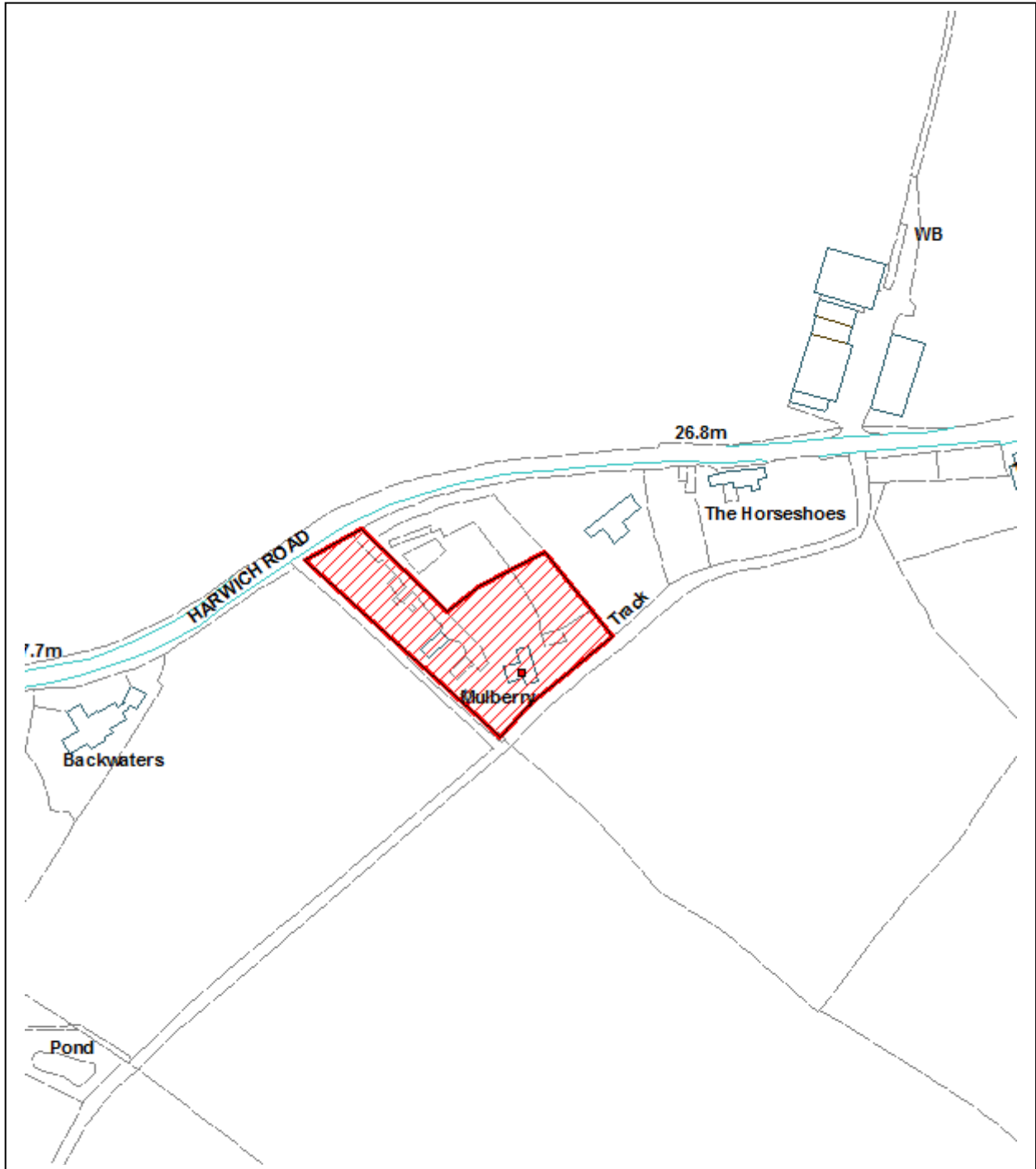


PLANNING COMMITTEE

24 SEPTEMBER 2019

REPORT OF THE HEAD OF PLANNING

**A.5 PLANNING APPLICATION - 19/00909/FUL - MULBERRY HARWICH ROAD**  
**BEAUMONT CLACTON ON SEA CO16 0AU**



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**Application:** 19/00909/FUL

