiversity value over 30 years. In conclusion, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

### **9. Planning Balance/Conclusions**

- 9.1 Although there is some conflict with the Council's Housing settlement strategy, as the site lies outside of a defined settlement boundary, the benefits identified from the scheme delivery and associated enabling development are considered to demonstrably outweigh the conflict.
- 9.2 Moreover, the principle of resident development in this location is already established and the access point is already consented. The proposal would represent a sustainable and proportionate development which, like the consented scheme, would serve as enabling development to fund further restoration works at St Osyth Priory. In this respect there is an identified and agreed need for such enabling development.
- 9.3 Historic England initially raised concerns regarding the enabling approach at St Osyth Priory and posed some questions. These were responded to, and on that basis, officers are satisfied that the forwarded funded works directly support the agreed Business Plan for St Osyth Priory. Additionally,

officers are reassured that the works assist in preserving a Grade I listed building and help to deliver the optimum viable use for that building, which facilitates improved public access at St Osyth Priory.

- 9.4 In respect of the impacts of the development upon nearby heritage assets, the construction of a further 37 units on this site, in the manner outlined on the indicative plans provided, would not result in significant harm to the setting of either of these assets. There are also no objections from ECC-Highways, Place Services (Ecology), the Lead Local Flood Authority (ECC-SUDs) or Anglian Water.
- 9.5 In summary, the development would accord with the requirements of the National Planning Policy Framework (NPPF) paragraph 221, as the benefits for the proposed for enabling development, which do result in some degree of conflict with local plan policies governing the siting of new housing development, would help to secure the future conservation of a heritage asset and provide for extra housing in a sustainable location, whilst demonstrably outweighing the disbenefits of departing from those local plan policies.
- 9.6 **Therefore in the absence of any overriding objections from any statutory consultees, the development is recommended for approval subject to the completion of a legal agreement outlining the various obligations listed below and the conditions listed at section 10.2 of this report.**

## 10. Recommendation

### 10.1 Approval (including S106 requirements)

**Recommendation:** Outline Approval subject to S106

- 5) On appropriate terms below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control to secure the completion of a legal agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 dealing with the matters as summarised at paragraph 10.2:
- 6) That the Head of Planning and Building Control be authorised to grant outline consent subject to the agreed section 106 agreement and conditions as stated at paragraph 10.3, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 7) The informative notes as may be deemed necessary.

**Or;**

- 8) That in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months that the Head of Planning and Building Control be authorised to refuse the application on appropriate grounds at their discretion.

### 10.2 S106 Legal Agreement - Heads of Terms

CATEGORY	TERMS
Enabling Works	Secure enabling works outlined in enabling works table at 8.13 above. Trigger points/Timing of works to be confirmed.
Public Open Space	Details of Transfer / Management Responsibilities.
RAMS	£169.45p per dwelling <b>(if applicant decides to secure via legal agreement rather than</b>

	<b>condition - see Condition 7 below).</b>
BNG	Securing precise details of net gain plan (10% gain) and the implementation, management and monitoring of such plan <b>(if applicant decides to secure via legal agreement rather than condition – see Conditions 8 and 9 below).</b>

### 10.3 Conditions and Reasons

#### 1 COMPLIANCE REQUIRED: TIME LIMIT FOR RESERVED MATTERS APPLICATION

**CONDITION:** Application for approval of all outstanding and the final reserved matters for any phase of the development must be made to the Local Planning Authority not later than the expiration of three years beginning with the date of this permission, and the development must be begun not later than the expiration of two years from the final approval of the reserved matters for the relevant phase or, in the case of approval on different dates, the final approval of the last such matter to be approved.

**REASON:** To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

**NOTE/S FOR CONDITION:**

The reserved matters need to be received by the Local Planning Authority within the timeframe provided. Failure to comply with this condition will result in the permission becoming lapsed and unable to be carried out. If there is no phasing plan, this condition is considered to apply to the whole site as a single phase. If commencement takes place after the time lapses this may result in unlawful works at risk Enforcement Action proceedings. You should only commence works when all other conditions requiring agreement prior to commencement have been complied with.

#### 2 APPROVAL OF RESERVED MATTERS

**CONDITION:** No development in any phase shall commence until approval of the details of:- landscaping, appearance, layout and scale (hereinafter called "the reserved matters") for that particular phase have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and agreed order of phasing.

**REASON:** To enable the Local Planning Authority to secure an orderly and well designed development in accordance with the character and appearance of the neighbourhood and in accordance with the Development Plan. This condition is required to be agreed prior to the commencement of any development in accordance with proper planning principles to allow public engagement on the outstanding reserved matters and ensure no significant adverse harm results.

**NOTE/S FOR CONDITION:**

This condition requires approval of all reserved matters as may be listed to be agreed in writing prior to any commencement of the approved development. Failure to comply with this condition may result in the permission becoming lapsed and unable to be carried out. If there is no phasing plan, this condition is considered to apply to the whole site as a single phase. The reserved matters that may be listed above are further defined under government guidance as follows:-

**LANDSCAPING:** The treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features.

**APPEARANCE:** The aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture.

**LAYOUT:** The way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.

**SCALE:** The height, width and length of each building proposed within the development in relation to its surroundings.

### 3 APPROVED PLANS & DOCUMENTS

**CONDITION:** The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard. Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

- Red line site plan drawing is CC-0175-ABP010-6-1 C (Received 02/05/2024)
- 208104 21 REV E (Access/Highway Works Plan)

**REASON:** For the avoidance of doubt and in the interests of proper phased planning of the development.

#### NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

### 4 FURTHER APPROVAL - CONSTRUCTION MANAGEMENT TO BE AGREED (PRE COMMENCEMENT)

**CONDITION:** Prior to the commencement of development details of a construction methodology and timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall

incorporate the following information:-

- a) Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
- b) Details of the loading/unloading/storage of construction materials on site, including details of their siting and maximum storage height.
- c) Details of how construction and worker traffic and parking shall be managed. This shall include the intended routing of HGV traffic on the surrounding road network, programme of restoration works to soft highway verges, and any directional signs to be installed and where.
- d) Details of any protection measures for footpaths and trees surrounding the site.
- e) Details of all access points to be used to access the site during construction only and any staging of provision.
- f) Details of the scheduled timing/phasing of development for the overall construction period.
- g) Details of measures to control the emission of dust and dirt during construction and including details of any wheel washing to be undertaken, management and location it is intended to take place.
- h) Details of the siting of any on site compounds and portaloo's.
- i) Details of the method of any demolition to take place, including the recycling and disposal of said materials resulting from demolition.
- j) Site waste management plan (that shall include reuse and recycling of materials)
- k) Scheme for sustainable construction management to ensure effective water and energy use.
- l) Scheme of review of complaints from neighbours.
- m) Registration and details of a Considerate Constructors Scheme to be joined prior to the commencement of development, and confirmation of registration to be provided in writing to the LPA before the start of works, or similar scheme for which full details shall be provided and complied with
- n) Details on the provision, location and management of any show home/s or reception, including opening times, parking and advertisements (including flags and directional signs).
- o) Before and after condition survey to identify defects to highway in the vicinity of the access to the site and where necessary ensure repairs are undertaken at the developers expense when caused by the developer.

The said methodology as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

REASON: To minimise detriment to nearby residential and general amenity by controlling the construction process to achieve the approved development, and to ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety. This condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, by reason of the location and scale of development may result in adverse harm on amenity.

**NOTE/S FOR CONDITION:**

You are strongly advised to discuss this condition with the Local Planning Authority and if possible/available local residents likely to be affected by this development prior to submission of details. Please note the provisions of the Highways Act 1980 Para 131 are likely to apply and may need to be discussed with the Highways Authority, this legislation includes details and penalties for any damage and/or alterations to the highway including verge, highway signage and surface materials of pavement/footpath and carriageway.

## 5 RESIDENTIAL TRAVEL INFORMATION PACK

CONDITION: Prior to first occupation of each dwelling, a Residential Travel Information Pack (travel pack) shall be provided to each dwelling for use of its first occupiers. The travel pack shall be agreed,

in writing, by the Local planning authority prior to provision and shall include a minimum of six one day travel vouchers for use with a local transport operator.

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

## 6 ACCESS/HIGHWAY WORKS

CONDITION: No occupation of the development hereby permitted shall take place until the following access/highway works have been completed in full and in accordance with precise details of which shall have been submitted to and agreed in writing by the Local Planning Authority.

- a) The highway works as shown in principle on planning application drawing number 208104 21 Rev. E. Works include:
  - i) The removal of the existing access and lay-by;
  - ii) A priority junction off the B1027 to provide access to the proposal site. Junction to include 2 no. 3 metre wide footways and a 160 x 2.4 x 160 metre visibility splay maintained clear to the ground at all times;
  - iii) A right turn lane at the priority junction mentioned above to include 2no. pedestrian central islands; and
  - iv) A bell mouth access off Colchester Road to provide access to the proposal site. Bell mouth to include kerbed radii and a 70 x 2.4 x 70 metre visibility splay maintained clear to the ground at all times
- b) A new footway connection from the proposed northern development parcel, with a maximum of 2-metre-wide footway provided on the east side of the B1027 Colchester Road providing a connection to the existing bus stops north of the proposal site.

REASON: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

## 7 PRE-COMMENCEMENT CONDITION: MITIGATION TO BE AGREED, RAMS (**Condition applied if RAMS not secured via the associated legal agreement instead**).

CONDITION: The hereby approved development shall not be first commenced until detailed proposals addressing the mitigation of the development's impact on protected Essex Habitats Sites have been submitted to and received written approval from the Local Planning Authority.

Such proposals must provide and secure mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) or demonstrate mitigation measures of an equivalent effectiveness to the satisfactory of the Local Planning Authority. For any on site mitigation proposals approved, it shall be carried out in full prior to first occupation, and thereafter shall be maintained as approved.

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations. Failure to achieve satisfactory mitigation would result in harm by new residents due to the development's impact on protected sites meaning the development must mitigate the burden of development regardless of scale of impact.

### NOTE/S FOR CONDITION:

This condition establishes the necessity to ensure the implementation of appropriate mitigation measures due to the impact of the approved development. Such mitigation may be required on-site, off-site, or a combination of both.

Typically, a contribution towards visitor management measures at the protected Habitats Site(s) may



be the preferred and simplest approach to fulfil the requirements of this condition. To fulfil this requirement, you can contribute funds towards a range of mitigation projects in the protected areas. It is essential to secure this provision through a legal agreement between the District Council, Developer/Applicant, and site owners before occupation. If this is the approach to fulfilling this condition you wish to take, you are strongly advised to finalise the legal agreement with the District Council before submitting any request to discharge this condition. Should this be the route chosen, failure to conclude the agreement within the discharge of condition application timeframe may lead to the refusal to discharge the condition.

Please note if there are other obligations needed for this development, for example to secure monitoring and maintenance of a Biodiversity Net Gain Plan, you may wish to combine these together as one agreement. Furthermore, please also note a legal agreement will include legal fees and may require obligations to secure monitoring and associated fees.

## 8 FURTHER APPROVAL: BIODIVERSITY NET GAIN PLAN

**CONDITION:** The development may not be begun unless (a) a biodiversity gain plan has been submitted to the planning authority (see note), and (b) the planning authority has approved the plan (see note).

**REASON:** In order to accord with Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) and amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024.

### **NOTE - CONTEXT AND APPLICATION:**

Planning conditions are typically established upon the granting of planning permission under sections 70(1) and 72 of the Town and Country Planning Act 1990. However, it's essential to note that the biodiversity gain condition operates under a distinct statutory framework, specifically outlined in paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990.

This condition is deemed to apply to all planning permissions granted for land development in England, unless specific exemptions or transitional provisions are applicable (for further details, please refer to the provided web link <https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments> or contact us directly.

The government advises against including this condition in decision notices to avoid confusion. However, for clarity and accountability, we have opted to highlight this condition within the decision notice. This ensures that all involved parties are aware of its requirements, facilitating effective tracking and monitoring throughout the development process, including the discharge of conditions.

In certain instances, this condition may be imposed even if the applicant believes that biodiversity net gain (BNG) does not apply. Based on the available information, it is determined that this permission necessitates the approval of a biodiversity gain plan before commencing development, as none of the statutory exemptions or transitional arrangements apply.

For further details, please consult the officer report as needed. If you believe this condition does not apply, we strongly recommend contacting the Local Planning Authority (LPA) for clarification. Tendring District Council serves as the planning authority responsible for 24/01384/OUT determining the approval of a Biodiversity Gain Plan in relation to this permission.

### **BIODIVERSITY GAIN PLAN REQUIREMENTS:**

For the Biodiversity Gain Plan requirements, please refer to both paragraphs 14 and 15 of the Environment Act Sch 14 Part 2 as amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024.

<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>

In summary, the Biodiversity Net Gain (BNG) plan must achieve a minimum biodiversity net gain of 10% and should typically include the following:

Steps taken or to be taken to minimize adverse effects of the development on the biodiversity of the onsite habitat and any other habitat. Pre-development and post-development biodiversity assessments of the onsite habitat. Allocation of any registered offsite biodiversity gain to the development and its biodiversity value in relation to the development. Details of any biodiversity credits purchased for the development. Plans for maintaining and securing the net gain on and/or off site for at least 30 years after completion of the development.

The Local Authority will ensure the submitted details meet the requirements of the Town and Country Planning Act 1990 as amended, Environment Act as amended, associated legislation and guidance.

Ways to achieve 10% BNG may include:

- i. Enhancement and restoring biodiversity on-site (within the red line boundary of a development site).
- ii. If proposals can only achieve part of their BNG on-site, they can deliver through a mixture of on-site and off-site. Developers can either make off-site biodiversity gains on their own land outside the development site or buy off-site biodiversity units on the market as close as possible to the site.
- iii. If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government. This must be a last resort. The government will use the revenue to invest in habitat creation in England.

Developers may combine all 3 options but must follow the steps in order. This order of steps is called the biodiversity gain hierarchy.

#### CONDITIONS AND LEGAL AGREEMENT:

The Local Authority is responsible for ensuring that the biodiversity gain objective is achieved, whether it be onsite, offsite, or through the purchase of credits, and that it is secured by legal agreement as necessary. It is essential to highlight that planning conditions operate within a strict timeframe. Therefore, any legal agreements required to secure the biodiversity gain must be completed prior to the consideration of the planning condition. Failure to comply with this requirement may result in the refusal of the condition.

#### 9 FURTHER APPROVAL: BIODIVERSITY NET GAIN PLAN MANAGEMENT & MONITORING PLAN **(Condition applied if BNG HMMP not secured via the associated legal agreement instead).**

CONDITION: No development shall commence until a 30 year Habitat Management and Monitoring Plan (HMMP), prepared in accordance with the approved Biodiversity Gain Plan under Condition 8 has been submitted to and approved in writing by the local planning authority and shall contain the following:

- a) description and evaluation of the planned habitat works for the creation and/or enhancement of the onsite habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;
- b) the management measures to maintain the onsite habitat creation and/or enhancement works for a period of at least 30 years from the completion (defined for this purpose as first use and/or occupation unless agreed in writing by the LPA) of the development including:
  - i) ecological trends and constraints on site that may influence management;
  - ii) aims, objectives and targets for management e.g. links with local and national species

- and habitat action plans;
  - iii) a description of the management operations necessary to achieving aims and objectives;
  - iv) prescriptions for management actions;
  - v) preparation of a works schedule, including annual works schedule;
  - vi) mechanisms of adaptive management to account for necessary changes in work schedule to achieve the required targets;
- c) details of the monitoring methodology, to measure the effectiveness of the management of the onsite habitat creation and/or enhancement works together with the timetable for each element of the monitoring programme including when first implemented with provision for monitoring reports to be provided to the local planning authority in writing on year 1, 2, 3, 5, 7, 10, 15, 20, 25 and 30, with biodiversity reconciliation calculations at each stage; and
- d) details of the roles and responsibilities of the people or organisation(s) delivering the HMMP including implementation and monitoring;

The approved HMMP shall be strictly adhered to at all times and implemented in full for its duration no later than the first use/occupation of the development.

REASON: To enhance biodiversity in accordance with the National Planning Policy Framework and to achieve the Biodiversity Net Gain objectives set out in Schedule 7A of the Town and Country Planning Act 1990 (as amended).

#### 10 ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

CONDITION: All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecology Assessment (Hopkins Ecology, April 2024) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECOW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

REASON: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (as amended).

#### 11 FURTHER APPROVAL REQUIRED – BIODIVERSITY ENHANCEMENTS

CONDITION: Prior to any works above slab level a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

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

REASON: To enhance protected and Priority species & habitats and allow the LPA to discharge its

duties under the s40 of the NERC Act 2006 (as amended).

## 12 FURTHER APPROVAL – WILDLIFE SENSITIVE LIGHTING SCHEME

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

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

REASON: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (as amended).

## 13 FURTHER APPROVAL - SUDS WATER DRAINAGE DETAILS

CONDITION: No development shall commence (except demolition) until details of a surface water management scheme/plan, detailing how surface water and storm water will be managed on the site during construction and during the lifetime of the development, is submitted to and agreed in writing by the local planning authority. The scheme shall include but not be limited to:

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 45% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 45% climate change critical storm event.
- Provision of 10% urban creep allowance applied to the impermeable areas used to calculate the required storage, in accordance with BS8582.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- An updated drainage strategy incorporating all of the above bullet points including matters already approved and highlighting any changes to the previously approved strategy.

Unless a timetable is agreed as part of the surface water management scheme submitted, no part of the development shall be first occupied or brought into use until the scheme is fully installed and is functionally available for use, unless alternative timing for installation is otherwise agreed in writing by the Local Planning Authority. The drainage scheme shall thereafter be maintained as approved.

REASON: To safeguard the ground water environment and minimise the risk of flooding. This condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, by reason of the location and scale of development may result in adverse harm by reason of flood risk.

NOTE/S FOR CONDITION:

This condition shall engage and requires details to be agreed prior to the commencement of development. This condition is imposed to ensure the potential impact on a sensitive area is considered and harm avoided that may be detrimental to amenity and the environment.

#### 14 FURTHER APPROVAL – SUDS MAINTENANCE

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

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

REASON: To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information prior to occupation may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

#### 15 FURTHER APPROVAL - FOUL WATER DRAINAGE DETAILS

CONDITION: Full details of foul water drainage shall have been submitted to and approved, in writing, by the Local Planning Authority prior to the beginning of any works to the building it would serve are commenced. No part of the building/s shall be first occupied or brought into use until the agreed method of foul water drainage has been fully installed and is functionally available for use for that building/s. The foul water drainage scheme shall thereafter be maintained as approved.

REASON: To safeguard the ground water environment from harm.

##### NOTE/S FOR CONDITION:

This condition shall engage and requires details to be agreed prior to the commencement of works to the building/s approved. This condition is imposed to ensure the potential impact on a sensitive area is considered and harm avoided that may be detrimental to amenity and the environment. This condition as detailed will apply to the development at all times once agreement is obtained unless varied or removed legally.

#### 16 AGREEMENT OF LOCAL RECRUITMENT STRATEGY

CONDITION: No above ground works shall commence until a Local Recruitment Strategy has been submitted to and approved in writing by the Local Planning Authority. The Local Recruitment Strategy shall include details of how the applicant/ developer shall use their reasonable endeavours to promote and encourage the recruitment of employees and other staff in the locality of the application site, for the construction of the development. The approved Local Recruitment Strategy shall be adhered to thereafter.

REASON: To promote and encourage the recruitment of employees and other staff in the locality of the application site.

##### NOTES FOR CONDITION:

Locality of the application site is taken to refer to the administrative boundaries of Tendring District Council unless otherwise specified and agreed in writing by the Local Recruitment Strategy.

#### 17 AGREEMENT OF MEASURES TO IMPROVE SUSTAINABILITY OF DEVELOPMENT

CONDITION: Concurrent with the first reserved matter application a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include as a minimum:-

- An electric car charging point per dwelling
- Agreement of a scheme for water conservation including greywater recycling and rainwater capture/re-use for new dwellings.
- Agreement of a scheme to achieve as far as possible a water consumption rate of not more than 110 litres, per person, per day for new dwellings.
- Agreement of heating of each dwelling/building
- Agreement of scheme for waste reduction
- Provision of a fibre optic broadband connection to the best possible speed installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing. (If the applicant is unable to achieve this standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast wireless service will be considered.)

The scheme shall be fully implemented prior to the first occupancy of the development unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

REASON: To enhance the sustainability of the development through reduced need, better use or savings in the use of water, energy and resources; reduced harm to the environment; and result in wider public benefit in accordance with the NPPF.

#### NOTES FOR CONDITION:

Slab level normally refers to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visualised above ground level or seek confirmation from the Local Planning Authority for your development.

Broadband provision is included to ensure the development is able to be equipped with high speed broadband to enable opportunities for web-based communication and homeworking reducing the need for unsustainable travel.

A water consumption rate of not more than 110 litres, per person, per day adopted as Planning Policy and as imposed by this condition will directly change the building regulations water consumption rate to match as a result of this policy. The introduction of effective utilities, rainwater capture for watering plants, aerators to taps and other water saving options can be considered.

## 18 FURTHER APPROVAL – GROUND LEVELS

CONDITION: Concurrent with the first reserved matters application, details of the proposed finished floor levels; ridge and eaves heights of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The submitted levels details shall be measured against a fixed datum and shall show the existing and finished ground levels, eaves and ridge heights of surrounding property. The development shall be carried out as approved.

REASON: To ensure a satisfactory relationship between the various components of the development and between the site and adjoining land. To ensure that construction is carried out at a suitable level having regard to drainage, access, the appearance of the development, any trees or hedgerows and the amenities of neighbouring properties.

## 19 AGREEMENT OF HOUSING MIX

CONDITION: Concurrent with the first reserved matters application, the housing mix both in terms of house type and number of bedrooms for both market and affordable housing shall be submitted, in writing, for approval by the Local Planning Authority and carried out entirely as may be approved. The size of bedrooms shall comply entirely with the nationally adopted "Technical housing standards – nationally described space standard".

REASON: To ensure 1) a mix of dwelling sizes to reflect the overarching vision for growth within the District and the evidence of housing need contained in the latest Strategic Housing Market Assessment 2) to allow for consideration of the development's impact on local highways.

### NOTES FOR CONDITION:

The housing mix shall broadly reflect the housing need identified in the latest Strategic Housing Market Assessment unless there are specific housing mix requirements for a particular site, as set out in site-specific policies in the Local Plan, or genuine physical or economic viability reasons why this mix cannot be achieved.

## 10.4 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. Also, in determining this application the LPA have identified matters of concern within the application (as originally submitted) and negotiated, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the LPA has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

### Highway Informatives

Prior to any works taking place in the highway, the developer should enter into an S278 agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works.

All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible).

All highway related details should be agreed with the Highway Authority.

## 11. Additional Considerations

### Equality Impact Assessment

11.1 In making this recommendation/decision regard must be had to the public sector equality duty (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 that in summary include 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\* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.

11.2 It is vital to note that the PSED and associated legislation are a significant consideration and material

planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

- 11.3 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

### Human Rights

- 11.4 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.
- 11.5 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).
- 11.6 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

### Finance Implications



- 11.7 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.
- 11.8 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.

## **12. Declaration of Interest**

- 12.1 Please refer to the minutes of this meeting, which are typically available on the councils website which will be published in due course following conclusion of this meeting.

## **13. Background Papers**

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

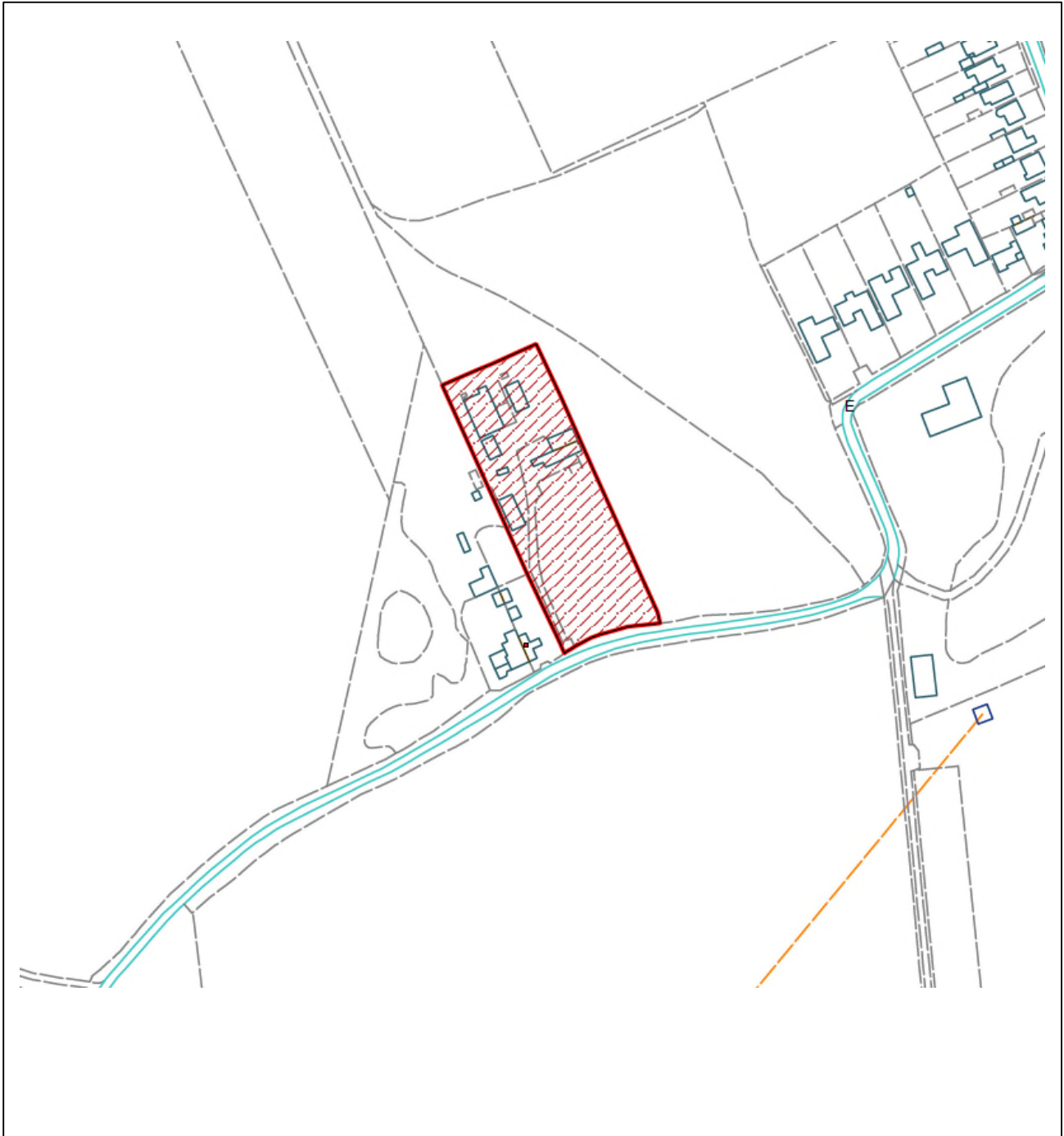
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## PLANNING COMMITTEE

08 JULY 2025

### REPORT OF THE CORPORATE DIRECTOR OF PLANNING AND COMMUNITY

#### A.2 - PLANNING APPLICATION – 25/00755/FUL – LAND TO THE NORTH-EAST OF BLOOMFIELD COTTAGE GRANGE ROAD LAWFORD MANNINGTREE



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<b>Application:</b>	25/00755/FUL	<b>Expiry Date:</b>	16th July 2025
<b>Case Officer:</b>	Jacob Jaarsma		
<b>Town/ Parish:</b>	Lawford Parish Council		
<b>Applicant:</b>	Mr Lawrence Symes		
<b>Address:</b>	Land to The North-east of Bloomfield Cottage Grange Road Lawford Manningtree		
<b>Development:</b>	Planning Application - Construction of new single storey dwelling with associated three bay cart lodge, parking and turning area.		
<b>Referral Reason:</b>	Technical Departure from Development Plan and red line site plan differs from most recent 'in lieu of' approval ref 21/01718/FUL.		
<b>Recommendation:</b>	<p>1) That the Head of Planning and Building Control be authorised to grant planning permission subject to the conditions as stated at paragraph 10.1, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,</p> <p>2) The informative notes as may be deemed necessary.</p>		

## 1. **Executive Summary**

- 1.1 Planning permission (ref. 21/01718/FUL) was granted on 17 April 2024 for the construction of a two-bedroom bungalow on a smaller site, with a three-year implementation timeframe. This permission remains extant and is considered to carry significant weight in the planning balance, despite the site being located outside any designated Settlement Development Boundary (SDB). The current proposal seeks to replace this with a larger, two-bedroom dwelling on an expanded site, incorporating substantial landscape enhancements. Crucially, the net effect remains a single dwelling in this location. From a general sustainability standpoint, the overall impact is considered comparable to that of the approved two-bedroom bungalow.
- 1.2 Furthermore, the proposed development involves the removal of unsightly existing structures and is regarded as a more effective and visually appropriate use of the land compared to the extant approval. The scheme would have no adverse impact on residential amenity, and the access and highway safety implications remain broadly in line with the extant approval. Subject to conditions, the proposal is also considered to offer landscape and biodiversity benefits that arguably exceed those of the previously approved scheme. Accordingly, the proposal is recommended for approval subject to the conditions set out in section 10 below.

## 2. **Status of the Local Plan**

- 2.1 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 Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022,

respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

In relation to housing supply:

- 2.2 The Framework requires Councils to significantly boost the supply of homes to meet the District's housing need. Paragraph 78 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 5% to ensure choice and competition in the market for land, unless the Housing Delivery Test (HDT) demonstrates significant under delivery of housing over the previous 3 years - in which case a higher buffer is required.
- 2.3 On 12th December 2024 the Government published the Housing Delivery Test: 2023 measurement. Against a requirement for 1,466 homes for 2020-2023, the total number of homes delivered was 2,343. The Council's HDT 2023 measurement was therefore 160%, and a buffer of 5% is to be used when calculating the Council's five year land supply position.
- 2.4 The Council demonstrates its supply of specific deliverable sites within the Strategic Housing Land Availability Assessment (SHLAA), which is published annually. The most recent SHLAA was published by the Council in July 2024, and demonstrates a 6.26-year supply of deliverable housing sites against the annual requirement of 550 dwellings per annum set out within the adopted Local Plan, plus a 5% buffer. The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>
- 2.5 As a result, the 'titled balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

### **3. Neighbourhood Plans**

- 3.1 A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>
- 3.2 There are no neighbourhood plan(s) in place for this area.

### **4. Planning Policy**

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

#### **National:**

National Planning Policy Framework 2025 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

#### **Local:**

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

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  
HP5 Open Space, Sports and Recreation Facilities  
DI1 Infrastructure Delivery and Impact Mitigation  
PPL3 The Rural Landscape  
PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
PPL10 Renewable Energy Generation  
CP1 Sustainable Transport and Accessibility

#### Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)  
Tendring Provision of Recreational [Open Space for New Development SPD](#) 2008

[Essex Design Guide](#)

[Technical housing standards](#): Nationally described space standard Published 27 March 2015

#### Local Planning Guidance

[Essex Parking Guidance](#) Part 1: Parking Standards Design and Good Practice 2024

[Essex Parking Guidance](#) Part 2: Garden Communities and Large Scale Developments 2024

## **5. Relevant Planning History**

20/01184/COUNOT	Proposal to convert agricultural buildings into 3 two-bedroom bungalows, with two parking spaces and a private amenity per dwelling.	Determination (Prior approval refused)	18.02.2021
21/00704/COUNOT	Proposed conversion of one agricultural building into one dwelling.	Determination (Prior approval granted)	17.06.2021
21/01718/FUL	Proposed replacement of an agricultural building with a two bed bungalow (in lieu of Prior Approval for 1 No. 2 bed dwelling, subject of application 21/00704/COUNOT).	Approved	17.04.2024
25/00755/FUL	Planning Application - Construction of new single storey dwelling with associated three bay cartlodge, parking and turning area.	Current	

## **6. Consultations**

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), 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/>.

### **ECC Highways**

#### **Position summary: No highways objection subject to conditions**

The information provided with the application has been assessed by the Highway Authority and conclusions reached from a desktop study based on the submitted material, google maps and previous site visit. The proposal site will be accessed from and along a private road, with alterations/ upgrade to the existing access which serves the previous agricultural buildings from the established vehicular access from Grange Road, classed as a local road within the County's Route Hierarchy. The proposed dwelling will retain adequate off-street parking and turning and when compared with the former agricultural use, it is not considered that the proposed 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, considering these factors:

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

1. As indicated on drawing no. 03H, there should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the road junction / access is first used by the development and retained free of any of obstruction above 600mm and below 2 metres at all times.

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

2. Prior to first occupation of the dwelling a minimum size 5 vehicular turning facility (8m x 8m), shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

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

3. Prior to the first occupation of the proposed dwelling, the vehicular access shall be reconstructed at right angles to the highway boundary the proposed private drive shall not be less than 4.5 metres in width and shall be retained at that width for 6 metres within the site and shall be provided with an appropriate vehicular crossing.

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

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

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

5. As indicated on drawing no. 03H, any gates retained at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the footway / or where no provision of footway is present, the carriageway.

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

6. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been 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.

7. 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.

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

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

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance and National Planning Policy Framework.

**Informatives:**

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

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

ii) 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.

iii) 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.

iv) Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the [Essex Climate Action Commission](#) proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the [Essex Developers' Group Climate Charter \[2022\]](#) and to view the advice contained in the [Essex Design Guide](#). Climate Action [Advice guides](#) for residents, businesses and schools are also available.

**Officer Comment:** *The majority of the recommended conditions are considered to meet the NPPF tests for planning conditions. Should the application be approved, these conditions will be imposed accordingly. However, Conditions 7 and 8 are considered not to meet the NPPF tests of necessity and reasonableness—Condition 7 is addressed through other recommended highways conditions, and the requirements of Condition 8 are deemed duplicative, as they would be adequately covered by the Construction Management Plan condition to be imposed upon approval.*



## **Environmental Protection**

**Position summary: No objection subject to conditions and informatives.**

**Asbestos:** The EP team are requesting the undertaking of a formal asbestos survey of the building / structures in question, the results and proposed removal measures of which are to be submitted to the LPA for approval prior to the commencement of any approved proposal.

**Contaminated Land:** Given the sites proximity to historic contaminated land, and the potential for asbestos materials to be on site, the EP Team are requesting that, a Tier 1 Risk Assessment shall be carried out to establish whether the site is contaminated in any way. Such investigations shall be carried out in accordance with a scheme which shall first be agreed in writing with the Local Planning Authority. If the investigations reveal contamination of the site, a further scheme shall be agreed in writing by the Local Planning Authority, setting out measures to ensure that the entire area of the site, in relation to soil conditions resulting from such contamination, will not be harmful or detrimental to human health, animal health, normal plant health or growth, to buildings, building surfaces or amenities. Such agreed measures shall be implemented and completed to the satisfaction of the Local Planning Authority prior to the commencement of any development of the site.

*REASON: It is the responsibility of the developer to ensure the safe development of the site and to carry out any appropriate land contamination investigation and remediation works. The condition is to ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors*

**Demolition / Construction Activities:** In order to minimise potential nuisance caused by demolition/construction works, Environmental Protection recommend that the following hours and actions be adhered to, should the application be approved;

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

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

*REASON: to protect the amenity of nearby residential premises*

\*INFORMATIVE Foul Drainage: The submitted application form confirms the proposed foul drainage system; should a Sewerage Treatment Plant will be utilised as a way of disposing of foul waste; we would request, should the application be approved, that the Applicant / Agent, ensure the installation is fully compliant with the Environment Agency's Binding Rules and any other relevant Government guidance and British standards, in respect of these systems. Information on this can be found at: Septic tanks and treatment plants: permits and general binding rules: The general binding rules - GOV.UK ([www.gov.uk](http://www.gov.uk)). It is strongly recommended these rules are complied with, as they will minimise any potential nuisance to nearby residential

dwellings, assist in preventing a potential Public Health nuisance, and minimise the potential for adverse incidents, of which may result in formal enforcement action.

**Officer comment:** *The issue of asbestos falls under separate legislation and is therefore not controlled through the planning system. However, the developer will be made aware of their responsibilities regarding the lawful and compliant removal and disposal of any asbestos via an informative. The most recent extant planning approval for a single dwelling on this site did not include a condition requiring a Tier 1 Contaminated Land Risk Assessment, and it is therefore considered potentially unreasonable to impose such a condition at this stage. Instead, the developer will be reminded, also through an informative, of their responsibility to ensure the safe development of the site, including undertaking any necessary land contamination investigations and remediation. Should planning permission be granted, a condition requiring the submission of a Construction Management Plan could be imposed, which would also include confirmation of construction working hours.*

### **Essex County Council Ecology**

#### **Position summary: No ecological objection subject to conditions**

We have reviewed The Ecological Report (MHE Consulting, May 2025) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures. We have also reviewed the information submitted relating to mandatory biodiversity net gains. We are satisfied that there is sufficient ecological information available to support determination of this application.

This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in The Ecological Report (MHE Consulting, May 2025) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly those recorded in the locality.

