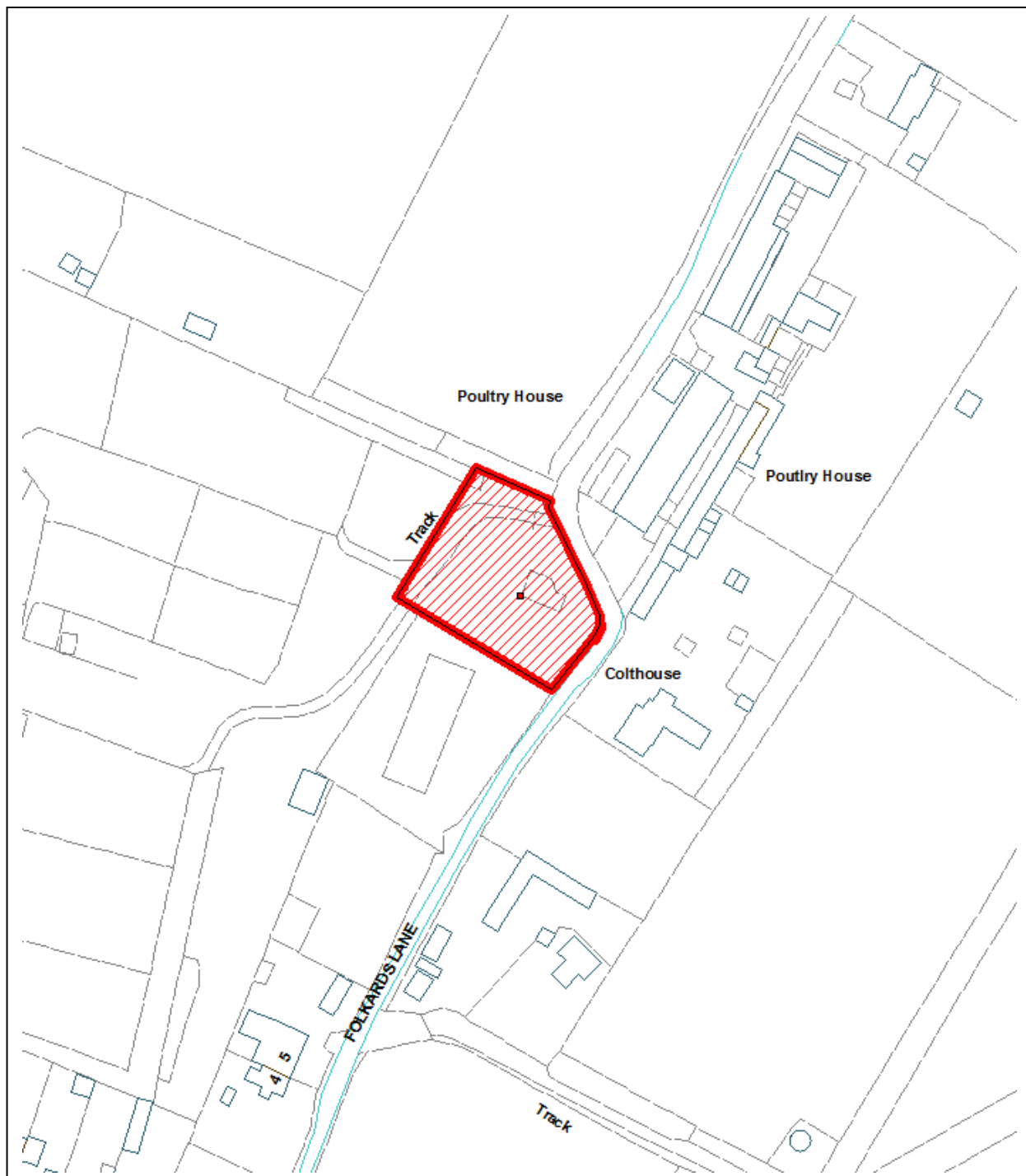


**PLANNING COMMITTEE**

**11 JUNE 2019**

**REPORT OF THE HEAD OF PLANNING**

**A.6 PLANNING APPLICATION – 19/00179/FUL – FOLKARDS LANE, BRIGHTLINGSEA, CO7 0SJ**



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**Application:** 19/00179/FUL