**Town / Parish:** Beaumont Parish Council

**Applicant:** Mr and Mrs Smith

**Address:** Mulberry Harwich Road Beaumont Clacton On Sea Essex CO16 0AU

**Development:** Proposed replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT).

## 1. Executive Summary

- 1.1 This planning application has been referred to Planning Committee at the request of Councillor Land due to concerns relating to highway impact, traffic issues and negative impact upon neighbour.
- 1.2 This application seeks full planning permission for the erection of a proposed replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT).
- 1.3 In September 2017, a formal notification was submitted pursuant to Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 for the conversion of the three agricultural buildings on the site into three dwellings. Following consideration of the issues involved, the Council accepted by letter dated 23<sup>rd</sup> April 2019 that Prior Approval was not required (reference 19/00358/COUNOT). This approval was subject to the conversion of the building with a gross floor area of approximately 139 sqm with a height of 3.7 metres.
- 1.4 A copy of the appeal decision in relation to appeal references APP/A1530/W/16/3144635 and APP/A1530/W/16/3144643 for Chesnut Farm, Abberton Road, Layer De La Haye has been submitted with the application in support of the proposal. These appeals deal with the replacement of buildings where the fall-back position relates to a Prior Notification Application under Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 (formerly Class MB). The Inspector accepted that the fall-back position is a material planning consideration and concluded that the proposal would have a very similar effect to the prior approval scheme in relation to its sustainability of location and access to local services and facilities (the occupants would be reliant on private car); would not increase the number of dwellings over the prior approval scheme and would not result in an increase in new isolated homes in the countryside. The Inspector supported the replacement of three poultry sheds with three dwellings with the same floor area subject to conditions (in order to protect the character and appearance of the rural character of the area).
- 1.5 The application site is located outside the defined Settlement Development Boundary for Beaumont, as defined by the Saved Tendring District Local Plan 2007 and the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017). In considering the overall planning balance, there would be economic benefits arising from the proposal, in particular the additional employment created during the demolition and construction phases, as well as social benefits in respect of the contribution towards the supply of new housing and support for rural communities. The proposal would also meet the requirements of the environmental role, as it would contribute to protecting the natural environment in comparison with the fall-back position of the prior approval scheme. There are no adverse impacts which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Consequently, the proposal would amount to sustainable development.

- 1.6 The proposed dwelling is visually acceptable, will result in no significant harm to neighbouring dwellings and represents no highway safety risk.

**Recommendation:**

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

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

**2. Planning Policy**

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

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

HG6 Dwelling Size and Type

HG9 Private Amenity Space

HG14 Side Isolation

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

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

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

PPL3 The Rural Landscape

CP1 Sustainable Transport and Accessibility

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**

18/01144/FUL	Alterations and extension.	Approved	06.09.2018
19/00358/COUNOT	Proposed conversion of agricultural buildings to three x 1 bedroom residential dwelling houses.	Prior Approval Not Required	23.04.2019

**4. Consultations**

ECC Highways Dept

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

1. 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 access is first used by vehicular traffic for the three residential dwellings and retained free of any obstruction at all times.
- 2.No unbound material shall be used in the surface treatment of the existing vehicular access within 6 metres of the highway boundary.
3. Prior to the occupation of the proposed dwellings, the existing private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of the Highway Boundary.
4. The Cycle parking shall be provided in accordance

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

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.

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: As per the information contained in The Planning Statement, under item 2.5 it will be necessary to undertake some maintenance to the existing hedgerow and cut back any overhanging trees adjacent to Harwich Road to ensure that a 2.4 metres parallel band visibility splay will be provided for the entire site frontage.

Informative 2: 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 3: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

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

## **5. Representations**

5.1 Beaumont Parish Council have not commented on this application

2 letters of objection have been received raising the following concerns:

- Referral to the comments made on planning application 19/00358/COUNOT concerning the fact that the original site was based on a lie as the site was never agricultural.
- TDC should take reasonable steps to properly verify the accuracy of the original Application.
- If it is acceptable for a planning officer to simply "think or feel" that the site was agricultural, without obtaining any support for that view from those who would actually know, then that will open the door to anyone with similar sheds in their gardens (prior to the relevant date under the legislation) to claim them as agricultural, and be able to convert them to living accommodation.
- Site line is incorrect
- The site is delineated by a red line which could be used for further development.
- Need to restrict further development
- The site is accessed by a drive off of Harwich Road on a bend
- Additional traffic causes a risk to road users.
- The proposal will change the rural character of the location.
- Neighbour not informed of the application
- Change of name of property from Meadowside to Mulberry as a cynical means to obscure the intentions of the application.