We support the proposed reasonable biodiversity enhancements for protected, Priority and threatened species, which have been recommended to secure net gains for biodiversity, as outlined under Paragraph 187d and 193d of the National Planning Policy Framework (December 2024). The reasonable biodiversity enhancement measures should be outlined within a separate Biodiversity Enhancement Strategy and should be secured by a condition of any consent.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 (as amended).

Please note we do not provide comments on Biodiversity Net Gain as we have been instructed to leave comments on this matter to the LPA.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013. We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

#### **Recommended conditions**

#### **1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS**

“All mitigation measures and/or works shall be carried out in accordance with the details contained in The Ecological Report (MHE Consulting, May 2025) as already submitted with the

planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.”

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (as amended).

## **2. PRIOR TO COMMENCEMENT: CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY**

“A construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority.

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority”

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (as amended).

**3. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY**

“Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected, Priority and threatened species, prepared by a suitably qualified ecologist in line with the recommendations of The Ecological Report (MHE Consulting, May 2025), shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following: a) Purpose and conservation objectives for the proposed enhancement measures; b) detailed designs or product descriptions to achieve stated objectives; c) locations of proposed enhancement measures by appropriate maps and plans (where relevant); d) persons responsible for implementing the enhancement measures; and e) details of initial aftercare and long-term maintenance (where relevant). The works shall be implemented in accordance with the approved details shall be retained in that manner thereafter.”

## **3. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY**

“Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected, Priority and threatened species, prepared by a suitably qualified ecologist in line with the recommendations of The Ecological Report (MHE Consulting, May 2025), shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans (where relevant);
- d) persons responsible for implementing the enhancement measures; and
- e) details of initial aftercare and long-term maintenance (where relevant). The works shall be implemented in accordance with the approved details shall be retained in that manner thereafter.”

Reason: To enhance protected, Priority and threatened species and allow the LPA to discharge its duties under paragraph 187d of NPPF 2024 and s40 of the NERC Act 2006 (as amended).

#### 4. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

“Prior to occupation, a “lighting design strategy for biodiversity” in accordance with Guidance Note 08/23 (Institute of Lighting Professionals) shall be submitted to and approved in writing by the local planning authority. The strategy shall:

- a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and b) show how and where external lighting will be installed (technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

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

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (as amended).

**Officer Comment:** *The recommended conditions are considered to satisfy the NPPF tests for planning conditions. If the application is approved, they will be imposed accordingly—except for Condition 2, the requirements of which are already largely addressed within the Construction Management Plan condition that would also be applied upon approval.*

#### **Tree & Landscape Officer**

**Position summary: No landscape objection subject to minor layout changes and conditions**

The main body of the application site is overgrown with rank and ruderal vegetation with a few small trees becoming established.

The boundary with the highway, Grange Road, is demarcated with vegetation that comprises of decorative conifers and a few indigenous species. The vegetation is overgrown with Ivy.

The removal and replacement of this vegetation with a new hedgerow of comprising of the species shown on The Proposed Site Layout Plan will not have an adverse impact on the local landscape character. There are two or three Field Maples, set back from the boundary ditch, that could be retained.

The eastern boundary of the site is planted primarily with conifers and Blackthorn hedging. It

contains two large conifers along with small indigenous trees. It currently provides a good level of screening from the Public Right of Way (PRoW) further to the east.

The Proposed Site Layout Plan shows the retention of two large conifers on this boundary and replanting with a new native hedge. Whilst the conifers are prominent in their setting, they are incongruous features in the landscape. The new hedge will provide a pleasant boundary screen however rather than retaining the two large conifers it would be desirable for them to be removed and the smaller native trees such as Hawthorn and Field Maple to be retained.

The provision and implementation of a good landscaping scheme has the potential to improve the appearance of the land by way of the removal of non-native species and the introduction of boundaries hedges and trees comprising indigenous species

Should planning permission be likely to be granted then details of the soft landscaping shown on the Proposed Site Layout Plan should be secured by a planning condition.

## **7. Representations**

### **7.1 Parish / Town Council**

Lawford Parish Council comments that this application looks like it is outside the settlement area and there should be a check on whether this land is for agricultural use.

### **7.2 Neighbour / Local Representations**

No third-party comments or objections were received.

## **8. Assessment**

### **Site Context**

8.1 The application site is located on the northern side of Grange Road with access to the highway located alongside the boundary with No. 30 Grange Road. The site is located outside of, but close to (some 115m to the west of) the defined settlement development boundary of Lawford. The site is therefore considered to be in a countryside location. In terms of the 'red line' site location plan as submitted with the application, the site is extensive and encompass all the land and buildings in depth and up to a point where the existing mixture of trees and hedgerow along the northern boundary encloses the site. The eastern boundary of the site is made up of a mixture of trees and hedgerow offering a very good level of screening of the existing structures on site. The western boundary of the site is also made up of hedgerow and trees and is shared by No. 30 Grange Road which is the neighbouring semi-detached cottage immediately to the west of the site. applicant owns a large.

8.2 To the north and east the site is bordered by best and most versatile agricultural land (according to the agricultural land classification for the East of England region the land around the site is grade 1 and 2 agricultural land). Further to the east is the settlement of Lawford. The site is within Flood Zone 1 which has a low risk of flooding and there are no listed buildings near the site.

### **Proposal**

8.3 Planning permission is sought for the construction of a new two-bedroom, single-storey dwelling with an associated cart lodge, replacing the previously approved two-bedroom dwelling under planning reference 21/01718/FUL.

8.4 The dwelling approved under application 21/01718/FUL features a relatively simple design on a smaller site, with a rectangular footprint measuring 12.5m x 7.4m. It incorporates a dual-pitched roof,

with an eaves height of approximately 2.5m and a ridge height of around 5m. The approved dwelling has a gross internal area of approximately 81sqm, which is 18sqm larger than the existing agricultural building on-site. This agricultural building had previously gained prior approval for conversion into a dwelling, followed by the aforementioned planning consent.

- 8.5 The approved scheme includes two bedrooms, a bathroom, and an open-plan kitchen, dining, and lounge area, with proposed external materials comprising black weatherboard and red pantiles.
- 8.6 The scheme subject to this application is significantly larger, featuring a T-shaped footprint that extends beyond the previously approved dwelling, increasing the spread of built form. The proposal includes:
- A large open-plan kitchen/living/dining area
  - Improved circulation space
  - Two generously sized bedrooms, both with en-suite bathrooms
  - A substantial home office measuring 4.3m x 4m
  - A separate snug area/TV room
- 8.7 As a result, the proposed dwelling will have a gross internal floor area of 201.8 sqm, which is 120 sqm larger than the dwelling approved under application 21/01718/FUL.
- 8.8 The building will be set on a low-level facing brick plinth, with elevations finished in stained weatherboarding and a roof clad in handmade plain clay tiles. Contemporary design elements are incorporated through the use of colour-coated aluminium-framed glazing and oak verandahs finished with pre-weathered zinc coverings. Photo-voltaic (PV) panels will be discreetly integrated into the roof slopes. Rainwater goods will comprise circular-section gutters and half-round downpipes, both in colour-coated aluminium to complement the overall aesthetic.

#### Principle of Development

- 8.9 Planning law requires that decisions on planning 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). The development plan for Tendring Council comprises of the adopted Tendring District Local Plan 2013-2033 and Beyond Sections 1 and 2.
- 8.10 Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements. The site lies outside of the defined settlement boundary of Lawford in the adopted 2013-2033 Local Plan. The proposed development would therefore extend outside the area planned to provide growth for this settlement. In view of the housing land supply position, in the first instance the Council does not need to look beyond identified settlements to meet its housing requirement.
- 8.11 Policy SPL2 supports new development within defined SDBs which would encourage sustainable patterns of growth and carefully control urban sprawl. Within a defined SDB, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans. Under Policy SPL1 Lawford (along with Manningtree and Mistley) is classified as a Smaller Urban Settlement, which benefits from a range of existing infrastructure and facilities and are able to support larger scale growth, within the SDB.
- 8.12 Although the proposal for a new dwelling in this location is not explicitly supported by the Local Plan policies referenced above—given its position outside the defined Settlement Development Boundary (SDB)—the Plan nonetheless acknowledges that the Council will assess planning applications with regard to the pattern and scale of growth set out in the Settlement Hierarchy under Policy SPL1. In addition, proposals will be considered in the context of other relevant policies within the Plan and any other material planning considerations, as set out below.

### 'Fallback Position' Assessment

- 8.13 A Prior Approval exists for the conversion of an agricultural building into a dwelling, which establishes a lawful fallback position under Class Q. Although the proposed dwelling is significantly larger and the red line site area broader than that of the prior approvals (including extant permission 21/01718/FUL), the fallback principle is still applicable.
- 8.14 Case law (notably *R v Secretary of State for the Environment and Havering BC* and *Mansell v Tonbridge & Malling BC*) confirms that fallback positions may be considered material when: (1) a lawful fallback exists, (2) there is a real prospect of it being implemented, and (3) a meaningful comparison is made with the new proposal.
- 8.15 While the current proposal differs in scale and design, the fact that a dwelling could still realistically come forward under the extant approval lends weight to the principle of development. The benefits of replacing unsightly structures and improving landscaping must be weighed against any harm from the increased scale – these elements will be covered in the sections below. Despite differences, the fallback position supports the acceptability of development in this location.

### Agricultural Land

- 8.16 Although the site exceeds the size of the most recent extant approval, it is not currently in agricultural use and it very unlikely to return to agricultural use due to the extant approval and the reasonable prospect of that permission being implemented regardless of the outcome of this application. The land comprises dilapidated buildings and is predominantly overgrown. While the surrounding arable land is classified as Best and Most Versatile (BMV) agricultural land, the proposed development is fully contained within the red line boundary and will not encroach upon these areas. Consequently, the proposal will not result in the loss of any BMV land.

### Scale, Layout & Appearance

- 8.17 Paragraph 135 of the National Planning Policy Framework (NPPF) 2024 outlines that new developments should function well, contribute positively to the overall quality of the area, be visually attractive through high-quality architecture, layout, and effective landscaping, and demonstrate sensitivity to local character and history. They should also maintain a strong sense of place while creating environments that are safe, inclusive, and accessible.
- 8.18 In line with this, Section 1 Policy SP7 of the 2013–2033 Local Plan requires high standards of urban and architectural design that respond positively to their local context. Likewise, Section 2 Policies SPL3 and LP4 emphasise the importance of high-quality design and thoughtful site layout in creating distinctive and locally appropriate places.
- 8.19 The proposed dwelling is considered appropriate in appearance for its rural, edge-of-settlement location. Its design integrates vertical timber cladding, a distinctive verandah, and a modest single-storey height with a defined pitched roof, all of which contribute to a characterful and locally responsive scheme. Though incorporating some subtle modern features—including larger areas of glazing and roof lights—these do not detract from the area's character. In fact, they are seen as a positive evolution compared to the previous approval, contributing to the building's practicality and architectural interest.
- 8.20 While the materials differ from those approved previously, they remain of high quality and can be secured through planning conditions. The combination of the site's generous size, set back from Grange Road, low building height, and refined design—together with enhanced landscaping—ensures that the proposal will sit comfortably within its surroundings.
- 8.21 Although the scheme departs from the design of the previously approved dwelling, these changes

are considered enhancements that improve the overall appearance and use of the site.

- 8.22 Accordingly, with reference to national and local design policies, the proposal is considered compliant in terms of its scale, layout, and visual impact. It represents a more efficient and contextually sensitive use of land, and would not harm the character or appearance of the area, thereby aligning with the overarching aims of Policies SP7, SPL3 and LP4 of the Local Plan.

#### Heritage Assets

- 8.23 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest. There are no statutory listed buildings near the site and the site is also not located in or close to a conservation area, as such the proposal raises no heritage concerns.

#### Highway Safety/Parking

- 8.24 Paragraph 115 of the NPPF 2024 requires local planning authorities to ensure that:
- appropriate opportunities to promote sustainable transport modes are taken, relative to the development type and location;
  - safe and suitable access to the site can be achieved for all users; and
  - any significant transport network impacts (capacity, congestion, or highway safety) can be mitigated to an acceptable degree in a cost-effective manner.
- 8.25 Paragraph 116 further states that development should only be refused on highway grounds where there would be an unacceptable impact on highway safety, or where the residual cumulative impacts on the road network would be severe—even after mitigation and consideration of all reasonable future scenarios.
- 8.26 In addition, Paragraph 109 highlights the need for streets, parking, and transport considerations to be integral to scheme design, contributing positively to the creation of high-quality places.
- 8.27 Within the Tendring District Local Plan 2013–2033 Part 2, Policy CP1 confirms that development proposals will only be supported where the additional vehicular movements can be accommodated within the capacity of the existing or improved highway network, without causing an unacceptable increase in congestion. Policy SPL3 (Part B) also requires that access to new development sites is practicable and that the surrounding network can safely absorb any increase in traffic.
- 8.28 Parking provision must also meet the requirements of the most recent Essex Parking Standards.
- 8.29 The application provides a satisfactory level of technical detail, including the specification of surfacing materials and access design. The proposed layout shows an access width of at least 4.5m where it meets Grange Road, with a bound surface extending 6.0m from the highway edge. The scheme proposes to reuse the existing access (albeit with improvements), which is deemed acceptable. The new driveway incorporates gentle curves to avoid a linear route and to retain, where possible, existing established trees. It will terminate between the proposed dwelling and a three-bay cart lodge, where three open-air parking spaces will be provided in addition to those within the cart lodge—exceeding the minimum policy requirement.
- 8.30 Following consultation, Essex County Council's Highway Authority raised no objection to the proposal in terms of highway safety, parking provision, or access, subject to compliance with the conditions outlined in the consultation response. These can be secured via planning conditions and are considered consistent with the relevant NPPF tests.

#### Impact on Residential Amenity



- 8.31 The NPPF includes that planning decisions should ensure developments create places that are safe, inclusive and accessible, and which promote health and well-being with a high standard of amenity for existing and future users.
- 8.32 Local Plan Policy SPL3, Part B requires that buildings and structures are designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents. Furthermore, Part B states that, new development must meet practical requirements, including provision for adequate private amenity space, waste storage and recycling facilities, vehicle and cycle parking.
- 8.33 Policy LP4 j. states that the design and layout of new residential 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. The rear garden area to serve the dwelling is considered to meet these policy requirements.
- 8.34 In terms of future residents, the new dwelling in terms of the internal floorspace will exceed Nationally prescribed floorspace standards for a 2-bedroom dwelling is therefore acceptable. It is also considered that the internal layout is appropriate, with all habitable rooms having adequate natural light. The amenity area proposed is considered to meet the needs and expectations of future residents and is commensurate to the size of dwelling.
- 8.35 In terms of the proposal's impact on existing nearby residential occupiers, the application site is located within a rural location, with residential dwellings some distance away fronting Grange Road. The nearest residential property (to the application site) is to the west but is set a sufficient distance away to ensure that the proposal would not impact on the residential amenities of the neighbouring occupiers in any regard.
- 8.36 As with the last planning approval on site, given the quiet rural location, it is considered necessary and reasonable to include a planning condition seeking details of a Construction Management Plan for a small scale development of this nature to include measures to minimise potential nuisance to nearby existing residents caused by the construction works, having regard to vehicle movements, working hours, storage of materials, on-site parking, site security, wheel washing facilities and basic noise control measures. Moreover, due to the location of the site and its previous agricultural use, an informative could be included (in the event of an approval) in relation to land contamination in the form of a Watching Brief.

#### Bin Storage and Waste Collection

- 8.37 Policy SPL3 (Part C) of the Tendring District Local Plan (TDLP) requires all new development to meet practical requirements, including the provision of adequate waste and recycling storage facilities.
- 8.38 In accordance with this, a dedicated refuse storage area for residual, recyclable, and green waste bins is proposed in an accessible location between the proposed dwelling and the three-bay cart lodge. On collection days, bins will be wheeled to a purpose-designed bin collection point located just south of the main access gates onto Grange Road.
- 8.39 While the distance between the dwelling and the collection point exceeds 140 metres, this arrangement mirrors that of the extant planning permission. Although this distance is not ideal, it reflects the unique characteristics and constraints of the site. Prospective occupants will be aware of this arrangement prior to constructing the development (in the event of planning approval) or purchase (if the development is sold on the open market), making it a clear "buyer-beware" scenario.
- 8.40 Given the site's planning history and the fact that a similar arrangement has already been deemed acceptable under the extant approval, a refusal based solely on the waste collection distance would, in officers' opinion, be unreasonable and difficult to defend at appeal.

### Drainage, Flood Risk and SuDS

- 8.41 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. Furthermore, 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.
- 8.42 Adopted Policy PPL5 of Section 2 of the Adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Connection to the mains is the preferred option having regard to the drainage hierarchy and building regulations requirements. However, where this is not possible, an application will need to confirm how foul sewage disposal will be dealt with in compliance with the building regulations and Environment Agency drainage hierarchy.
- 8.43 In this instance, the dwelling would be served by a Package Treatment Plant. Details of the proposed Package Treatment Plant have not been provided with the application. A condition is therefore included within the recommendation to secure these details.
- 8.44 The site lies within Flood Zone 1, indicating a low risk of flooding, and therefore passes the sequential test. The proposal would result in a reduction in the overall building footprint when compared to the existing situation, taking into account all structures proposed for demolition. In addition, the scheme includes the creation of a new wildlife pond in the southern area of the site, rainwater harvesting tub(s) and a driveway constructed from permeable materials—all of which can be secured by condition.
- 8.45 Subject to conditions requiring the removal of all identified buildings and structures prior to first occupation, as well as the implementation of the proposed pond and rainwater harvesting features, it is considered that the development will offer an overall improvement in surface water drainage relative to the current baseline. As such, no conflict with national or local policy on flood risk and drainage has been identified.

### Habitats, Protected Species and Biodiversity Enhancement

#### **Ecology and Biodiversity**

- 8.46 This report addresses the distinct legal requirements, ensuring a comprehensive analysis of the ecology and biodiversity impacts of the proposal in line with regulatory standards.

#### General duty on all authorities

- 8.47 The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: “For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.” Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.
- 8.48 This development is subject to the general duty outlined above. The following features underscore how the proposal positively impacts biodiversity, offsetting requirements necessary for the development to take place.

- Tree Planting: Introduction of 27 broadleaf trees, including species such as birch,

hornbeam, field maple, and cherry.

- Native Hedgerows: Establishment of mixed native hedging featuring species like dogwood, blackthorn, hawthorn, spindle, hazel, and beech.
- Stag Beetle Loggeries: Installation of log piles in the south-western corner of the site to support stag beetle habitat, following guidance by the People's Trust for Endangered Species.
- Wildflower Lawn: Sowing of a flowering lawn using a traditional 80/20 meadow seed mix (grasses to wildflowers) sourced locally, tailored to site soil conditions.
- Heritage Orchard: Planting of a fruit orchard using locally sourced Suffolk heritage varieties to promote genetic diversity and traditional species.
- Wildlife Pond: Creation of a pond west of the dwelling, designed with varied depths and gentle slopes to attract and support invertebrate life.

8.49 Therefore, the development on balance and with consideration of the impact of the development and baseline situation on site, and subject to conditions, has the potential to conserve and enhance biodiversity interests in accordance with the relevant local plan policies and NPPF paragraphs.

#### Biodiversity net gain

8.50 Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. The minimum requirement is for a 10% net gain in biodiversity value achieved on a range of development proposals (excluding Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Certificates, householders, self builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow).

8.51 The statutory framework for BNG applies to this proposal. This involves the imposition (automatically applied as a deemed condition) of a planning condition on approvals to ensure the objective of at least 10% net gain over 30 years. The determination of the Biodiversity Gain Plan (BGP) under this planning condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the BGP, via planning condition discharge, is approved.

8.52 Given this position, the government strictly provides it would generally be inappropriate for decision makers to refuse an application on the grounds that the biodiversity gain objective will not be met. It is considered logical to confirm this closer to commencement of development, given the potential number of options available. This further supports the position that the biodiversity gain objective can always be met in some form.

#### Protected Designated Habitats

8.53 The site falls within the recreational Zone of Influence (ZOI) of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). 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.

8.54 The application scheme proposes a residential on a site that lies within the Zone of Influence (ZOI) of the Stour and Orwell Estuaries RAMSAR and SPA. New housing development within the ZOI would be likely to increase the number of recreational visitors to these sites 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.

8.55 A planning condition is recommended to secure this via a future 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.

### Protected Species

- 8.56 In accordance with Natural England's standing advice the application site and surrounding habitat have been assessed for potential impacts on protected species.
- 8.57 The submitted details—particularly the Ecology Report (MHE Consulting, May 2025) and accompanying environmental information—provide the Local Planning Authority (LPA) with sufficient certainty regarding the likely impacts on protected and Priority species and habitats. Subject to the securing of appropriate mitigation measures via planning condition, the development is considered acceptable in ecological terms.
- 8.58 The mitigation measures identified within the Ecology Report can be fully secured through condition and are deemed compliant with the relevant NPPF tests. These measures are necessary to conserve and enhance the ecological value of the site, particularly for species known to occur locally.
- 8.59 The LPA also supports the proposed biodiversity enhancements, which are considered reasonable and proportionate for protected, Priority, and threatened species. These enhancements are recommended in line with the objective of delivering measurable net gains for biodiversity, as outlined in Paragraphs 187(d) and 193(d) of the National Planning Policy Framework (December 2024).
- 8.60 It is therefore recommended that a separate Biodiversity Enhancement Strategy be submitted and secured by condition. This approach is both reasonable and necessary to ensure the proposed development complies with national policy and delivers tangible ecological benefit.

### Conclusion

- 8.61 In accordance with the overarching duty outlined above, this development is committed to actively contributing to the conservation and enhancement of biodiversity as set out above and within the planning conditions. The development aligns with the statutory framework for biodiversity net gain, striving to achieve a 10% net gain in biodiversity value over 30 years. In conclusion, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

## **9. Planning Balance and Conclusion**

- 9.1 The proposal is not positively supported by Local Plan policy in terms of the overarching spatial strategy, which seeks to direct growth primarily to the main urban areas. As such, by virtue of its location alone, the proposal is not supported by Policies SP1, SP3, SPL1 and SPL2 of the adopted Local Plan.
- 9.2 Nevertheless, material consideration has been given to the fallback position established through the most recent planning approval for a two-bedroom dwelling. As outlined above, the current proposal differs substantially in form and scale, meaning it does not meet the third limb of the fallback test (comparability) as set out in relevant case law. That said, the planning balance must be considered in its entirety, and there are site-specific benefits that should be assessed on their individual merits.
- 9.3 All other relevant material considerations identified in the main body of this report are either in accordance with policy or can be made policy-compliant through the imposition of reasonable and necessary planning conditions.
- 9.4 It is considered that the proposal represents a well-designed, policy-compliant scheme from a layout,

access, design, and landscaping perspective—both in its own right and when considered against the extant approval for a two-bedroom dwelling on a smaller site.

Accordingly, the application is recommended for approval, subject to appropriate conditions.

## 10. **Recommendation**

### Approval

#### **Recommendation:** Approval

- 3) That the Head of Planning and Building Control be authorised to grant planning permission subject to the conditions as stated at paragraph 10.1, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 4) The informative notes as may be deemed necessary.

### 10.1 **Conditions and Reasons**

#### 1. COMPLIANCE: TIME LIMIT

CONDITION: 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. COMPLIANCE: APPROVED PLANS AND DOCUMENTS

CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local planning authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local planning authority as a non-material amendment following an application in that regard.

- Site Location Plan at scale 1:1250
- Drawing Number 03 H - Proposed Site Layout/Cartlodge Floor Plan/Roof Plan/Elevation
- Drawing Number 01 F - Proposed Floor Plans, Elevations, Schematic Section
- Ecology Report dated May 2025 by MHE Consulting
- Email dated 23 May 2025 confirming that the development will benefit from a super fast Broadband connection on completion

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

#### 3. COMPLIANCE: PERMEABLE SURFACING & NO UNBOUND SURFACE MATERIALS

CONDITION: All new parking areas and areas of hardstanding shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area within the site area.

REASON: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety, and in the interests of sustainable development to minimise the risk of surface water

flooding.

#### 4. FURTHER APPROVAL: MITIGATION TO BE AGREED - RAMS

##### MITIGATION TO BE AGREED: RAMS

CONDITION: Prior to any works slab level, detailed proposals addressing the mitigation of the development's impact on protected Essex Habitats Sites have been submitted to and received written approval from the Local Planning Authority. Such proposals must provide and secure mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) or demonstrate mitigation measures of an equivalent effectiveness to the satisfaction of the Local Planning Authority. For any on site mitigation proposals approved, it shall be carried out in full prior to first occupation, and thereafter shall be maintained as approved.

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations. Failure to achieve satisfactory mitigation would result in harm by new residents due to the development's impact on protected sites meaning the development must mitigate the burden of development regardless of scale of impact.

##### NOTE/S FOR CONDITION:

This condition establishes the necessity to ensure the implementation of appropriate mitigation measures due to the impact of the approved development. Such mitigation may be required on-site, off-site, or a combination of both.

Typically, a contribution towards visitor management measures at the protected Habitats Site(s) may be the preferred and simplest approach to fulfil the requirements of this condition. To fulfil this requirement, you can contribute funds towards a range of mitigation projects in the protected areas. It is essential to secure this provision through a legal agreement between the District Council, Developer/Applicant, and site owners prior to commencement of development. You are strongly advised to finalise the legal agreement with the District Council before submitting any request to discharge this condition. Failure to conclude the agreement within the discharge of condition application timeframe may lead to the refusal to discharge the condition. Please note if there are other obligations needed for this development, for example to secure monitoring and maintenance of a Biodiversity Net Gain Plan, you may wish to combine these together as one agreement. Furthermore, please also note a legal agreement will include legal fees and may require obligations to secure monitoring and associated fees.

#### 5. FURTHER APPROVAL: CONSTRUCTION MANAGEMENT TO BE AGREED

CONDITION: Prior to the commencement of development details of the construction methodology and timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall incorporate the following information:-

- a) Confirmation of the hours of operation on the site. No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
- b) Details of the loading/unloading/storage of construction materials on site, including details of their siting and maximum storage height.
- c) Details of how construction and worker traffic and parking shall be managed. This shall include routing of all traffic and any directional signs to be installed and where.
- d) Details of wheel and underbody washing facilities to be provided and used at the site.
- e) Details of any protection measures for footpaths and trees surrounding the site.
- f) Details of any means of access to the site during construction.
- g) Details of the scheduled timing/phasing of development for the overall construction period.

- h) Details of measures to control the emission of dust and dirt during construction and including details of any wheel washing to be undertaken, management and location it is intended to take place.
- i) Details of the siting of any on site compounds and portalooos.
- j) Details of the method of any demolition to take place, including the recycling and disposal of said materials resulting from demolition.
- k) Site waste management plan (that shall include reuse and recycling of materials) and the prohibition of the burning of materials on the site.
- l) Scheme for sustainable construction management to ensure effective water and energy use.
- m) A scheme to control noise and vibration during the construction phase, including details of any piling operations. If piling is to be carried out on the site a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents shall be provided.
- n) Scheme of review of complaints from neighbours.
- o) Registration and details of a Considerate Constructors Scheme.

The said methodology as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

REASON: To minimise detriment to nearby residential and general amenity by controlling the construction process to achieve the approved development. This condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, by reason of the location and scale of development may result in adverse harm to neighbouring residents' amenities.

## 6. COMPLIANCE: IMPLEMENTATION OF LANDSCAPING SCHEME

CONDITION: All changes in ground levels, soft/hard landscaping shown on the approved Drawing Number 03 H (containing details of hard and soft landscaping) shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development, or in such other phased arrangement as may be approved, in writing, by the local planning authority up to the first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the local planning authority.

REASON: To ensure that the approved landscaping scheme is implemented in accordance with the approved scheme and has sufficient time to establish, in the interests of visual amenity and the quality of the development.

## 7. FURTHER APPROVAL: SUSTAINABILITY & ENERGY EFFICIENCY

CONDITION: No development shall commence above slab level until full details of the sustainability and energy efficiency measures to be used in the development shall be submitted to and approved in writing by The Local Planning Authority. The detailed scheme shall include as a minimum:-

- An electric car charging point scheme
- Agreement of a scheme for water conservation including greywater recycling and rainwater capture/re-use for the new dwelling
- Agreement of a scheme to achieve as far as possible a water consumption rate of not more than 110 litres, per person, per day for the new dwelling
- Agreement of heating for the new dwelling
- Agreement of scheme for waste reduction
- In line with the accompanying Broadband Statement, the provision of a fibre optic broadband

connection to the best possible speed installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing. (If the applicant is unable to achieve this standard of connection and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 30mbps) wireless service will be considered.)

The scheme shall be fully implemented prior to the first occupancy of the development unless otherwise agreed in writing by the local planning authority. The scheme shall be constructed, and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

REASON: To enhance the sustainability of the development through reduced need, better use or savings in the use of water, energy and resources; reduced harm to the environment; and result in wider public benefit in accordance with the NPPF.

#### NOTES FOR CONDITION:

Slab level normally refers to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visualised above ground level or seek confirmation from the Local Planning Authority for your development.

Broadband provision is included to ensure the development is able to be equipped with high-speed broadband to enable opportunities for web-based communication and homeworking reducing the need for unsustainable travel.

A water consumption rate of not more than 110 litres, per person, per day adopted as Planning Policy and as imposed by this condition will directly change the building regulations water consumption rate to match as a result of this policy. The introduction of effective utilities, rainwater capture for watering plants, aerators to taps and other water saving options can be considered.

#### 8. COMPLIANCE: ACCESS DETAILS AND WIDTH

CONDITION: Prior to the occupation of the development, the vehicular access shall be constructed perpendicular to the highway boundary and the existing carriageway. The access shall be surfaced in a bound material for a minimum width of 4.5 metres at its junction with the highway and shall be maintained at this width for at least 6 metres into the site.

REASON: To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety.

#### 9. VISIBILITY SPLAY

CONDITION: As indicated on drawing no. 03H, there should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the road junction / access is first used by the development and retained free of any of obstruction above 600mm and below 2 metres at all times.

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

#### 10. TURNING FACILITY ON SITE

CONDITION: Prior to first occupation of the dwelling a minimum size 5 vehicular turning facility (8m x 8m), shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.



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

#### 11. PARKING AREAS PROVIDED

CONDITION: The hereby approved development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been 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.

#### 12. REMOVAL OF PERMITTED DEVELOPMENT: FENCING & ENCLOSURES

CONDITION: Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that order with or without modification), other than the fencing shown on the approved drawings, there shall be no other gates/fence and/or other means of enclosure erected at the point of access or anywhere on or within the site, unless details are first agreed, in writing, by the local planning authority. Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge the carriageway.

REASON: To allow the local planning authority additional control over the erection of fencing and enclosures, in the interests of proper planning of the development, in the interests of highway safety and in the interests of visual amenity and the rural character and appearance of the area.

NOTE/S FOR CONDITION: Carriageway is the part of a road intended for vehicles rather than pedestrians normally define by kerb if available or edge of a bound surface. It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the ECC Highway Authority. Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by Essex County Council or its agents at the applicant's expense.

#### 13. REMOVAL OF PERMITTED DEVELOPMENT: NO EXTENSIONS OR OUTBUILDINGS

CONDITION: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), Classes A, B, C and E no extensions or alterations to the dwelling or its roof shall be undertaken, nor shall any sheds or amenity/utility buildings, or other buildings or structures, other than those shown on the approved plans shall be erected on the site unless details of their size, materials and location have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

REASON: In the interests of proper planning of the development, in the interests of visual amenity and the rural character and appearance of the area.

#### 14. FURTHER APPROVAL: DRAINAGE DETAILS

CONDITION: Full details of surface and foul water drainage shall be submitted to and approved, in writing, by the local planning authority prior to the commencement of any works to the building/s it

would serve. No part of the building/s shall be first occupied or brought into use until the agreed method of surface and foul water drainage has been fully installed and is functionally available for use for that building/s. The surface and foul water drainage scheme shall thereafter be maintained as approved.

REASON: To safeguard the ground water environment from harm and minimise the risk of flooding as insufficient information has been provided with the application.

**NOTE/S FOR CONDITION:**

This condition shall engage and requires details to be agreed prior to the commencement of works to the building/s approved. This condition is imposed to ensure the potential impact on a sensitive area is considered and harm avoided that may be detrimental to amenity and the environment.

**15. COMPLIANCE: ECOLOGICAL APPRAISAL RECOMMENDATIONS**

CONDITION: All mitigation measures and/or works shall be carried out in accordance with the details contained in the hereby approved Ecological Report by MHE Consulting, dated May 2025.

REASON: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (as amended).

**16. FURTHER APPROVAL: BIODIVERSITY ENHANCEMENT STRATEGY**

CONDITION: Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

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

REASON: To enhance protected and Priority species and habitats.

**17. FURTHER APPROVAL: EXTERNAL LIGHTING**

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

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

REASON: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (as amended).

## 18. FURTHER APPROVAL: BIODIVERSITY NET GAIN PLAN

CONDITION: The development may not be begun unless (a) a biodiversity gain plan has been submitted to the planning authority (see note), and (b) the planning authority has approved the plan (see note).

REASON: In order to accord with Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) and amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024

### NOTE - CONTEXT AND APPLICATION:

Planning conditions are typically established upon the granting of planning permission under sections 70(1) and 72 of the Town and Country Planning Act 1990. However, it's essential to note that the biodiversity gain condition operates under a distinct statutory framework, specifically outlined in paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990.

This condition is deemed to apply to all planning permissions granted for land development in England, unless specific exemptions or transitional provisions are applicable (for further details, please refer to the provided web link <https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments> or contact us directly.

The government advises against including this condition in decision notices to avoid confusion. However, for clarity and accountability, we have opted to highlight this condition within the decision notice. This ensures that all involved parties are aware of its requirements, facilitating effective tracking and monitoring throughout the development process, including the discharge of conditions.

In certain instances, this condition may be imposed even if the applicant believes that biodiversity net gain (BNG) does not apply. Based on the available information, it is determined that this permission necessitates the approval of a biodiversity gain plan before commencing development, as none of the statutory exemptions or transitional arrangements apply.

For further details, please consult the officer report as needed. If you believe this condition does not apply, we strongly recommend contacting the Local Planning Authority (LPA) for clarification. Tendring District Council serves as the planning authority responsible for determining the approval of a Biodiversity Gain Plan in relation to this permission.

### BIODIVERSITY GAIN PLAN REQUIREMENTS:

For the Biodiversity Gain Plan requirements, please refer to both paragraphs 14 and 15 of the Environment Act Sch 14 Part 2 as amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024.

<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>

In summary, the Biodiversity Net Gain (BNG) plan must achieve a minimum biodiversity net gain of 10% and should typically include the following:

- Steps taken or to be taken to minimize adverse effects of the development on the biodiversity of the onsite habitat and any other habitat.
- Pre-development and post-development biodiversity assessments of the onsite habitat.
- Allocation of any registered offsite biodiversity gain to the development and its biodiversity

- value in relation to the development.
- Details of any biodiversity credits purchased for the development.
- Plans for maintaining and securing the net gain on and/or off site for at least 30 years after completion of the development.
- The Local Authority will ensure the submitted details meet the requirements of the Town and Country Planning Act 1990 as amended, Environment Act as amended, associated legislation and guidance.

Ways to achieve 10% BNG may include:

- 1) Enhancement and restoring biodiversity on-site (within the red line boundary of a development site).
- 2) If proposals can only achieve part of their BNG on-site, they can deliver through a mixture of on-site and off-site. Developers can either make off-site biodiversity gains on their own land outside the development site or buy off-site biodiversity units on the market as close as possible to the site.
- 3) If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government. This must be a last resort. The government will use the revenue to invest in habitat creation in England.

Developers may combine all 3 options but must follow the steps in order. This order of steps is called the biodiversity gain hierarchy.

#### CONDITIONS AND LEGAL AGREEMENT:

The Local Authority is responsible for ensuring that the biodiversity gain objective is achieved, whether it be onsite, offsite, or through the purchase of credits, and that it is secured by legal agreement as necessary. It is essential to highlight that planning conditions operate within a strict timeframe. Therefore, any legal agreements required to secure the biodiversity gain must be completed prior to the consideration of the planning condition. Failure to comply with this requirement may result in the refusal of the condition.

<https://www.tendringdc.gov.uk/content/discharging-the-biodiversity-net-gain-plan-condition-bng>

#### 19. ALL OUTBUILDINGS TO BE DEMOLISHED AND MATERIALS REMOVED FROM SITE

CONDITION: Prior to first occupation of the hereby approved dwelling the existing outbuildings as shown to be demolished on drawing number Drawing Number 03 H (Proposed Site Layout/Carlodge Floor Plan/Roof Plan/Elevation) shall be completely removed and all materials resulting therefrom shall be cleared from the site.

REASON: In the interests of good planning and safeguarding the visual amenity of the area, with particular regard given to the positive contribution made by the removal of unsightly outbuildings as part of the hereby approved development.

#### 10.2 Informatives

##### Positive and Proactive Statement

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

##### Highways Informative

**Highway Works Coordination:** All works affecting the highway must be agreed in advance with the Highway Authority. Developers should contact the Essex Highways Development Management Team before starting.

**Restoration Post-Development:** On completion, any public or shared infrastructure affected—such as roads, footways, verges, trees, and street furniture—must be restored to the satisfaction of the relevant authority.