**Town / Parish:** Brightlingsea Town Council

**Applicant:** Mrs Cribb

**Address:** Folkards Lane, Brightlingsea, CO7 0SJ

**Development:** Proposed detached four bedroom house and associated cart lodge.

## 1. Executive Summary

- 1.1 This application is before members at the request of the Head of Planning.
- 1.2 The site lies outside of the Brightlingsea Settlement Development Boundary as defined within both the adopted Tendring District Local Plan (2007) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). The site lies within the Coastal Protection Belt of Brightlingsea Reach and St Osyth Marsh.
- 1.3 The proposal would result in conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site's location beyond the settlement development boundary. However, whilst the National Planning Policy Framework 2019 advocates a plan-led approach, it is important to consider whether any circumstances outweigh the conflict. Development should be plan led unless material considerations indicate otherwise. Recent appeal decisions demonstrate that a site falling outside of a Settlement Development Boundary is not in itself sufficient to justify refusing applications for proposed development. Specifically appeal decisions for residential development within Folkards Lane have established this as a socially sustainable location.
- 1.4 The site cannot be considered physically isolated being closely related with residential dwellings fronting Campernell Close to the west, existing dwellings directly opposite and to the south along Folkards Lane and with large commercial buildings to the north east and Lower Marsh Farm beyond. The proposed dwelling would be sited within the proximity of other dwellings and would not appear isolated or give the impression that the site would encroach into the countryside.
- 1.5 The scale, layout and appearance of the dwelling are acceptable and will not result in any material harm to the character of the area. The dwelling is served by ample private amenity space and is sited a sufficient distance from neighbouring properties further softened by boundary vegetation. The standard of residential amenities for existing and future occupants is considered acceptable.
- 1.6 Whilst it is recognised that Folkards Lane is narrow, there is an existing access to the site associated with the existing equestrian use and the development of the site for 1 dwelling will not intensify the use of this access to a level that could be considered materially harmful to highway safety or amenity.
- 1.7 In conclusion, there would be no harm to the aims and objectives of Policy QL1 other than the basic conflict with it insofar as the location outside of a settlement boundary is concerned. The location of the proposal is supported by the NPPF and appeal decisions. The site constitutes previously developed land and the proposal would not be materially harmful to the landscape character or character of the area. In combination with the economic and social benefits these material considerations outweigh the conflict.
- 1.8 A legal agreement has been completed to account for contributions towards open space and Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).

**Recommendation: Approval**

Subject to the conditions stated in section 8.2.

A legal agreement has been completed to account for contributions towards open space and Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).

**2. Planning Policy**

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

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

EN1 Landscape Character

EN3 Coastal Protection Belt

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

HG9 Private Amenity Space

HG14 Side Isolation

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

COM6 Provision of Recreational Open Space for New Residential Development

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

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

LP1 Housing Supply

LP2 Housing Choice

LP4 Housing Layout

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP1 Improving Health and Wellbeing

PPL4 Biodiversity and Geodiversity

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

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

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

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

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

In relation to housing supply:

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

### 3. Relevant Planning History

15/01729/LUEX	Existing use as equestrian land.	Part Approved, Part refused.	26.01.2016
18/30203/PREAPP	Proposed 4 bed detached house & cartlodge.	Support	07.11.2018

### 4. Consultations

#### **ECC Highways Dept**

A site visit has been undertaken and the information that was submitted in association with the application has been fully considered by the Highway Authority.

The proposal is located off a private road and retains adequate room and provision for off street parking and turning, within the extents of the proposed site, therefore:

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

1. Prior to occupation of the proposed dwelling, the private drive shall be constructed to a maximum width of 4.5 metres for at least the first 6 metres from the back of carriageway and provided with an appropriate dropped kerb crossing of the existing access.

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

2. No unbound material shall be used in the surface

treatment of the vehicular access within 6 metres of the carriageway.

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

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

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

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

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.

5. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway/carriageway (delete as appropriate).

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

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

Informative 1: the private road is less than 3 metres in width without any passing places and no scope to provide any passing places. Should the application be approved the developer/ future home owner should be obligated to contribute to any future maintenance or ongoing costs for the repair and upkeep of the private road.

Informative 2: Under Building Regulations B5, access for fire tenders is required to a point not further than 45 metres from the entrance to the dwelling. Any road or private drive forming part of such a fire access must be no less than 3.7 metres wide between kerbs (this may be reduced to 3.1 metres for a gateway or similar short narrowing) and should have a minimum centre line bend radius of 6.55 metres. The access way should be

capable of carrying a 12.5 tonne vehicle. A cul-de-sac which is more than 20 metres long must have a turning head of a least Size 3.