## **6. Assessment**

### Site Context

- 6.1 This application refers to 'Mulberry' which is a detached bungalow set to the rear of the application site. There are other outbuildings located on the application site which are now redundant following the cessation of the use of the site for poultry rearing purposes. As stated with the accompanying planning statement, throughout the past 20 years the buildings have been used only poultry rearing purposes or for the storage of agricultural items. There has been no other use of the building at any time other than for agricultural purposes.

### Proposal

- 6.2 This application seeks full planning permission for the erection of a proposed replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT).

### Assessment

- 6.3 The main considerations for this application are:
- Planning and Appeal History;
  - Principle of Development
  - Residential Amenities;
  - Access and Parking;
  - Trees and Landscaping;
  - Ecology and Protected Species;
  - Financial Contributions - RAMS;
  - Financial Contributions - Open /Play Space; and,
  - Representations.

### Planning and Appeal History

### Site Specific History

- 6.4 In September 2017, a formal notification was submitted pursuant to Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 for the conversion of the three agricultural buildings on the site into three dwellings.
- 6.5 Following consideration of the issues involved, the Council accepted by letter dated 23<sup>rd</sup> April 2019 that Prior Approval was not required (reference 19/00358/COUNOT). This approval was subject to the conversion of the building with a gross floor area of approximately 139 sqm with a height of 3.7 metres.

#### Appeal History

- 6.6 A copy of the appeal decision in relation to appeal references APP/A1530/W/16/3144635 and APP/A1530/W/16/3144643 for Chesnut Farm, Abberton Road, Layer De La Haye has been submitted with the application in support of the proposal.
- 6.7 These appeals deal with the replacement of buildings where the fall-back position relates to a Prior Notification Application under Part Q of the Town & Country Planning (General Permitted development) (England) Order 2015 (formerly Class MB).
- 6.8 The Inspector accepted that the fall-back position is a material planning consideration and concluded that the proposal would have a very similar effect to the prior approval scheme in relation to its sustainability of location and access to local services and facilities (the occupants would be reliant on private car); would not increase the number of dwellings over the prior approval scheme and would not result in an increase in new isolated homes in the countryside. The Inspector supported the replacement of three poultry sheds with three dwellings with the same floor area subject to conditions (in order to protect the character and appearance of the rural character of the area).

#### Principle of Development

- 6.9 The National Planning Policy Framework 2019 (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.
- 6.10 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.
- 6.11 Whilst it is recognised that there would be 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 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.

#### Assessment of Sustainable Development

- 6.12 While the NPPF 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 and it is accepted that the site is not in a preferred location for growth.
- 6.13 In line with paragraph 11 d) of the NPPF and the appeal decision set out above, the fall-back position is of particular relevance when considering circumstances that outweigh the conflict with Saved Policy QL1 and Emerging Policy SPL1.
- 6.14 Paragraph 8 of the National Planning Policy Framework (2019) sets out the criteria of achieving sustainable development as meeting an economic objective, a social objective and an environmental objective. These are assessed below and also take into account the fall-back position:
- economic;
  - social, and;
  - environmental roles.
- 6.15 The sustainability of the application site is therefore of particular importance. In assessing sustainability, it is not necessary for the applicant to show why the proposed development could not be located within the development boundary.

#### Economic

- 6.16 It is considered that the proposal would contribute economically to the area, for example by providing employment during the construction of the dwelling and from future occupants utilising local services, and so it meets the economic arm of sustainable development.
- 6.17 The development now incorporates a demolition stage which has the potential to generate more employment than the fall-back position.