**Developer Liabilities:** The Highway Authority accepts no liability for developer improvements. Developers may be required to provide a cash deposit or bond to cover potential compensation claims under the Land Compensation Act 1973.

### Environmental Informative

**Climate Responsibility:** Developers are encouraged to align with Essex County Council's climate goals, including signing the Essex Developers' Climate Charter and referring to the Essex Design Guide for sustainability advice.

**Foul Drainage Compliance:** If a sewage treatment plant is proposed, it must comply with the Environment Agency's General Binding Rules and other relevant standards. Compliance is strongly advised to avoid environmental or public health issues.

### **Unexpected Contamination Protocol and Asbestos Removal:**

- If unforeseen ground contamination is encountered during construction, work at the affected location must stop immediately. The Local Planning Authority (LPA) and Environmental Health must be informed without delay.
- This may have to be followed by Assessment and Testing: A qualified geo-environmental engineer should assess the contamination. Material should be tested and either safely retained, stockpiled, treated, or removed—depending on test results and guidance from the LPA.
- Containment Measures: Any material suspected to be contaminated must be handled to prevent environmental impact, including appropriate covering, surface preparation, and dust control measures.
- Documentation: A photographic record and Verification Report must be completed, with all findings and decisions recorded in consultation with the LPA.
- Developer's Responsibility: The developer remains fully responsible for ensuring the site is safely developed, including appropriate responses to contamination.
- Asbestos Removal: If asbestos-containing materials are identified, they must be safely removed by a licensed contractor, with proper waste transfer documentation maintained.

## **11. Additional Considerations**

### Equality Impact Assessment

- 11.1 In making this recommendation/decision regard must be had to the public sector equality duty (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 that in summary include 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\* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.
- 11.2 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions

including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

- 11.3 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

### Human Rights

- 11.4 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.
- 11.5 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).
- 11.6 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

### Finance Implications

- 11.7 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.

- 11.8 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.

## **12. Declaration of Interest**

- 12.1 Please refer to the minutes of this meeting, which are typically available on the councils website which will be published in due course following conclusion of this meeting.

## **13. Background Papers**

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

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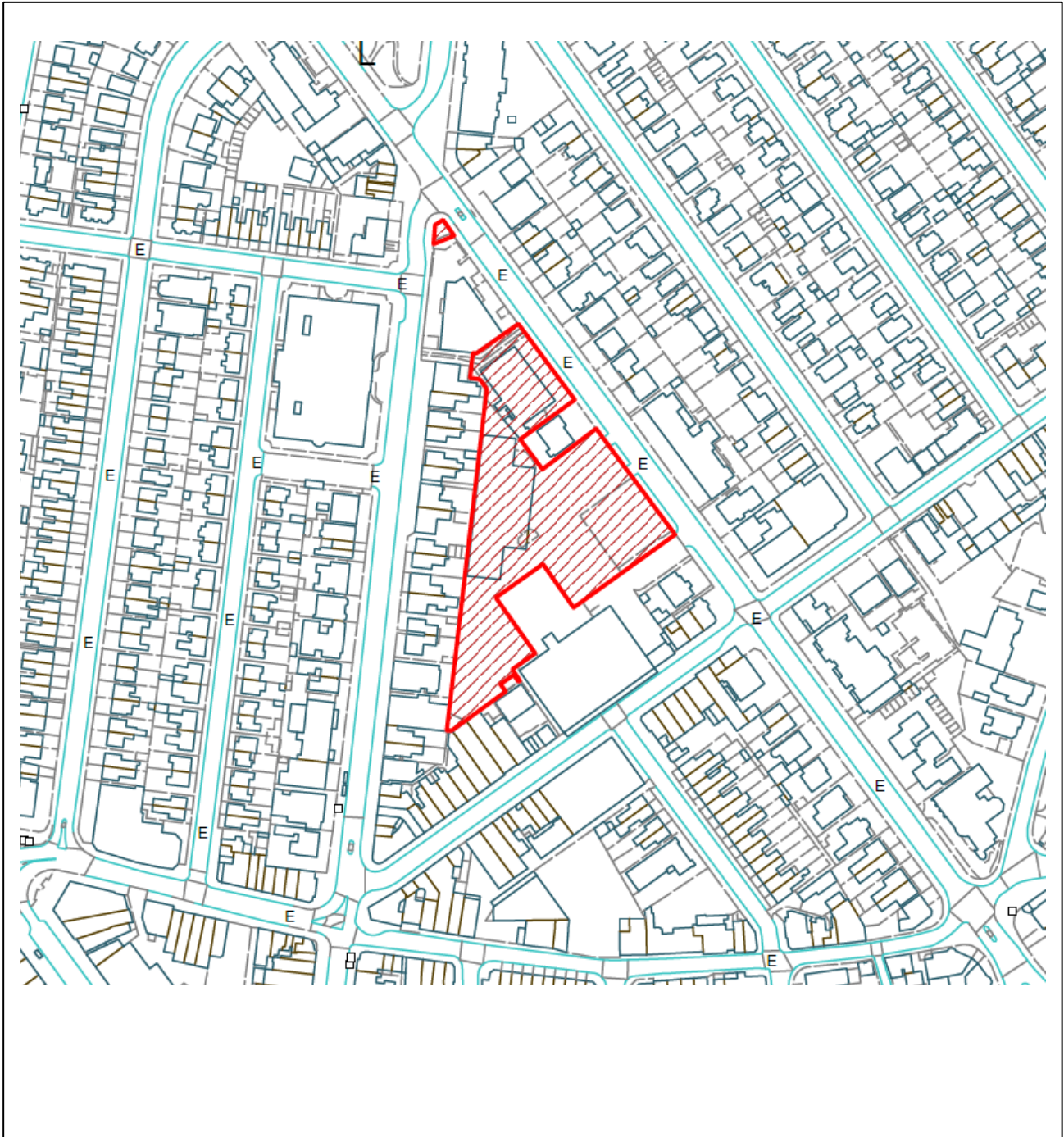


## PLANNING COMMITTEE

8 JULY 2025

### REPORT OF THE CORPORATE DIRECTOR OF PLANNING AND COMMUNITY

#### **A.3 - PLANNING APPLICATION – 24/01890/FUL – LAND AT HIGH STREET CAR PARK CARNARVON ROAD CLACTON ON SEA CO15 6QF**



DO NOT SCALE

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<b>Application:</b>	24/01890/FUL	<b>Expiry Date:</b>	3rd April 2025
<b>Case Officer:</b>	Michael Pingram		
<b>Town/ Parish:</b>	Clacton Non Parished		
<b>Applicant:</b>	Tendring District Council		
<b>Address:</b>	Land at High Street Car Park Carnarvon Road Clacton On Sea Essex CO15 6QF		
<b>Development:</b>	Demolition of existing multi-story car park and clearance of site. Construction of replacement multi-story car park, 28no. residential (Class C3) apartments, and 5no. flexible units (Class E, F1, F2 and related Sui Generis uses).		

## 1. Executive Summary

- 1.1 The application is before members of the Planning Committee on the basis that the applicant and owner of the site is Tendring District Council. This application seeks the demolition of the existing multi-story car park and all other structures, to be replaced by a new multi-story car park providing 301 spaces, the erection of 28 affordable residential units and the erection of 1,330sqm of flexible commercial floorspace.
- 1.2 Since the resolution of approval subject to securing a s106 legal agreement for affordable housing provision and Biodiversity Net Gain by the Planning Committee in March 2025, it has not been possible to enter into a s106 legal agreement to secure the monitoring of the Biodiversity Net Gain. This is due to Tendring District Council being the landowner, and alternative arrangements between the applicant and legal services to secure the legal obligations have been agreed. To facilitate these agreements to achieve the same outcome as Planning Committee resolved in March 2025, a change in resolution is required. This includes a further planning condition requiring the submission of a 30 year Habitat Monitoring and Management Plan (HMMP) prior to the commencement of development.
- 1.3 All other elements of the proposed development remain exactly as per the report put before Members of the Planning Committee in March 2025.

### Description of Proposal

- 1.4 This application seeks planning permission for the following works:
  - Demolition of the existing multi-story car park and all other structures, to be replaced by a new multi-story car park providing 301 parking spaces;
  - Erection of 28 residential units (14 x 1 bedroom units and 14 x 2 bedroom units) to the northern section of the site, with 11 units (40%) being affordable housing;
  - Creation of five flexible commercial civic/community units (1,330sqm) including Classes E, F1, F2 and Sui Generis, with one located on the ground floor of the residential building, one on the ground floor of the car park, and three on the land to the west of the site; and
  - New publicly accessible urban realm, including a range of hard and soft landscaping features.

### Assessment Update

- 1.5 This application was previously put before Members of the Planning Committee on 4<sup>th</sup> March 2025 with a recommendation of approval. The report submitted at that time is attached as an appendix to this current report and this is to be relied upon as there are no changes or updates to the report

except regarding the recommendation. The Planning Committee resolved to approve the application subject to the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990, to secure affordable housing provision and Biodiversity Net Gain.

- 1.6 Since the resolution by the Planning Committee in March 2025, it has become clear that as Tendring District Council is the landowner, it has not been possible to enter into a legal agreement to secure Biodiversity Net Gain (BNG). This is because the delivery of the onsite habitat creation and enhancement works, and arrangements for its subsequent management and monitoring, requires approval by the Local Planning Authority through the discharge of the statutory BNG condition.
- 1.7 To address this outstanding matter, it is proposed to allow BNG to be completed solely through the use of planning conditions instead of a legal agreement. Condition 18 of the earlier report, which requires the submission of a biodiversity gain plan, is proposed to remain. However, it is now recommended to include one further condition requiring the submission of a 30 year Habitat Monitoring and Management Plan (HMMP) prior to the commencement of development. The full details of this condition are shown below at Condition 20, however will require details of features to be managed, ecological trends/constraints that may influence management, details of monitoring and a timetable, as well as reporting on specific years.
- 1.8 All other elements of the proposal remain exactly as per the report put before Members of the Planning Committee in March 2025.

## 2. **Recommendation**

- 2.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section 106 legal agreement with the agreed Heads of Terms, for affordable housing. The additional proposed condition is added in **bold**.

### **Recommendation:** Approval subject to securing Planning Obligations

1. On appropriate terms below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control to secure the completion of a legal agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 dealing with the following matters:
    - Affordable Housing provision
  2. That the Head of Planning and Building Control be authorised to grant planning permission subject to the agreed section 106 agreement and conditions as stated at paragraph 2.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
  3. The informative notes as may be deemed necessary.
- Or;**
4. That in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months that the Head of Planning and Building Control be authorised to refuse the application on appropriate grounds at their discretion.

## 2.2 **Conditions and Reasons**

- 1 **CONDITION:** The works to which this consent relate must be begun not later than the expiration of three years beginning with the date of this consent.

REASON: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

Drawing Numbers 9613-CPL-ZZ-ZZ-DR-A-08000 Revision P4, 9613-CPL-ZZ-ZZ-DR-A-08200 Revision P10, 9613-CPL-01-01-DR-A-08201 Revision P9, 9613-CPL-01-02-DR-A-08202 Revision P8, 9613-CPL-01-03-DR-A-08203 Revision P8, 9613-CPL-01-RF-DR-A-08204 Revision P8, 9613-CPL-01-ZZ-DR-A-08301 Revision P7, 9613-CPL-01-ZZ-DR-A-08400 Revision P7, 9613-CPL-01-ZZ-DR-A-08401 Revision P7, 9613-CPL-01-ZZ-DR-A-08600 Revision P5, 9613-CPL-01-ZZ-DR-A-08601 Revision P5, 9613-CPL-01-ZZ-DR-A-08602 Revision P5, 9613-CPL-01-ZZ-DR-A-08603 Revision P5, 9613-CPL-02-04-DR-A-08210 Revision P9, 9613-CPL-02-01-DR-A-08211 Revision P8, 9613-CPL-02-02-DR-A-08212 Revision P8, 9613-CPL-02-03-DR-A-08213 Revision P8, 9613-CPL-02-04-DR-A-08214 Revision P8, 9613-CPL-02-ZZ-DR-A-08311 Revision P6, 9613-CPL-02-ZZ-DR-A-08411 Revision P6, 9613-CPL-02-ZZ-DR-A-08412 Revision P6, 9613-CPL-03-05-DR-A-08225 Revision P6, 9613-CPL-03-ZZ-DR-A-08321 Revision P6, 9613-CPL-03-ZZ-DR-A-08322 Revision P6, 9613-CPL-03-ZZ-DR-A-08323 Revision P6, 9613-CPL-ZZ-ZZ-DR-A-08150 Revision P6, 9613-CPL-ZZ-ZZ-DR-A-08151 Revision P5, 9613-CPL-ZZ-ZZ-DR-A-08152 Revision P2, 2487-WWA-ZZ-ZZ-D-L-0101 Rev P05, 2487-WWA-ZZ-ZZ-D-L-0103 Rev P02, 2487-WWA-ZZ-ZZ-D-L-0104 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0105 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0106 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0107 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0301 Rev P05, 2487-WWA-ZZ-ZZ-D-L-0302 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0704 Rev P01 and the documents titled 'Planning Statement', 'Tree Survey, Arboricultural Impact Assessment and Outline Method Statement', 'Interim Travel Plan', 'Transport Statement', 'Townscape and Visual Appraisal', 'Superfast Broadband Statement', 'Preliminary Ecological Appraisal', 'Energy Strategy Report', 'Design and Access Statement', 'Contaminated Land Risk Assessment', 'Sitewide Existing Demolition Plan'.

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

- 3 CONDITION: No development of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) shall take place until;
- i) A strategy for investigating any contamination present on site has been submitted for approval, in writing, by the Local Planning Authority. Development on site, including demolition, may be carried out in order to fully investigate contamination prior to the submission of said strategy subject to agreement, in writing, by the Local Planning Authority and all other pre commencement conditions being agreed by the Local Planning Authority first.
  - ii) Following approval of the strategy, an investigation shall be carried out in accordance with the strategy and timescales as may be agreed.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off site receptors. This condition is required to be agreed prior to

the commencement of any development to ensure health and safety is secured early for both development and its construction including the health of all workers during all phases of construction. If agreement was sought at any later stage there is an unacceptable risk to health.

- 4 CONDITION: Prior to any works within each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) above slab level, a Noise Impact Assessment shall be submitted to, and agree in writing by, the Local Planning Authority. The details contained within this assessment shall thereafter be adhered to.

REASON: In the interest of the amenity of neighbouring residents.

- 5 CONDITION: Before any machinery/plant is first used on the development as hereby approved as part of this permission, it shall be enclosed with sound insulating material and mounted in a way which will minimise transmission of structure borne sound in accordance with a scheme to be approved, in writing, by the Local Planning Authority. The scheme shall thereafter been maintained as may be approved.

REASON: In the interest of the amenity of neighbouring residents having regard to the background noise levels in the area.

- 6 CONDITION: Prior to the commencement of development details of a construction methodology and timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall incorporate the following information:-

- a) Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
- b) Details of the loading/unloading/storage of construction materials on site, including details of their siting and maximum storage height.
- c) Details of how construction and worker traffic and parking shall be managed. This shall include the intended routing of HGV traffic on the surrounding road network, programme of restoration works to soft highway verges, and any directional signs to be installed and where.
- d) Details of any protection measures for footpaths and trees surrounding the site.
- e) Details of all access points to be used to access the site during construction only and any staging of provision.
- f) Details of the scheduled timing/phasing of development for the overall construction period.
- g) Details of measures to control the emission of dust and dirt during construction and including details of any wheel washing to be undertaken, management and location it is intended to take place.
- h) Details of the siting of any on site compounds and portaloo's.
- i) Details of the method of any demolition to take place, including the recycling and disposal of said materials resulting from demolition.
- j) Site waste management plan (that shall include reuse and recycling of materials)
- k) Scheme for sustainable construction management to ensure effective water and energy use.
- l) Scheme of review of complaints from neighbours.
- m) Registration and details of a Considerate Constructors Scheme to be joined prior to the commencement of development, and confirmation of registration to be provided in writing to the LPA before the start of works, or similar scheme for which full details shall be provided and complied with
- n) Details on the provision, location and management of any show home/s or reception, including opening times, parking and advertisements (including flags and directional signs).

The said methodology as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

REASON: To minimise detriment to nearby residential and general amenity by controlling the

construction process to achieve the approved development. This condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, by reason of the location and scale of development may result in adverse harm on amenity.

- 7 CONDITION: All changes in ground levels, soft/hard landscaping shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the development, or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

- 8 CONDITION: Prior to the first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the hereby approved development, all mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Place Services, October 2024).

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations.

- 9 CONDITION: Prior to first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the hereby approved development, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

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

REASON: To enhance protected and Priority species and habitats.

- 10 CONDITION: No development/works shall be commenced above slab level of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development and fully applied prior to the first use/occupation.

REASON: To secure an orderly and well designed finish sympathetic to the character of the existing

building(s) and in the interests of visual amenity and the character and appearance of the area.

- 11 **CONDITION:** Prior to the erection/installation of any means of external lighting at the site, details to include position, height, aiming points, lighting levels and a polar luminance diagram shall be submitted to and approved, in writing, by the Local Planning Authority. The lighting shall be carried out and retained as may be approved. There shall be no other means of external lighting installed and/or operated on/at the site except that approved.

**REASON:** In the interests of amenity to reduce the impact of night time illumination on the character of the area and in the interests of biodiversity.

- 12 **CONDITION:** Full details of surface water drainage shall have been submitted to and approved, in writing, by the Local Planning Authority prior to the beginning of any works to the building/s it would serve are commenced. No part of the development shall be brought into use until the agreed method of surface water drainage has been fully installed and is functionally available for use. The surface water drainage scheme shall thereafter be maintained as approved.

**REASON:** To safeguard the ground water environment and minimise the risk of flooding.

- 13 **CONDITION:** Prior to first use of the access of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152), visibility splays shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway, and shall then be retained in its approved form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

**REASON:** To ensure vehicles exiting the access would have sufficient visibility to enter the public highway safely and vehicles on the public highway would have sufficient warning of a vehicle emerging in order to take avoiding action.

- 14 **CONDITION:** Prior to first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the development, a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the hereby permitted vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

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

- 15 **CONDITION:** Prior to first use of the new access details of the stopping up of all other means of vehicular access within the frontage as shown on the approved drawings shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highways Authority. The stopping up as approved shall be implemented in full prior to first use of the new access.

**REASON:** To ensure that an increase in accesses available does not increase in highway safety risk.

- 16 **CONDITION:** Prior to first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the hereby approved development, the vehicle parking area indicated on the approved plans shall be hard surfaced and sealed. 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 in writing 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.

- 17 **CONDITION:** Prior to first occupation of each dwelling, a Residential Travel Information Pack (travel pack) shall be provided to each dwelling for use of its first occupiers. The travel pack shall be agreed, in writing, by the Local planning authority prior to provision and shall include a minimum of six one day travel vouchers for use with a local transport operator.

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

- 18 **CONDITION:** The development may not be begun unless (a) a biodiversity gain plan has been submitted to the planning authority (see note), and (b) the planning authority has approved the plan (see note).

REASON: In order to accord with Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) and amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024.

- 19 **CONDITION:** The hereby approved development shall not be first commenced until detailed proposals addressing the mitigation of the development's impact on protected Essex Habitats Sites have been submitted to and received written approval from the Local Planning Authority. Such proposals must provide and secure mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) or demonstrate mitigation measures of an equivalent effectiveness to the satisfactory of the Local Planning Authority. For any on site mitigation proposals approved, it shall be carried out in full prior to first occupation, and thereafter shall be maintained as approved.

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations. Failure to achieve satisfactory mitigation would result in harm by new residents due to the development's impact on protected sites meaning the development must mitigate the burden of development regardless of scale of impact.

- 20 **CONDITION:** No development shall take place until a 30 year Habitat Monitoring and Management Plan (HMMP), prepared in accordance with an approved Biodiversity Gain Plan, has been submitted to and approved in writing by the local planning authority and shall contain the following:

- a) Description and evaluation of the features to be managed;
- b) Ecological trends and constraints on site that may influence management;
- c) Aims, objectives and targets for management - links with local and national species and habitat action plans;
- d) Description of the management operations necessary to achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a works schedule, including annual works schedule;
- g) Details of the monitoring needed to measure the effectiveness of management;
- h) Details of the timetable for each element of the monitoring programme;
- i) Details of the persons responsible for the implementation and monitoring;
- j) mechanisms of adaptive management to account for necessary changes in work schedule to achieve the required targets;
- k) Reporting on year 1, 2, 3, 5, 7, 10, 15, 20, 25 and 30, with biodiversity reconciliation calculations at each stage.

The approved HMMP shall be strictly adhered to at all times and implemented in full for its



**duration.**

**REASON: To enhance biodiversity in accordance with the National Planning Policy Framework and to achieve the Biodiversity Net Gain objectives set out in Schedule 7A of the Environment Act.**

## 2.3 Informatives

Positive and Proactive Statement:

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

Highways Informatives:

i) 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 must be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

ii) The areas directly adjacent to the carriageway(s) in which trees are to be planted should not be less than 3 metres wide, exclusive of the footway and the trunks of the trees should be no nearer than 2 metres to the channel line of the road. The same dimensions should be used in situations where the footway is located adjacent to the carriageway. In paved areas, whether or not the planted areas are to be adopted highway, trees should be sited no closer than 2 metres to the defined (or undefined) edge of the carriageway. Where the adopted highway is to be an independent path, trees should be planted no closer than 1 metre from the edge of the highway. In all cases, trees should be provided with root barriers to prevent damage to underground services.

iii) No permanent part of a development shall overhang the public highway.

iv) In main urban areas with frequent and extensive public transport, cycling and walking links, the EPOA Parking Standards recommend that a reduced parking standard provision may be applied to residential developments. A reduced parking standard provision level can be applied to this proposal as it is located very close to regular public transport services and public car parking facilities.

v) 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.

vi) Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the Essex Climate Action Commission proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the Essex Developers' Group Climate Charter [2022] and to view the advice contained in the Essex Design Guide. Climate Action Advice guides for residents, businesses and schools are also available.

Biodiversity Enhancements Informative:

In accordance with the Council's general duty to conserve and enhance biodiversity, you are strongly encouraged to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Suggested enhancements could include:

<https://www.rhs.org.uk/wildlife/in-the-garden/encourage-wildlife-to-your-garden>

### 3. **Additional Considerations**

#### Equality Impact Assessment

- 3.1 In making this recommendation/decision regard must be had to the public sector equality duty (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 that in summary include 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\* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.
- 3.2 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 3.3 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

#### Human Rights

- 3.4 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.
- 3.5 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).
- 3.6 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### Finance Implications

- 3.7 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.
- 3.8 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.

#### **4. Declaration of Interest**

- 4.1 Please refer to the minutes of this meeting, which are typically available on the councils website which will be published in due course following conclusion of this meeting.

#### **5. Background Papers**

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

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COMMITTEE REPORT AUTHORISATION CHECK

**24/01890/FUL**

**Land at High Street Car Park Carnarvon Road Clacton On Sea**

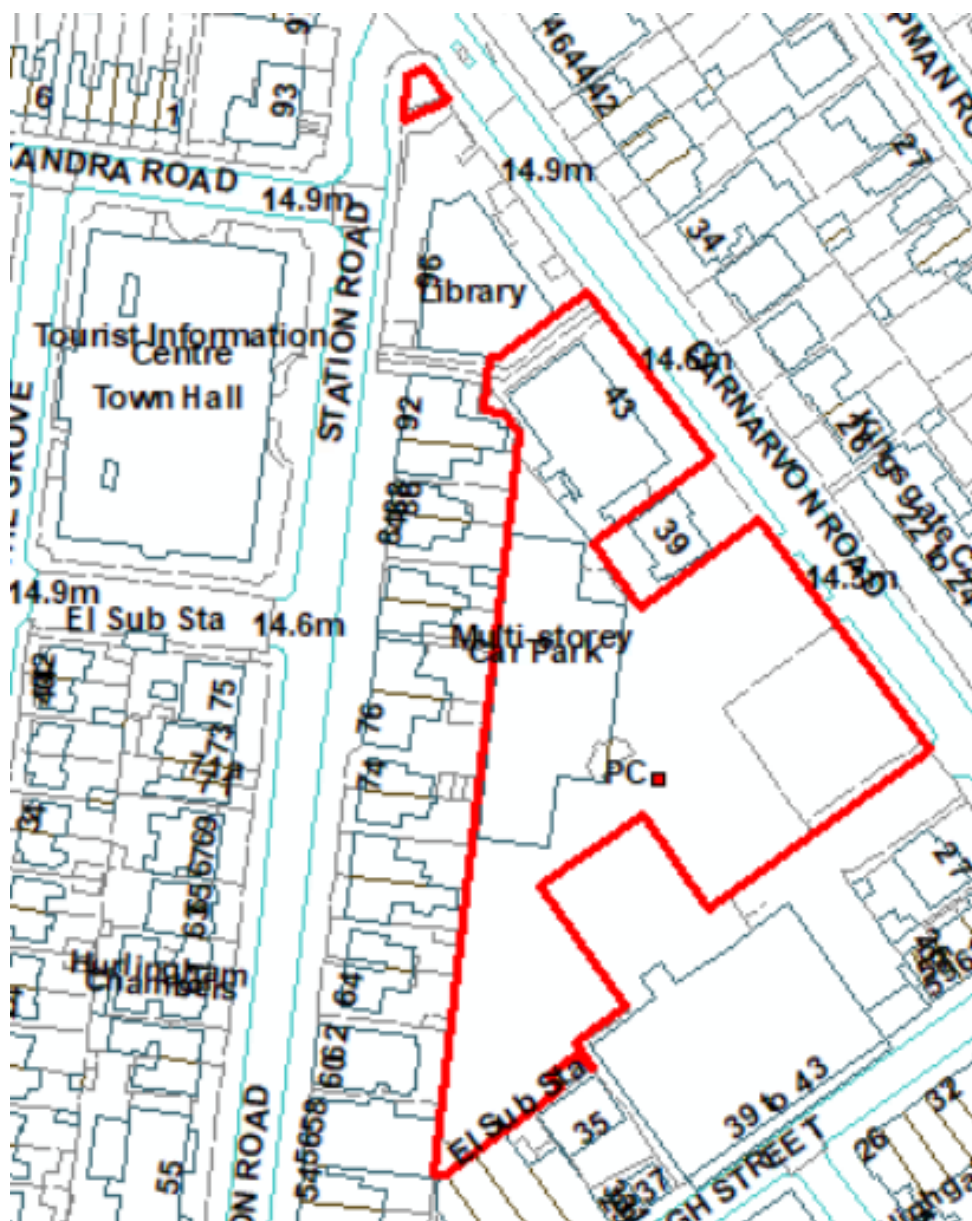
		Initials	Date
1.	File completed and recommendation drafted by	MP	18/02/25
2.	Senior Officer clearance	JPG	19/02/25
3.	All corrections completed	-	-
4.	DC Admin Support – Uniform updated	JJ	21/02/25

PLANNING COMMITTEE

4 MARCH 2025

REPORT OF THE DIRECTOR OF PLANNING

**A.1. PLANNING APPLICATION – 24/01890/FUL – LAND AT HIGH STREET CAR PARK  
CARNARVON ROAD CLACTON ON SEA ESSEX CO15 6QF**



DO NOT SCALE

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<b>Application:</b>	24/01890/FUL	<b>Expiry Date:</b>	3rd April 2025
<b>Case Officer:</b>	Michael Pingram		
<b>Town/ Parish:</b>	Clacton - Non Parished		
<b>Applicant:</b>	Tendring District Council		
<b>Address:</b>	Land at High Street Car Park Carnarvon Road, Clacton On Sea, CO15 6QF		
<b>Development:</b>	Demolition of existing multi-story car park and clearance of site. Construction of replacement multi-story car park, 28no. residential (Class C3) apartments, and 5no. flexible units (Class E, F1, F2 and related Sui Generis uses).		

## 1. Executive Summary

- 1.1 The application is before members of the Planning Committee on the basis that the applicant and owner of the site is Tendring District Council.
- 1.2 This application seeks the demolition of the existing multi-story car park and all other structures, to be replaced by a new multi-story car park providing 301 spaces, the erection of 28 affordable residential units and the erection of 1,330sqm of flexible commercial floorspace. Given that the site falls within the Settlement Development Boundary for Clacton-on-Sea, and is also an area prioritised for regeneration, the principle of development is acceptable. The proposed commercial uses may not necessarily be main town centre uses, but will still be a boost to the commercial offering in the surrounding area.
- 1.3 Officers consider that the design, scale and layout is an acceptable response to the character and appearance of the area, and whilst there will be a degree of harm to the amenities of Number 39 Carnarvon Road, on balance this is not considered so significant that it warrants recommending a reason for refusal. The residential units all meet the technical housing space standards and provide for enough private amenity space, and Essex Highways Authority have raised no objections subject to conditions. The parking provision is also considered to be of an acceptable level.
- 1.4 The proposal would result in the loss of a Copper Beach tree, however whilst unfortunate it would not be feasible to retain it without significant revisions to the wider scheme. Furthermore, the proposal includes a significant increase of soft landscaping, and therefore on balance the wider benefits of the scheme are considered to outweigh the harm of the loss of this tree.
- 1.5 Taking all of the above into consideration, Officers conclude that whilst there are some minor harms as a result of the development, they are significantly outweighed by the benefits the scheme would generate.

**Recommendation:** Approval subject to S106

- 1) On appropriate terms as summarised below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control to secure the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters:
  - Affordable Housing provision; and

- Biodiversity Net Gain (Unless the applicant opts to deal with under the planning condition)
- 2) That the Head of Planning and Building Control be authorised to grant planning subject to the agreed section 106 agreement and conditions as stated at paragraph 10.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
  - 3) The informative notes as may be deemed necessary.
- Or;**
- 4) That in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months that the Head of Planning and Building Control be authorised to refuse the application on appropriate grounds at their discretion.

## 2. Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

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 Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

In relation to housing supply:

The Framework requires Councils to significantly boost the supply of homes to meet the District's housing need. Paragraph 78 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 5% to ensure choice and competition in the market for land, unless the Housing Delivery Test (HDT) demonstrates significant under delivery of housing over the previous 3 years - in which case a higher buffer is required.

On 12th December 2024 the Government published the Housing Delivery Test: 2023 measurement. Against a requirement for 1,466 homes for 2020-2023, the total number of homes delivered was



2,343. The Council's HDT 2023 measurement was therefore 160%, and a buffer of 5% is to be used when calculating the Council's five year land supply position.

The Council demonstrates its supply of specific deliverable sites within the Strategic Housing Land Availability Assessment (SHLAA), which is published annually. The most recent SHLAA was published by the Council in July 2024, and demonstrates a 6.26-year supply of deliverable housing sites against the annual requirement of 550 dwellings per annum set out within the adopted Local Plan, plus a 5% buffer. The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>

As a result, the 'titled balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

### **3. Neighbourhood Plans**

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

### **4. Planning Policy**

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

#### **National:**

National Planning Policy Framework December 2024 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

#### **Local:**

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 (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
- HP2 Community Facilities
- HP5 Open Space, Sports and Recreation Facilities
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable Housing
- PP1 New Retail Development
- PP5 Town Centre Uses
- PP8 Tourism
- PP14 Priority Areas for Regeneration
- PPL1 Development and Flood Risk

PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
PPL8 Conservation Areas  
PPL9 Listed Buildings  
PPL10 Renewable Energy Generation and Energy efficiency Measures  
CP1 Sustainable Transport and Accessibility  
CP2 Improving the Transport Network  
DI1 Infrastructure Delivery and Impact Mitigation

#### Supplementary Planning Documents

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

[Essex Design Guide](#)

[Technical housing standards](#): nationally described space standard Published 27 March 2015

#### Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

### **5. Relevant Planning History**

94/01377/FUL	(High Street Car Park, High Street, Clacton on Sea) General Market (Tuesdays) including small car park, replacement for site on Ellis Road car park	Approved	10.01.1995
95/00950/FUL	(High Street Car Park, Clacton on Sea) Construction of a multi-storey car park on the site of the existing surface level car park	Approved	26.09.1995
96/00593/FUL	(High Street Car Park, Clacton on Sea) General market to be held on Tuesdays including car parking	Refused	25.06.1996
96/01010/FUL	(High Street Car Park, Clacton on Sea) Construction of a multi-storey car park on the site of the existing surface level car park (variation to scheme approved under planning permission TEN/95/0950)	Approved	17.09.1996
98/00983/FUL	Extension to access/egress ramp to upper floors	Approved	22.09.1998

### **6. Consultations**

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), 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/>.

**Active Travel England****08.01.2025**

Following a high-level review of the above planning consultation, Active Travel England has determined that standing advice should be issued and would encourage the local planning authority to consider this as part of its assessment of the application. Our standing advice can be found here: <https://www.gov.uk/government/publications/active-travel-england-sustainable-development-advice-notes>

ATE would like to be notified of the outcome of the application through the receipt of a copy of the decision notice, in addition to being notified of committee dates for this application.

**Anglian Water Services Ltd****23.01.2025****ASSETS****Section 1 - Assets Affected**

There are assets owned by Anglian Water or those subject to an adoption agreement within or close to the development boundary that may affect the layout of the site. Anglian Water would ask that the following text be included within your Notice should permission be granted.

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

**WASTEWATER SERVICES****Section 2 - Wastewater Treatment**

This development is within the catchment of Clacton-Holland Haven water recycling centre (WRC), which currently lacks the capacity to accommodate the additional flows that would be generated by the proposed development. Clacton-Holland Haven WRC is included within our approved Business Plan as a named growth scheme with investment delivery planned between 2025-2030

To ensure there is no pollution or deterioration in the receiving watercourse due to the development foul flows we recommend a planning condition is applied if permission is granted.

Condition: Prior to occupation written confirmation from Anglian Water must be submitted confirming the upgrades at Clacton-Holland Haven water recycling centre have been completed, and there is sufficient headroom to accommodate the foul flows from the development site.

Reason: To protect water quality, prevent pollution and secure sustainable development having regard to paragraphs 7/8 and 180 of the National Planning Policy Framework.

**Section 3 - Used Water Network**

This response has been based on the following submitted documents: Drainage Strategy Document 12/12/24 The sewerage system at present has available capacity for these flows.

If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. We will then advise them of the most suitable point of connection.

#### Section 4 - Surface Water Disposal

Anglian Water object to this application as the proposal of discharge of surface water to existing systems without evidence of existing connections and surface water hierarchy evidence could cause flood risk as per Drainage Strategy dated 12/12/24.

There is no historic right of connection when a site is redeveloped and the surface water hierarchy must be fully explored. There are designated public surface water sewers within the vicinity of the development. When the applicant has fully explored the surface water hierarchy, they will need to engage with Anglian Water and provide evidence that all other options have been exhausted and discounted in line with the Surface Water Hierarchy and with consultation with the LLFA.

The rate proposed (5l/s) is not in line with Anglian Water's policy and rate and is not considered acceptable. Only when this engagement has taken place and an agreement issued by Anglian Water will we remove any objections.

<https://www.anglianwater.co.uk/developing/drainage-services/sustainable-drainage-systems/surface-water-policy/>

FOR THE ATTENTION OF THE APPLICANT - if Section 3 or Section 4 condition/objection has been recommended above, please see below information:

#### Next steps

Desktop analysis has suggested that the proposed development will lead to an unacceptable risk of flooding downstream. We therefore highly recommend that you engage with Anglian Water at your earliest convenience to develop in consultation with us a feasible drainage strategy.

If you have not done so already, we recommend that you submit a Pre-planning enquiry with our Pre-Development team. This can be completed online at our website <http://www.anglianwater.co.uk/developers/pre-development.aspx>

Once submitted, we will work with you in developing a feasible mitigation solution.

If a foul or surface water condition is applied by the Local Planning Authority to the Decision Notice, we will require a copy of the following information prior to recommending discharging the condition:

#### Surface water:

- Feasible drainage strategy agreed with Anglian Water detailing the discharge solution, including:
- Development hectare size
- Proposed discharge rate (Our minimum discharge rate is 2l/s. The applicant can verify the site's existing 1 in 1 year greenfield run off rate on the following HR Wallingford website - <http://www.uksuds.com/drainage-calculation-tools/greenfield-runoff-rate-estimation> . For Brownfield sites being demolished, the site should be treated as Greenfield. Where this is not practical Anglian Water would assess the roof area of the former development site and subject to capacity, permit the 1 in 1 year calculated rate)
- Connecting manhole discharge location

- Sufficient evidence to prove that all surface water disposal routes have been explored as detailed in the surface water hierarchy, stipulated in Building Regulations Part H (Our Surface Water Policy can be found on our website)

**Essex County Council Archaeology**

**27.01.2025**

There are no recorded features on the Essex Historic Environment Record and no evidence to indicate that there is potential for surviving archaeological remains within the proposed site. The site has been developed and is likely to have disturbed or destroyed any archaeological remains that may have been present. The above application is unlikely to have any further significant impact on any unknown archaeological remains.

There is no objection to the above application.