Informative 3: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Informative 4: The remote location of the site is such that access to key facilities, public transport, employment and leisure opportunities is limited and for the vast majority of journeys the only practical option would be the car. This should be taken in to consideration by the Planning Authority when assessing the overall sustainability and acceptability of the site.

Informative 5: Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

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

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

## **5. Representations**

- 4.1 Brightlingsea Town Council originally opposed the application, as all previous applications in Folkards Lane were.
- 4.2 However, Brightlingsea Town Council supports the amended application.
- 4.3 15 objections have been received (some duplicates sent via email and through public access), the material planning considerations raised can be summarised as follows:
  - Highway safety – narrow single lane, private road, cumulative impact from developments in Folkards Lane, construction traffic, landscaping and fencing will cause obstruction of view.
  - Will result in noise complaints from new occupants being in close proximity to the existing kennel business.
  - Outside development boundary.
  - Loss of countryside.
  - Dwelling is too large and out of keeping.
- 4.4 The material planning considerations raised above are addressed in the main report below.

- 4.5 Concerns over the ownership of the road, status of the road and its upkeep have been raised. Any disputes over the ownership or upkeep are a private matter between the relevant parties and do not constitute a material planning consideration.
- 4.6 It is noted that 8 comments received are directly from the applicant responding to the objections.

## **6. Assessment**

### Site Context

- 4.7 The application site comprises 0.14 hectares of paddock land (approved under 15/01729/LUEX) sited on the western side of Folkards Lane accessed from Red Barn Road, located to the northern edge of Brightlingsea.
- 4.8 The site is bounded by mature trees and hedging with some low level wire and timber fencing.
- 4.9 Vehicular access is obtained via an existing access at the north eastern corner of the site directly from Folkards Lane enclosed by a timber gate.
- 4.10 To the west beyond the remainder of the paddock land, are the residential dwellings fronting Campnell Close. There are existing dwellings directly opposite and to the south of the site along Folkards Lane with large commercial buildings to the north east and Lower Marsh Farm beyond. To the north west of the site are open fields.
- 4.11 It is noted that a 2 metre high fence has been recently erected along the southern boundary of the site. This falls within permitted development tolerances allowed under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 2, Minor operations, Class A which states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted provided the height does not exceed 2 metres above ground level.
- 4.12 The site lies outside of the Brightlingsea Settlement Development Boundary as defined within both the adopted Tendring District Local Plan (2007) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). The site lies within the Coastal Protection Belt of Brightlingsea Reach and St Osyth Marsh.

### Proposal

- 4.13 The application seeks full planning permission for the erection of a 4 bedroom detached dwelling and detached 2 bay cartlodge accessed via the existing access from Folkards Lane.
- 4.14 The dwelling has been designed as a one and a half storey property with an 'L' shaped footprint with an external chimney and front door canopy.
- 4.15 External materials comprise a soft red brick plinth and rendered elevations with plain brown roof tiles. The cart lodge (enclosed on 3 sides) is to be a timber framed structure with a pitched roof finished with a brick plinth and brown roof tiles to match the dwelling with timber weatherboarded elevations.

### Principle of Development

*Relevant Planning and Appeal History of nearby sites:*



#### **5 Folkards Lane, Brightlingsea**

17/00696/OUT	Proposed new four bedroom dwelling and two bay cartlodge.	Allowed on Appeal APP/P1560/W/17/3182967 26.01.2016
18/02107/DETAIL	Proposed new four bedroom dwelling and two bay cartlodge.	Pending

#### **4 Folkards Lane, Brightlingsea**

17/00141/FUL	Proposed construction of a new 3 bedroom cottage.	Approved	05.05.2017
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#### **Land East of Folkards Lane, Brightlingsea**

17/01086/OUT	Erection of two detached bungalows with associated garaging and parking.	Allowed on Appeal APP/P1560/W/17/3187416 13.06.2018	
18/01828/DETAIL	Reserved matters application following outline permission (allowed at appeal) 17/01086/OUT - Erection of two detached bungalows with associated garaging and parking.	Approved	21.12.2018