#### Social

- 6.18 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 therefore being in line with the aims of the aforementioned paragraph 17 of the NPPF. 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 and to within development boundaries as defined within the Local Plan.
- 6.19 Beaumont is identified as a village within saved Policy QL1 of the adopted Tendring District Local Plan 2007 and is defined as a Smaller Rural Settlement within Policy SPL1 of the emerging Tendring District Local Plan Publication Draft (2017). These smaller villages are considered to be the least sustainable locations for growth and there is a concern that encouraging too much development in these areas will only serve to increase the number of people having to rely on cars to go about their everyday lives. It is accepted that each of these smaller rural settlements can achieve a small scale increase in housing stock over the plan period. To allow for this to happen, Settlement Development Boundaries have been drawn flexibly, where practical, to accommodate a range of sites both within and on

the edge of villages and thus enabling them to be considered for small-scale residential 'infill' developments. With this in mind, where appropriate the emerging Local Plan settlement development boundary has been extended but does not include or extent near to the application site.

- 6.20 The proposal will generate the same number of private car journeys in comparison with the fall-back position of the prior approval. The development would be no less sustainable than the permitted scheme.

#### Environmental

- 6.21 The environmental role is about contributing to protecting and enhancing the natural and built environment. The proximity of the site to open fields and agricultural land and the considerable distance to the residential properties along Harwich Road, gives it a strongly rural character.
- 6.22 The Council accepted that the conversion of the building into a dwelling can be undertaken without further prior approval. This approval is subject to the conversion of the building with a gross floor area of approximately 139 sqm. The Council did not raise any concern on the three grounds for consideration of the prior notification application, namely access, flooding or contamination.
- 6.23 The current application is for the replacement of three poultry units with 1 x three bed dwelling (in lieu of prior approval 19/00358/COUNOT). The proposed dwelling will replace plot 3 in virtually the same location as the existing building subject of the prior notification approval. The proposed replacement dwelling comprises of a gross floor area of 140 m2 and a maximum height of 5.5 metres.
- 6.24 With the exception of the inclusion of additional floor space and the additional height of the 1.8 metres, the proposed scheme will be virtually equal to the 'fall back' scheme.
- 6.25 The proposed replacement building is a modest structure with limited impact upon its surroundings having a comparable impact upon the character and appearance of the area as the fall-back position.

#### Layout and Appearance

- 6.26 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. Saved Policy HG14 requires a minimum of 1 metre side isolation between dwellings.
- 6.27 The application proposes the erection of a single storey dwelling with a hipped roof. The proposed dwelling is located to the south east corner of the application site and adjacent to 'Mulberry'. As stated within the planning statement, although the new building will have a greater height than the existing poultry buildings, this is due to the pitched roof arrangement. However, the dwelling will equate to the same floor space as the proposed three conversions. A condition will be imposed to ensure that prior to occupation of the proposed dwelling; the farm related buildings will be removed in the interests of protecting and enhancing the rural character and appearance of the area.
- 6.28 Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling with three bedrooms or more should be a minimum of 100 square metres. This is achieved comfortably.

### Residential Amenities

- 6.29 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).
- 6.30 To the north east of the application site is 'The Horseshoes'. The proposed dwelling will be located approximately 60 metres away from the neighbouring dwelling and due to the single storey nature of the dwelling as well as the existing vegetation along the boundary which will help to screen the single storey dwelling, it is considered that the proposal will not cause any significant impact upon neighbouring amenities.
- 6.31 The proposed dwelling will be located approximately 12 metres away from the neighbouring dwelling 'Mulberry' which will comply with Policy HG14 of the Tendring District Local Plan 2007. The proposed dwelling comprises of a hipped roof which will slope away from the neighbouring dwelling as well as the single storey nature of the proposal, it is considered that the proposal will not cause any significant impact upon neighbouring amenities.
- 6.32 To the south west of the application site is 'Backwaters', however due to the approximate distance of approximately 160 metres to the neighbouring dwelling as well as the single storey nature and the existing vegetation, it is considered that the proposed dwelling will not cause any significant impact upon neighbouring amenities.
- 6.33 Conditions removing permitted development rights are considered necessary in this instance due to the potential impact and harm from extensions and outbuildings to the character and appearance of the area, and given the fact that the proposal represents effectively an alternative permission the already approved Prior Notification application which does not benefit from permitted development rights due to the countryside location.