**Essex County Fire Officer**

**23.01.2025**

Initial Response to Consultation Document

Having reviewed the consultation document, at this time Essex County Fire and Rescue Service would ask that the following are considered during the continued development of the 24/01890.FUL 28 Land at High Street Car Park Carnarvon Road Clacton On Sea Essex:

- Use of community spaces as a hub for our Prevention teams to deliver Fire Safety and Education visits, with the shared use of an electric charging point.
- Adherence to the requirements of the Fire Safety Order and relevant building regulations, especially approved document B.
- Installation of smoke alarms and/or sprinkler systems at suitably spaced locations throughout each building.
- Implementation of vision zero principles where there are introductions of or changes to the road network.
- Appropriate planning and mitigations to reduce risks around outdoor water sources.
- Suitable principles in design to avoid deliberate fire setting.
- Consideration for road widths to be accessible whilst not impeding emergency service vehicle response through safe access routes for fire appliances including room to manoeuvre (such as turning circles).
- Access for Fire Service purposes must be considered in accordance with the Essex Act 1987
- Section 13, with new roads or surfaces compliant with the table below to withstand the standard 18 tonne fire appliances used by Essex County Fire and Rescue Service.

Min. Width of Road between Kerbs

Pumping Appliance

3.7m

High Reach

3.7m

Min. Width of Gateways

Pumping Appliance

3.1m

High Reach

3.1m

Min. Height Clearance

Pumping Appliance

3.7m

High Reach

4.0m

Min. Carrying Capacity  
Pumping Appliance  
18 tonnes  
High Reach  
28 tonnes

Min. Turning Circle (Kerb to Kerb)  
Pumping Appliance  
17.8m  
High Reach  
17.8m

Min. Turning Circle between Walls  
Pumping Appliance  
19.0m  
High Reach  
20.0m

Sweep Circle  
Pumping Appliance  
19.0m

- Implementation of a transport strategy to minimise the impact of construction and prevent an increase in the number of road traffic collisions. Any development should not negatively impact on the Service's ability to respond to an incident in the local area.
- A risk reduction strategy to cover the construction and completion phases of the project.
- Implementation of a land management strategy to minimise the potential spread of fire either from or towards the development site.

Essex County Fire and Rescue Service welcomes the opportunity to continue these conversations as the development progresses to ensure opportunities to reduce risk and improve the emergency service provision are realised.

Future Infrastructure Risk Team: [future.infrastructure.risk@essex-fire.gov.uk](mailto:future.infrastructure.risk@essex-fire.gov.uk)

### **ECC Green Infrastructure**

**22.01.2025**

#### **ECC GI position**

Having reviewed the Design and Access Statement (includes Landscape Strategy), Landscape Masterplans, Preliminary Ecological Assessment (PEA), Biodiversity Net Gain (BNG) Metric Calculation and the associated documents which accompanied the planning application, we do not object to the granting of 24/01890/FUL based on the following:

The site benefits from existing green infrastructure (GI) in the form of a few urban trees but is otherwise bare of other GI features. The DAS, PEA, and BNG Metric Calculations highlight the retention and enhancement of mature trees where possible, with significant opportunities for further improvements. These improvements include urban greening of vertical landscapes, introducing native hedgerows, enhancing the small section of landscape north of Clacton Library, adding shrubs and species-rich wildflower lawns, creating green streets, designing natural play areas, providing seating, implementing sustainable drainage rain gardens, and additional tree planting.

The BNG Metric Calculations and PEA establishes a net gain of 59.9%% in habitats, a significant net gain of 0.25 units in hedgerow against a 0 units baseline which is welcomed.

Additionally, the PEA and DAS recommend other ecological enhancements not captured by the metric, such as bird, bat and insect boxes. The enhancement and mitigation measure identified are instrumental in producing quality GI, therefore all these GI threads should be carried through to detail stages of the application and secured through suitably worded condition.

The PEA recommends that a Biodiversity Gain Assessment (or BNG Plan) be produced to support the application and that management and maintenance for 30 years. The application does not reference or include any maintenance or management schedules for the proposed landscape scheme. Therefore, we recommend that a Landscape Ecological Management Plan (LEMP) be submitted for approval prior to determination or secured by condition as outlined below. The LEMP should detail responsibilities for GI assets, timescales for implementing each aspect of GI within the development phase, maintenance activities and frequencies, and the funding, management, and monitoring of GI assets and green spaces throughout the development's lifetime. A Construction Environmental Management Plan (CEMP) should explain how to protect existing GI during construction and how to add new GI in stages for early growth. Given the significant net gains, a Habitat Management and Monitoring Plan may be required as a planning condition.

To ensure delivery of the new GI components and retention of the existing, we would recommend the following conditions:

#### Condition 1

No development shall take place until there has been submitted to and approved, in writing, by landscape specialists at the Local Planning Authority a Construction Environmental Management Plan (CEMP). Ideally, strategic elements of the GI framework are brought forward in phase one of the development, to create a landscape structure or evidence is shown that substantive GI is secured as early as possible in initial phases of delivery to allow early establishment, where possible. Therefore, a Construction Environmental Management Plan (CEMP) will be required to set out how retained GI, such as trees, and vegetation will be protected during construction.

#### Reason:

The phased implementation of new GI of the development construction will allow for the GI to mature and it will provide further benefit of reducing/buffering the aesthetic impact from the construction work.

#### Condition 2

No development shall take place until there has been submitted to and approved, in writing, by SuDS and landscape specialists at the Local Planning Authority a Landscape Ecological Management and Maintenance Plan (LEMP) and work schedule for a minimum of 10 years.

Details should include who is responsible for GI assets (including any surface water drainage system) and the maintenance activities/frequencies.

We would also expect details on how management company services for the maintenance of GI assets and green spaces shall be funded and managed for the lifetime of the development to be included.

#### Reason:

To ensure appropriate management and maintenance arrangements and funding mechanisms are put in place to maintain high-quality value and benefits of the GI assets.

Failure to provide the above required information before commencement of works may result in reducing the value of the development, becoming an undesirable place to live that may increase the impacts from climate change, such as flood risk or air pollution from the site.

### Condition 3

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

### Reason:

To ensure the GI are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure the high-quality and multi-functional benefits of GI assets.

### Other Considerations

#### New Tree Planting and their early establishment

ECC GI Team will expect that all new trees on new developments will have their establishment considered at the time of planting. This should include weeding, mulching and watering. All newly planted trees with a trunk diameter of 6cm or more will be watered for three years via a buried watering tube, irrigation bag or irrigation well; applying 60 litres per visit, at least 14 times between May and September. Mulch, stakes, ties and weed establishment will also be inspected and actioned as required. Stakes and ties should be removed 3 years after planting.

### Sustainable Design

ECCs GI team support a strategy that seeks to maximise opportunity for habitat retention and welcomes the proposal for vertical landscaping (climbers), rain gardens and other ecological enhancements recommended by the PEA. ECCs GI team also recommends consideration of the following: -

- Wildlife Bricks: The provision of wildlife bricks creates habitats for invertebrates.
- Dual street furniture/seating (i.e., a bench including a planter): The design of the street furniture and bin stores can contribute to the landscape character, reduce clutter of an area or street and act as a green corridor/link to the wider landscape scale GI network.]
- Log piles/ hibernacula- for invertebrates.
- Permeable paving within the public realm/ green streets.

### **ECC Highways Dept**

**30.01.2025**

The information provided with the application has been assessed by the Highway Authority and conclusions reached from a desktop study based on the submitted material and google maps. A previous site visit was undertaken in conjunction with a separate planning application. It is noted that the existing site is currently situated in a residential and commercial area. Its primary use is for parking and consists of a multi-storey car park as well as more car parking at the wider ground level of 300 spaces overall. A parking survey over a radius of approximately 200m around the site accounting for daytime and nighttime was undertaken in September 2024. The findings indicate that as the proposed car park is of a similar size to the existing, the development will not have an adverse impact on the parking situation in the area. The vehicle trips associated with the development is expected to remain consistent with the existing given that the number of spaces being provided will be consistent with the current scenario. The town centre location means that many services are within walking distance of the new mixed-use development and apartments with sustainable travel or public transport network facilities nearby, considering these factors:



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

1. As provided in the supporting information, and prior to any works commencing on site, including any ground works or demolition, a Construction Management Plan must be approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. vehicle routing,
- ii. the parking of vehicles of site operatives and visitors,
- iii. loading and unloading of plant and materials,
- iv. storage of plant and materials used in constructing the development,
- v. wheel and underbody washing facilities.
- vi. Before and after condition survey to identify defects to highway in the vicinity of the access to the site and where necessary ensure repairs are undertaken at the developer expense when caused by developer.

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

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

- a) A minimum 2.4 metres x 43 metres clear to ground visibility splay shall be provided at its centre line in both directions, for all vehicular accesses as measured from and along the nearside edge of the carriageway.
- b) A 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of each vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.
- c) A half a metre 'no build zone' will need to be provided between the rear of the existing footway/ highway boundary and the proposed structures/ buildings across the site frontage.
- d) At no point shall barriers/gates be provided at the car park access. To ensure a free and unhindered access is retained at all times.
- e) Any redundant vehicular access as shown in principle on drawing shall be suitably and permanently closed incorporating the reinstatement to full height of the highway footway / kerbing prior to the occupation of the development.
- f) Public Footpath 34, surface is a block paved area, which is prone to lift or sink creating tripping hazards. The block paving should be removed and replaced with a compacted surface material to provide a firm and level surface, a plan shall be submitted to PROW Planning providing details of the surfacing works to be agreed prior to commencement of works.

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as walking, in accordance with policy DM1 and DM9.

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

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

4. Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres and each blue badge parking space shall have minimum dimensions of 4.1 metres x 6.7 metres.

Reason: To ensure adequate space for parking off the highway is provided and to reflect modern car sizes in the interest of highway safety in accordance with Policy DM8.

5. The powered two-wheeler/cycle parking facilities as shown on the approved plan are to be provided prior to the first occupation of the development and retained at all times.

Reason: To ensure appropriate powered two-wheeler and bicycle parking is provided in accordance with Policy DM8.

6. Prior to occupation of the proposed residential 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, (to include six one day travel vouchers for use with the relevant local public transport operator).

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

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

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

8. The public's rights and ease of passage over public footpath no. 34 (Great Clacton\_167) shall be maintained free and unobstructed at all times.

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

9. No development shall be permitted to commence on site until such time as an Order securing the temporary closure/ diversion of the existing definitive right of way (public footpath no. 34 Great Clacton\_167) to allow the route to be resurfaced, to a route to be agreed with the Local Planning Authority has been confirmed and the new route has been constructed to the satisfaction of the Local Planning Authority.

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

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance and National Planning Policy Framework.

Notes:

- o Prior to any works taking place in the highway the developer should enter into an S278 agreement with the Highway Authority under the Highways Act 1980 or Minor Works Authorisation to regulate the construction of the highway works.

- o The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority.

- o The development should be in accordance with the 2024 Essex Parking Guidance 2024 Essex Parking Guidance | Essex Design Guide

o A Stage 1 RSA for the proposed accesses to be provided, ideally to be carried out by Essex Highways (to avoid the issue of additional items being identified at RSA2 stage which can then delay technical approval) roadsafety.audit@essexhighways.org o The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate.

**ECC Schools Service**

**07.02.2025**

Thank you for your email, no request on this occasion, I can see that there are multiple 1 bed dwellings, therefore this falls under our current threshold for requesting contributions.

**ECC SuDS Consultee**

**20.01.2025**

Lead Local Flood Authority position:

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

- As discussed in the pre application advice from October 2024, the LLFA does not accept a flat rate of 5l/s discharging from the site if the Greenfield 1 in 1 year rate is below 5l/s as there are vortex flow control devices which can be designed to a discharge at 1l/s, with 600mm shallow design head and still provide a more than 50mm orifice diameter. Furthermore, appropriate measures should be put in place to remove materials that are likely to cause blockage before they reach the flow control device.
- As the site lies within the Combined Essex Management Catchment, 45% climate change allowance should be used when calculating the storage required and within the drainage calculations.

**Essex County Council Ecology**

**04.02.2025**

We have reviewed the Preliminary Ecological Appraisal (Place Services, October 2024) and Landscape Master Plan (Wynne-Williams Associates, Drg 2487-WWA-ZZ-ZZ-D-L-0101, Rev Po5, October 2024) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures.

We are satisfied that there is sufficient ecological information available to support determination of this application. This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in the Preliminary Ecological Appraisal (Place Services, October 2024) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly those recorded in the locality.

We also support the proposed reasonable biodiversity enhancements for protected and Priority species, which have been recommended to secure net gains for biodiversity, as outlined under Paragraph 187d and 193d of the National Planning Policy Framework (December 2024). The reasonable biodiversity enhancement measures should be outlined within a separate Biodiversity Enhancement Strategy and should be secured by a condition of any consent. This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 (as amended).

Please note we do not provide comments on Biodiversity Net Gain as we have been instructed to leave comments on this matter to the LPA.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013. We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

#### Recommended conditions

##### 1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

All mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Place Services, October 2024) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (as amended).

##### 2. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected and Priority or threatened species, prepared by a suitably qualified ecologist in line with the recommendations of the Preliminary Ecological Appraisal (Place Services, October 2024), shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans (where relevant);
- d) persons responsible for implementing the enhancement measures; and
- e) details of initial aftercare and long-term maintenance (where relevant).

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

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under paragraph 187d of NPPF 2024 and s40 of the NERC Act 2006 (as amended).

#### **Economic Growth Team**

**17.01.2025**

The Economic Growth Team are unable to submit a comment on this application due to the team being involved in the delivery of this project.

#### **Environmental Protection**

**20.01.2025**

With reference to the above application, please see below for comments from the EP Team:

Contaminated Land: I can advise we have reviewed the submitted Phase One, Desk Top Study document, dated November 2024, and are satisfied with its methodology and findings. In line with the relevant recommendations, the EP Team are requesting a further, intrusive study be performed to determine the extent of the presence of contaminated soil within the site.

REASON: It is the responsibility of the developer to ensure the safe development of the site and to carry out any appropriate land contamination investigation and remediation works. The condition is to ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours, future residents and other offsite receptors

Noise / Ventilation: Given the sites location within the Town Centre, and consideration for the location on the main carriageway, as well as its proximity to Clacton Railway Station and consideration for the potential change to the existing noise climate, due to number of required plant/machinery (extraction / ventilation systems for food outlets for example - use classes requested include potential for food outlets, as well as confirmation as to whether ventilation within the residential units will be achieved by either trickle vents or mechanical ventilation), the EP Team are requesting evidence be submitted to confirm the proposed units will not expose future residents to unacceptable levels of noise leading to an adverse impact. As such we are requesting a formal Noise Impact Assessment be undertaken, by a relevantly qualified acoustician. The survey will meet the requirements of relevant Planning Policy Guidance and include periods for -

Day-time 0700-2300 hours and night-time 2300-0700 hours.

The purpose of the report will be to confirm the current noise climate, any potential design or mitigation techniques that may be required and to ensure the proposed development can offer future residents compliance with the relevant British Standard for noise levels, and other applicable guidance and standards; including the World Health Organisations Community Noise Guideline Values - as shown below -

Dwellings indoors in daytime - 35 dB LAeq,16 hours  
Outdoor living area in day time - 55 dB LAeq,16 hours  
Inside bedrooms at night-time - 30 dB LAeq,8 hours (45 dB LMax)  
Outside bedrooms at night-time - 45 dB LAeq,8 hours (60 dB LMax)  
The internal figures consider that windows are open.

In addition we are requesting the predicted noise emissions from the proposed plant / machinery is included within the Noise Assessment, in line with the relevant British Standard (BS4142:2014) -

Potential Noise Impact from Plant Machinery: Prior to installation of any plant/machinery/ventilation/air conditioning/extraction equipment, including any replacements of such, full details including location, acoustic specifications, and specific measures to control noise/dust/odour from the equipment, shall be submitted to and approved in writing by the Local Planning Authority. The equipment shall be installed, used and maintained thereafter in full accordance with the approved details.

REASON: to ensure compliance with the relevant standards and guidelines and to protect the amenity of guests and possible future residential premises

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

REASON: In the interest of protecting residential amenity

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

- Noise Control

- 1) 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.
- 2) No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00(except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
- 3) The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228.
- 4) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
- 5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.
- 6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.

- Emission Control

- 1) All waste arising from the demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
- 2) No materials produced as a result of the site development or clearance shall be burned on site.
- 3) 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.
- 4) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

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

REASON: In the interest of protecting residential amenity.

**Arch. Liaison Off, Essex Police**

**23.01.2025**

The 'Essex Police ' Designing out Crime Office' (DOCO), welcomes the opportunity to comment on the submission of 24/01890/FUL.

We recognise that communities where safety and security has been addressed and 'designed in' at the earliest planning stages, will enhance the health and wellbeing of its residents. The perception of crime and fear of crime can be an influential factor in determining the synergy and ongoing sustainability of a community.

Security forms a key part of a sustainable and vibrant development and Essex Police considers that it is important that this site is designed incorporating the maximum achievable benefit of

Crime Prevention Through Environmental Design (CPTED) for which Secured by Design (SBD) is the preferred enabler. This national, official police security initiative works to improve the security of a structure and their immediate surroundings to provide a safe and secure environment to help reduce the opportunities for crime and minimise the fear of crime, as referenced in the NPPF, 'Promoting Healthy and Safe Communities'.

Upon reviewing the submitted documents for this application, the DOCO would request further information regarding the Multi-storey car park cycle store and ground floor front aspect space towards Carnarvon Road, we would welcome the opportunity to discuss these spaces with the applicant.

The applicant and Essex Police have been involved in constructive, pre-application consultation and Essex Police is content the ethos of NPPF, sec 12, para 127(f) and the Tendring Local Plan policy PL4, which requires developments that are safe, secure places, is being considered. The applicant has indicated their aspiration for this development to attain Secured by Design accreditation (SBD).

Essex Police requests Tendring DC Planning make SBD compliance a planning condition for this application. The Designing Out Crime Team is keen to support the applicant to ensure crime prevention through environmental design is embedded into the development and assist in successfully achieving the requirements to gain the nationally acknowledged and Police recommended, Secured by Design accreditation.

#### **UU Open Spaces**

**15.01.2025**

Officer Conclusions and Recommendations

- On site open space is being provided. So no off site contribution is being requested.

#### **Tree & Landscape Officer**

**29.01.2025**

The application site is currently dominated by the built form and contains only small areas of soft landscaping and no functional open space or other usable area.

The main landscape features on the site are three mature trees: 2 Copper Beech (*Fagus sylvatica* 'purpurea') close to Carnarvon Road and a Maidenhair Tree (*Ginkgo biloba*) by the walkway from the car park to Station Road.

There are a few smaller trees mainly the fastigate form of the Callery Pear (*Pyrus calleryana* 'Chanticleer').

The site layout proposals make provision for the retention of the large Copper Beech (T3) tree at the northern end of the site and the Maidenhair tree (T4) however the site layout and tree report identify the removal of the second and southernmost Copper Beech (T8) ostensibly because of its condition.

In this regard it is noted that the crown of the tree (T8) is somewhat asymmetrical with the southwestern aspect showing much weaker growth. The Arboricultural Impact Assessment submitted in support of the application categorises the tree as C2 which means that it is not considered to be a significant constraint on the development potential of the land.

However, as the tree is not in leaf at the present time, it is not possible to ascertain the extent of deadwood within the canopy of the tree. The tree appears to be in reasonable condition and makes a positive contribution to the character and appearance of the area.

Whilst the amenity value provided by the smaller trees can be relatively easily replicated and improved upon by tree planting included in the overall soft landscaping proposals the removal of the Copper Beech (T8) would have a significant adverse impact on the amenities of the locality.

Whilst there is no reason to question the accuracy of the AIA in respect of the condition of the Copper Beech (T8) it was not possible for the findings of the report at the time of the site visit as the tree was not in leaf.

Regarding the physical protection of the large, retained trees the application is supported by the above-mentioned Arboricultural Impact Assessment (AIA) containing an Arboricultural Method Statement (AMS) and a Tree Protection Plan (TPP). This information shows how retained trees will be physically protection for the duration of the construction phase of any approved development.

This information is in accordance with BS5837 2012 Trees in relation to design demolition and construction. Recommendations.

In terms of soft landscaping the scheme will lead to the provision of an area of well-designed and 'thought out' open space that will be a significant improvement on the current situation.

#### **Waste Management**

**07.01.2025**

Bin store for residential properties to be of sufficient size to accommodate the equivalent wheeled bin capacity of 5040 litre fortnightly residual waste collection, 640 litre weekly food waste collection and 8240 litre dry mixed recycling collection.

#### **ECC Heritage**

**11.02.2025**

The site is located within the wider setting of the designated heritage assets named below:

- Clacton Town Hall (List Entry No. 1267903), a Grade II Listed Building which is situated to the west of the site; and,
- Clacton Seafront Conservation Area that includes Rosemary Road to the south of the site.

Currently the site is visually unintrusive and makes a neutral contribution to the setting of these heritage assets. In principle the proposed scheme of re-development for the site is supported, on the basis that the setting of the heritage assets is preserved and could be enhanced if opportunities to improve the connections from the site through to the Town Hall and Conservation Area are exploited.

There is a proposal emerging for expansion of Clacton Seafront Conservation Area northwards to include additional buildings of potential positive contribution to its character and appearance. If that proposal is brought forward and adopted by the Tendring District Council, the boundary for the Conservation Area will be redrawn along the High Street. This would bring the Conservation Area adjacent to the southern part of the site where there is a pedestrian access through a passageway between No. 37 the High Street and Nos. 39-43 the High Street (a vacant superstore). This possibility was discussed during the pre-application stage and is recognised by Section 2.03 of the Design and Access Statement submitted for the proposal, which also considers how the proposed Mixed-Use Spaces will be viewed and linked from the High Street (see Section 7.31 for passageway perspective).

The stepped shopfronts of the proposed Mixed-Use Spaces create a contemporary arcade that is in-keeping with the character of the High Street, given that there is a historic arcade found between Nos 4 and 7 the High Street. It is unfortunate that the opposing view of the High Street from the passageway is not represented, as a glimpsed view of the former Post Office (a Non-Designated Heritage Asset) would be gained, nevertheless, the proposal will undoubtedly



improve the appearance of the passageway in the street scene and the experience and appreciation of the former Post Office as a landmark building. Which will in turn enhance the setting of the Conservation Area.

Similarly, a gap between Clacton Library (potentially to be redeveloped as Clacton Hub) and No. 92 Station Road allows a glimpsed view of Clacton Town Hall to be gained, and provides pedestrian access to the site, but only the view of the new four-storey residential building from Station Road through this gap is represented in the Design and Access Statement (see Section 7.15 perspective).

It was recommended at pre-application stage that the height and scale of the new residential building should not detract from the prominence of Clacton Town Hall in the Station Road street scene. The Townscape and Visual Appraisal does not provide any wireframe viewpoints (either from north of Clacton Library looking south or from Station Road looking towards the site) to demonstrate that the proposal will not be a visually prominent addition to the setting of the Town Hall. In addition, there is no Heritage Statement to consider the significance of the Town Hall and Conservation Area and the impact of the development, as per paragraph 207 of the National Planning Policy Framework (NPPF).

The scale of the proposed buildings in views north of Clacton Library looking south towards the site and the Town Hall is not well illustrated. Viewpoint 1 of the Townscape and Visual Appraisal is taken at an angle that excludes the Town Hall from view, which is unhelpful for assessing the impact on its setting and without a wireframe the impact is unclear. It is noted that the submitted Townscape and Visual Appraisal has considered this potential for the upper stories to be visible within the Station Road (Viewpoints 1, 2a and 2b), and concluded that its adverse effects will be minor or negligible.

But the perspective view clearly shows that the upper two stories of the new residential building will protrude above the roofs of the intervening built form that lines the east side of Station Road (page 93 of the Design and Access Statement). From this viewpoint, it is unlikely to result in a harmful impact upon the significance of the Town Hall. However, it is suggested that a condition be used to agree a sensitive colour palette for the external materials of the new residential building, so that its appearance harmonises better with the colour palette of the Station Road street scene. Securing a respectful colour palette will ensure that the new building is unimposing upon the setting of Clacton Town Hall and does not compete with it for prominence. For avoidance of the same issues occurring at nighttime, a condition to agree a suitable external lighting scheme for the building is also suggested.

In its entirety the scheme of new development within the setting of the heritage assets is likely to be acceptable, however, the colour and design of the proposed car park does not appear to reflect local character and distinctiveness on Carnarvon Road. Otherwise, the proposals will enhance the connections from the site to Clacton Town Hall, and the Conservation Area, and attention has been shown to the surrounding historic environment, which is used as a source of inspiration for the design of the Mixed-Use Spaces and the Residential Building. Such as in the use of external materials to distinguish the shopfronts from the residential storeys above and exaggerate the roof form, in a contemporary way that follows the hierarchy and rhythms of the built form from the adjoining streets.

Nevertheless, the application is lacking in information to illustrate the impact on views of the Town Hall, however, assuming that the proposed buildings are of low visibility as per the discussion within the Townscape and Visual Appraisal, it is likely that the proposal will preserve the special architectural and historic interest of the Clacton Town Hall and its setting in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

With regards to the National Planning Policy Framework (NPPF), the proposal is unlikely to cause harm to the significance of any of the aforementioned heritage assets (Clacton Town Hall, Clacton Seafront Conservation Area, and the former Post Office), and the proposal should be treated favourably in line with the direction of Paragraph 219; given that it will improve the appearance and use of the pedestrian connections from the site to the heritage assets which will in turn enhance their setting. In respect of the proposal's design and potential to make a positive contribution to the local character and distinctiveness Paragraphs 210 (c) and 135 (c) will be relevant to decision-making.

## **7. Representations**

7.1 Clacton-on-Sea is non-parished so no comments were expected.

7.2 One letter of objection has been received, with concerns that the proposal is out of character.

7.3 One letter of observation has also been received, which raises potential concerns with the contractor working hours and where contractors would park during construction – this, however, can be addressed within a Construction Method Statement, which is recommended to be included as a planning condition. It is also asked whether the application includes improvements to existing pavements, however this does not form part of the submission.

## **8. Assessment**

### Site Description

8.1 The application site is the High Street Car Park, which is land sited to the western section of Carnarvon Road, within Clacton-on-Sea. The majority of the site consists of a multi-storey car park and ancillary car parking, with the land to the northern section currently empty following demolition of Carnarvon House, a former building previously occupied by the NHS, in 2023.

8.2 The character of the area is heavily urbanised, with a mixture of residential and commercial development located to all sides. The Grade II Listed 'Clacton Town Hall' is sited adjacent to the east, with the main hub of the Clacton Town Centre approximately 250 metres to the south-west. Adjacent to the north of the site is the Clacton Library.

8.3 The site falls within the Settlement Development Boundary for Clacton-on-Sea within the adopted Local Plan 2013-2033, and is also allocated as an area prioritised for regeneration purposes. The site is allocated within the Primary Shopping Area for Clacton-on-Sea, with the Clacton Seafront Conservation Area sited to the south, but outside of the site.

### Description of Proposal

8.4 This application seeks planning permission for the following works:

- Demolition of the existing multi-story car park and all other structures, to be replaced by a new multi-story car park providing 301 parking spaces;
- Erection of 28 residential units (14 x 1 bedroom units and 14 x 2 bedroom units) to the northern section of the site, with 11 units (40%) being affordable housing;
- Creation of five flexible commercial civic/community units (1,330sqm) including Classes E, F1, F2 and Sui Generis, with one located on the ground floor of the residential building, one on the ground floor of the car park, and three on the land to the west of the site; and
- New publicly accessible urban realm, including a range of hard and soft landscaping features.

### Principle of Development

- 8.5 The site is located within the Settlement Development Boundary (SDB) for Clacton-on-Sea, as established in the adopted Local Plan 2013-2033. Adopted Policy SPL2 states that within the Settlement Development Boundaries, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local plan policies. In this respect, the site is well located for residential properties.
- 8.6 In addition, the site is allocated within an area prioritised for regeneration purposes. Policy PP14 states these areas are identified within Policy PP14 to be the focus of investment in social, economic and physical infrastructure and initiatives to improve vitality, environmental quality, social inclusion, economic prospects, education, health, community safety, accessibility and green infrastructure. The development of a site that is currently operational but not a particularly visually impressive site, would be a welcome boost to the wider area, and is supported in principle.
- 8.7 It is noted that the site also falls within a Primary Shopping Area, with adopted Policy PP5 requiring that ground floor units should be restricted to uses within Class E (commercial, business and service uses). Whilst the exact use types are not yet clarified, the submission clarifies that the 1,330sqm of commercial floorspace will include Classes E, F1 (Learning and non-residential institutions), F2 (Local community uses) and Sui Generis. Whilst some of these uses are not technically in accordance with the requirements of PP5, the NPPF is clear that main town centre uses extend far beyond retail uses. In addition, the current site includes no commercial offering, and therefore the proposal would result in a significant increase to the services provided within the Clacton Town Centre.
- 8.8 Given the above, at an overarching high level, the principle of development on the sites for both residential and civic/commercial uses is acceptable, subject to the detailed considerations below.

#### Affordable Housing

- 8.9 Paragraph 64 of the NPPF (2024) states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site. Adopted Local Plan Policy LP5 adds that to promote a mix of housing tenure in the District and address the housing needs of people and families with lower incomes who cannot afford to buy or rent housing on the open market, the Council will work with the development industry to provide new affordable housing. For proposals of 11 or more (net) homes the Council will expect 30% of new dwellings to be made available to Tendring District Council or its nominated partners to acquire at a proportionate discounted value for use as affordable housing.
- 8.10 On this occasion, the proposal includes for a total of 28 residential properties, and therefore there is a requirement to ensure that a minimum of nine units are allocated as affordable housing. The supporting submission confirms that 11 of the units (40%) will be affordable housing, thereby comfortably adhering with the above policy requirements. The Council's Housing Team have been consulted but have not provided any comments at the time of writing, however Officers are content with the affordable housing provision outlined. It is therefore recommended that this be secured via a legal agreement in the event that the application is recommended for approval.

#### Scale, Layout & Appearance

- 8.11 Paragraph 135 of the NPPF (2023) 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.
- 8.12 Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context, and to protect the district's landscape and the quality of existing places and their environs. Policy SPL3 and LP4 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high

standards and which, together with a well-considered site layout which create a unique sense of place.

- 8.13 As detailed above, in principle the development of these sites would be a visual improvement in comparison to the current site, which includes an outdated multi storey car park as well as additional parking and does not maintain or enhance the character of the wider area. Historically, the site where the 28 dwellings are proposed was a three storey building of poor design that has since been demolished. Similarly, on the land where the proposed car park is to be, was historically Westleigh House which was also demolished a number of years ago.
- 8.14 Set against the above context, the proposal for a mixed-use development that maintains the existing public parking provision and offers additional residential and commercial offering to the District represents an enhancement to the areas character and appearance. ECC Urban Design were involved at pre-application stage and have therefore been involved in the overall design process. The proposed siting of the residential block in the northern corner of the site is considered logical and this location has the opportunity to relate well to the emerging Clacton Hub proposals and existing flats. Similarly, consolidating car parking into the south-western corner of the site is also logical and direct vehicular access off Carnarvon Road to avoid unnecessary highway infrastructure is welcomed. In addition, the development includes significant public realm improvements, including a seating area, a 'green street', public art and additional tree planting; all of which will provide for a significant visual improvement and make the site more appealing and better connected from Carnarvon Road/Station Road through to High Street.
- 8.15 In summary, the proposals overall are considered to result in a significant visual enhancement to the character of the area, representing a marked improvement in comparison to the existing site which is considered to detract from the areas wider character. The design of the buildings and car park is certainly of a more contemporary nature, however would equally not detract from the more traditional properties along Carnarvon Road in particular. Taking all of the above into consideration, there are no objections raised in this regard.

#### Heritage Impacts

- 8.16 Paragraph 210(c) of the NPPF states that in determining applications, local planning authorities should take account of the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 215 confirms that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 8.17 Adopted Policy PPL8 states that 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. Policy PPL9 adds that proposals for new development affecting a listed building or its setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric.
- 8.18 The application site falls within the setting of a Grade II Listed Building, and is also close to the Clacton Seafront Conservation Area. ECC Place Services (Heritage) have been consulted as part of this planning application, and have provided the following comments:

*"The site is located within the wider setting of the designated heritage assets named below:*

- Clacton Town Hall (List Entry No. 1267903), a Grade II Listed Building which is situated to the west of the site; and,*
- Clacton Seafront Conservation Area that includes Rosemary Road to the south of the site.*

*Currently the site is visually unintrusive and makes a neutral contribution to the setting of these heritage assets. In principle the proposed scheme of re-development for the site is supported, on the*

*basis that the setting of the heritage assets is preserved and could be enhanced if opportunities to improve the connections from the site through to the Town Hall and Conservation Area are exploited.*

*There is a proposal emerging for expansion of Clacton Seafront Conservation Area northwards to include additional buildings of potential positive contribution to its character and appearance. If that proposal is brought forward and adopted by the Tendring District Council, the boundary for the Conservation Area will be redrawn along the High Street. This would bring the Conservation Area adjacent to the southern part of the site where there is a pedestrian access through a passageway between No. 37 the High Street and Nos. 39-43 the High Street (a vacant superstore). This possibility was discussed during the pre-application stage and is recognised by Section 2.03 of the Design and Access Statement submitted for the proposal, which also considers how the proposed Mixed-Use Spaces will be viewed and linked from the High Street (see Section 7.31 for passageway perspective).*

*The stepped shopfronts of the proposed Mixed-Use Spaces create a contemporary arcade that is in-keeping with the character of the High Street, given that there is a historic arcade found between Nos 4 and 7 the High Street. It is unfortunate that the opposing view of the High Street from the passageway is not represented, as a glimpsed view of the former Post Office (a Non-Designated Heritage Asset) would be gained, nevertheless, the proposal will undoubtedly improve the appearance of the passageway in the street scene and the experience and appreciation of the former Post Office as a landmark building. Which will in turn enhance the setting of the Conservation Area.*

*Similarly, a gap between Clacton Library (potentially to be redeveloped as Clacton Hub) and No. 92 Station Road allows a glimpsed view of Clacton Town Hall to be gained, and provides pedestrian access to the site, but only the view of the new four-storey residential building from Station Road through this gap is represented in the Design and Access Statement (see Section 7.15 perspective).*

*It was recommended at pre-application stage that the height and scale of the new residential building should not detract from the prominence of Clacton Town Hall in the Station Road street scene. The Townscape and Visual Appraisal does not provide any wireframe viewpoints (either from north of Clacton Library looking south or from Station Road looking towards the site) to demonstrate that the proposal will not be a visually prominent addition to the setting of the Town Hall. In addition, there is no Heritage Statement to consider the significance of the Town Hall and Conservation Area and the impact of the development, as per paragraph 207 of the National Planning Policy Framework (NPPF).*

*The scale of the proposed buildings in views north of Clacton Library looking south towards the site and the Town Hall is not well illustrated. Viewpoint 1 of the Townscape and Visual Appraisal is taken at an angle that excludes the Town Hall from view, which is unhelpful for assessing the impact on its setting and without a wireframe the impact is unclear. It is noted that the submitted Townscape and Visual Appraisal has considered this potential for the upper stories to be visible within the Station Road (Viewpoints 1, 2a and 2b), and concluded that its adverse effects will be minor or negligible.*

*But the perspective view clearly shows that the upper two stories of the new residential building will protrude above the roofs of the intervening built form that lines the east side of Station Road (page 93 of the Design and Access Statement). From this viewpoint, it is unlikely to result in a harmful impact upon the significance of the Town Hall. However, it is suggested that a condition be used to agree a sensitive colour palette for the external materials of the new residential building, so that its appearance harmonises better with the colour palette of the Station Road street scene. Securing a respectful colour palette will ensure that the new building is unimposing upon the setting of Clacton Town Hall and does not compete with it for prominence. For avoidance of the same issues occurring at nighttime, a condition to agree a suitable external lighting scheme for the building is also suggested.*

*In its entirety the scheme of new development within the setting of the heritage assets is likely to be acceptable, however, the colour and design of the proposed car park does not appear to reflect local*

*character and distinctiveness on Carnarvon Road. Otherwise, the proposals will enhance the connections from the site to Clacton Town Hall, and the Conservation Area, and attention has been shown to the surrounding historic environment, which is used as a source of inspiration for the design of the Mixed-Use Spaces and the Residential Building. Such as in the use of external materials to distinguish the shopfronts from the residential storeys above and exaggerate the roof form, in a contemporary way that follows the hierarchy and rhythms of the built form from the adjoining streets.*

*Nevertheless, the application is lacking in information to illustrate the impact on views of the Town Hall, however, assuming that the proposed buildings are of low visibility as per the discussion within the Townscape and Visual Appraisal, it is likely that the proposal will preserve the special architectural and historic interest of the Clacton Town Hall and its setting in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.*

*With regards to the National Planning Policy Framework (NPPF), the proposal is unlikely to cause harm to the significance of any of the aforementioned heritage assets (Clacton Town Hall, Clacton Seafront Conservation Area, and the former Post Office), and the proposal should be treated favourably in line with the direction of Paragraph 219; given that it will improve the appearance and use of the pedestrian connections from the site to the heritage assets which will in turn enhance their setting. In respect of the proposal's design and potential to make a positive contribution to the local character and distinctiveness Paragraphs 210 (c) and 135 (c) will be relevant to decision-making."*

- 8.19 In summary, the site in its current form provides a neutral contribution to the setting of the aforementioned heritage assets, and the principle of re-development of the site is supported. The stepped shopfronts create a contemporary appearance in-keeping with the character of the adjacent High Street, and overall the proposal improves the appearance of the passageway in the street scene. Whilst the submission does not definitively clarify that the proposal would not be a visually prominent addition to the setting of the Town Hall, it is considered unlikely to result in a harmful impact subject to conditions relating to the colour palette of the external materials and a suitable external lighting scheme.
- 8.20 Some concerns are raised with the design and colour of the proposed car park, with it being considered not to reflect the local character and distinctiveness of Carnarvon Road, however the remainder of the works enhance connections from the site to Clacton Town Hall as well as the Conservation Area. Overall, ECC Place Services consider the proposal should be looked upon favourably. Officers acknowledge these comments, and subject to the recommended conditions do not raise any objections in this regard. It is noted that some concerns are raised relating to the car park design, however the overall proposals taken as a whole are an enhancement to the setting of the heritage assets, and therefore Officers do not consider it reasonable to raise an objection on this basis.