- 4.16 The appeal decisions highlighted above at nearby sites in Folkards Lane are of particular relevance in this instance. Application 17/00696/OUT (APP/P1560/W/17/3182967) was allowed at a time when the Council were unable to demonstrate a 5 year housing land supply and 17/01086/OUT (APP/P1560/W/17/3187416) was allowed when the Council could demonstrate a 5 year supply.
- 4.17 Within the appeal decisions the Inspector concluded the following key points relevant to the consideration of this application:
- The site is surrounded by residential development and not physically isolated.
  - The site is very close to existing services and facilities within Brightlingsea and not functionally isolated.
  - The provision of a single dwelling would only result in a very modest contribution to the housing supply.
  - There would be some short term economic benefits during construction and subsequent maintenance of the building.
  - A social benefit would result through the enhancement and maintenance of local services.
  - The proposed dwelling would be sited within the proximity of other dwellings and would not appear isolated or give the impression that the site would encroach into the surrounding countryside.
  - The site is not open countryside, does not have the appearance of undeveloped coastal land and the development would not have an adverse impact on the character and appearance of the area.
  - The development would not compromise highway safety.
- 4.18 The site lies outside of the Brightlingsea Settlement Development Boundary as defined within both the adopted Tendring District Local Plan (2007) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). The site is lies within the Coastal Protection Belt of Brightlingsea Reach and St Osyth Marsh.

- 4.19 Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft.
- 4.20 The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.
- 4.21 At the time of this report, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.
- 4.22 Whilst it is recognised that there would be some conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.
- 4.23 Therefore, at this present time, it is correct to assess development on its merits against the sustainable development objectives set out within Paragraph 8 of the NPPF. The economic objective, the social objective and the environmental objective are therefore assessed below.

*Economic:*

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

*Social:*

- 4.25 Emerging Policy SPL1 of the Publication Draft of the Local Plan 2017 includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations. This is the emerging policy equivalent to Saved Policy QL1 of the adopted Tendring District Local Plan 2007 which states that development should be focussed towards the larger urban areas. Brightlingsea is categorised as a Smaller Urban Settlement in recognition of its settlement size and level of amenities.

- 4.26 The site is located less than 140 metres from the edge of the defined Brightlingsea Settlement Development Boundary as defined by both the adopted and emerging Local Plans. The site is suitably close to existing services and facilities within Brightlingsea where occupants of the proposed dwelling can access shops, schools, employment opportunities and transport links.
- 4.27 In this regard, and having regard to the above-mentioned appeal decisions, there would be an appropriate level of services, facilities and infrastructure nearby to serve the development and the occupiers of the dwelling would not be unduly dependant on their car. The number of trips by private car associated with a single dwelling would be low and journeys by car would be short. The development of the site for 1 dwelling will not intensify the use of the existing access associated with the existing equestrian use to a level that could be considered environmentally harmful.

*Recent Appeal Decisions regarding sites outside of the Settlement Boundary:*

- 4.28 There have been a number of appeal decisions that have demonstrated that an application site being located outside of a settlement development boundary is not in itself sufficient justification to refuse an application for residential development, some of which are highlighted below.
- 4.29 Within planning reference APP/P1560/W/17/3187802 (Land north of 2 Martins Gate Cottage, Colchester Road, St Osyth) the inspector concluded “that while there would be some conflict with Policy QL1 of the Local Plan, because the dwelling would be located outside St Osyth’s settlement boundary, this site would be an appropriate location for a dwelling. I therefore find that there would be no unacceptable conflict with the Local Plan.”
- 4.30 Within planning reference APP/P1560/W/17/3183189 (Site adj Malting House, Station Road, Thorpe-le-Soken) the inspector stated the following: “that the appeal site is outside a settlement boundary is not a decisive factor in this appeal and the conflict with Policy QL1 carries only limited weight in the planning balance.”
- 4.31 Further, within planning reference APP/P1560/W/17/3188055 (Land rear of The Laund, Heath Road, Bradfield) the inspector concluded the following: “I find that the adverse impacts in this case, arising from the location of the appeal site outside the development boundary for Bradfield, do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.”
- 4.32 Also, within planning reference APP/P1560/W/18/3209480 (Land South of Frinton Road, Thorpe Le Soken, CO16 0HS) the inspector concluded “The proposed development would be contrary to Saved Policy QL1 of the Local Plan. However, the proposed development would meet the aims of the NPPF to provide new housing in appropriate locations and would not cause harm to the character and appearance of the countryside. I would conclude that these are material considerations that would indicate making a decision that is not in accordance with the development plan.”