### Highway Safety/Parking

- 6.34 Essex County Highways have been consulted on this application and do not raise any objections subject to conditions relating to; visibility splays, no unbound materials, width of existing private drive, cycle parking and storage of building materials. All conditions will be imposed however the condition relating to the storage of building materials which will be imposed as an informative.
- 6.35 The plans provided demonstrate that there are two parking spaces proposed to serve the dwelling which are in line with Essex Parking Standards requirements of parking spaces measuring 5.5 metres by 2.9 metres. The proposed dwelling will not have any adverse impact on traffic generation, the existing highway network or noise generation when compared with the former agricultural use.

### Trees and Landscaping

- 6.36 The application site is well populated with trees, mainly culinary varieties of edible fruit such as Apples, Pears and Plums. The site also contains decorative species with the most prominent being a large willow on the eastern boundary.
- 6.37 Taking into account the density of the vegetation on the boundary with the highway and the limited extent to which the application site can be seen by the public any trees on the site have low amenity value.

- 6.38 The erection of the dwelling in the proposed position will not result in harm being caused to any trees on the land.
- 6.39 A soft landscaping condition will be imposed to secure details of soft landscaping to practically obscure views of the site from the Public Right of Way network to the south-west of the application site.

#### Financial Contributions – RAMS

- 6.40 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.
- 6.41 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.
- 6.42 A unilateral undertaking is currently being prepared 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.

#### Financial Contributions – Open Space

- 6.43 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".
- 6.44 There is currently a deficit of 0.49 hectares of play and formal open space in Beaumont. Although there is a current deficit of play facilities in Beaumont it is unlikely due to the size and location that this development will impact on the current facilities.

## **7. Conclusion**

- 7.1 The underlying purpose of Class Q is to allow the conversion of agricultural buildings and increase rural housing without building on the countryside. Total demolition and replacement of buildings falls outside of Class Q. Officers recognise that the approval of this permission could be considered at odds with the purpose and aims of Class Q and also be considered contrary to the principles of sustainable development set out within national and local plan policies. However, the approval of this application will not set a harmful precedent due to the special circumstances under which the application is being assessed. Any future applications for residential development would be considered on its merits at the time of the application.

7.2 In considering the overall planning balance, there would be economic benefits arising from the proposal, in particular the additional employment created during the demolition and construction phases, as well as social benefits in respect of the contribution towards the supply of new housing and support for rural communities. The proposal would also meet the requirements of the environmental role, as it would contribute to protecting the natural environment in comparison with the fall-back position of the prior approval scheme. There are no adverse impacts which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Consequently, the proposal would amount to sustainable development and the application is recommended for approval, subject to conditions.

**8. Recommendation**

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section106 legal agreement 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

8.2 Conditions and Reasons

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

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

2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Drawing No. BHR -101 Revision A, Block Plan – Demolition Plan scanned 6<sup>th</sup> August and Planning Statement dated June 2019.

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

3 There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic for the three residential dwellings and retained free of any obstruction at all times.

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

4 No unbound material shall be used in the surface treatment of the existing 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 Prior to the occupation of the proposed dwellings, the existing private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of the Highway Boundary.

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

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

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

- 7 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 obscure views of the site from the Public Right of Way Network to the south west of the application site.

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

Reason - To ensure that the landscaping scheme is suitably implemented within an appropriate timescale.

- 9 The proposed dwelling shown on drawing no. BHR-101 Revision A hereby permitted shall be occupied until all of the existing agricultural buildings as shown on drawing Block Plan – Demolition Plan scanned 6<sup>th</sup> August, have been demolished and the resulting demolition materials removed from the site.

Reason – In the interests of protecting and enhancing the rural character and appearance of the area.

- 10 Notwithstanding the provisions of Classes A, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), the dwelling shown on drawing no. BHR-101 Revision A hereby permitted shall not be extended or ancillary buildings or structures shall be erected within the curtilage, without the prior written approval of the local planning authority.

Reason – In the interests of protecting and enhancing the rural character and appearance of the area.

### 8.3 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 - 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.

#### Building Control and Access

Fire service access is required in accordance with B5.

#### Highways

Informative 1: As per the information contained in The Planning Statement, under item 2.5 it will be necessary to undertake some maintenance to the existing hedgerow and cut back any overhanging trees adjacent to Harwich Road to ensure that a 2.4 metres parallel band visibility splay will be provided for the entire site frontage.

Informative 2: 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 3: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

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

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.

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

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

### Human Rights

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

### Finance Implications

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



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

**10. Background Papers**

None