#### Highway Safety

- 8.21 Paragraph 114 of the National Planning Policy Framework (2024) seeks to ensure that safe and suitable access to a development site can be achieved for all users, whilst Paragraph 108 requires that streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places. Paragraph 115 adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 8.22 Adopted Policy CP1 (Sustainable Transport and Accessibility) of the Tendring District Local Plan 2013-2033 states that planning permission will only be granted if amongst other things; access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and the design and layout of the development provides safe and convenient access for people.

- 8.23 Essex Highways Authority have been consulted on the application and have confirmed that from a highway and transportation perspective the impact of the proposal is acceptable. However, they do recommend a number of conditions relating to a Construction Management Plan, visibility splays, no gates/barriers, closure of any redundant access points, the vehicle parking area, cycle parking provision, the submission of a Residential Travel Information Pack, boundary planting, no impact to the public footpath, and that no development shall commence until a temporary closure/diversion of the existing definitive right of way has been agreed. Where these are supported by the six tests of conditions they have been recommended to be included.
- 8.24 The proposed car park includes for a total of 301 public parking spaces, of which 36 will be dedicated to electric vehicle charging and 21 will be dedicated blue badge spaces. There is also proposed to be 64 cycle spaces. The current car park provides for approximately 300 spaces, and therefore there will be no loss of spaces overall.
- 8.25 Essex Parking Standards (2009) outlines that for one bedroom properties there should be a minimum of one parking space measuring 5.5m x 2.9m and for two bedroom properties there should be a minimum of two spaces at the above measurements. Given part of the application is for 28 dwellings, of which 14 will be served by one bedroom and 14 served by two bedrooms, there is a requirement to provide for a total of 42 parking spaces. The supporting submission clarifies that 42 cycle spaces are to be provided within the private garden area, and residents occupying the residential units will also be able to apply for a permit to park within the public car park. In addition, Officers acknowledge that the site is within a highly sustainable location in walking distance to a number of shops and facilities. Given this, and that all of the units are one and two bedroom, therefore unlikely to attract larger families with a greater requirement for parking provision, Officers conclude that the parking provision as outlined is acceptable.

#### Impact on Residential Amenity

- 8.26 Paragraph 135 of the National Planning Policy Framework (2024) confirms planning policies and decisions 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.
- 8.27 Policy SP7 of Section 1 of the 2013-33 Local Plan requires that the amenity of existing and future residents is protected. Section 2 Policy SPL 3 (Part C) seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.
- 8.28 The site is within a highly urbanised area, with a number of residential properties located out to all sides. There are a number of properties along the western boundary (fronting Station Road), to the south (fronting High Street) and Number 39 Carnarvon Road to the eastern section of the site.
- 8.29 The development by its very nature will result in some degree of impact to these properties, however it must also be acknowledged that the existing site is an active and busy car park that generates high levels of vehicular movements and associated noise. The re-location of the multi-storey car park away from the north-western boundary will result in an improvement to the amenities of the neighbours to the west, with the current multi-storey appearing oppressive and likely resulting in some of loss of light.
- 8.30 The most impacted property is likely to be 39 Carnarvon Road given its close proximity and relationship to the residential proposals. The submitted plans include a daylight and sunlight report that concludes that while there would be a minor impact in respect of loss of daylight to two windows at Number 39, these both serve small kitchens there are not considered to be non-habitable rooms. The units include small balcony areas that provide a degree of overlooking to the rear of Number 39, however it is noted that this area is already overlooked via the adjacent multi-storey car park that is proposed to be replaced elsewhere within the site, which in turn results in a neutral overall impact. Furthermore, it is acknowledged that previously a large structure has been in the location of the

proposed residential units for a number of years, and the site is a heavily urbanised location where such proposed development would be expected.

- 8.31 Taking the above into consideration, whilst it is likely that there will be some impacts as a result of the development, the majority is set away from neighbouring properties and in the case of the north-western corner properties, there will be an improvement to their existing amenities. With regards to Number 39 Carnarvon Road, Officers acknowledge a small degree of loss of light and note that the building itself will appear relatively oppressive, however for the reasoning detailed above the harm is not so significant that Officers consider it warrants recommending a reason for refusal.

#### Tree and Landscape Impacts

- 8.32 Adopted Policy PPL3 states that 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.
- 8.33 The Council's Tree and Landscape Officer has been consulted on the application, and has provided the following comments:

*"The application site is currently dominated by the built form and contains only small areas of soft landscaping and no functional open space or other usable area.*

*The main landscape features on the site are three mature trees: 2 Copper Beech (*Fagus sylvatica* 'purpurea') close to Carnarvon Road and a Maidenhair Tree (*Ginkgo biloba*) by the walkway from the car park to Station Road.*

*There are a few smaller trees mainly the fastigate form of the Callery Pear (*Pyrus calleryana* 'Chanticleer'.*

*The site layout proposals make provision for the retention of the large Copper Beech (T3) tree at the northern end of the site and the Maidenhair tree (T4) however the site layout and tree report identify the removal of the second and southernmost Copper Beech (T8) ostensibly because of its condition.*

*In this regard it is noted that the crown of the tree (T8) is somewhat asymmetrical with the southwestern aspect showing much weaker growth. The Arboricultural Impact Assessment submitted in support of the application categorises the tree as C2 which means that it is not considered to be a significant constraint on the development potential of the land.*

*However, as the tree is not in leaf at the present time, it is not possible to ascertain the extent of deadwood within the canopy of the tree. The tree appears to be in reasonable condition and makes a positive contribution to the character and appearance of the area.*

*Whilst the amenity value provided by the smaller trees can be relatively easily replicated and improved upon by tree planting included in the overall soft landscaping proposals the removal of the Copper Beech (T8) would have a significant adverse impact on the amenities of the locality.*

*Whilst there is no reason to question the accuracy of the AIA in respect of the condition of the Copper Beech (T8) it was not possible for the findings of the report at the time of the site visit as the tree was not in leaf.*

*Regarding the physical protection of the large, retained trees the application is supported by the above-mentioned Arboricultural Impact Assessment (AIA) containing an Arboricultural Method Statement (AMS) and a Tree Protection Plan (TPP). This information shows how retained trees will be physically protected for the duration of the construction phase of any approved development.*



*This information is in accordance with BS5837 2012 Trees in relation to design demolition and construction. Recommendations.*

*In terms of soft landscaping the scheme will lead to the provision of an area of well-designed and 'thought out' open space that will be a significant improvement on the current situation."*

- 8.34 Therefore, in summary, the proposal involves the removal of the existing Copper Beach which provides a positive contribution to the area, and its loss results in a level of harm to the amenities of the locality. However, the submitted AIA considers it not to be a significant constraint on the development potential of the land, and following discussions with the agent for the application they have confirmed the tree falls within the footprint of the proposed car park, which could not realistically be located elsewhere on the site. On balance, whilst the loss of the tree is not supported, it must be weighed in the overall planning balance against the benefits of the provision of the car park, and on this occasion the benefits of the proposal are considered to outweigh the identified harm.

### Foul Sewage

- 8.35 Paragraph 187 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. Furthermore, Paragraph 198 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.
- 8.36 Adopted Local Plan Section 2 Policy PPL5 states that all new development must make adequate provision for drainage and sewerage. Connection to the mains is the preferred option having regard to the drainage hierarchy and building regulations requirements.
- 8.37 The application form clarifies that foul sewage will be disposed of via the existing mains sewer, and therefore it fully complies with the requirements of the above local and national planning policies.

### Flood Risk and SuDS

- 8.38 Paragraph 181 of the NPPF states that, when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 182 goes on to say that, developments should incorporate sustainable drainage systems. The systems used should, amongst other things, take account of advice from the lead local flood authority and have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.
- 8.39 Adopted Local Plan Policy PPL5 requires that all new development must make adequate provision for drainage and sewage treatment and should include sustainable drainage systems (SuDS). Policy SPL3, Part B criterion g), requires that development reduces flood risk and integrates sustainable drainage within development.
- 8.40 ECC SuDS as Lead Local Flood Authority have been consulted on the application and have raised a holding objection on the basis that they do not accept a flat rate of 5l/s discharging from the site if the Greenfield 1 in 1 year rate is below 5l/s. In addition, a 45% climate change allowance should be used when calculating the storage required and within the drainage calculations.
- 8.41 At the time of writing, the applicant is preparing revised information in order to address these technical points raised by ECC SuDS, but importantly this is not a greenfield site and material consideration must be given to the location, existing infrastructure and previous use. Tending has not adopted higher rates. Due to the nature of this proposal and the existing/previous use of the site, it is considered this matter could be adequately resolved by condition as included within the recommendation, in consultation with ECC SUDS and Anglian Water.

### Functional Layout

- 8.42 Paragraph 135(f) of the NPPF states that planning decisions should ensure that developments create places that are safe with a high standard of amenity for existing and future users. Adopted Policy SPL3 (Part B)(f) seeks to ensure that provision is made for adequate private amenity space, waste storage and recycling facilities, vehicle and cycle parking.
- 8.43 The submitted plans demonstrate that there is a shared residential garden space to the rear of the site, that includes cycle parking facilities. In addition, the properties at ground floor level each have a small private amenity area, whilst all apartments on first, second and third floors are all served by a balcony area. Given this, and that the site is in a highly sustainable location in walking distance to amenity areas including the seafront, such provision is acceptable on this occasion.
- 8.44 Policy LP3(b) states new residential development must comply with the government's latest 'Technical housing standards - nationally described space standard', which for a one bedroom for two persons on a single storey requires the dwelling to be a minimum of 50 square metres, and for a two bedroom property for four persons on a single storey requires the dwelling to be a minimum of 70 square metres. The plans submitted show that the one bedroom units range between 50.2sqm and 62.6sqm, and the two bedroom units range between 70.1sqm and 85sqm. Therefore, the standards above are adhered to and no objections are raised in this regard.

### Bin Storage and Waste Collection

- 8.45 Policy SPL3 Part states that all new development must meet practical requirements, including provision for adequate waste storage and recycling facilities. The supporting information states that refuse will be provided in accordance with best practice and the Essex Design Guide.
- 8.46 On this occasion, the submitted plans show that a refuse area is located at ground floor level to the rear of the residential courtyard. The Council's Waste Management team have confirmed this area is of a sufficient size to accommodate the equivalent wheeled bin capacity of 5,040 litre fortnightly residual waste collection, 640 litre weekly food waste collection and 8,240 litre dry mixed recycling collection. Officers therefore raise no objections in this regard.

### Impact on Protected Species

- 8.47 Paragraph 187 of the Framework states planning decisions should contribute to and enhance the natural and local environment, by minimising impacts and providing net gains for biodiversity. Paragraph 193(a) of the NPPF confirms that in assessing planning applications where significant harm to biodiversity as a result of a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.
- 8.48 Adopted Policy SP7 requires that all new development should incorporate biodiversity creation and enhancement measures. Adopted Policy SPL3 Part A(d) includes that the design and layout of development should maintain or enhance ecological value.
- 8.49 ECC Place Services (Ecology) have been consulted on the application, and have confirmed there is sufficient ecological information available to support determination this application. They raise no objections to the proposal, subject to conditions relating to securing the mitigation measures and the submission of a Biodiversity Enhancement Strategy.

### Habitats, Protected Species and Biodiversity Enhancement

- 8.50 This report addresses the distinct legal requirements, ensuring a comprehensive analysis of the ecology and biodiversity impacts of the proposal in line with regulatory standards.

### General duty on all authorities

- 8.51 The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: “For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.” Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.
- 8.52 The application is supported by a Preliminary Ecological Appraisal (PEA), that concludes there will be a neutral impact to bats, mammal species and birds. ECC Place Services (Ecology) have been consulted on the application, and have confirmed there is sufficient ecological information available to support determination this application. They raise no objections to the proposal, subject to conditions relating to secure the mitigation measures outlined within the PEA and the submission of a Biodiversity Enhancement Strategy.

#### Biodiversity net gain

- 8.53 Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. The minimum requirement is for a 10% net gain in biodiversity value achieved on a range of development proposals. The statutory framework for BNG applies. This involves the imposition (automatically applied as a deemed condition) of a planning condition on approvals to ensure the objective of at least 10% net gain over 30 years. The determination of the Biodiversity Gain Plan (BGP) under this planning condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the BGP, via planning condition discharge, is approved.
- 8.54 Given this position, the government strictly provides it would generally be inappropriate for decision makers to refuse an application on the grounds that the biodiversity gain objective will not be met. It is considered logical to confirm this closer to commencement of development, given the potential number of options available. This further supports the position that the biodiversity gain objective can always be met in some form. Sufficient information has been provided at this stage in relation to BNG and the full requirements are recommended to be secured by condition and legal agreement.

#### Protected Designated Habitats

- 8.55 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.
- 8.56 The application scheme proposes a residential on a site that lies within the Zone of Influence (Zoi) but is approximately 6.1 kilometres from the Colne Estuary SPA, SAC and RAMSAR. New housing development within the Zoi would be likely to increase the number of recreational visitors to these sites 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.
- 8.57 A planning condition is recommended to secure this via a future 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.

#### Biodiversity Conclusion

- 8.58 In accordance with the overarching duty outlined above, this development is committed to actively contributing to the conservation and enhancement of biodiversity as set out above and within the planning conditions. The development aligns with the statutory framework for biodiversity net gain, striving to achieve a 10% net gain in biodiversity value over 30 years. In conclusion, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

#### Public Open Space and Play Facilities

- 8.59 Policy HP5 of the adopted Local Plan requires major new residential development to provide a minimum 10% of the gross site area as open space. If new development would be better served by existing or proposed open spaces within an accessible distance (having regard to the standards set out in the Open Spaces Strategy or any future update), a financial contribution in lieu of on-site provision may be sought through a s106 legal agreement or an appropriate alternative mechanism towards any necessary improvement or expansion of existing, or the delivery of new, open spaces and/or sports facilities.
- 8.60 The Council's Open Space team have confirmed that there is a deficit of 2.22 hectares of equipped play in Clacton-on-Sea, and adequate formal open space to cope with some future development. However, they have clarified that as on site open space is being provided within the scheme, no off-site contribution is requested.

#### Renewable Energy

- 8.61 Paragraph 117 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.
- 8.62 Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.
- 8.63 The proposal includes for a development that has the potential to incorporate renewable energy features, and accordingly is supported by an Energy Statement which outlines a series of energy efficiency and low/zero carbon measures are to be adopted, including ULEV charging points for electric cars, air source heat pumps, solar panels, and highly efficient systems for lighting. Given this, it is not reasonable or necessary to include a condition requiring the submission of renewable energy details.

### **9. Planning Balance and Conclusion**

- 9.1 This application seeks the demolition of the existing multi-story car park and all other structures, to be replaced by a new multi-story car park providing 301 spaces, the erection of 28 affordable residential units and the erection of 1,330sqm of flexible commercial floorspace. Given that the site falls within the Settlement Development Boundary for Clacton-on-Sea, and is also an area prioritised for regeneration, the principle of development is acceptable. The proposed commercial uses may not necessarily be main town centre uses, but will still be a boost to the commercial offering in the surrounding area.
- 9.2 Officers consider that the design, scale and layout is an acceptable response to the character and appearance of the area, and whilst there will be a degree of harm to the amenities of Number 39 Carnarvon Road, on balance this is not considered so significant that it warrants recommending a reason for refusal. The residential units all meet the technical housing space standards and provide

for enough private amenity space, and Essex Highways Authority have raised no objections subject to conditions. The parking provision is also considered to be of an acceptable level.

- 9.3 The proposal would result in the loss of a Copper Beach tree, however whilst unfortunate it would not be feasible to retain it without significant revisions to the wider scheme. Furthermore, the proposal includes a significant increase of soft landscaping, and therefore on balance the wider benefits of the scheme are considered to outweigh the harm of the loss of this tree.
- 9.4 Taking all of the above into consideration, Officers conclude that whilst there are some minor harms as a result of the development, they are significantly outweighed by the benefits the scheme would generate.

## **10. Recommendation**

- 10.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section 106 legal agreement with the agreed Heads of Terms, for affordable housing and BNG.

### **10.2 Conditions and Reasons**

- 1 CONDITION: The works to which this consent relate must be begun not later than the expiration of three years beginning with the date of this consent.

REASON: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

Drawing Numbers 9613-CPL-ZZ-ZZ-DR-A-08000 Revision P4, 9613-CPL-ZZ-ZZ-DR-A-08200 Revision P10, 9613-CPL-01-01-DR-A-08201 Revision P9, 9613-CPL-01-02-DR-A-08202 Revision P8, 9613-CPL-01-03-DR-A-08203 Revision P8, 9613-CPL-01-RF-DR-A-08204 Revision P8, 9613-CPL-01-ZZ-DR-A-08301 Revision P7, 9613-CPL-01-ZZ-DR-A-08400 Revision P7, 9613-CPL-01-ZZ-DR-A-08401 Revision P7, 9613-CPL-01-ZZ-DR-A-08600 Revision P5, 9613-CPL-01-ZZ-DR-A-08601 Revision P5, 9613-CPL-01-ZZ-DR-A-08602 Revision P5, 9613-CPL-01-ZZ-DR-A-08603 Revision P5, 9613-CPL-02-04-DR-A-08210 Revision P9, 9613-CPL-02-01-DR-A-08211 Revision P8, 9613-CPL-02-02-DR-A-08212 Revision P8, 9613-CPL-02-03-DR-A-08213 Revision P8, 9613-CPL-02-04-DR-A-08214 Revision P8, 9613-CPL-02-ZZ-DR-A-08311 Revision P6, 9613-CPL-02-ZZ-DR-A-08411 Revision P6, 9613-CPL-02-ZZ-DR-A-08412 Revision P6, 9613-CPL-03-05-DR-A-08225 Revision P6, 9613-CPL-03-ZZ-DR-A-08321 Revision P6, 9613-CPL-03-ZZ-DR-A-08322 Revision P6, 9613-CPL-03-ZZ-DR-A-08323 Revision P6, 9613-CPL-ZZ-ZZ-DR-A-08150 Revision P6, 9613-CPL-ZZ-ZZ-DR-A-08151 Revision P5, 9613-CPL-ZZ-ZZ-DR-A-08152 Revision P2, 2487-WWA-ZZ-ZZ-D-L-0101 Rev P05, 2487-WWA-ZZ-ZZ-D-L-0103 Rev P02, 2487-WWA-ZZ-ZZ-D-L-0104 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0105 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0106 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0107 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0301 Rev P05, 2487-WWA-ZZ-ZZ-D-L-0302 Rev P04, 2487-WWA-ZZ-ZZ-D-L-0704 Rev P01 and the documents titled 'Planning Statement', 'Tree Survey, Arboricultural Impact Assessment and Outline Method Statement', 'Interim Travel Plan', 'Transport Statement', 'Townscape and Visual Appraisal', 'Superfast Broadband Statement',

'Preliminary Ecological Appraisal', 'Energy Strategy Report', 'Design and Access Statement', 'Contaminated Land Risk Assessment', 'Sitewide Existing Demolition Plan'.

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

- 3 CONDITION: No development of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) shall take place until;
- (i) A strategy for investigating any contamination present on site has been submitted for approval, in writing, by the Local Planning Authority. Development on site, including demolition, may be carried out in order to fully investigate contamination prior to the submission of said strategy subject to agreement, in writing, by the Local Planning Authority and all other pre commencement conditions being agreed by the Local Planning Authority first.
  - (ii) Following approval of the strategy, an investigation shall be carried out in accordance with the strategy and timescales as may be agreed.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off site receptors. This condition is required to be agreed prior to the commencement of any development to ensure health and safety is secured early for both development and its construction including the health of all workers during all phases of construction. If agreement was sought at any later stage there is an unacceptable risk to health.

- 4 CONDITION: Prior to any works within each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) above slab level, a Noise Impact Assessment shall be submitted to, and agree in writing by, the Local Planning Authority. The details contained within this assessment shall thereafter be adhered to.

REASON: In the interest of the amenity of neighbouring residents.

- 5 CONDITION: Before any machinery/plant is first used on the development as hereby approved as part of this permission, it shall be enclosed with sound insulating material and mounted in a way which will minimise transmission of structure borne sound in accordance with a scheme to be approved, in writing, by the Local Planning Authority. The scheme shall thereafter been maintained as may be approved.

REASON: In the interest of the amenity of neighbouring residents having regard to the background noise levels in the area.

- 6 CONDITION: Prior to the commencement of development details of a construction methodology and timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall incorporate the following information:-
- a) Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
  - b) Details of the loading/unloading/storage of construction materials on site, including details of their siting and maximum storage height.
  - c) Details of how construction and worker traffic and parking shall be managed. This shall include the intended routing of HGV traffic on the surrounding road network, programme of restoration works to soft highway verges, and any directional signs to be installed and where.
  - d) Details of any protection measures for footpaths and trees surrounding the site.
  - e) Details of all access points to be used to access the site during construction only and any staging of provision.
  - f) Details of the scheduled timing/phasing of development for the overall construction period.

- g) Details of measures to control the emission of dust and dirt during construction and including details of any wheel washing to be undertaken, management and location it is intended to take place.
- h) Details of the siting of any on site compounds and portalooos.
- i) Details of the method of any demolition to take place, including the recycling and disposal of said materials resulting from demolition.
- j) Site waste management plan (that shall include reuse and recycling of materials)
- k) Scheme for sustainable construction management to ensure effective water and energy use.
- l) Scheme of review of complaints from neighbours.
- m) Registration and details of a Considerate Constructors Scheme to be joined prior to the commencement of development, and confirmation of registration to be provided in writing to the LPA before the start of works, or similar scheme for which full details shall be provided and complied with
- n) Details on the provision, location and management of any show home/s or reception, including opening times, parking and advertisements (including flags and directional signs).

The said methodology as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

REASON: To minimise detriment to nearby residential and general amenity by controlling the construction process to achieve the approved development. This condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, by reason of the location and scale of development may result in adverse harm on amenity.

- 7 **CONDITION:** All changes in ground levels, soft/hard landscaping shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the development, or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

- 8 **CONDITION:** Prior to the first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the hereby approved development, all mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Place Services, October 2024).

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations.

- 9 **CONDITION:** Prior to first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the hereby approved development, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;

- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

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

REASON: To enhance protected and Priority species and habitats.

- 10 CONDITION: No development/works shall be commenced above slab level of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development and fully applied prior to the first use/occupation.

REASON: To secure an orderly and well designed finish sympathetic to the character of the existing building(s) and in the interests of visual amenity and the character and appearance of the area.

- 11 CONDITION: Prior to the erection/installation of any means of external lighting at the site, details to include position, height, aiming points, lighting levels and a polar luminance diagram shall be submitted to and approved, in writing, by the Local Planning Authority. The lighting shall be carried out and retained as may be approved. There shall be no other means of external lighting installed and/or operated on/at the site except that approved.

REASON: In the interests of amenity to reduce the impact of night time illumination on the character of the area and in the interests of biodiversity.

- 12 CONDITION: Full details of surface water drainage shall have been submitted to and approved, in writing, by the Local Planning Authority prior to the beginning of any works to the building/s it would serve are commenced. No part of the development shall be brought into use until the agreed method of surface water drainage has been fully installed and is functionally available for use. The surface water drainage scheme shall thereafter be maintained as approved.

REASON: To safeguard the ground water environment and minimise the risk of flooding.

- 13 CONDITION: Prior to first use of the access of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152), visibility splays shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway, and shall then be retained in its approved form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

REASON: To ensure vehicles exiting the access would have sufficient visibility to enter the public highway safely and vehicles on the public highway would have sufficient warning of a vehicle emerging in order to take avoiding action.

- 14 CONDITION: Prior to first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the development, a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the hereby permitted vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.



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

- 15 CONDITION: Prior to first use of the new access details of the stopping up of all other means of vehicular access within the frontage as shown on the approved drawings shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highways Authority. The stopping up as approved shall be implemented in full prior to first use of the new access.

REASON: To ensure that an increase in accesses available does not increase in highway safety risk.

- 16 CONDITION: Prior to first occupation of each phase (as shown on the Sequencing Plan, drawing number 9613-CPL-ZZ-ZZ-DR-A-08152) of the hereby approved development, the vehicle parking area indicated on the approved plans shall be hard surfaced and sealed. 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 in writing 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.

- 17 CONDITION: Prior to first occupation of each dwelling, a Residential Travel Information Pack (travel pack) shall be provided to each dwelling for use of its first occupiers. The travel pack shall be agreed, in writing, by the Local planning authority prior to provision and shall include a minimum of six one day travel vouchers for use with a local transport operator.

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

- 18 CONDITION: The development may not be begun unless (a) a biodiversity gain plan has been submitted to the planning authority (see note), and (b) the planning authority has approved the plan (see note).

REASON: In order to accord with Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) and amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024.

- 19 CONDITION: The hereby approved development shall not be first commenced until detailed proposals addressing the mitigation of the development's impact on protected Essex Habitats Sites have been submitted to and received written approval from the Local Planning Authority. Such proposals must provide and secure mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) or demonstrate mitigation measures of an equivalent effectiveness to the satisfactory of the Local Planning Authority. For any on site mitigation proposals approved, it shall be carried out in full prior to first occupation, and thereafter shall be maintained as approved.

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations. Failure to achieve satisfactory mitigation would result in harm by new residents due to the development's impact on protected sites meaning the development must mitigate the burden of development regardless of scale of impact.

### 10.3 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.

#### Biodiversity Enhancements Informative

In accordance with the Council's general duty to conserve and enhance biodiversity, you are strongly encouraged to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Suggested enhancements could include:

<https://www.rhs.org.uk/wildlife/in-the-garden/encourage-wildlife-to-your-garden>

#### Highways Informatives:

- i) 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 must be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)
- ii) The areas directly adjacent to the carriageway(s) in which trees are to be planted should not be less than 3 metres wide, exclusive of the footway and the trunks of the trees should be no nearer than 2 metres to the channel line of the road. The same dimensions should be used in situations where the footway is located adjacent to the carriageway. In paved areas, whether or not the planted areas are to be adopted highway, trees should be sited no closer than 2 metres to the defined (or undefined) edge of the carriageway. Where the adopted highway is to be an independent path, trees should be planted no closer than 1 metre from the edge of the highway. In all cases, trees should be provided with root barriers to prevent damage to underground services.
- iii) No permanent part of a development shall overhang the public highway.
- iv) In main urban areas with frequent and extensive public transport, cycling and walking links, the EPOA Parking Standards recommend that a reduced parking standard provision may be applied to residential developments. A reduced parking standard provision level can be applied to this proposal as it is located very close to regular public transport services and public car parking facilities.
- v) 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.
- vi) Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the Essex Climate Action Commission proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the Essex Developers' Group Climate Charter [2022] and to view the advice contained in the Essex Design Guide. Climate Action Advice guides for residents, businesses and schools are also available.

## **11. Additional Considerations**

### Equality Impact Assessment

- 11.1 In making this recommendation/decision regard must be had to the public sector equality duty (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 that in summary include 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\* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.
- 11.2 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 11.3 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

### Human Rights

- 11.4 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.
- 11.5 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).

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

#### Finance Implications

- 11.7 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.
- 11.8 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.

### **12. Declaration of Interest**

Please refer to the minutes of this meeting, which are typically available on the councils website which will be published in due course following conclusion of this meeting.

### **13. Background Papers**

- 13.1 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

8<sup>th</sup> July 2025

### REPORT OF THE CORPORATE DIRECTOR – PLANNING AND COMMUNITY

#### **A.4 REVISED PLANNING SERVICE ENFORCEMENT POLICY AND THE ASSOCIATED HARM ASSESSMENT**

##### **PART 1 – KEY INFORMATION**

###### **PURPOSE OF THE REPORT**

To seek the Planning Committee's approval to adopt the revised Planning Service Enforcement Policy and the associated Harm Assessment.

###### **EXECUTIVE SUMMARY**

The National Planning Policy Framework (NPPF) 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.

The purpose of the 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.

The attached Planning Service Enforcement Policy document has been updated from the version last adopted with the approval of the Planning Committee in September 2022 to address areas requiring updating and taking the opportunity to make improvements.

Some notable areas of the new Enforcement Policy where changes from the 2022 version are proposed include:

##### **1. Integration with Building Control Enforcement**

The current 2022 policy only covered planning enforcement and did not include any reference to how the Council might deal with breaches of building control regulations, which can have significant safety and compliance implications.

The revised document takes the opportunity to incorporate Building Control Enforcement, ensuring that non-compliance with building regulations (which can be a criminal offence) is addressed alongside planning breaches. Building Control is now required to have an Enforcement Policy under Building Safety Regulator requirements introduced recently, and if not included in this document, must form a separate policy for the Council or represents a risk to the council and potential penalties. This update to the Planning Enforcement Policy will address that requirement for Tendring District Council.

##### **2. Prioritisation and Response Times**

The 2022 policy referred to four priority levels (Priority 1 to 4) for the consideration of enforcement complaints, which in practice have proven to be unnecessary and, for some cases, ineffective. The current policy required urgent breaches to be investigated within 2 working days, while the least urgent could take up to 15 days. However, in practice Officers have been able to carry out most visits quicker than 15 days.

The revised policy simplifies priorities into a single standard response time (5 working days) but allows for immediate action in urgent cases (e.g., demolitions, protected trees). A traffic light system approach (Red, Amber, Green) is now proposed to help determine urgency.

### **3. Improved Transparency & Public Accountability**

The Council has, in recent years, improved public accessibility to information on enforcement cases and their progress. In the past, information was not always readily available online, and complainants had to wait for 21-day updates with limited details.

The new policy reflects current practice which ensures that all live enforcement cases (except confidential ones) are published online. Updates are more structured, with specific reporting stages as detailed in the policy.

### **4. Clearer Enforcement Decision-Making Framework**

The current 2022 version of the Planning Enforcement Policy, whilst setting out the Council's approach to enforcement matters, was not presented as a set of clear policies on different subjects relating to enforcement. To improve the clarity and usability of the document, including a clearer definition of what constitutes "harm" the structure of the new revised policy sets out specifically defined policies that will help ensure that enforcement decisions are consistent, justified, and based on clear public interest and proportionate action. In addition, the policy background has been updated and added to reflect all current considerations and changes in legislation, policy and approach.

### **5. Clearer commentary around Legal Position & Unclear Consequences**

The proposed revised policy seeks to improve the commentary around the distinction between unlawful and criminal offences as well as specifying clear consequences for breaches. The current 2022 version of the policy covers these matters in general terms, but the update has offered the opportunity to strengthen and offer more clarity.

The revised policy therefore explicitly states which breaches are criminal (e.g., demolishing a listed building), the legal consequences for non-compliance with notices (e.g., fines, prosecutions, injunctions) and specific procedures for withdrawing enforcement notices.

### **6. Improvements to Compliance Monitoring & Follow-Up**

To strengthen arrangements around monitoring compliance with planning obligations and planning conditions, the revised policy includes a structured case review process, including six-monthly updates on all cases and regular updates to Planning Committee.

### **7. Biodiversity & Environmental Protections**

The revised policy has been updated and strengthened to refer to environmental legislation including the introduction of new requirements (e.g., biodiversity protection). The Natural Environment and Rural Communities Act 2006 (as amended 2021), Environment Act and Levelling-up & Regeneration Act 2023, for example, are now have to be factored into enforcement decisions. The Council must ensure that enforcement actions conserve and enhance biodiversity.

## **8. Withdrawing Enforcement Notices**

The revised policy has been improved to include explanation of when and why an enforcement notice might be withdrawn. It sets out the need for formal justification for withdrawing notices..

## **9. Case Investigation & Evidence Collection**

The revisions to the policy seek to strengthen consistency in the approach taken to site investigations. It sets out clear guidance on when and when not Officers could record evidence such as photographs, drone footage and body cam footage. The ability to use such evidence, when appropriate, will help to improve the effectiveness of enforcement investigations.

### **RECOMMENDATION(S)**

**It is recommended that the Planning Committee agrees to the adoption of the revised version of the Planning Service Enforcement Policy 2025 attached at Appendix A along with the associated Harm Assessment 2025 at Appendix B along with the LABC Enforcement policy at Appendix C.**

### **REASON(S) FOR THE RECOMMENDATION(S)**

To ensure the Council's policy on planning enforcement is kept up to date, reflects the new requirements around Building Control enforcement and is as effective as possible having regard to legislation, guidance and the practical operation of the Council's enforcement function.

### **ALTERNATIVE OPTIONS CONSIDERED**

Alternatives include no action to update the current policy that represents a risk as outlined above – including not meeting the regulator's expectations around Building Control; There may be alternative wording or approaches to be considered within the document, but the current proposal is the result of expert opinion, consultation across Council services and legal advice. The proposal is the best approach currently for consideration and adoption representing a positive and necessary evolution of the Council's current policy.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **USE OF RESOURCES AND VALUE FOR MONEY**

No likely change to resources within the service as a result of this revision. The revised policies in many respects reflect existing practice.

#### **MILESTONES AND DELIVERY**

The policy would replace the existing 2022 version immediately.

#### **ASSOCIATED RISKS AND MITIGATION**

The risks of not updating the Planning Service Enforcement policy, as proposed, are that the Council proceeds with a policy that is out of date, not as clear and effective as it would be with the amendments and that does not reflect latest legislator requirements and expectations, particularly in respect of Building Control. On review the proposed policy sets out best practice and considerations in part currently engaged without any known risk in themselves. The changes are not considered to require more resource than available.

#### **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The Portfolio Holder responsible for Planning and Housing was consulted during the review process. The council officer enforcement group had no comment to make on the document. The Council's legal team reviewed and provided advice that has been incorporated into the policy as appropriate. .

#### **EQUALITIES**

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. Part of the document review was needed to include awareness of equalities as a policy consideration of enforcement decision.

#### **IMPLICATIONS RELATED TO DEVOLUTION AND/OR LOCAL GOVERNMENT REORGANISATION**

The document is designed for Tendring at this current time. Colchester City Council has an enforcement document (adopted 2022), this sets standards that are longer in response times than Tendring. Braintree also as an Enforcement document (adopted 2020) that also set standards that are longer in response times than Tendring. All authorities (including any other authority that may form part of any future arrangement) would need to review to align documents in the future.

#### **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050**

No part of this policy would create a barrier or delay any work of the Council to reach Net Zero.

#### **OTHER RELEVANT IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**



<b>Crime and Disorder</b>	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.
<b>Health Inequalities</b>	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.
<b>Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)</b>	N/a
<b>Area or Ward affected</b>	All.
<b>ANY OTHER RELEVANT INFORMATION</b>	
N/a	

### **PART 3 – SUPPORTING INFORMATION**

<b>BACKGROUND</b>
<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>

investigation is set down within the proposed policy along with a Harm Assessment 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.

The notable amendments and improvements to the revised version of the policy are highlighted in the executive summary above, including the need to cover Building Control enforcement within an adopted enforcement policy.

#### **PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.**

Adoption of the current Planning Enforcement Policy was agreed by the Planning Committee at its meeting on 1 September 2022.

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None.

#### **APPENDICES**

Appendix A – Planning Service Enforcement Policy  
Appendix B – Harm Assessment  
Appendix C – LABC Enforcement Policy

#### **REPORT CONTACT OFFICER(S)**

<b>Name</b>	<b>John Pateman-Gee</b>
<b>Job Title</b>	<b>Head of Planning and Building Control</b>

# **TENDRING DISTRICT COUNCIL - PLANNING SERVICE ENFORCEMENT POLICY**

**V.8: June 2025**

## VERSION HISTORY

Version	Date	Details
V.1	2010	Created
V.2	01.09.2022	Revised & Updated
V.3	11/10/2024	Reviewed and amended JPG
V.4	10/01/2025	Updated JPG
V.5	15/1/25	Updated JPG
V.6	March 2025	Post stakeholder review
V.7	1/04/2025	Post GG review
V.8	12/06/2025	Updated post Legal feedback

## **Introduction**

Tendring District Council's Local Enforcement Policy outlines the purpose and delivery of the Planning Enforcement service within the district. As a Local Planning Authority, the Council is responsible for investigating and enforcing breaches of planning control when it is in the public interest. This helps protect the quality of life for residents and the district's built and natural environment.

While this policy is focused on planning enforcement, the Council is also responsible for the enforcement of building regulations under separate legislation as the Building Control Authority for the district. Parts of this policy, including the customer expectations section will also therefore apply equally to building control procedures as indicated.