*Environmental:*

- 4.33 The environmental role is about contributing to, protecting and enhancing the natural, built and historic environment. In this instance, the location of the development within the Coastal Protection Belt forms a material consideration. These area considered below

Appearance, Layout and Scale

- 4.34 Paragraphs 127 and 170 state that developments should function well and add to the overall quality of the area, be visually attractive as a result of good architecture, layout and appropriate and effective landscaping, be sympathetic to local character and history, including the surrounding built environment and landscape setting and planning policies and decisions should contribute to and enhance the natural and local environment by, inter alia, recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.
- 4.35 Saved Policies QL9, QL10 and QL11 of the adopted Tendring District Local Plan (2007) seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward in Policy SPL3 of the Emerging Plan.
- 4.36 The site cannot be considered physically isolated being closely related with residential dwellings fronting Campernell Close the west, existing dwellings directly opposite and to the south along Folkards Lane and with large commercial buildings to the north east and Lower Marsh Farm beyond. The proposed dwelling would be sited within the proximity of other dwellings and would not appear isolated or give the impression that the site would encroach into the countryside.
- 4.37 Amended plans have been submitted reducing the height and scale of the proposed dwelling as well as improving the overall design and appearance. The dwelling now appears more modest and traditional in appearance. The finish will combine a soft red brick plinth and rendered elevations with brown plain roof tiles which are considered sympathetic to the design of the dwelling and character of the area.
- 4.38 The scale and proportion of the dwelling is not excessive and the footprint and siting of the development allows for ample spacing around the property.
- 4.39 The property is orientated as such that it faces into the site, fronting the adjacent remaining paddock land meaning that the rear elevation will address Folkards Lane. The rear of the dwelling comprises a single storey sunroom attached to a gable projection with the principal element of the dwelling being set behind. 19 metres is retained to the rear boundary from the sunroom, 22 metres from the gable and 28 metres from the main part of the house. This distance, together with the mature trees and planting along the boundary and to the south ensures that the development will not appear prominent or harmful to visual amenities.
- 4.40 The cartlodge is sited to the north of the dwelling, closest to the existing access. The design, scale and finish of the cartlodge is suitably subservient to the main dwelling and is of a traditional appearance that will not appear prominent of harmful to visual amenities.

Impact on the Coastal Protection Belt

- 4.41 Saved Policy EN3 of the Tendring District Local Plan (2007) and Draft Policy PPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development as well as seeking to improve public access to and enjoyment of the coast in accordance with the National Planning Policy Framework.

- 4.42 The proposal cannot be considered as having a significant impact upon the Coastal Protection Belt as the proposal is for a single dwelling in a location set well within land with built form and dwellings beyond to the north. The development will not have a harmful impact upon the character or appearance

#### Highway Impacts, Access and Parking Provision

- 4.43 Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 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. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 4.44 The Council's Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied on to provide a parking space, should measure 7 metres by 3 metres internally.
- 4.45 The land is served by an existing access associated with the equestrian use. The development does not create an additional access nor introduce new vehicle movements to the site. The development of the site for 1 dwelling will not intensify the use of the lane or access to a level that could be considered materially harmful to highway safety or amenity.
- 4.46 The access, double bay cartlodge, parking to the frontage and turning space are sufficient to serve the dwelling and accord with adopted standards.
- 4.47 The Highway Authority have raised no objection to the development subject to conditions and informatives. The suggested conditions comprise; access width, no unbound materials, cycle storage, travel information pack and storage of building materials. The storage of building materials will be covered by a condition requiring the submission of a Construction Method Statement. The cartlodge provides secure cycle storage and therefore a condition is not required. The other suggested conditions will be added.

#### Landscape and Tree Impacts

- 4.48 Policy EN1 of the adopted Local Plan and Policy PPL3 in the emerging Local Plan seek to protect and, wherever possible, enhance the quality of the district's landscape; requiring developments to conserve natural and man-made features that contribute toward local distinctiveness and, where necessary, requiring suitable measures for landscape conservation and enhancement.
- 4.49 In order to show the extent of the constraint that the trees are on the development potential of the land and to determine the impact of the development on the trees the applicant has provided a Tree Survey and Report. The report is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations. The Tree Report contains a Tree Constraints Plan that shows the extent of the area around the trees that should be protected to ensure that they are not harmed by the development proposal. It shows the Root Protection Areas (RPA's) of the trees and identifies the area of land within which development should not be take place or where specialist construction techniques will be required. The proposed site layout shows that there may be an incursion into the RPA's of T1 and T2. Therefore the applicant will need to use specialist 'no-dig' construction techniques for any part of the drive that falls within the RPA's of retained trees.

- 4.50 Due to the location of the application site and the extent to which the land, and the trees contained thereon, can be seen from a public place, none of them have such amenity value that they merit protection by means of a tree preservation order.
- 4.51 The site boundary is planted with established trees comprising primarily Alder. The Lombardy Poplar trees within the site have recently been felled (T3, T4 and T5) and some clearance of the boundary vegetation has taken place. This has reduced the natural screening from Folkards Lane and diminished the visual quality and setting of the proposed dwelling. The site layout plan shows that the boundary will be demarcated by a wall or fence.
- 4.52 Details of the boundary treatments, a hard and soft landscaping scheme and details of 'no dig' construction techniques are considered essential to ensure that the development satisfactorily assimilates into its setting and does result in any landscape harm.

#### Impact on Residential Amenity

- 4.53 The NPPF, in paragraph 127 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).
- 4.54 The internal layout and separation distances to neighbouring properties are considered sufficient and the development would not detract from the amenities of the future occupiers of the proposed dwelling or neighbouring dwellings.
- 4.55 The dwelling is served by ample private amenity space in excess of the requirements set out in saved Policy HG9 of the adopted Tendring District Local Plan (2007).
- 4.56 The closest neighbouring property is Colts House opposite the site to its east. This property is associated with Brightlingsea Kennels and Cattery to the north east of the site.
- 4.57 Due to the orientation of the proposed dwelling, the rear elevation faces the front elevation of Colts House. The proposed dwelling comprises a single storey sunroom attached to a gable projection with the principal element of the dwelling being set behind. 19 metres is retained to the rear boundary from the sunroom, 22 metres from the gable and 28 metres from the main part of the house. The width of the lane and set back siting of Colts House within its plot amounts to a further 18 metres separation distance. The only first floor window facing Colts House is a small dormer window serving bedroom 2, over 48 metres from the front elevation of Colts House. Nonetheless, any views are completely obscured by existing boundary trees and vegetation.
- 4.58 Concerns have been raised regarding the potential for complaints from future occupants of the proposed dwelling due to the proximity of the Kennels and Cattery. However, given there is an approximate separation distance of 25 metres, and that any future occupiers would be aware of the situation prior to living at the site, it is not considered the harm is sufficient enough to warrant a reason for refusal.

## Ecology

- 4.59 Policy EN6 of the adopted Local Plan and Policy PPL4 of the emerging Local Plan give special protection to designated sites of international, national or local importance to nature conservation but for non-designated sites still require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.
- 4.60 The site is currently being used for equestrian purposes and is mostly clear of vegetation. The partial removal of some trees and boundary treatment has been undertaken. Although the characteristics of the land does not trigger the requirement for a Phase 1 Habitat Survey, in order to minimise any further potential harm a condition relating to the timing of any future clearance will be controlled by condition.

## Legal Obligations

- 4.61 Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".
- 4.62 There is currently a deficit of -13.68 hectares of play and formal open space in Brightlingsea. There are two play spaces in Brightlingsea, a Local Area for Play and Skate Park at Promenade Way, Brightlingsea and a Local Equipped Area for Play at Regent Road Recreation Ground, Brightlingsea. This is 0.9 miles from the proposed development. Due to the overall deficit with in Brightlingsea a contribution towards increasing the play facilities is relevant and justified to the planning application and will be used towards providing new play equipment at the nearest play area Bayards Recreation Ground, Regents Road, Brightlingsea.
- 4.63 A completed unilateral undertaking has been provided to secure this legal obligation and to ensure compliance with saved policy COM6.

## Habitats Regulation Assessment

- 4.64 Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.
- 4.65 Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be a proportionate financial contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on European Designated Sites.
- 4.66 A completed unilateral undertaking has been provided to secure this legal obligation and to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

## **7. Conclusion**

4.67 In conclusion, there would be no harm to the aims and objectives of Policy QL1 other than the basic conflict with it insofar as the location outside of a settlement boundary is concerned. The location of the proposal is supported by the NPPF and appeal decisions. The site constitutes previously developed land and the proposal would not be materially harmful to the landscape character or character of the area. In combination with the economic and social benefits these material considerations outweigh the conflict. The development would not amount to any social, economic or environmental harm that would warrant the refusal of planning permission.