### **Key Points Regarding This Policy Document:**

- **Discretionary Enforcement:** The decision to take enforcement action is discretionary, guided by this Policy which details the principles and procedures for handling alleged breaches.
- **Reporting and Prioritisation:** The document shall outline key enforcement policies and also provide for the centralisation of information relevant to enforcement investigations.
- **Investigation and Action:** It outlines the investigation process and the various enforcement actions available, including formal actions like enforcement notices, prosecutions, or injunctions.
- **Positive Approach:** The Council aims to promote fairness and protection from harm by encouraging compliance and responding proportionately to breaches.
- **Public Awareness:** The Policy ensures that the public, Councillors, and officers understand the Council's approach to planning and building control enforcement as covered by this document, providing greater certainty for all involved.
- **Review and Compliance:** The Policy will be reviewed every four years, or sooner, to remain compliant with national and local planning policies and to reflect good practice.

**Accordingly, this document is set out in three main sections:-**

**Section 1 – The Adopted Policy for Planning and Building Control Enforcement.**

**Section 2 – Performance Indicators and Customer Expectations**

**Section 3 – Further information on available Enforcement Types / Actions**

**Appendix 1 – Planning Enforcement Harm Assessment (Subject to amendment)**

**Appendix 2 – LABC QMS Enforcement Policy**

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## Adopted Policy

This policy was adopted by Tendring District Council on **BLANK** as working practice and replaces the Council's Planning Enforcement Policy dated 2022.

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# **Section 1 – The Adopted Policy for Planning Enforcement and Building Control**



## 1. THE PURPOSE OF PLANNING AND BUILDING CONTROL ENFORCEMENT

### Planning Enforcement

Most forms of development require planning permission under the Town and Country Planning Act 1990 (as amended). This includes:

- Many types of building works
- Material changes in the use of land or buildings
- Certain engineering operations
- Mining and other similar activities

Planning permission can be granted in two main ways:

**By the Council** (as the Local Planning Authority) through a planning application

**Through national legislation**, where permission is automatically granted. This is called permitted development, set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Permitted development rights often cover minor changes, such as house extensions, garages, outbuildings, and fences. However, these rights can be:

- Restricted by conditions on a previous planning permission.
- Removed by an Article 4 Direction, which requires that planning permission is obtained even for works that would normally be permitted. These directions are used to protect the character or wellbeing of specific areas.

Before carrying out any work, it is important to check whether an Article 4 Direction applies or whether permitted development rights have been limited by condition.

A **breach of planning control** occurs when development is carried out

- Without planning permission
- In a way that breaches the conditions or limitations of a granted permission, including those attached to permitted development rights

The Council's Planning Enforcement Team investigates and takes action where breaches occur. We are also responsible for enforcing special planning controls, including unauthorised works to listed buildings (under the Planning (Listed Buildings and Conservation Areas) Act 1990), unlawful works to protected trees (under the Town and Country Planning Act 1990, Breaches of the Hedgerows Regulations 1997 and Unlawful advertisements.

Enforcement action is taken to address harm to public amenity or other significant impacts. We do not act in private disputes or where no breach of control has occurred. Any enforcement action taken must be, a) In the public interest and b) Proportionate to the harm caused

Where possible, the Council aims to resolve breaches informally through advice and negotiation. If this is unsuccessful, we may use formal enforcement powers, such as, serving enforcement notices, requiring certain steps to be taken or works to stop and/or taking legal action through the courts, including prosecution or injunctions

## **Building Control Enforcement**

The building control system is governed by the Building Act 1984, as amended and by the Building Safety Act 2022, and related regulations. The main regulations referred to in this policy are the Building Regulations 2010 (as amended).

These regulations apply to most types of building work in England, including:

- Constructing or extending a building
- Installing or altering controlled services or fittings (e.g. drainage, electrics, heating)
- Materially altering a building or system
- Changes in how a building is used
- Adding cavity wall insulation
- Underpinning a structure
- Carrying out work to improve energy efficiency

The regulations apply to all types of buildings, domestic, commercial, and industrial, unless exempt. They set minimum standards to protect the health and safety of people in and around buildings. **Failure to comply with the building regulations is a criminal offence and may lead to prosecution.** Those involved in the work, such as the client, designer, or contractor, are legally responsible under Part 2A of the 2010 Regulations to ensure the work complies.

In serious cases, failure to comply may result in unlimited fines, imprisonment and formal enforcement actions such as:

- Enforcement notices
- Compliance notices
- Stop notices
- Injunctions

As the local building control authority, the Council has a statutory duty to enforce these regulations. However, we aim to work cooperatively to achieve compliance wherever possible. Formal enforcement powers will only be used where necessary and always in a fair, proportionate, and public interest-driven manner.

## 2. POLICY AND GUIDANCE (PLANNING ENFORCEMENT AND BUILDING CONTROL)

### Planning Enforcement

Local Planning Authorities have discretion over whether or not to take enforcement action; and they need to consider whether action is lawful, appropriate and proportionate having regard to the Development Plan and any other material considerations, including the approach set out in the adopted Local Enforcement Policy (see policy section) and the National Planning Policy Framework. Some parts of the NPPF and other policy considerations are highlighted below, but there are others, for example the Code for Crown Prosecutors should prosecution be pursued. The Government has issued policy guidance on the adoption of Policies and the enforcement of breaches of planning control, to which the Council will often refer when considering the approach to dealing with enforcement cases.

#### **National Planning Policy Framework December 2024 (NPPF)**

This provides for enforcement under Para 60. *“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They 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 appropriate.”*

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

This provides some key guidance quoted below, but is subject to change and updating:-

*“Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan. In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework...”*

*“The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, 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.”*

*“Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.”*

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- 1) there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- 2) development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- 3) in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

In preparing and adopting this Policy, the Council has had regard to the Government's recommendations in the NPPF and the National Planning Practice Guidance on effective enforcement of planning breaches.

### **Local Plan Policy**

The Council's adopted 'Development Plan' is fundamental in guiding decisions relating to breaches of planning control. The current Development Plan is made up of the Tendring District Local Plan 2013-2033 and Beyond for which Section 1 was adopted on 26th January 2021 and Section 2 was adopted on 25<sup>th</sup> January 2022.

The policies and proposals in the Local Plan provide the statutory framework for planning decisions in Tendring District until 2033 (subject to future review) and relate to a wide range of topics including housing, employment, transport, education, heritage and landscape.

### **General duty for listed buildings and conservation areas in exercise of planning functions.**

When exercising planning enforcement decisions affecting listed buildings and conservation areas there are duties that the Council as Local Planning Authority must adhere to.

Under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 it provides that a Local Planning Authority in considering whether to grant planning permission affecting a listed building or its setting, is required to have 'special regard' to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Further, under section 72(1) of that Act, in exercising planning functions affecting any buildings or other land in a conservation area, the Local Planning Authority is required to pay 'special attention' to the desirability of preserving or enhancing the character or appearance of that area.

The district of Tendring has many listed buildings and conservation areas. These duties will need to be applied when considering whether enforcement action is necessary for unauthorised works to a listed building or its setting, the demolition of an unlisted building in a conservation area, or other development within a conservation area.

## **Duty to protect, conserve and restore European sites (habitats and species)**

The Council as a competent authority, is under a duty to help protect, conserve and restore European sites. The duty applies to amongst other things, taking decisions, including enforcement that might affect a European Site. European Sites are Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), including their inshore waters within 12 nautical miles of the coast. European sites on land will also be sites of special scientific interest (SSSI). When the site, or any part of it, is a SSSI the Council will also have other duties for the site.

If a plan or project (which includes development to be acceptable via enforcement action or lack thereof) might impact on the features of a European site there is a duty under regulation 63 of the Conservation of Species and Habitats Regulations 2017 to carry out a habitats regulations assessment (HRA). The competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site, unless there are imperative reasons of overriding public interest which must be demonstrated (regulation 64).

Again, in determining whether enforcement action is appropriate, this duty will be applied where applicable. There are three European sites in the district of Tendring, Hamford Water, the Colne Estuary and Stour Estuary.

## **Building Control**

### **Section 58Z8 of the Building Act 1984, as amended (the “Act”) and the Building Safety Regulator**

Sections 58Z – 58Z10 of the Building Act 1984 set out the provisions that apply to building control functions delivered by local authorities and registered building control approvers and allows for the publication of, and amendment to Operational Standards Rules (OSRS) <https://www.gov.uk/government/publications/building-control-bodies-professional-codes-and-standards/operational-standards-rules> . The OSRs set particular standards to be met and practices, procedures or methods to be adopted in exercising building control functions. These include the requirement to apply a risk-based approach to the use of regulatory intervention and/or enforcement tools and need for an enforcement policy.

## **Both Planning and Building Control Enforcement**

### **Human Rights**

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. When 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.

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

In making decisions in relation to planning and building control enforcement matters, the Council will 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.

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.

## **General duty on all authorities with regards to biodiversity**

The Natural Environment and Rural Communities Act 2006 as amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity. Section 40 A1 states “For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England”

This duty to conserve and enhance biodiversity applies to local planning authorities and a range of other public authorities. Section 40 requires authorities to consider what actions they can take to further the general biodiversity objective and, after consideration, determine policies and specific objectives to achieve this goal. The actions can include conserving, restoring, or enhancing populations of particular species and habitats. While the Section duty does not explicitly state that planning/building control decisions and/or enforcement action must contribute to biodiversity conservation, it is essential to consider the broader context of planning/building and enforcement functions within the authority.

Typically, the local planning authority plays a crucial role in land use decisions, and decisions related to development that the Council’s Planning and Building Enforcement Teams may need to investigate that could have significant implications for biodiversity interests. In making decisions in relation to planning and building control enforcement, the Council must consider whether the development in question would conserve and enhance biodiversity and have regard to any guidance issued.

## **General duty on public bodies as regards Areas of Outstanding Natural Beauty (National Landscapes)**

Under Section 85(A1) of the Countryside and Rights of Way Act 2000 as amended by the Levelling-up and Regeneration Act 2023, there is a general duty on public bodies to now ‘seek to further’ the statutory purposes of areas of outstanding beauty (AONBs now



rebranded as National Landscapes but the name change is non-statutory). This replaces the previous duty on relevant authorities to 'have regard to' their statutory purposes.

Section 85(A1) provides *"In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."*

There are two AONBs in the district of Tendring, The Dedham Vale and Suffolk Coast and Heaths.

### 3. THE PLANNING AND BUILDING ENFORCEMENT POLICIES

#### Policy ENF01 – Planning Enforcement Standards

All planning enforcement matters shall be considered and processed by the Council in line with the following standards:-

- Clear Communication: Information and advice about planning breaches will be communicated in plain language, detailing required actions and the rationale behind decisions. All parties involved will be informed about who is managing the investigation, the Council's contact details regarding the matter, and the potential actions that may be taken. Each case will be assigned a reference number for tracking, and Officers will make efforts to contact property owners if available prior to any formal action.
- Compliance Timelines: Reasonable timescales for compliance for all informal and formal actions will be established, along with clear consequences for non-compliance.
- Public Accountability: Decision-making processes will be transparent and all decisions exercised under delegated powers will be recorded in an officer report to be published in accordance with the Council's constitution. Where enforcement decisions are made by the Council's Planning Committee reports, resolutions and minutes will also be published in accordance with the Council's constitution.

Some details regarding live enforcement matters/investigations shall be placed online. The publication of reports, decisions, and live case information however will always be subject to the need to withhold information which might prejudice subsequent proceedings, any publication by the Council is also subject to data protection laws. **Only Formal enforcement actions, such as the issue of a Planning Enforcement Notice, must be published as required by planning legislation.**

Comprehensive information on planning enforcement procedures will be available on the Council's website, including contact details for the enforcement team.



## **Policy ENF02 – Planning Enforcement Site Investigation**

When Enforcement Investigation matters require on site investigation, Officers will introduce themselves to the site owners/occupiers during visits when possible. The right to access land or property without an owner's express consent is reserved by the Council and can be used when appropriate by exercising powers of entry (Section 196A of the Town and Country Planning Act 1990 as amended).

Assessments on site will include consideration of site conditions, impact on adjacent properties, and relevant planning history along with material considerations relevant. Officers may conduct site visits outside normal hours, if necessary. Any photographs, videos, recordings, including body cams, drone and dashcam footage as may be taken as part of the investigation regarding the site, statements, interviews and used as evidence shall be subject to the Council's data protection and retention policies, and any council policy/duty as required to allow the investigation to conclude lawfully or allow any criminal matters to be taken forward.

## **Policy ENF03 – Planning Enforcement Assessment**

Formal enforcement action cannot be taken where there has been no breach of planning control. Enforcement action can not be taken to protect private interests or disputes. Formal action can only be exercised in the public interest\* and must be proportionate.

Decisions regarding enforcement action will consider the local development plan, NPPF and policies listed in this enforcement policy document, and relevant material planning considerations in the public interest\* and all legal duties that apply to the matter under investigation. Such decisions shall consider the extent of any harm\*\* with prioritisation given to public health risks, environmental harm, and/or loss of amenity for which the adopted Harm Assessment tool will be used to help judge in all investigations.

In all planning enforcement cases the officers will consider:-

- If the harm\*\* can be resolved/reduced/reversed due through any informal or formal action,
- If no resolution is possible, would taking no action affect public confidence,

- If the Council's decision against any likely success would result in significant cost to the public that outweighs any benefit gained, and therefore in itself not in the public interest\*.
- All enforcement actions will comply with relevant legal duties, including (but not limited to) ecological/wildlife and historic environment considerations, the European Convention on Human Rights and the Equalities Act 2010.
- All enforcement actions shall have due regard and give material weight to all planning policies, and all material planning considerations.

**\*Public Interest:**

"Public" refers to the wider local community or concerning the people as a whole. It is not individuals, and may not include individual neighbours. It is the welfare or well-being of the general public and society. "Interest" in this context is the material interests that would be affected by planning matters. On this basis, Public Interest are the planning material interests that affect the wider community or people as a whole.

The following matters are not considered to be in the public interest, devaluation of property, loss of a private view, breach of a restrictive covenant, moral considerations (for example, religious objections to licensed premises, political or ideological opinions), ownership and issues which are covered by other legislation (eg Building Regulations, Health and Safety regulations, Environmental Controls).

**\*\*Harm:**

Harm is the negative impacts of development resulting from material planning matters. If the enforcement matter is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area it will not be pursued. When the development is acceptable on its planning merits, any enforcement matter may be closed if the sole purpose of enforcement action is to regularise the development. In summary with any breach of planning control, a Planning Enforcement Officer must consider if the level of harm is so significant that it warrants formal action. Where there is significant harm and it is in the public interest to do so, then enforcement action should be taken without undue delay.

## **Policy ENF04 – Withdrawing Planning Enforcement Notices**

Planning Enforcement Notices run with the land. They may only be withdrawn at the Council's discretion for example, planning permission is now granted for the breach alleged in the notice resulting in the notice having no effect. Conversely and by way of example, if there is a notice in place for a specified use of land to cease that remains in perpetuity however the Council can exercise its discretion to withdraw the notice if that use is unlikely to resume.

Where an extant Planning Enforcement Notice has been complied with, but it is possible that the breach alleged in the Notice could easily re-occur, applicants would need to provide very special circumstances as to why the notice should be withdrawn.

Note for ENF1 to 3: If the breach of planning control raises no planning issues, then support by both national and local government is given to not to take further action. For example, 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. In conclusion the fundamental principle is that taking enforcement action must be in the public interest and proportionate and to resolve significant harm.

### **Policy ENF05 – Building Control Enforcement Policy**

To ensure consistent working and alignment with both the adopted Local Authority Building Control (LABC) Quality Management System, the Council adopts all provisions contained within the ISO 9001:2015 LABC Quality Management System – Enforcement Policy.

In line with that document all Building Control Enforcement officers shall consider the following factors before deciding when to act.

- The seriousness of the breach.
- The track record of non-compliance.
- The continued risk to health, safety or the environment.
- The effects of non-compliance.
- The likely effectiveness of enforcement choices.
- Legislation and guidance issued nationally or locally.
- The need to consult with other authorities and enforcement bodies.

We will consider prosecuting:

- Where the offence involves a blatant breach of the law.
- Where the offence involves failure to comply with a statutory notice or order.
- Where the offence results in an imminent risk to public health, safety, or the environment.
- Where there is a failure to correct an identified serious risk within a reasonable time.
- Where there is a history of similar offences.
- Where there is obstruction or assault of a surveyor or where an surveyor is given false or misleading information

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## **Section 2 – Performance Indicators and Customer Expectations for Planning Enforcement and Building Control**

#### **4. REPORTING AN ALLEGED BREACH (PLANNING ENFORCEMENT AND BUILDING CONTROL)**

Breaches of planning control or building regulations can be reported to the Council by letter, email or by completing an 'Enforcement Enquiry Form' form on the Tendring District Council website. Any interested party can also contact the Council in person or by phone in cases of urgent matters, for example unauthorised works are being undertaken to a Listed Building or a protected tree.

Where an alleged breach is reported and the web site form is not used, the enquirer will be asked to provide certain information before the Council can investigate further, this needs to be sufficient for Officers to complete the enquiry form, or the enquirer may be asked to complete the enquiry form. The purpose being to receive sufficient information to enable the enforcement team to prioritise the action to be taken, understand the concerns in full and enable effective following action. Providing full details also enables exchange of contact details so that interested parties can be updated at key stages.

Please note that anonymous enquiries will not usually be acted upon unless there is sufficient evidence and details to enable reasonable consideration of the enquiry, and the alleged breach is serious or readily apparent. Personal details will remain confidential and will not be revealed unless required by law. In exceptional cases, the Council may be required to reveal personal details to the police in connection with an investigation.

The planning / building control enforcement enquirer can also speak to their local District Councillor, Town or Parish Council, but advising them about their 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 be recorded as an enquiry from the Councillor, Town/Parish Council and not the member of the public that originally reported the issue. The Council's enforcement team will still require certain information in order to start the investigation (as detailed on enquiry form). Direct contact is encouraged and preferred over other means of raising an enforcement enquiry to minimise delay and avoid the risk of breach of confidentiality outside of the control of the District Council and/or concerned party.

## 5. PLANNING ENFORCEMENT PRIORITIES FOR INVESTIGATION

A single standard of priority management is applied in the consideration of planning enforcement matters: -

### **Priority**

For all planning enforcement cases, an initial desktop assessment will be carried out within five (5) working days of receipt of a completed enquiry form. Some matters will not require a site visit, but if a site visit is considered required it shall be carried out within ten (10) working days of receipt of the completed form.

**Immediate investigation and site visit will be necessary on receipt of a completed enforcement enquiry form for the following:-**

- demolition of a listed building or unlisted building in a conservation area.
- ongoing works to a listed building
- removal of a protected tree or hedgerow (all that require permission for alteration/removal by Local Planning Authority).
- development causing an immediate significant danger to the public or highway.
- if part of the site includes a SSSI, or designated to protect wildlife.

Note: Should any enquiry include any of the above in part, this will still be an immediate investigation.

### **Identification of Case (Traffic Light)**

Planning Enforcement cases will be classified using a 'traffic light system' to identify the highest priority cases. In other words, cases of very high priority and urgency will be classified as red, less urgent cases will be treated as amber and cases which are either not urgent or can be investigated over a longer period will be treated as green. This ensures that the cases causing most harm and impact are given the highest priority and are dealt with most expediently with resources available to the Council.

The identification of the case as red, amber and green shall be based on the initial harm assessment tool, but all matters needing immediate enforcement investigation defined above shall be treated as Red.

The status of the case may be altered to reflect changing circumstances as the investigation proceeds. This may, for example, reflect an improvement to, or resolution of the situation; or that works on site have not ceased despite the requests from the Council or further breaches on the site are discovered

## **6. PLANNING ENFORCEMENT HARM ASSESSMENT**

The decision whether to take enforcement action is discretionary and the Council, like most Councils throughout the country, has limited resources to devote to resolving planning enforcement issues. Therefore, a process to assess the degree of harm, public interest and policy considerations is carried out to assist in deciding whether it is appropriate to take action, what type of action may be appropriate and how the case should be prioritised.

Harm assessments will be carried out as part of the initial assessment where a breach has been confirmed. The degree of harm resulting from the breach is graded against a series of planning criteria and other considerations listed. The Council receives in excess of 350 enforcement investigation requests each year of which almost half are found to involve no breach of planning control. 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 likely be closed and the reasons for the Council's decision recorded.

The harm assessment result will be reviewed and updated before the closing of the case. This may result in a revised harm assessment or no change to the initial position.

The effectiveness of the Harm Assessment form will be assessed every 12 months to ensure that the scoring system provides an accurate guide for officers in assessing cases. However, it is important to note it is only a guide/tool that will have limitations and does assist, not replace, professional judgement on the matter being investigated.

## **7. CASE PROGRESS REPORTING FOR PLANNING ENFORCEMENT AND BUILDING CONTROL ENFORCEMENT**

### **Updates to the enquirer**

On the Council's website, all planning enforcement enquiry cases will be recorded online, unless there are specific reasons not to place information in the public domain e.g. application of data protection laws; information relating to a concluded or ongoing investigation where formal enforcement action is or may be taken. This under the public planning application search section of the Council's web site, via selecting Enforcement tab.

The record that is placed on the website will provide only basic information regarding the investigation and stage but will not provide any sensitive information.

Building Control enforcement matters will not be recorded online in any form.

Enforcement cases, whether related to planning or building control, can be complex and take varying amounts of time to resolve. This is because each case is different and often involves multiple steps, investigations, and legal processes.



## Why Enforcement Takes Time

When we receive a report of a potential breach, our officers must:

- Investigate the alleged issue
- Research the site and relevant planning or building regulations
- Determine whether the development is permitted or requires consent
- Visit the site and speak with those involved

This process can take time, especially if the situation is complicated or if cooperation from the landowner is limited.

## When You'll Hear from Us regarding Enforcement matters

We aim to keep the enquirer informed at key stages of the process, rather than providing updates where nothing has changed. Our typical communication timeline is:

Stage	Action	Timeframe
<b>Stage 1</b>	Acknowledgement of planning/building regulation enforcement enquirer	Within 3 working days
<b>Stage 2</b>	Establishment of Breach or Closure of the case (including letter of summary to enquirer if closed).	Within 21 working days
<b>Stage 3</b>	Reporting on the proposed/agreed resolution/remediation for the site, including any planning/building regulation application sought to address the breach.	Within 42 working days
<b>Stage 3a</b>	Outcome of any Planning/Building regulation application (including letter of summary to enquirer if enforcement case is then closed)	As soon as available
<b>Stage 4</b>	Case review and update	Every 6 months (and 6 months thereafter)
<b>Stage 5</b>	Serving of formal notice, prosecution or closure (including letter of summary to enquirer if enforcement case is then closed)	As applicable

If no breach is found, we will inform you and close the case.

## What Affects the Timeline?

The time it takes to resolve a case depends on several factors, including:

- The complexity and seriousness of the breach
- Whether planning permission or building consent is needed
- The cooperation of the landowner
- The need for specialist reports (e.g. bat surveys, which are seasonal)
- Whether the case goes to the Planning Committee or requires legal agreements
- Appeals or legal challenges, such as judicial reviews



Some cases may be resolved quickly, while others can take 6–12 months or longer—especially if appeals are involved. Where a Planning 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

## **Keeping Informed**

We understand that enforcement matters can be frustrating, especially when progress seems slow. We are committed to keeping the enquirer updated at key points and will also provide updates on our website where possible.

## **Updating the Council regarding Planning Enforcement matters**

Officers shall report the following information to the Planning Committee (unless amended) or as needed the Tendring/Colchester Borders Garden Community Joint Committee the following information at least twice a year for planning enforcement matters only.

- Number of enforcement enquiries received/registered in each quarter;
- Number of enforcement enquiries closed to date that year;
- Number of live cases presented by category, electoral ward and time period since receipt;
- Enforcement-related appeal decisions.

## **Role of Councillors with regard to Planning Enforcement matters**

At Tendring all planning and building control Enforcement functions are delegated to senior officers, but planning enforcement matters can also be decided by Planning Committee / Tendring/Colchester Borders Garden Community Joint Committee. Councillors play a vital role in planning enforcement by representing their constituents and acting as a link between residents and the planning authority.

- They can raise local concerns, help residents understand the planning process, and advocate for local issues, ultimately influencing the enforcement of planning regulations. Councillors can facilitate public engagement in planning matters, making the process more transparent and accessible
- They help set the direction of planning policy, ensuring it aligns with local needs and aspirations.
- They can influence the overall planning vision and culture within the planning service.
- They can help identify potential breaches of planning control early on, preventing issues from escalating.
- They can support the planning authority's efforts to ensure that planning regulations are followed and actions are accountable in the public interest.

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## **Section 3 – Further Information on available Planning Enforcement and Building Control - Types / Actions**

## 8. BREACHES OF PLANNING CONTROL

Many types of development require planning permission before they can be carried out including building works, engineering works, mining operations and material changes to the use of land or buildings. Development is defined in section 55 of the Town and Country Planning Act 1990 (as amended).

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.*

Planning permission is granted expressly or may have deemed permission by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The latter is known as Permitted Development. Both types of permission have restrictive conditions or limitations that must be complied with.

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, as it would be a breach of condition of express grant of planning permission.

Examples of breaches of development without planning permission include, extension of a building, engineering works, demolition, material change of use of a building or land, development not in accordance with the plans approved by the permission or planning conditions imposed.

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/works to a listed building, display of an advertisement without consent, or removal of protected hedgerows.

### Is a breach a criminal offence?

Most breaches of planning control are not immediate criminal offences but may result in the Council taking formal enforcement action where this is justified in the public interest to resolve the breach. If formal enforcement action is taken, for example the service of a Planning Enforcement Notice, it is then a criminal offence to fail to comply with the notice.

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

- Demolition of a listed building or the carrying out of works (likely to cause harm and 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 unauthorised works to trees protected by a Tree Preservation Order or within a Conservation Area or removal of a protected hedgerow.
- Display of unauthorised advertisements.

## Time Limits on Planning Enforcement

When a **breach of planning control** has occurred, the Council must usually take formal enforcement action **within 10 years** from the date the unlawful development was substantially completed or implemented. After this time, the development may become **lawful by default** and immune from enforcement.

For unauthorised buildings or change of use to a dwelling, a 4-year time limit applied before 25 April 2024. If such a development was completed before this date, the shorter 4-year rule still applies.

### Exceptions to the Time Limits

There are cases where enforcement may proceed even after the usual time limits:

- **Deliberate Concealment:** If a breach was intentionally hidden and only discovered after the time limit passed, the Council can apply for a Planning Enforcement Order. This allows enforcement despite the expiry of the original time limit.
- **Listed and Conservation Area Buildings:**
  - There is no time limit for taking enforcement action against:
    - Unauthorised demolition of an unlisted building in a Conservation Area, or
    - Unauthorised works to a Listed Building

These breaches do not become lawful over time, and a Listed Building Enforcement Notice may be served at any point.

## Time Limits for Prosecution

While enforcement action has its own time frames, criminal prosecutions have separate time limits depending on the offence and what the law specifically allows. Regardless of the legal timelines, investigations must proceed promptly and fairly. Any undue delay may lead to claims of abuse of process, where the defendant could argue that delays have compromised their right to a fair defence.

## **9. TYPES OF ENFORCEMENT ACTION**

When an enquiry 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 the Council to resolve the breach, although not all options will be appropriate in all cases.

### **Planning Contravention Notice (PCN)**

The PCN enables Local Planning Authorities to obtain information about a suspected breach of planning control as part of an investigation. 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 a criminal offence not to comply with the requirements of the notice within the 21 day period set for its return or to make false or misleading statements.

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

This notice is primarily intended to establish information about ownership and other interests in the land as part of an investigation. It is a criminal 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**

This provision enables the Council to require information as to interests in land, usually at an early stage of the enforcement process. It involves serving a Notice on occupiers of premises and/or person(s) receiving rent. It is a criminal 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)**

The Council can serve a BCN on the developer/occupier or any person having control on the land, if they do not comply with conditions imposed on a planning permission. There is no right of appeal against a BCN and failure to comply within the specified period is a criminal offence allowing the Council to issue proceedings.

A BCN can only be used to secure complete compliance. It does not apply to breaches of control relating to listed buildings, advertisements or protected trees/hedgerows. The Council can use this procedure in preference to issuing a Planning Enforcement Notice, where appropriate, however the penalties for non-compliance may be lower than if a Planning Enforcement Notice is used to remedy the breach of condition, and there is non-compliance.

### **Planning Enforcement Notice**

The Council can issue a Planning Enforcement Notice if there's a breach of planning control and action is necessary. It must be served on the landowner, occupier, and anyone else considered by the Council to have a significant interest in the property.

The notice takes effect no sooner than 28 days after being served, giving time to appeal. It will outline the steps that must be taken and by when. Failing to comply is a criminal offence. Recipients have the right to appeal to the Secretary of State via the Planning Inspectorate. While an appeal is ongoing, the notice is paused. The Council will inform relevant parties of the appeal and explain how to submit public comments, which will be publicly available.

If there's no appeal, or the appeal is unsuccessful, the notice becomes enforceable. The recipient must comply within the stated timeframe, or face potential legal action, including court proceedings or injunctive relief.

Local Planning Authorities can also take direct action: they may enter the land, complete the required work, and recover costs from the landowner. Obstructing officials during this process is a criminal offence. These powers are used when other efforts to gain cooperation have failed.

## **Stop Notice**

The Council can serve a Stop Notice with a Planning Enforcement Notice where it considers that continuing unauthorised development is causing significant harm. A Stop Notice's requirements should only prohibit what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. The Stop Notice continues to take effect even if an appeal is lodged against the Planning 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 and there is no right of appeal against the Stop Notice but it can be challenged by judicial review. Failure to comply with the Stop Notice is a criminal offence.

There are compensation liabilities to the Council if the Planning Enforcement Notice is later quashed, varied or withdrawn or the Stop Notice is withdrawn, but these are not related to the planning merits of the case.

## **Temporary Stop Notice**

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 a Temporary Stop Notice only lasts for 56 days and it is a criminal offence not to comply. There is no right of appeal, but judicial review can challenge the decision to issue the notice. There are limited circumstances where compensation can be claimed.

## **Injunction**

The Council can apply to the County Court or High Court for an injunction to stop an actual or apprehended breach of planning or listed building control, even when the identity of the person is unknown. An injunction must be both necessary and expedient.

An injunction can be sought whether or not other enforcement action has been taken. Failure to comply with an injunction can be considered as contempt of court and can lead to an unlimited fine, confiscation of assets or imprisonment as this is a criminal offence.

### **Section 215: Untidy Site Notice / Maintenance of Land**

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 and adversely affects 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.

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 a criminal offence. The Council may also carry out the works in default and recover the cost from the owner.

Section 215 Notices may be appropriate in connection with a prominent and derelict site, particularly if it has started to attract fly-tipping, or where 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.

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 there are 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.

A 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, undertaking 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.

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.

### Listed Building Enforcement & Temporary Stop Notices

Under the *Planning (Listed Buildings and Conservation Areas) Act 1990*, consent from the Local Planning Authority is required before demolishing, altering, or extending a listed building in any way that may affect its character.

If unauthorised work takes place, the Council can issue a **Listed Building Enforcement Notice**. This notice sets out the steps needed to address the breach, often including restoring the building to its original condition, and a timeframe for compliance. **Failing to comply is a criminal offence.**

The recipient has **28 days** to appeal to the Secretary of State via the Planning Inspectorate. While the appeal is ongoing, the notice is put on hold. If an appeal is made, the Council will inform neighbouring properties and explain how to make representations, which will be publicly accessible.

Unlike general planning enforcement cases, **unauthorised works to a listed building can lead directly to prosecution**, without the need for a formal notice or court injunction. Even minor unauthorised changes can be treated as criminal offences.

The Council may also issue a **Temporary Stop Notice** to immediately halt suspected breaches while further investigation takes place. These powers mirror those under the Town and Country Planning Act 1990.

**Important:** In serious cases, courts may issue not only substantial fines, but also custodial sentences for those responsible for unauthorised works to a listed building.

To avoid legal action or damage to heritage assets, it is *strongly advised* that anyone considering works to a listed building first contacts the Council to check whether consent is needed.

### Advertisement Control Matters

Advertising is subject to a separate consent process under planning law, outlined in the *Town and Country Planning (Control of Advertisements) (England) Regulations 2007*. Advertisements are regulated based on their **impact on public safety and amenity**.

It is a **criminal offence** to display an advert:

- Without express consent from the Local Planning Authority.
- In breach of any conditions attached to that consent,



- Or without “Deemed Consent,” which applies to certain advert types that meet specific criteria.

There are:

- 16 classes of adverts with Deemed Consent (listed in Schedule 3), and
- 9 classes that don’t require consent at all if conditions are met (e.g. road signs, detailed in Schedule 1).

If an advert is considered illegal or harmful, the advertiser is usually given 14 days to remove it. This period may be shorter if the advert poses a safety risk or affects a listed building, which may also need listed building consent. While content is not normally a planning issue, **offensive content** may justify quicker removal. **Responsibility for legal content on permitted sites lies with the Advertising Standards Authority, not the Local Planning Authority.**

If an advert remains after a warning, the Council can take legal action, including prosecution or formal caution. Each day it remains illegally displayed is treated as a separate offence.

The Local Planning Authority also have powers to remove illegal adverts and supporting structures, and may work with Essex County Council to remove unauthorised adverts on highways under the *Highways Act 1980*. Removed adverts may be subject to a recovery fee, and if replaced, could be confiscated.

## Protection of Trees and Hedgerows

Certain trees and hedgerows are legally protected, and it is a criminal offence to carry out unauthorised work on them.

Trees may be protected if they:

- Are covered by a **Tree Preservation Order (TPO)**, or
- Are located within a **Conservation Area**

If a tree is protected, you must obtain permission from the Council before carrying out any work. This includes cutting down, uprooting, lopping, or topping. It is a criminal offence to wilfully damage or destroy such trees.

Ancient hedgerows that fall under the Hedgerows Regulations 1997 are also protected. You must not remove or destroy these hedgerows without approval. Offenders may face prosecution and a fine of up to £2,500 if found guilty.

**Offences and Penalties:** If a protected tree or hedgerow is damaged or destroyed, the following may apply:

- **Serious Offences:** Anyone who cuts down, uproots, or wilfully destroys a protected tree (or damages it in a way that is likely to destroy it) may be fined:
  - Up to £20,000 in the Magistrates’ Court
  - An unlimited fine if convicted in the Crown Court

*Note: A tree does not need to be completely destroyed—if its value as an amenity is lost, it may still be considered destroyed.*

- **Lesser Offences:** Carrying out unauthorised works that do not destroy the tree can result in a fine of up to £2,500.

Council officers have the legal right to enter land to investigate suspected offences. Investigations will check whether the tree or hedgerow is protected, whether permission was granted and who carried out the work. If someone is suspected of committing an offence, they may be cautioned under the Police and Criminal Evidence Act 1984. If a protected tree is removed without permission, or due to it being dead, dying, or dangerous, the person responsible must be able to prove the condition of the tree.

Unless the Council waives the requirement, the landowner must:

- Replant a suitable tree in the same location as soon as reasonably possible
- The replacement tree will receive the same legal protections as the original

If replanting is not carried out, the Council may issue a Tree Replacement Notice, enforceable for up to four years. There is a right of appeal.

The Council considers each case individually and decides whether to pursue enforcement based on the public interest and whether the works caused a loss of public amenity.

Prosecution is unlikely if the Council would have approved the work had permission been sought. However, replacement planting is generally required in all cases, and compliance will be monitored. A Tree Replacement Notice may be served if necessary.

## 10. PROSECUTION

In deciding whether to prosecute any offence (planning or building control), the Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. This Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

The Council will exercise its discretion when deciding whether to prosecute an offence but will only do so if it is in the public interest and in accordance with the Code for Public Prosecutors. Whilst collation of the evidence to prosecute will be from the Enforcement Team (other departments where necessary), **the decision to prosecute will be made by the appropriate senior legal officer in accordance with the constitution.**

Upon successful prosecution/appeal, the Council will seek its reasonable cost incurred in prosecuting or defending a matter. Measures under the Proceeds of Crime Act 2002 (POCA) will be utilised where appropriate to recover money unlawfully gained but monies recoverable under POCA will not form any part of the decision to put a case forward for prosecution.

In addition to prosecution, other enforcement powers may be exercised at the same time (as outlined above) to resolve a breach of planning or building control. Some include direct action for example, under the Building Act 1984 a Building Control Authority can undertake works including the removal/alteration of works that may be necessary to comply with the building regulations.

## CONTACTS AND FURTHER INFORMATION

### Planning Enforcement and Building Control

Tendring District Council

Town Hall

Station Road

Clacton-on-Sea

Essex CO15 1SE

Tel: 01255 686120

Email: Planning Enforcement [planning.enforcement@tendringdc.gov.uk](mailto:planning.enforcement@tendringdc.gov.uk)

Email: Building Control Enforcement [bcinspections@tendringdc.gov.uk](mailto:bcinspections@tendringdc.gov.uk)

### Planning Inspectorate

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

Room 3/01, Kite Wing,

Temple Quay House,

2 The Square,

Temple Quay,

Bristol, BS1 6PN.