**8. Recommendation**

4.68 The Planning Committee is recommended to grant planning permission subject to the following conditions, informatives and subject completed unilateral undertaking with the agreed Heads of Terms, as set out in the table below:

CATEGORY	TERMS
Financial contribution towards RAMS.	£122.30 for the one dwelling proposed.
Open Space	Contribution will be used towards providing new play equipment at the nearest play area Bayards Recreation Ground, Regents Road.

4.69 Conditions and Reasons

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

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

2 The development hereby permitted shall be carried out in accordance with the following approved plans, drawing numbers 01B, 03A, 04A and 05A.

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

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

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

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

4 Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees,



shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction.

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

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

- 6 All surfaces within the Root Protection Areas of the trees to be retained as set out within the Arboricultural Impact Assessment and Preliminary Method Statement and Appendices Reference No. TPSarb9550119 dated 28th January 2018 shall be constructed using no dig technology.

Reason - To ensure the protection and longevity of the protected trees in the interests of visual amenity.

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

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

- 8 No above ground level works shall take place until precise details of the provision, siting, design and materials of screen fences have been submitted to and approved in writing by the Local Planning Authority. The approved screen fences shall be erected prior to the occupation of the development and thereafter be retained in the approved form unless otherwise agreed in writing by the Local Planning Authority.

Reason - To ensure that the development is appropriate within its setting and in the interests of highway safety.

- 9 Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), there shall be no additions or alterations to the dwelling or its roof, nor shall any buildings, enclosures, swimming or other pool be erected except in accordance with drawings showing the design and siting of such additions and/or building(s) which shall previously have been submitted to and approved, in writing, by the local planning authority.

Reason - It is necessary for the local planning authority to be able to consider and control further development in order to ensure that landscape harm does not result in this edge of settlement location.

- 10 Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) England Order 2015 (or any Order revoking and re-enacting that Order with or without modification), other than the boundary treatments shown on the approved drawings, no provision of fences, walls, gates or other means of enclosures, shall be erected on any part of the site forward of the front elevation of the dwellings hereby approved except in accordance with details that shall previously be approved in writing by the Local Planning Authority.

Reason - In the interests of visual amenity.

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

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

- 12 Prior to occupation of the proposed dwelling, the private drive shall be constructed to a maximum width of 4.5 metres for at least the first 6 metres from the back of carriageway and provided with an appropriate dropped kerb crossing of the existing access.

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

- 13 No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the carriageway.

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

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

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

- 15 Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the highway.

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.

- 16 The development shall be carried out in strict accordance with Arboricultural Impact Assessment and Preliminary Method Statement and Appendices Reference No. TPSarb9550119 dated 28th January 2018.

Reason - To ensure the protection and longevity of the protected trees in the interests of visual amenity.

- 17 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 - In the interests of sustainable development and to minimise the risk of surface water flooding.

#### 4.70 Informatives

##### Positive and Proactive Statement

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

##### Legal Agreement Informative - Open Space/Play Space Contribution

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: Public Open Space financial contribution in accordance with Policy COM6 of the adopted Tendring District Local Plan (2007) and Policy HP5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

##### Legal Agreement Informative - Recreational Impact Mitigation

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

##### Highways Informatives

1. The private road is less than 3 metres in width without any passing places and no scope to provide any passing places. Should the application be approved the developer/ future home owner should be obligated to contribute to any future maintenance or ongoing costs for the repair and upkeep of the private road.
2. Under Building Regulations B5, access for fire tenders is required to a point not further than 45 metres from the entrance to the dwelling. Any road or private drive forming part of such a fire access must be no less than 3.7 metres wide between kerbs (this may be reduced to 3.1 metres for a gateway or similar short narrowing) and should have a minimum centre line bend radius of 6.55 metres. The access way should be capable of carrying a 12.5 tonne vehicle. A cul-de-sac which is more than 20 metres long must have a turning head of a least Size 3.
3. On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.
4. Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

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

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

## **5. Additional Considerations**

### Public Sector Equality Duty (PSED)

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

### Human Rights

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

### Finance Implications

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

### **6. Background Papers**

None.