[www.planning-inspectorate.gov.uk/pins/index.htm](http://www.planning-inspectorate.gov.uk/pins/index.htm)

**Planning Portal:** Is the Government's online planning resource where you can learn about the planning system and research the latest government policy. [Planning Portal](https://www.planningportal.gov/)

**Planning Aid:** Provides free, independent, professional town planning advice to communities and individuals who cannot afford to pay planning consultant fees. [info@planningaid.rtpi.org.uk](mailto:info@planningaid.rtpi.org.uk)

Planning Aid

PO Box 37,

Freshwater,

Isle of Wight, PO40 9ZR

Phone: 0207 929 8338

### RTPI | Planning Enforcement Handbook for England

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

### Advertising Standards Authority

[Home - ASA | CAP](https://www.asa.co.uk/)

### High Hedges

Information and guidance on High Hedges and how to make an enquiry can be found on the Council's website via the following link.

<https://www.tendringdc.gov.uk/content/high-hedges>

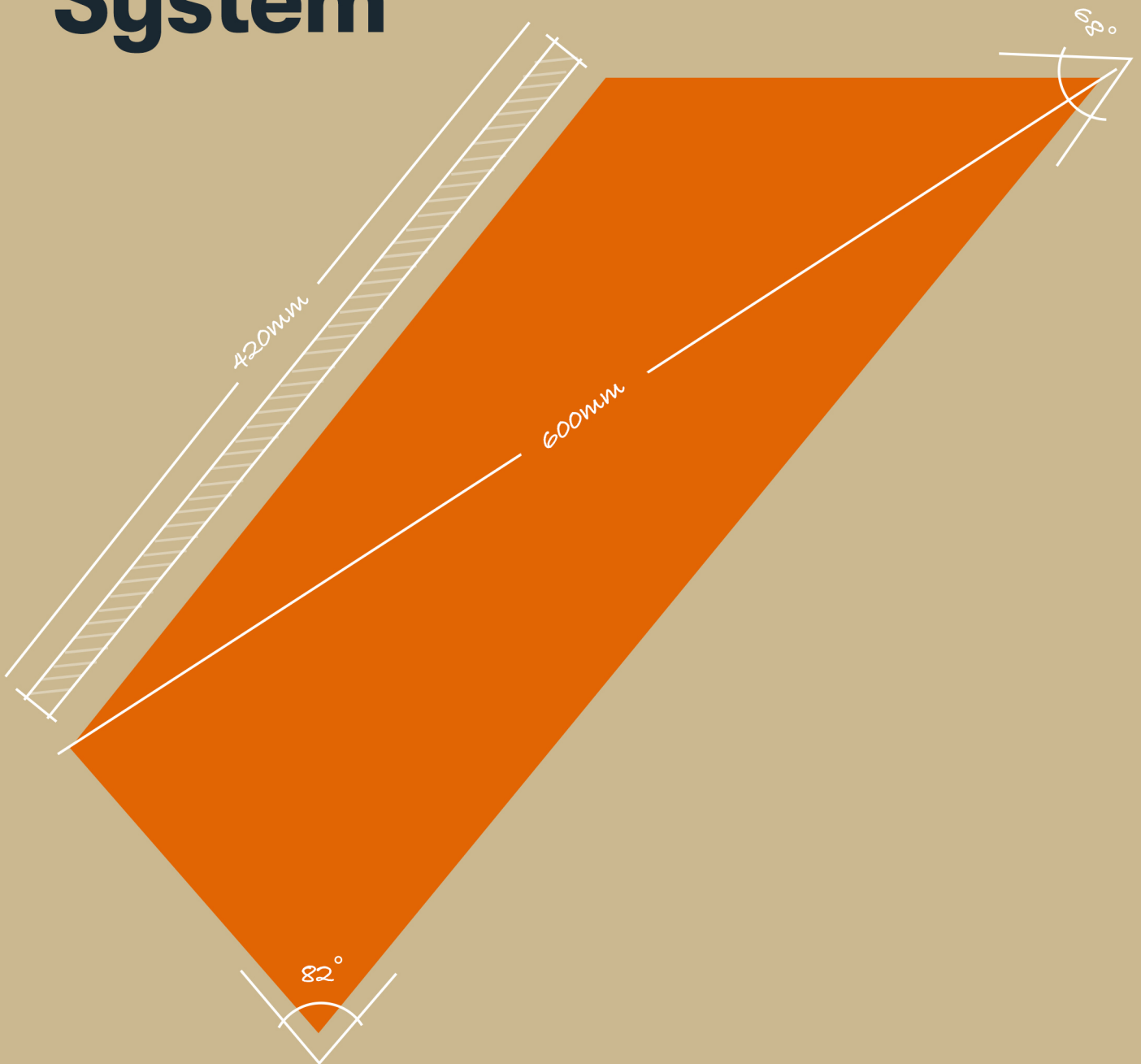
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Planning Enforcement Assessment		Yes / Harm (1)	Unsafe/ Severe and/or irreversible
<b>Heritage</b>			
	Direct harm to the Listed Building or curtilage		
	Harm within the setting of Listed Building		
	Harm within the Conservation Area		
	Harm within the Setting of Conservation Area		
<b>Trees</b>			
	Resulting in damage to any tree or hedge		
	Resulting in damage to any protected tree or hedge (Example TPO)		
<b>Highways</b>			
	Results in vehicular highway danger for immediate risk		
	Results in alteration to the public vehicular highway		
	Results in alterations to public rights of way, including public footpaths.		
<b>Public Safety</b>			
	Danger to public pedestrian		
	Results in involvement of animals that may be dangerous		
<b>Environment</b>			
	Results in significant noise pollution		
	Results in significant air pollution		
	Result in pollution of water source		
<b>Flood</b>			
	Development in a flood risk zone		
	Development may result in flooding elsewhere		
<b>Impact on residential amenity</b>			
	Overlooking		
	Noise/Vibration/Other pollution direct to neighbour/s		
<b>Wildlife/ Ecology</b>			
	Harm to protected species		
	Harm to BNG site		
<b>Policy</b>			
	Contrary to Development Plan/Neighbourhood Plan policy?		
	Designation AONB		
<b>Further Considerations</b>			
No of households/businesses affected by breach beyond site (may be estimate). Add 1 point for each.			
Previous enforcement action/ relevant planning history at the site/premises. Repeat of same offence within 5 years = 2 points. New offence but other enforcement matters on different issues before in last 10 years = 1 point.			
<b>Summary</b>	Total	0	
	Does any criteria selected require immediate investigation?	No	
	Red / Amber / Green	GREEN	

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# ISO 9001:2015

## LABC Quality Management System



**Enforcement Policy**

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# Introduction

Building Control has adopted this policy which sets out what individuals, businesses and others can expect from our Building Control Surveyors whilst seeking to ensure compliance.

The aim of proper enforcement is to protect the public, the environment and groups such as consumers or workers, whilst supporting economic progress.

This policy commits us to good enforcement policies and procedures with the sole aim of supporting compliance.

This document sets out the basic principles followed in enforcing building control legislation in your Borough Council's area.

## **The work of Building Control includes:**

- Processing Building Regulations applications.
- Inspecting work under construction.
- Controlling building demolition and dealing with dangerous structures.
- The preparation and enforcement of general and special safety certificates and the enforcement of fire safety standards, under the Regulatory reform (Fire Safety) Order 2005, for Sports Stadia and certificated stands in sporting venues.

## **What is enforcement?**

Building Control Services are responsible for using a wide range of Acts of Parliament and Statute Laws. "Enforcement" means action carried out in the exercise of, or against the background of, these Acts and Laws. This includes studying documents and reviewing drawings, making inspections of premises to check compliance with legislation and providing advice to aid compliance – this we term 'interventions' since they are aid to achieving and supporting compliance and aren't what is traditionally referred to as 'enforcement'. Local Authority Building Control can also take enforcement actions that escalate through a staged process that involve more formal correspondence, the issue of legal notices and ultimately prosecution.

Our enforcement activity is informed by risk assessment to ensure our regulatory efforts and resources are targeted to be most effective and in the best interests of the public.

Building Control's aim is to protect the public, the environment, consumers and workers.

### **Enforcement action is intended to:**

- Ensure that we enforce the law in a fair, equitable and consistent manner.
- Assist businesses and others in meeting their legal obligations without unnecessary expense.
- Focus on prevention rather than cure.
- Take firm action against those who repeatedly offend, or act irresponsibly, or whose actions could cause serious harm.

## **Why do we need an enforcement policy?**

It is important that our customers, businesses and others who might be affected by enforcement action have access to a clear statement of what they can expect from our Building Control Surveyors. It also commits us to following good enforcement policies and procedures.

Our primary role is to secure the health, safety, welfare and convenience of people in and about buildings, further the conservation of fuel, prevention of waste or misuse of water and protection of the environment.

In addition we support the protection of public health, environmental quality and quality of life by responding to dangerous structures, emergency incidents and controlling the demolition of premises.

Carrying out enforcement works in an equitable, practical and consistent manner helps to promote a thriving local economy.

We are committed to these aims, to ensure the health, safety and well-being of all residents, visitors and workers.

## **How do we apply this policy fairly?**

We are committed to the following principles of fairness:

- Openness – we will be open about how we set about our work and will provide information and advice in plain language.
- Consistency – arrangements are in place to ensure that our Building Control Surveyors take a similar approach in similar circumstances to achieve similar aims, and that our approach is consistent with other local authorities and enforcement bodies.
- Proportionality – any action we take to secure compliance will be proportionate to the risks to public health and safety and to the seriousness of any breach.

- Targeted – we will target action on those whose activities result in the most serious risks or least well-controlled hazards.

## How do we decide when to take enforcement action?

Building Control Surveyors will consider several factors before deciding when to act:

- The seriousness of the breach.
- The track record of non-compliance.
- The continued risk to health, safety or the environment.
- The effects of non-compliance.
- The likely effectiveness of enforcement choices.
- Legislation and guidance issued nationally or locally.
- The need to consult with other authorities and enforcement bodies.

We recognise that most people want to comply with the law. We will, therefore, take care to help them meet their legal duties but will take firm but fair action against those who act illegally or behave irresponsibly.

## How do we decide what action to take?

### No action

If we cannot prove any breaches of legislation then we will take no action other than to tell the relevant people.

### Informal action

Where the act is not serious, the history of compliance is good, confidence in management is high and where non-compliance will not pose a significant risk to public health, safety or welfare then we will take informal action. This will result in verbal and/or written advice or warnings. The Building Control Surveyor will clearly distinguish between legal requirements and elements of good practice.

### Formal action

Where there are serious breaches of legislation, a history of non-compliance, lack of confidence in management, potentially serious effects or where legislation requires it, then we will serve a statutory notice. We will give an opportunity to discuss the issues unless immediate action is needed.

The time limit on notices will be realistic and we will tell recipients of their rights.

## **What are the penalties for non-compliance?**

Failure to comply with a statutory notice will result in Prosecution or Formal Caution or Injunction and undertaking works in default.

## **When is it necessary to prosecute?**

We will consider prosecuting:

- Where the offence involves a blatant breach of the law.
- Where the offence involves failure to comply with a statutory notice or order.
- Where the offence results in an imminent risk to public health, safety, or the environment.
- Where there is a failure to correct an identified serious risk within a reasonable time.
- Where there is a history of similar offences.
- Where there is obstruction or assault of an surveyor or where an surveyor is given false or misleading information.

## **How can I appeal against enforcement action?**

Those affected by enforcement decisions have a right of appeal to a Court or Tribunal. Appeals must be made within a certain time – usually 21 days. We will set out these rights in writing at the same time that we take action, or serve notice.

You can also ask to discuss the matter with the Building Control Surveyor or their Team Leader, the Building Control Manager, or you can make a formal complaint against the service.

# Principles of Enforcement and Supporting Compliance

Building Control standards are enforced having regards to the Regulators Code, the Code for Crown Prosecutors and (if applicable) the councils Regulatory Services Enforcement Policy.

This means that the Building Control team will be open, helpful and fair to ensure that any enforcement action is proportionate to the risks.

- Sanctions should **change the behaviour** of the offender.
- Sanctions should ensure that there is **no financial benefit** obtained by non-compliance.
- 
- Sanctions should be **responsive** and consider what is appropriate for the particular offender and the particular regulatory issue.
- Sanctions should be **proportionate** to the nature of the offence and harm caused.
- Sanctions should aim to **restore the harm caused** by regulatory non-compliance.

# The Approach to Supporting Compliance

## Prevention

The first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. Building Control can, on request, or through web pages provide written guidance on aspects of the law and should be happy to discuss and explain requirements with residents and businesses alike.

## Stage 1 (Intervention) - Informal Action

Best efforts should be taken to resolve any issues where the law may have been broken without issuing formal notices, or referring the matter to the courts. This is the first option when the circumstances indicate that a minor offence may have been committed and there is confidence that appropriate corrective action will be taken. The situation should be written in a clear manner with an explanation as to why any recommended remedial work is necessary and over what time-scale it should be completed. When writing to residents and businesses it's important that legal requirements are clearly distinguished from recommendations.

## Stage 2 - Written Notice of the impending service of a Notice

If the contravention is not minor Building Control will write to the applicant / agent and / or contractor advising what work should be undertaken and what action will be taken if contraventions are not removed within a given period of time (usually 28 days).

## Stage 3 - The service of a legal notice

The legislation that Building Control enforces provides for the service of formal notices on individuals, businesses or other organisations requiring them to meet specific legal requirements.

Where a formal notice is served, the method of appealing against the notice and the time-scale for doing so will be provided in writing at the same time.

The notice will explain what is wrong, what is required to put things right and what the likely consequences are if the notice is not complied with.

In most situations, before formal action is taken, Building Control will provide an opportunity to discuss matters and hopefully resolve points of difference. However, this may not always be possible where immediate action is considered necessary, e.g. in the interests of health and safety, or to prevent an imminent risk to health, or to protect the environment.

## **Stages 4 & 5 - Prosecution – the last resort**

Where the circumstances warrant it, because of the seriousness of the matter or due to repeat offending, and the alternative actions mentioned previously in this policy are considered inappropriate, then prosecution may result. This formal prosecution action will be in the first instance, to seek summary conviction in the Magistrate's Court following which is formal prosecution action to seek an injunction in a higher Court.

Building Control will consider the following factors when deciding whether or not to prosecute:

- The seriousness and effect of the offence.
- The foreseeability of the offence, or the circumstances leading to it.
- The intent of the offender.
- The history of offending.
- The attitude of the offender.
- The deterrent effect of a prosecution, on the offender and others.
- Whether there is enough evidence to prove the offence.



# Additional Notes

## A Consistent Approach

Building Control will be consistent in enforcement approach by following the criteria and guidance set down in relevant legislation and codes of practice.

Building Control will always be objective to ensure that decisions are based on facts and evidence.

## Time Limits for Prosecution

The 1991 guidance note stated the law relating to enforcement at the time, and in particular the time limits controlling prosecutions brought before Magistrates. The guidance is still valid now.

The cases of *Hertsmere Borough Council –V– Alan Dunn Building Contractors Ltd* [1986] LGR and *Torridge District Council –V– Turner* [1991] TLR, provide the law in respect to when a contravention has occurred and from when the enforcement clock begins. This is particularly necessary insofar as section 127 of the Magistrates Court Act 1980 (c.43) is concerned, in that:

(1) ... a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of compliance arose.

This rule is equally applicable to any prosecution or action being considered under other parts of the legislation that Building Control deals with, for example section 81 of the Building Act 1984 (Demolition).

Accordingly to pursue a financial penalty, under any section of the Acts – except section 35A of the Building Act (see below) – the action must be laid within 6 months from when the alleged offence occurred.

Where the solution is to remove a contravention then the specified time limit will also run from when the contravention occurred. As such, to remove a Building Regulation contravention, by way of the service of an enforcement notice by the application of section 36 of the Building Act, the 12-month time limit to take action will begin at the time the contravention occurred – not when the contravention was brought to Building Controls attention.

In the following examples (the list is not exhaustive) the date when the alleged offence was committed is easily definable:-

(a) Failure to deposit plans or a building notice – the 6 months time limit begins to run from the time the work commenced.

(b) Failure to provide a notice about certain stages of work – the 6 months time limit begins from the date that the notice should have been received and after the work involved has been carried out.

(c) Failure to provide a notice about the demolition of a building – the 6 months time limit begins from the date that the work commenced.

In other cases – except those to which section 35A of the Building Act 1984 applies – evidence must be laid, to begin proceedings, within 6 months of the work being completed.

The date of completion of the work can sometimes be difficult to determine, but if the Council is aware that contraventions have existed for more than 6 months, or there is sufficient doubt about how long the work has been underway, then prosecutions for a fine are unlikely to succeed.

It is also worth noting that case law directs that time limits for proceedings commence when a part of the building, which is in contravention, has been completed – not necessarily when all the work has been completed.

For example a staircase in an office block that is installed at too steep an angle. The staircase may be structurally complete before the rest of the building work; however, the alleged offence time limit begins at the time of the completion of the staircase – not upon the completion of all the building work.

The time limits mentioned above have been modified with respect to section 35 of the Building Act 1984, which was amended by section 13 of the Climate Change and Sustainable Energy Act 2006 and introduced section 35A – in particular:

---

(1) DESPITE ANYTHING IN SECTION 127(1) OF THE MAGISTRATES' COURTS ACT 1980 (C. 43), AN INFORMATION RELATING TO A RELEVANT OFFENCE MAY BE TRIED BY A MAGISTRATES' COURT IF IT IS LAID AT ANY TIME—

(A) WITHIN THE PERIOD OF TWO YEARS BEGINNING WITH THE DAY ON WHICH THE OFFENCE WAS COMMITTED, AND

(B) WITHIN THE PERIOD OF SIX MONTHS BEGINNING WITH THE RELEVANT DATE.

(4) IN SUBSECTION (1)(B) ABOVE, “THE RELEVANT DATE” MEANS THE DATE ON WHICH EVIDENCE SUFFICIENT TO JUSTIFY THE PROCEEDINGS COMES TO THE KNOWLEDGE OF THE PERSON COMMENCING THE PROCEEDINGS.

---

This amendment became effective on 21 August 2006. However, it was unable to be applied until a designating order was made to identify which regulations would be considered to be a relevant offence.

On 10 March 2008 amendment regulations (S.I. 2008/671) were made and then laid before Parliament on 13 March 2008. These amendments inserted a new regulation 22A into the Building Regulations which effectively designated regulations 4 and 6(e) – so far as Part L was concerned – and regulations 4A, 4B, 17C and 17D(f) to allow section 35A of the Building Act to be applied.

However, regulation 22A only came into force on 6 April 2008 and was not able to be applied retrospectively.

There was concern that the application of these longer time limits solely to energy performance contraventions was uneven and, following a consultation process, it was considered that similar time limits should be applied to all the regulations.

The mechanism for extending the prosecutions time limits, to all provisions of the Building Regulations, was provided for in the Housing and Regeneration Bill. This became law on 22 July 2008, with the publication of the Housing and Regeneration Act 2008 (c17) (H&RA08).

Within the H&RA08 section 317 amended section 35A of the Building Act to allow any contravention of Building Regulations to enjoy the same time limit freedoms as those introduced for energy conservation offences.

However, section 317 of the H&RA08 did not come into force automatically and was – by virtue of section 325 – to be introduced on such a day appointed by the Secretary of State.

On 9 September 2008, in a circular letter (CI/43/19/1) to all Building Control Bodies throughout England and Wales, the Secretary of State confirmed – thereby appointing – the date when section 317 of the H&RA08 was to come into force – this being 22 September 2008.

Again the application of section 317, and therefore section 35A, is not retrospective and can only be applied to any contraventions – including energy efficiency regulations covered by regulation 22A – that occurred on or after 22 September 2008.

To assist in understanding the impact of these, a time table was provided by government.

Date of offence under section 35	Provisions to which section 35 applies breached	Time limit for bringing prosecution
Before 6 April 2008	All provisions	Six months
6 April 2008 to 21 September 2008	Provisions designated by regulation 22A	Two years, subject to maximum of 6 months from date of obtaining sufficient evidence to bring prosecution
6 April 2008 to 21 September 2008	Provisions not designated by regulation 22A	Six months
From 22 September 2008	All provisions	Two years, subject to maximum of 6 months from date of obtaining sufficient evidence to bring prosecution

It should be noted that Regulation 22A is, by virtue of section 317 H&RA08 and section 35A BA84, unnecessary after 22 Sept 2010 – after which time all Building Regulation contraventions were able to be handled under section 35A BA84.

## **Application of section 36 Building Act 1984**

The use of section 36 notices should only be used where a serious contravention occurs and there is an intention that the Council intends for it to be removed.

Case law suggests that, having served a section 36 notice within the required 12-month time period, the Council has an infinite period of time in which to enforce the notice (*Bello v London Borough of Lewisham* [2003] EWCA Civ 353).

As such it was held that there was no time limit by which a Local Authority has to use its powers under section 36 of the Building Act 1984. In the case in question Lewisham Council enforced the removal of a contravention some 12-years after the service of the original notice.

As such the Council will, in all cases where it considers the contravention of Building Regulations to be justifiably serious enough to warrant the application of section 36, serve a notice on the owner of the building and have the details of the notice included on the Land Charges register for the property.

The Council will then make all reasonable attempts to require the owner to remove the contravention themselves.

Should powers of persuasion fail then the Council will remove work undertaken in default.

## **Inspection of premises and powers of entry**

As a part of its normal routine, evidence will normally be gathered through the process of notified inspections for Building Regulations matters.

Where a matter is by way of complaint, surveyors will make all reasonable attempts to gain entry to a property to carry out an inspection by way of invitation by the owner/occupier. However, where the matter is considered to be serious or access is being unreasonably withheld, surveyors have the authority to enter premises at reasonable hours – unless the matter relates to a dangerous building and/or emergency measures are necessary outside normal working hours.

Failure to allow entry to an authorised surveyor will result in a warrant being obtained from a Magistrate and the warrant will be used and entry gained – by force if necessary.

Building Control surveyors carry photographic identification badges and warrant cards, which will be displayed on request.

Building Control will, in the application of gathering evidence and inspecting any allegation of an offence or dangerous and dilapidated building, have regard to and apply the principles set out in the Home Office publication: Code of Practice – Powers of Entry (December 2014).

## **Service of Building Control enforcement notices**

All Building Control enforcement notices will, except notices in relation to actions carried out to deal with emergency measures for a dangerous building – by virtue of section 78 of the Building Act 1984, include information regarding rights of appeal and appropriate time limits to make any such appeal.

In most cases notices will be served on the owner as identified by reference to the most up-to-date records held by the Land Registry, or where an owner cannot be identified notices will be served by addressing them to – “The Owner(s) and/or Occupier(s)” and posted or affixed to the property in question.

Where the owner is a business, the notice will be addressed to the Company Secretary.

The council will, as far as it is reasonably practical to do so, make reasonable enquiries about the name and address of the owner and address any notice accordingly.

Notices will, in most cases, be delivered by surveyors to the owner’s address – where this is within the authority boundary. In some cases recorded or registered mail will be used.

Where notices etc. are delivered by hand these will be confirmed by reference to a certificate of service, signed by the surveyor concerned and, where possible, accompanied by a dated photograph of the place where the notice etc. was addressed to, e.g.: house number and post/letter box.

## **Dangerous buildings – emergency measures**

In some instances there might not be the time available to make enquiries about ownership – where the nature of an incident, such as a severe dangerous building occurs. In these cases simple enquiries about ownership will still be made but, if these come to no avail, surveyors are authorised to take appropriate action under section 78 of the Building Act 1984 – to remove any immediate danger.

Following any action under section 78 full enquiries will be undertaken as soon as it is practical to do so and a notice then served on the owner as indicated on the Land Registry records.

## **Recovery of reasonable costs incurred to enforce a notice**

Where the council incurs any costs or charges to enforce a notice in default, then this will be recovered from the owner and/or placed as a specific financial charge on the Land Charges register.

Charges not paid in good time will accrue interest and it is in the interest of property owners to resolve any outstanding debt(s), made against the property, as quickly as possible.

Anyone purchasing a property after a notice has been served, and after costs have been incurred for the enforcement of a notice, may become responsible for the debt.

Debts left unpaid for any length of time may result in the council seeking a county court judgment or even seizing the property and selling it at auction to recover all or part of the debt.

Examples of costs might include – the list is not exhaustive

- Council staff time in dealing with the matter
- Contractor charges – labour, materials, plant & equipment
- Professional advisor(s) charges
- Legal charges
- Court costs

You can find more information or receive a copy of the Policy from the Councils Building Control Team

## **Accountability**

When delivering this enforcement policy we will remain independent in our decision making and accountable for our actions. We will strive to provide effective consultation and remain cooperative in our relationships with people when undertaking enforcement.

## **Alternative formats**

If you would like a copy of this Policy to be provided in another format (for example large type, Braille or audio tape) please contact Building Control Services.

## **Where can I complain about this Policy?**

If your concern is with the way in which the Council has handled your case, you can complain using the Council's complaints system link.

If your complaint is that you have suffered injustice as a result of maladministration, you can ask for your case to be investigated by the Local Government Ombudsman. The Ombudsman is independent from the Council. Whilst they cannot set aside a decision of the Council, they can make recommendations and can, where they find that it is appropriate, recommend that the Council pays compensation where they determine that the complaint is justified. Generally the Ombudsman will expect you to have used the Council's own complaints system before they will look into a complaint.

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LABC represents all local authority building control teams in England and Wales who work with industry and building professionals to ensure compliance with the Building Regulations. There are 3,000 surveyors working in LABC providing a consistent national service that is delivered at a local level.

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## PLANNING COMMITTEE

8 JULY 2025

### REPORT OF THE CORPORATE DIRECTOR - PLANNING AND COMMUNITY

#### A.5. **BIODIVERSITY NET GAIN (BNG): DELEGATION AND CONSULTATION ARRANGEMENTS IN RESPECT OF PROPOSALS FOR HABITAT BANKS**

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To seek the Planning Committee's agreement to delegate future decision making powers to the Head of Planning and Building Control in respect of proposals for 'Habitat Banks' including their approval, entering into legal agreements and future enforcement. To also seek the Committee's agreement to consultation arrangements for the processing of Habitat Bank proposals. These matters are referred to the Planning Committee at the request of the Cabinet, following its decision on 21 October 2024 to adopt an interim planning policy on Biodiversity Net Gain (BNG).

##### EXECUTIVE SUMMARY

On 21 October 2024, the Cabinet considered a report of the Portfolio Holder responsible for Housing and Planning seeking agreement to adopt a policy statement on 'Biodiversity Net Gain' (BNG) to serve as the Council's interim corporate position on the subject, ahead of detailed consideration as part of the forthcoming Local Plan review.

**The Cabinet report and associated policy statement are attached in full as Appendix 1 to this report for information and detailed background.**

The policy that has been adopted for interim use is now applicable both in the determination of planning applications and in the consideration of proposals for 'Habitat Banks'. Habitat Banks are parcels of land where habitats have been created or enhanced, in advance, to provide an uplift of biodiversity units. These surplus biodiversity units can then be sold to developers to meet their BNG requirements 'off-site'. In order to sell off-site biodiversity units, there are a number of legislative criteria that must be met; and whilst the establishment of a Habitat Bank does not require planning permission, in many cases it would require landowners to enter into a s106 legal agreement with the Council alongside a formal registration process with Natural England.

As well as agreeing the adoption of the policy statement, the Cabinet resolved to invite the Planning Committee, at its earliest convenience, to consider and determine how it will exercise its power in respect of Council decisions on entering into legal agreements with landowners under Section 106 of the Town and Country Planning for the purposes of setting up Habitat Banks, guided by the

aforementioned policy and the advice of Officers – including the extent to which the Committee deems it appropriate for such decision-making powers to be delegated to Officers; and any arrangements for public consultation on specific proposals. This is because this is a fairly new area of work with no explicit arrangements set out in the constitution in respect of delegated powers and no legislative requirements around public consultation.

It is recommended that the consideration, approval and entering into s106 agreements with landowners for the establishment of Habitat Banks be delegated to the Head of Planning and Building Control, along with decisions around future enforcement action against non-compliance. If agreed, it is recommended that these arrangements are put forward for consideration, as part of a future review of the constitution, as to whether explicit amendments to the wording are required.

It is also recommended that no specific requirements for public or other stakeholder consultation on Habitat Bank proposals need to be put in place, apart from technical consultation with suitably qualified ecologists for the purpose of seeking professional advice.

It is important to emphasise that the establishment of a Habitat Bank (as described in this report) is a different and separate concept and process from the determination of planning applications for new development that, in many cases, have a requirement to address Biodiversity Net Gain (and for which existing constitutional arrangements for the Planning Committee and appropriate delegation to Officers already, along with statutory consultation requirements already apply).

## **RECOMMENDATION**

**That the Planning Committee:**

- a. notes the adoption of the ‘Policy on Biodiversity Net Gain (BNG)’ as attached as part of the report to Cabinet of 21 October 2024 (Appendix 1), as the Council’s interim policy on the subject of BNG – which is applicable both to the determination of planning applications and to the consideration of proposals for ‘Habitat Banks’;**
- b. agrees that future decisions for approval and/or entering into a s106 legal agreement with landowners for the establishment of Habitat Banks, along with any associated decisions around enforcement against non-compliance, be delegated to the Head of Planning and Building Control;**
- c. agrees that this delegation to the Head of Planning and Building control be put forward for consideration as part of the next review of the Council’s constitution to determine whether any specific wording changes be made to either the Planning Committee’s terms of reference or Part 3 Delegated Powers; and**
- d. confirms that the process for considering Habitat Bank proposals will not include any specific arrangements for public or wider stakeholder consultation, aside from**

**technical consultation with suitably qualified ecologists as considered necessary for the purpose of seeking professional advice.**

#### **REASON(S) FOR THE RECOMMENDATION(S)**

At present, the Council's constitution and associated Part 3 scheme of delegation does not provide any explicit arrangements for decision making in respect of entering into s106 legal agreements for the establishment of Habitat Banks – as it is a relatively new area of work. The constitution does however state that 'all planning conservation matters' are delegated to the Assistant Director (Planning) [whose responsibilities are fulfilled by the Head of Planning and Building Control] except in relation to the determination of certain planning applications for determination by the Committee as listed.

For the avoidance of any doubt in the interpretation of the constitution and delegated powers therein, it is recommended that the Planning Committee agrees that matters relating to the establishment of Habitat Banks, including the entering into s106 legal agreements with landowners for that purpose, are to be amongst those delegated to the Head of Planning and Building Control. It is also recommended that decisions required in respect of taking enforcement action against non-compliance with the clauses within s106 legal agreement for a Habitat Bank be delegated to the Head of Planning and Building Control.

Through a future review of the constitution, consideration could then be given to whether these delegated powers need to be made explicit within any revised wording.

Because the establishment of a Habitat Bank is not classed as development or a change of use and physical works (planting of trees, hedges and habitat creation of other sorts etc) do not, in themselves, require planning permission, it is considered appropriate for such matters to fall within those delegated to Officers and for there to be no explicit need for proposals to be the subject of any formal public or stakeholder consultation. It is only the arrangements for long-term management and monitoring of the habitats, in most cases, will require agreement from the local authority through s106 – for which the matters are mainly technical (following advice from a suitably qualified ecologist), legal and administrative and thus usually delegated to Officers.

#### **ALTERNATIVE OPTIONS CONSIDERED**

The alternative option in relation to delegation of powers would include that the Planning Committee retains all decision-making powers over matters relating to Habitat Banks and does not include them with the powers delegated to Officers. The implication would therefore be that any Habitat Bank proposal would need to be presented to and agreed by the Committee before any s106 agreement

is entered into, despite the fact that the physical works involved in setting up a Habitat Bank do not, in themselves, require planning permission.

The alternative option in relation to consultation arrangements would be for the Planning Committee to require proposals for Habitat Banks to be advertised and consulted upon – inviting residents and other interested parties to have their say before any decisions are taken. Again, because the physical works involved in creating a Habitat Bank do not constitute development nor change of use and do not require planning permission, there would be little merit in inviting comments from third parties – and such an approach would be inconsistent with that taken for other matters not requiring planning permission – such as permitted development. In Officers’ consideration of Habitat Bank proposals, they would however consult suitably qualified ecologists for advice as necessary, to ensure the proposals for management included within the associated ‘Habitat Management and Monitoring Plan (HMMP)’ (which are also required for registration with Natural England) are appropriate and acceptable.

## **APPENDICES**

Appendix 1: 21 October 2024 Report of the Portfolio Holder responsible for Housing and Planning to Cabinet: Tendring District Council’s Interim Policy on Biodiversity Net Gain (BNG).

## **CABINET**

**21 OCTOBER 2024**

### **REPORT OF THE PORTFOLIO HOLDER RESPONSIBLE FOR HOUSING AND PLANNING**

#### **A.3 TENDRING DISTRICT COUNCIL'S INTERIM POLICY ON BIODIVERSITY NET GAIN (BNG)**

##### **PART 1 – KEY INFORMATION**

###### **PURPOSE OF THE REPORT**

To seek the Cabinet's agreement to adopt a policy statement on 'Biodiversity Net Gain' (BNG) which will serve as the Council's interim corporate position on the subject, pending detailed consideration as part of the forthcoming Local Plan review. Having an interim policy will enable the Council to respond positively and constructively in its consideration of BNG as part of the planning process; and in the consideration of proposals to set up 'Habitat Banks' by Tendring landowners and, potentially, on Council-owned land.

###### **EXECUTIVE SUMMARY**

Biodiversity Net Gain (BNG) is a legal requirement of the national planning system which has applied to most proposals for major development since February 2024 and most proposals for smaller developments since April 2024. It requires developers to deliver a minimum 10% uplift in biodiversity (wildlife) value over and above what was present on site prior to development. In very simple terms, it is no longer just a requirement for development to minimise or mitigate its impact on wildlife; it must now, by law, bring about an improvement – a minimum 10% net increase in biodiversity habitat which is calculated, measured and monitored using a complex biodiversity metric set out in national guidance.

To achieve 10% BNG, development proposals are required to deliver as much of it as possible on the site that is being developed. Where it is not possible to achieve all the necessary BNG on-site, developers can create the necessary habitat off-site either on other land they control (which would be tied through a legal agreement on the grant of planning permission) or by purchasing 'biodiversity units' from a 'Habitat Bank' – i.e. a wildlife habitat set up and maintained by third-party landowners for the purposes of BNG and where units can be sold to developers on the open market. In the rare cases where on-site or off-site BNG provision is not possible, developers must – as a last resort – buy statutory biodiversity credits from the Government.

To set up a Habitat Bank and lawfully enter the market for selling biodiversity units to developers, a landowner must register their site with Natural England – which first requires them to either enter into a legal agreement with the local authority or a 'conservation covenant' with another responsible body recognised by Natural England. In doing so, the local authority (or other responsible body) takes on a responsibility to monitor and enforce the obligations set

out in any legal agreement.

A number of landowners in Tendring have expressed a keen interest in setting up Habitat Banks and some have already carried out much of the preparatory work required for entering into a legal agreement with Council, registering with Natural England and entering into the market for selling biodiversity units. However, like many local authorities, this Council has not been in a position to progress discussions with landowners about entering into the necessary legal agreements because Officers have needed time to research, consider and fully understand both the Council's legal duties and implications for resources – particularly in relation to its responsibilities around monitoring.

Now that there is a better understanding of the requirements around BNG and the process for setting up Habitat Banks, Officers have designed a planning policy on BNG (attached as Appendix 1 to this report for Members' consideration) which, in summary, covers the following:

- the Council's legal obligations to secure 10% BNG – without unnecessarily duplicating the detail of legislation of national guidance;
- the ambition (which aligns with the ambition of Essex County Council) to increase the BNG requirement to 20% at an appropriate point in the future; and
- the criteria under which the Council could be willing to enter into a s106 legal agreement with a landowner for the purpose of setting up Habitat Banks for registration with Natural England and the selling of BNG units to developers on the open market which:
  - reflect the benefit of expanding and connecting up existing protected wildlife habitats;
  - promote a scale of site that could better foster the creation of viable habitats than smaller more vulnerable sites;
  - support the objectives of the emerging Essex Local Nature Recovery Strategy (LNRS) and the locations identified for their opportunity for habitat creation in that strategy;
  - support Local Plan policy e.g. strategic green gaps and protected open spaces, and avoiding Habitat Banks in locations that could prejudice the proposals and policies in the Local Plan; and
  - allows the Council to establish Habitat Banks on its own land, in due course, allowing time to carry out due internal processes in relation to assets and Member approvals – without holding up the opportunity for third-party private landowners to progress Habitat Banks on their sites, to the benefit of wildlife in the District and the diversification of the rural economy.

The intention is that the proposed policy is agreed by the Cabinet for referral to the Planning Policy and Local Plan Committee for its full consideration for inclusion in the Local Plan through the forthcoming review process; but that it be adopted, in the interim, as the Council's corporate position on BNG which, amongst other things, will enable Officers to progress discussions with landowners about setting up and registering Habitat Banks in Tendring and negotiating the necessary legal agreements. It is also recommended that the Planning Committee be invited to give consideration to how it exercises its decision-making powers in respect of relevant legal agreements; the extent to which such powers are to be delegated, if at all, to Officers; and whether any public consultation arrangements should be put in place for the consideration of Habitat Bank proposals.

#### **RECOMMENDATION(S)**

**It is recommended that the Cabinet:**

- 1) notes the content of this report which, amongst other things, explains the Council's obligations around Biodiversity Net Gain (BNG), the role of Habitat Banks and the potential consideration of Council-owned land for BNG purposes;**
- 2) agrees that proposed 'Policy on Biodiversity Net Gain (BNG)' (attached as Appendix 1) is adopted as the Council's interim corporate position pending the outcome of the Local Plan review, for the purposes of dealing with matters relating to BNG;**
- 3) refers the aforementioned policy to the Planning Policy and Local Plan Committee for its consideration for inclusion in the Tendring District Local Plan as part of its current review;**
- 4) invites the Planning Committee, at its earliest convenience, to consider and determine how it will exercise its power in respect of Council decisions on entering into legal agreements with landowners under Section 106 of the Town and Country Planning for the purposes of setting up Habitat Banks, guided by the aforementioned policy and the advice of Officers – including the extent to which the Committee deems it appropriate for such decision-making powers to be delegated to Officers; and any arrangements for public consultation on specific proposals; and**
- 5) notes that the Portfolio Holder responsible for Housing and Planning in liaison with Officers will, in due course, consider and publish details of the fees to be charged to developers and landowners to cover the Council's costs in respect of monitoring BNG in line with its statutory obligations.**

#### **REASON(S) FOR THE RECOMMENDATION(S)**

In the absence of a clear local policy or position on the subject of Biodiversity Net Gain (BNG)

or any published expectations or criteria for the consideration of proposals for Habitat Banks, the Council can only refer to legislation and guidance produced by the Government when dealing with planning proposals that have BNG requirements and proposals for Habitat Banks from Tendring landowners. It is therefore difficult for Officers to have constructive conversations with landowners looking to set up Habitat Banks on the necessary content of legal agreements and associated expectations around monitoring fees – which is holding up the opportunity for local landowners to contribute towards BNG and enter into the market for biodiversity units to the benefit of the rural economy.

The recommendation will address these matters by putting in place a clear policy position to guide Officers and third parties in their deliberations in the short-term whilst allowing it to be considered fully in the context of the forthcoming Local Plan review and for it to be challenged and amended as appropriate through the plan-making process prior to inclusion and formal adoption as part of the Local Plan. The recommendation also invites the Planning Committee to consider and provide clarity around the decision-making process in respect of agreeing legal agreements with landowners for the setting up of Habitat Banks.

#### **ALTERNATIVE OPTIONS CONSIDERED**

To progress the proposed policy on BNG through the Local Plan review process only - awaiting its publication as part of the first draft consultation on the Local Plan in 2025 before it can be referred to for the purposes of matters relating the BNG and Habitat Banks. The main consequence would be Officers having to discuss the setting up of Habitat Banks with interested landowners and negotiating the necessary legal agreements in the absence of any clearly agreed corporate position or direction from elected Members.

This would leave only national legislation and guidance, with no local dimension, upon which to guide discussions around BNG and Habitat Banks until some point in 2025, which is likely to delay meaningful progress in assisting local landowners in Tendring to set up their Habitat Banks, facilitate habitat creation in Tendring and benefit economically from entering into the competitive market for the sale of biodiversity units.

## **PART 2 – IMPLICATIONS OF THE DECISION**

#### **DELIVERING PRIORITIES**

BNG supports the corporate objectives for championing our local environment and working with partners to improve quality of life. It also has the potential to contribute to raising aspirations and creating opportunities by supporting opportunities in the rural economy to participate in the open market for habitat creation.

This approach will support the Council in its consideration of whether Council-owned land could be used for the purpose of BNG which, in turn, could assist in its ambitions around tackling climate change and supporting financial sustainability.



The proposed approach would support the development and review of the Council's Local Plan and the Essex-wide ambition to explore an increase to 20% BNG in the future. It also seeks to align with the objectives of the emerging Essex Local Nature Recovery Strategy will be the subject of consultation in Summer 2024.

**OUTCOME OF CONSULTATION AND ENGAGEMENT** (including with the relevant Overview and Scrutiny Committee and other stakeholders where the item concerns proposals relating to the Budget and Policy Framework)

Full consideration and public consultation on the proposed policy on BNG will take place as part of the Local Plan review under the direction of the Planning Policy and Local Plan Committee. Hence the recommendation in this report is that the policy be referred to that Committee for consideration and adopted by Cabinet now, only to establish an interim position pending the outcome and any changes arising through the formal Local Plan review process.

Officers have however formulated the proposed policy having careful regard to legislation, national policy and national guidance, internal discussions between relevant departments within the Council and informal discussion with colleagues in Essex County Council, landowners that have indicated an interest in bringing forward Habitat Banks and contacts within Essex Wildlife Trust.

As it stands, the setting up of a Habitat Bank does not, in itself, require express planning permission (as habitat creation does not constitute development) and therefore is not bound by any requirements for publicity and public consultation for the Council to be able to enter into a legal agreement with a landowner. One of the recommendations in this report is referral to the Planning Committee for its consideration as to whether any consultation arrangements need to be put in place.

**LEGAL REQUIREMENTS (including legislation & constitutional powers)**

Is the recommendation a Key Decision (see the criteria stated here)	NO	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	4 <sup>th</sup> September 2024

In England, biodiversity net gain is required under a statutory framework introduced by [Schedule 7A of the Town and Country Planning Act 1990](#) (inserted by the [Environment Act](#)

[2021](#)). This statutory framework is referred to as 'biodiversity net gain' in Planning Practice Guidance to distinguish it from other or more general biodiversity gains.

Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

Section 40(2A) of the Natural Environment and Rural Communities Act 2006

The six sets of BNG implementing regulations are as follows:

- The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024 (SI 2024/49) - made on 17 January 2024, which make further consequential amendments to primary legislation, including the definition of a planning authority under Schedule 7A to the Town and Country Planning Act 1990 (TCPA 1990) that sets out the BNG framework.
- The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 (SI 2024/48) - made on 17 January 2024, which modify the application of the BNG requirement for onsite habitats that meet the definition of "irreplaceable habitat". They set out the alternative arrangements that must be made to minimise the adverse effect of a development on the biodiversity of the irreplaceable habitat onsite.
- The Biodiversity Gain Requirements (Exemptions) Regulations 2024 (SI 2024/47) made on 17 January 2024 - which exempt certain developments from meeting the BNG requirement and apply to development with no impact on priority habitat and where impacts fall below the specified "de minimis" threshold, to householder applications, to the high-speed railway network, to off-site gain developments and certain self-build and custom build developments. They also applied temporarily for small developments where a planning application is made or has been granted before 2 April 2024.
- The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (SI2024/50) - made on 17 January 2024, which set out provisions for information about BNG for applications for planning permission and decision notices, the contents of biodiversity gain plans and the procedure for their submission to the LPA, the eight week timescale for the LPA determining whether to approve a plan (unless an alternative period is agreed), what LPAs must consider when making a determination, the appeal process and modified arrangements for phased developments.
- The Biodiversity Gain Site Register Regulations 2024 (SI 2024/45) - made on 17 January 2024, which require Natural England (NE) to establish and maintain the new biodiversity gain site register, deal with registration applications and make sure that information in the register is publicly accessible.
- The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024 (SI 2024/46) - made on 18 January 2024, which allow for fees to be charged for applications to register land in the biodiversity gain site register and allows the register operator, NE, to issue financial penalties where false or misleading information is provided.

For the purposes of Biodiversity Net Gain, planning obligations (through a legal agreement, known as a Section 106 Agreement) are one of the mechanisms under paragraph 9 of

Schedule 7A of the Town and Country Planning Act 1990, necessary to secure the maintenance of significant onsite habitat enhancements for at least 30 years. They are also required to register sites for offsite gains (unless conservation covenants are used). The purpose of planning obligations is to make development acceptable in planning terms. The Planning Advisory Service (PAS) is currently producing legal agreement templates for consideration. The power to enter into a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) is a function reserved for Council, delegated to the Planning Committee (a non-executive function).

<b>X</b>	<b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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The relevant primary legislation for the statutory framework for biodiversity net gain is principally set out under [Schedule 7A \(Biodiversity Gain in England\) of the Town and Country Planning Act 1990](#). This legislation was inserted into the [1990 Act by Schedule 14 of the Environment Act 2021](#), and was amended by the [Levelling Up and Regeneration Act 2023](#). The [Biodiversity Gain \(Town and Country Planning\) \(Consequential Amendments\) Regulations 2024](#) made consequential amendments to other parts of the [1990 Act](#).

The sole in-house Planning Solicitor within legal services has provided advice on the law and guidance on securing the creation/enhancement of BNG and subsequent monitoring, including reviewing the templates produced by PAS.

The legislative framework around BNG places legal duties on the Council, both as the Local Planning Authority and, potentially, as a landowner promoting the use of Council-owned land for Habitat Banks. For these duties to be fulfilled, the Council should keep under careful review the need for sufficient legal and other resources as workloads have the potential to grow significantly in the future though increases in planning applications and/or Habitat Bank submissions, requiring more complex legal agreements.

In respect of governance implications due to adopting the Policy, there are various future decisions that will be required – some of which relate to planning and the delegated functions of the Planning Committee and officers, whilst others relate to Executive functions, particularly in relation to the use of Council owned land and how it manages its assets. Future proposals for the use of Council owned land will require a further Cabinet report.

## **FINANCE AND OTHER RESOURCE IMPLICATIONS**

TDC responsibilities and resource implications include:

- Determining planning applications in line with BNG requirements – covered by existing resources/planning application/pre-application fees;
- Imposing planning conditions, discharging and enforcing those conditions as necessary – covered by existing resources, but with the likely potential for case numbers to increase;
- Entering into s106 agreements for Habitat Banks or planning permissions – legal fees would be gained, but there are potentially significant implications for specialist resources in legal services which could require increased capacity, either in-house or

procuring external support;

- Reviewing the Local Plan and incorporating appropriate provisions around BNG - covered by existing Local Plan budget and staff resources;
- Monitoring BNG – costs to be recouped through agreements with developers and landowners for the use of existing, employment of more resources or outsourcing to a third party;
- Ecological surveys for Council-owned land – already underway and covered by existing BNG funding received from DEFRA;
- Processes for establishing Habitat Banks on Council-owned land which would require Cabinet consideration and approval, and the potential need to increase resources to support these processes depending on how many, if any, sites are to be put forward as Habitat Banks;
- Revenue income through the sale of BNG units on Council-owned land – will need to cover the cost of procuring and facilitating habitat creation with monitoring and enforcement, with potential for surplus; and
- Any implications for ongoing maintenance and public liability on Council-owned BNG sites.

<b>X</b>	<b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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Reference is made to the resources and risk section of this report which highlights the need to carefully consider the resource implications of BNG, on an ongoing basis, to ensure sufficient resources across a number of services are in place to deliver, effectively, on the requirements and opportunities around BNG. This could require further decisions in the on budgets, fees and charges in the future.

#### **USE OF RESOURCES AND VALUE FOR MONEY**

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	In its responsibilities as Local Planning Authority (LPA), the Council has duties around BNG as part of the Local Plan review process, decision making on planning applications, legal agreements for the establishment of Habitat Banks and monitoring and enforcement in respect of all of the above. The Council will be better-placed to administer these duties in an efficient and cost-effective manner in accordance with a clear policy position and associated decision-making arrangements than in the absence of such a policy and arrangements.
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B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	This report puts forward a proposed policy for agreement by the Cabinet for application in the interim as the Council's corporate position on BNG albeit pending full and thorough consideration by the Planning Policy and Local Plan Committee as part of the Local Plan review and consideration and agreement by the Planning Committee of how its powers will apply in the consideration of proposals for Habitat Banks.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Having a clear policy and associated decision-making processes in place in respect of BNG will provide clarity on the process for dealing with planning applications with BNG implications and approaches from landowners looking to set up Habitat Banks.

#### **MILESTONES AND DELIVERY**

The Council's duties in respect of BNG are already in place, as introduced through the Environmental Act 2021 and enacted from February 2024 in respect of major development and 2 April 2024 for minor development proposals. The Council is therefore already considering and determining planning applications in line with statutory requirements set out in legislation and details within national guidance.

The proposed Policy on Biodiversity Net Gain, designed to assist the Council in its approach to the above, is recommended for immediate adoption as the Council's interim position on BNG with the Cabinet's approval.

The policy is proposed for referral to the Planning Policy and Local Plan Committee for its consideration, in due course, for inclusion in the Local Plan as part of the forthcoming Local Plan review. The timetable for the Local Plan review is due to be revisited by the Planning Policy and Local Plan following significant changes being proposed by the newly elected Government to the National Planning Policy Framework in respect of housebuilding targets – although it is expected that there will be public consultation on the Local Plan throughout 2025 including consultation on the proposed BNG policy.

It is recommended that the Planning Committee is invited, at its earliest convenience to clarify how it wishes to exercise its decision-making powers in respect of s106 legal agreements for Habitat Banks including any requirements for public consultation or delegation of powers to Officers.

Overall, it is intended that the above actions will enable the Council to work smoothly and constructively with landowners to put necessary legal agreements in place for the registration and establishment of Habitat Banks in Tendring and for those Habitat Banks to enter the market for the sale of biodiversity units by the end of 2024 or early 2025. Decisions on the introduction of Monitoring fees will be taken by the Portfolio Holder responsible for Housing

and Planning in liaison with Officers as soon as is practicable following agreement of the interim policy.

The timing of whether the Council, as a landowner, establishes Habitat Banks on its own land will be considered by Officers and the Cabinet in the coming months.

#### **ASSOCIATED RISKS AND MITIGATION**

The main risk of not having clear policies and decision-making processes in place in respect of BNG is the potential for undue delay in the Council carrying out its legal and administrative duties for BNG and putting in place the necessary legal agreements and monitoring arrangements and enabling landowners in Tendring to set up Habitat Banks for the purposes of aiming to deliver habitat creation in our district – to the benefit of the district's environment, the rural economy and the objectives of the emerging Local Nature Recovery Strategy. The measures recommended in this report mitigate that risk.

There are also financial and resource risks to the Council if workloads relating to BNG increase to an extent that has not been fully considered, accounted and budgeted for. In particular there are implications for the resources within legal services with the potential for a large number of legal agreements needing to be either drafted or reviewed with potential for complex content. At present the Council has only a small legal team with one solicitor specialising in planning and s106 legal agreements. Whilst the Council is able to, and does recover costs from developers and landowners to cover existing costs, the situation will need to be kept under very close review in order to determine, in a timely manner, whether additional staff resources or external support need to be employed in order to cope with any potential workload increase.

The ability to effectively resource the processes for bring forward Habitat Banks on Council-owned land and carrying out the necessary physical and ongoing maintenance and monitoring works will require further consideration as it becomes clearer how many, if any, sites are put forward by the Council, their size and nature of works required. Failure to adequately resource these processes and works could leave the Council unable to fulfil its duties under any future legal agreement or conservation covenant or as an authorities responsible for monitoring BNG.

#### **EQUALITY IMPLICATIONS**

Whilst there are no identified equality implications in respect of residents or communities with protected characteristics or other groups in society, there is potential for Tendring landowners and the Tendring District to be disadvantaged if the Council is unable to process requests to establish Habitat Banks in an efficient and timely manner. The recommendations in this report look to minimise that risk.

Because the trade in biodiversity units can cross administrative boundaries, the risk of delay could result in Habitat Banks in other districts being better placed to meet the BNG

requirements of Tendring developments and, likewise Habitats Banks in Tendring not able to compete in the market for selling units to meet the BNG requirements of developments outside of Tendring.

## **SOCIAL VALUE CONSIDERATIONS**

Biodiversity Net Gain (BNG) and the objectives around Local Nature Recovery, as being progressed by Essex County Council through the Local Nature Recovery Strategy (LNRS) are critical to the sustainable future of humankind, tackling climate change and the health and wellbeing of residents. The opportunities afforded by BNG and the setting up of Habitat Banks can support the rural economy and the sustainability of income for our farming communities.

## **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030**

The overall objectives of Biodiversity Net Gain (BNG) support both national and local objectives around tackling climate change and achieving net zero. Whilst the Council has legal obligations around the administration and monitoring of BNG through its planning responsibilities and entering into any legal agreements in respect of Habitat Banks, it also has the opportunity as a landowner to participate in BNG and the potential to establish Habitat Banks on Council-owned land is actively under consideration.

## **OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

<b>Crime and Disorder</b>	No specific identified implications.
<b>Health Inequalities</b>	The opportunity to facilitate the delivery of as much Biodiversity Net Gain (BNG) in Tendring as possible will be beneficial to the health and wellbeing of residents in Tendring – tied in with the overall objectives of the emerging Essex Local Nature Recovery Strategy.
Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)	No implications
<b>Area or Ward affected</b>	All wards have the potential to accommodate or contribute towards BNG and relevant proposals could come forward for consideration in any part of the district.

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

Biodiversity Net Gain (BNG)

The Environment Act 2021, and associated regulations, has amended the Town and Country Planning Act 1990 (TCPA) to make Biodiversity Net Gain (BNG) a mandatory condition of planning permission (subject to exemptions). The requirements for BNG have applied to major development proposals since 12 February 2024 and to small sites proposals since 2 April 2024 (subject to exemptions or transitional arrangements apply).

Under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) relevant developments must deliver at least 10% uplift in biodiversity value, when compared to the pre-development biodiversity value of the application site to meet the biodiversity gain objective. Uplift is calculated with the statutory biodiversity metric with biodiversity measured in standardised biodiversity units. Development cannot commence until BNG has been both demonstrated and secured.

To achieve this, developers will need to submit a biodiversity gain plan (BGP) to local planning authorities for approval prior to the commencement of development, required as a mandatory planning condition. The BGP document via planning condition will evidence what measures are being provided to achieve the required uplift in biodiversity value demonstrating that the biodiversity gain objective is met.

The Biodiversity Gain Hierarchy and its effect for the purpose of the statutory framework for BNG is set out in Articles 37A and 37D of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This hierarchy (which does not apply to irreplaceable habitats) sets out a list of priority actions:

- first, in relation to onsite habitats which have a medium, high and very high distinctiveness (a score of four or more according to the statutory biodiversity metric), the avoidance of adverse effects from the development and, if they cannot be avoided, the mitigation of those effects; and
- then, in relation to **all** onsite habitats which are adversely affected by the development, the adverse effect should be compensated by prioritising in order, where possible, the enhancement of existing onsite habitats, creation of new onsite habitats, allocation of registered offsite gains and finally the purchase from the government of statutory biodiversity credits.

Both significant on-site enhancements and registered off site biodiversity gain must be maintained for 30 years and secured through planning condition, planning obligations or conservation covenant (as appropriate).

LPAs must take into account how the biodiversity gain hierarchy has been applied when determining whether to approve the BGP.

Delivering BNG on-site will not always be possible (within the red line boundary of the planning application), even when applying the Biodiversity Gain Hierarchy. Statutory



biodiversity credits are pitched as a last resort and have purposefully been priced to be unattractive to developers, so it does not discourage the development of local market schemes and non-credit habitat creation projects which could otherwise cut the registration of land in the biodiversity gain site register (see below). Further in order to buy credits, developers will have to demonstrate that they cannot deliver habitat onsite or via the off-site market. As such, it is anticipated that there will be demand for 'registered offsite biodiversity gain', within the district to enable developers to meet mandatory BNG requirements.

The Council's legal and planning teams have been working together to clarify the process for securing BNG from development proposals from the point an application is submitted through to the point it is determined – and the need for relevant planning conditions and legal agreements to be put in place, either pre-decision or post-decision depending on the scale and nature of the development. However, the legal and planning process for securing BNG is but one part of the overall picture.

### Habitat Banks

Under the Biodiversity Gain Hierarchy, developers are expected to deliver as much of the mandatory 10% net gain in biodiversity on the development site itself – which would normally be secured through a legal agreement, either put in place before or after the planning decision or secured by planning condition. However, where a developer cannot meet its full BNG quota on site, it can then consider, in accordance with the Biodiversity Gain Hierarchy, making provision offsite (or a combination of onsite and offsite BNG) – either on its own land outside of the development site (to be tied into a legal agreement), or by buying offsite biodiversity units on the market from a Habitat Bank (also secured by legal agreement). In both cases the site would need to be registered on the biodiversity gain site register held and administered by Natural England and allocated to the development on the register, with evidence provided to the Council, of that allocation.

If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government as a last resort, from which the government can use the revenue to invest in habitat creation anywhere in England.

Habitat banks are parcels of land where habitats have been created or enhanced, in advance, to provide an uplift of biodiversity units. These surplus biodiversity units can then be sold to developers to meet their BNG requirements 'off-site' and allocated to the development in question on the biodiversity gain site register to avoid double counting. The sale of surplus biodiversity units will give landowners a return on their investment in creating or enhancing habitats. In order to sell off-site biodiversity units, there are a number of criteria set out in the Biodiversity Gain Site Register Regulations 2024 (SI 2024/45) that must be met.

The following criteria must be met and the sites in question must be formally registered by Natural England on the biodiversity gain site register through approval of a Habitat Management and Monitoring Plan (HMMP) and secured by legal agreement. For Natural England to formally register a Habitat Bank, the landowners must have first, either entered

into a s106 legal agreement with the Council (that, amongst other things, will define the nature of proposed habitat creation and put in place long-term arrangements for management and monitoring for 30 years from the creation of the habitat); or enter into a 'conservation covenant' with another responsible body recognised by Natural England. The Local Planning Authority or Responsible Body (as appropriate) will be required to monitor and enforce the obligations in the legal agreement and may charge a reasonable monitoring fee to do so.

In Tendring, a number of landowners in the District have already expressed a keen interest in setting up Habitat Banks and entering into a legal agreement with the Council. To date Officers have urged them to be patient while the Council is still in the process of understanding the rules and processes around BNG and determining whether it needs to put some local criteria in place for the consideration of Habitat Banks – particularly given that Habitat Banks will essentially be private businesses competing against one another in the open market to sell BNG units. Such consideration requires the Council to determine its proposed policy for adoption through formal decision making.

Essex County Council is also considering the setting up of a Habitat Bank at St. Martin's Country Park in St. Osyth as a pilot scheme.

#### Council-owned land

Like any other landowner, the Council and other public bodies can play a role in facilitating the delivery of BNG by setting up Habitat Banks on their land. There are a number of benefits to Councils in using their own land in this way including:

1. To ensure that BNG enhancements are retained in the area;
2. To reduce the shortfall in offsite units and offer developers more choice;
3. To use plots of land that may not be suitable for any other purposes and generate income;
4. To create green space in urban areas; and
5. To support the Local Nature Recovery Strategy and comply with the duties under the Natural Environment and Rural Communities Act 2006 ("NERCA") to conserve and enhance biodiversity.

Like other landowners, Councils have to register their sites with Natural England – however because a Council cannot enter into a s106 legal agreement with itself, it could consider entering into a s106 with another authority (such as Essex County Council); delegate its s106 powers to another local authority; create an arms-length Special Purpose Vehicle (SPV) and lease land into that SPV to then enter into a s106 with the Council; lease the land to a trusted third party; or enter into a 'conservation covenant' with a 'responsible body' registered with Natural England. These options would need to be considered by Cabinet in the exercise of its functions.

As it stands at the moment, there are only a handful of designated responsible bodies registered with Natural England, none of whom operate in Essex; and the Essex Wildlife Trust (EWT) has indicated to Officers that it would not be interested in leasing land from the Council (as it prefers freehold in order to protect wildlife in perpetuity). It may be therefore that a partnership with ECC or another local authority, or the setting up of an SPV might be the better options which can be explored further in due course.

The Council is currently having ecological surveys carried out on its land by Essex Place Services and Geosphere Environmental to determine what the 'baseline' ecological value of each site is, in order to be able to create and measure BNG increases in the future.

If the Council does set up Habitat Banks on its land, it will essentially be entering the market for the sale of BNG units as off-site biodiversity gains for developers to purchase and allocate to their development to meet the biodiversity objective, in competition with other landowners both in the district and outside of the district. There will of course be internal processes for the Council to seek Member approval for the use of certain sites for Habitat Banks.

#### Cross-boundary BNG

So long as a Habitat Bank falls within the same 'National Character Area' of the country as the developments that are delivering off-site BNG, it is possible for BNG units to be bought from Habitat Banks in other districts and for developers in other districts to buy BNG units from Habitat Banks in Tendring.

Officers have been in discussion with the Essex Wildlife Trust (EWT), which is in the process of setting up a Habitat Bank next to its headquarters and Abbots Hall in Great Wigborough, in Colchester. It is highly likely that the EWT site at Abbots Hall will be one of the first to be set up and ready to sell biodiversity units to developers – with a possibility that developments in Tendring could buy their off-site units there. The EWT is in the process of finalising its s106 agreement with Colchester City Council and has helpfully shared details of a similar agreement from another authority as an example of good practice.

Clearly for the Council and other landowners in Tendring to benefit from being able to set up Habitat Banks for the sale of BNG units, they will need to follow a similar process and, on registration, will be entering a market in competition with EWT in Colchester – so there is a degree of urgency now in progressing to a position by which Tendring landowners can seek registration – with the first of Tendring's planning permissions requiring BNG already in the system and under consideration.

#### Responsibility for Monitoring

For any Biodiversity Net Gain created in the District under the recent provisions:

- a) on-site (secured by planning condition or s106 agreement with the LPA);

- b) off-site by a developer on land in their ownership (secured by s106 agreement with the LPA); or
- c) off-site on third party land via a Habitat Bank (secured by s106 agreement with the LPA);

the Council will be responsible for the monitoring and enforcement of the creation, management and maintenance of BNG for 30 years where the land concerned is within our district.

Therefore, it is important that through s106 legal agreements – the arrangements for long-term monitoring and enforcement, over a 30-year period are put in place; and that the Council can secure funding to cover the cost of carrying out the necessary monitoring and enforcement of planning conditions and obligations. Monitoring is likely to involve a commitment from the landowners/developers to produce a survey and report on a periodic basis (possibly in years 1, 2 and 5 and every 5 years thereafter which are periods being considered by other authorities) for the Council to scrutinise and, with professional advice where necessary, agree.

The fee required to cover the cost of this work has been considered by Officers across the services, taking into account likely resource costs, the need for professional advice and levels of inflation over a 30 year-period – whether carried out in-house or out-sourced to another appropriate body with specialist knowledge. This work suggests that the cost of discharging this work per year (at 2024 levels) would be in the order of £500-£600 (rising to around £2,000 at anticipated 2054 levels). The total compounded cost of monitoring a 30-year project at the intervals suggested above would be in the order of £8,500 for a BNG site/Habitat Bank of up to 50ha; £12,500 for sites between 50 and 100ha; and £17,000 for sites greater than 100ha. For smaller BNG schemes related to smaller developments where £8,500 might not be affordable or viable, Officers are considering a set of lower fees that go up in stages up to circa £8,500 – which would be commensurate with scale and complexity of the proposals under consideration. Officers have considered the approaches and ranges of fees published by other authorities across England.

#### Local Nature Recovery Strategy (LNRS)

The Environment Act 2021 also introduced the requirement for Local Nature Recovery Strategies (LNRS) to be introduced by responsible bodies across the country (in our case Essex County Council) to set out coordinated strategies for bringing about nature recovery and BNG. Section 40(2A) of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) makes provision about the duties of public authorities in relation to local nature recovery strategies. The primary purpose of the LNRS is to identify locations where the creation or enhancement of habitats has the potential to maximise the environmental benefits for people, nature climate adaptation and mitigation. There are three key aims across all habitats, increase their size, improve their quality and enhance connectivity between them.

The ECC Local Nature Recovery Strategy team have been working on county wide maps that indicate where these areas for nature recovery are. The data used to inform this map has come from existing open sources such as The Forestry Commission, the Environment Agency, Essex Wildlife Trust and Local Authorities. The consultation on the LNRS has recently commenced and closes on 25<sup>th</sup> October - officers at TDC are preparing a response. Throughout the consultation it is possible to access the Stakeholder Opportunity Maps that highlight spatial opportunities for nature recovery within the district. Whilst the maps are the headline element of the draft, the strategy itself offers an overview of the issues that have depleted biodiversity and proposes location specific measures to reverse the decline

The draft outlines how this strategy is designed around having the most positive impact possible on nature at a District and County level. It identifies habitat and species priorities and suggests practical ways to make them bigger, better and increase connectivity.

#### The proposed policy

The proposed policy entitled 'Biodiversity Net Gain in Tendring' has been drafted in the form of a planning policy for inclusion in the Council's Local Plan which sets out the approach recommended for the Council to adopt in respect of BNG and the setting up and monitoring of Habitat Banks. The policy essentially covers the following:

- the Council's obligations, under the Environment Act and the planning system, to secure 10% BNG – without unnecessarily duplicating the detail of legislation of national guidance;
- the ambition (which aligns with the ambition of ECC) to increase the BNG requirement to 20% through planning policies (albeit this would have to be justified, through evidence, as part of the Local Plan review process and is therefore suggested for 'phasing in' from April 2027 – at which point 1) the Council will know if it has succeeded in getting the Planning Inspector's approval; and 2) puts developers on a year's notice to get ready for the increased requirement. Naturally, if the Council fails to defend the soundness and viability of an increase to 20%, it will not feature in the Local Plan and the statutory 10% requirement will remain);
- the criteria under which the Council 'could' be willing to enter into a s106 legal agreement with a landowner for the purpose of setting up Habitat Banks for registration with Natural England and the selling of BNG units to developers on the open market (these include criteria from national guidance, but also include 'preferred' locations (without needing to identify specific sites in the Local Plan) for Habitat Banks which:
  - reflect the benefit of expanding and connecting up existing protected wildlife habitats;
  - promote a scale of site that could better foster the creation of viable habitats than smaller more vulnerable sites;

- support the objectives of the emerging Essex Local Nature Recovery Strategy (LNRS) and the locations identified for their opportunity for habitat creation in that strategy (it is proposed that these locations offer 15% greater BNG unit value than other locations);
- support Local Plan policy e.g. strategic green gaps and protected open spaces, and avoiding Habitat Banks in locations that could prejudice the proposals and policies in the Local Plan; and
- allows the Council to establish Habitat Banks on its own land, in due course, allowing time to carry out due internal processes in relation to assets and Member approvals – without holding up the opportunity for third-party private landowners to progress Habitat Banks on their sites, to the benefit of wildlife in the district and the diversification of the rural economy.

#### PREVIOUS RELEVANT DECISIONS

Planning Policy and Local Plan Committee 20 December 2023 – Minute No. 22. The Committee agreed to commence the Local Plan – the focus and approach for which to be underpinned by a set of agreed overarching ‘guiding principles’. One of the agreed guiding principles is:

***“ECOLOGY AND BIODIVERSITY NET GAIN:*** *The Council will specifically review its policies on the protection and enhancement of ecology and biodiversity to ensure they properly reflect government requirements for Biodiversity Net Gain (BNG) with the aim of increasing BNG expectations to above 20%. This could include the identification of specific sites for the creation and enhancement of ecology and biodiversity.”*

#### BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None.

#### APPENDICES

**Appendix 1: Proposed Policy on Biodiversity Net Gain in Tendring**

#### REPORT CONTACT OFFICER(S)

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### **A.3 Appendix 1: Proposed Policy on Biodiversity Net Gain in Tendring**

#### **Biodiversity Net Gain in Tendring**

Biodiversity Net Gain (BNG) is an approach to development that ensures habitats for wildlife are left in a measurably better state than they were before the development. In England, BNG is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Under this legislation, developments are required, as a minimum, to deliver a BNG of 10% to meet the biodiversity gain objective (save where exemptions apply).

Relevant developments are deemed to have been granted subject to a pre-commencement condition that the biodiversity gain objective is met (the biodiversity gain condition). To discharge this condition developers will need to demonstrate that proposals can deliver a minimum 10% uplift in biodiversity value, when compared to the pre-development biodiversity value of the application site. Uplift is calculated with the statutory biodiversity metric, with biodiversity measured in standardised biodiversity units. Development cannot commence until BNG has been demonstrated and secured.

To achieve this, and discharge the biodiversity gain condition, developers will need to submit a biodiversity gain plan (BGP) to local planning authorities for approval prior to the commencement of development. The BGP document will evidence what measures are being provided to achieve the required uplift in biodiversity value demonstrating that the biodiversity gain objective is met. There are special modifications for phased development and the treatment of onsite irreplaceable habitats.

The Biodiversity Gain Hierarchy (which does not apply to irreplaceable habitats) sets out a list of priority actions to deliver BNG:

- first, in relation to onsite habitats which have a medium, high and very high distinctiveness (a score of four or more according to the statutory biodiversity metric), the avoidance of adverse effects from the development and, if they cannot be avoided, the mitigation of those effects; and
- then, in relation to all onsite habitats which are adversely affected by the development, the adverse effect should be compensated by prioritising in order, where possible, the enhancement of existing onsite habitats, creation of new onsite habitats, allocation of registered offsite gains and finally the purchase from the government of statutory biodiversity credits.

Both significant onsite enhancements and registered offsite biodiversity gain must be maintained for 30 years and secured through planning condition, planning obligations or conservation covenant (as appropriate).

Local planning authorities must take into account how the biodiversity gain hierarchy has been applied when determining whether to approve the BGP.

The Council is committed to improving the natural environment of the district and contributing to nature's recovery more widely. Consistent with Council's corporate objectives and statutory duties placed on local authorities, the Council is taking action to facilitate the creation and enhancement of natural habitats where possible and appropriate.

Establishing Habitat Banks within the district will provide an efficient planning process, ensure best value for developers looking to discharge mandatory planning requirements, and deliver habitat creation and enhancement in areas subject to development pressure. Tendring District Council will support the creation of habitat banks to sell off site biodiversity units within the district. Those that encourage connectivity between existing sites in the Local Nature Recovery Strategy will be supported.

In the delivery of off-site BNG and the setting up of Habitat Banks, the Council will work with landowners and developers with the aim of delivering as much BNG as is possible within the Tendring District, recognising that BNG outside of Tendring, but within the same wider 'National Character Area' identified by Natural England can be achieved where options for BNG in Tendring are not available.

## **BIODIVERSITY NET GAIN IN TENDRING**

Alongside the requirements in relation to Biodiversity and Geodiversity set out in Policy PPL4 [of the Council's existing Local Plan], development in Tendring will be subject to the legal and national requirements for 'Biodiversity Net Gain' (BNG). For planning applications submitted to the Council on or before 31 March 2027, development proposals that qualify for BNG will be expected to deliver a minimum 10% increase in biodiversity value relative to the pre-development biodiversity of onsite habitat within the development site to meet the biodiversity objective in line with the national minimum requirement. From 1 April 2027 onwards, the requirement will be a minimum of 20%, as established through this policy.

The method by which developers are required to calculate the existing biodiversity value of a site and thereafter calculate and deliver BNG are set out in full within national guidance.

In line with the Biodiversity Gain Hierarchy as set out in legislation and national guidance, the Council will expect as much of the necessary BNG as possible to be delivered on-site (within the red line boundary of a development site), through measures that will be secured through legal agreement and/or planning condition.

Any residual BNG requirement that cannot be met on-site can be delivered off-site either on land in the control of the developer/landowner outside of the development site (to be tied into a legal agreement and registered), or by the purchase of offsite biodiversity units from a registered site. In both cases the offsite BNG must be allocated to the development and the Council would need to be provided with official certification of registration of that allocation to the development.



If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government as a last resort. The government may then use the revenue to invest in habitat creation anywhere in England.

To enable off-site BNG provision to be delivered in a coordinated way that brings about the creation of bigger, better and more connected habitats that are resilient, manageable and contribute effectively to the aims and objectives of the Essex Local Nature Recovery Strategy; the Council will support the setting up of 'Habitat Banks' in the District from which biodiversity units can be bought – so long as:

- 1) the applicant has the legal right to sell biodiversity units for the purpose of mandatory BNG;
- 2) the habitat creation/enhancement proposals are appropriate and likely to succeed;
- 3) the uplift in biodiversity units is genuinely additional (i.e. there is no double-counting with conservation schemes in place or funded by other means):
- 4) the applicant enters into a legal agreement with the Council or a conservation covenant with a responsible body, detailing the arrangements for provision, management, monitoring, remediation and enforcement;
- 5) the location would not prejudice either the integrity of existing habitats or the planned growth of the District proposed in the Local Plan; and
- 6) the site meets the criteria for registration and is subsequently registered on the biodiversity gain site register.

The Council will give particular support to the establishment of Habitat Banks in the following locations:

- a) on land adjoining existing sites designated for their international, national or local importance that will bring about expansion of and/or connectivity between those habitats;
- b) on land within the District's 'Strategic Green Gaps' (see Policy PPL6);
- c) on land at or adjoining the District's Registered Parks and Gardens, Local Green Spaces and safeguarded open spaces; and
- d) sites within locations identified in the Essex Local Nature Recovery Strategy as strategic opportunities for habitat creation.

To formalise these Habitat Banks, they need to be officially registered with Natural England which would first require landowners to either enter into a legal agreement with the Council (that, amongst other things, will define the nature of proposed habitat creation and put in place long-term arrangements for management and monitoring); or enter into a 'conservation covenant' with another responsible body recognised by Natural England.

Any legal agreements or covenants required either to discharge the BNG requirements for individual planning permissions or to establish Habitat Banks where the Council is the responsible for monitoring and enforcement will include the provision for the payment of

monitoring fees which will be used by the Council, or a nominated body, to cover the cost of monitoring BNG over a minimum 30-year period, in line with legislative requirements.