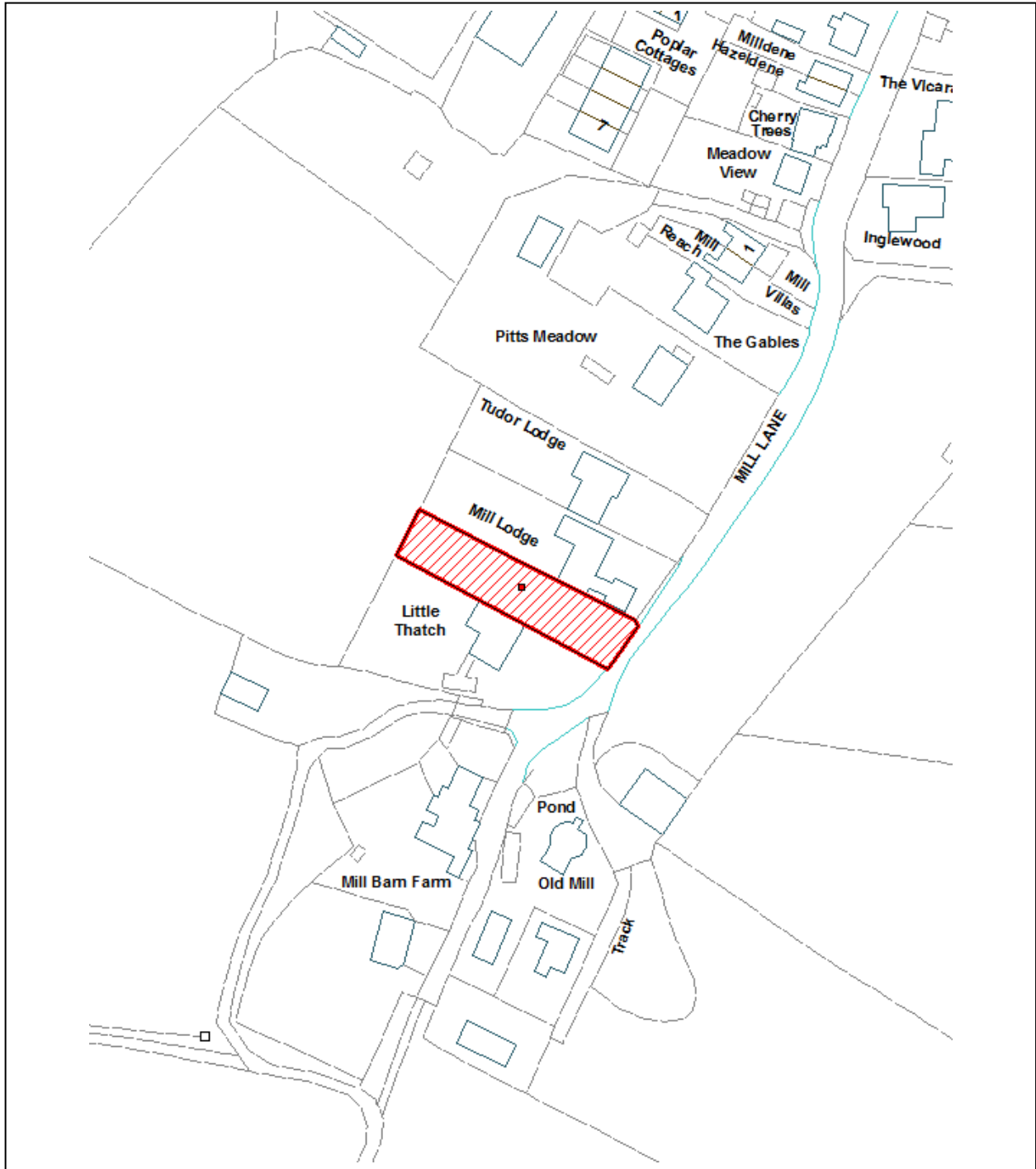


PLANNING COMMITTEE

24 SEPTEMBER 2019

REPORT OF THE HEAD OF PLANNING

**A.6 PLANNING APPLICATION – 19/01157/FUL – LAND ADJACENT LITTLE THATCH MILL LANE THORPE LE SOKEN CO16 0ED**



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**Application:** 19/01157/FUL

**Town / Parish:** Thorpe Le Soken Parish Council

**Applicant:** Mr & Mrs Cramphorn

**Address:** Land adjacent Little Thatch Mill Lane Thorpe Le Soken Essex CO16 0ED

**Development:** One dwelling.

## 1. Executive Summary

- 1.1 The application is referred to the Planning Committee by Councillor Land due to the proposed dwelling causing highway impacts and other traffic issues, a negative impact on neighbours, the site is located within a Conservation Area, it is located on a public right of way and it is within a confined space. Additional comments have been received by email from Councillor Land, dated 26<sup>th</sup> August relating to polluted waterway.
- 1.2 The application seeks full planning permission for the erection of one dwelling accessed via Mill Lane.
- 1.3 The application site is located within the defined Settlement Development Boundary for Thorpe Le Soken, as defined by the Saved Tendring District Local Plan 2007 and the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 1.4 Planning permission reference 18/00781/FUL was recommended for approval, and overturned by Members who refused planning permission due to the impact upon neighbouring amenities – Little Thatch and Mill Lodge; the proposal was contrary to Saved Policy EN6 Biodiversity and EN6a 'Protected Species; and the impact upon the setting of the Listed Building, Mill Barn Farm. The application was taken to planning appeal and it was dismissed by the Planning Inspectorate on 25 July 2019. The Planning Inspectorate considered that the proposal was contrary to Paragraph 11 of the NPPF as it failed to provide a RAMs contribution.

- 1.5 Appeal reference APP/P1560/W/18/3213632 was dismissed only on the lack of a Unilateral Undertaking for RAMS. A UU is currently being prepared to overcome the above concern. The principle of residential development in this location is acceptable and subject to conditions there is not considered to be any material visual harm, harm to neighbouring amenities, harm to ecology and biodiversity, harm to heritage assets or highway safety.

**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

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

HG7 Residential Densities

HG9 Private Amenity Space

HG14 Side Isolation

TR1A Development Affecting Highways

TR4 Safeguarding and Improving Public Right of Way

TR7 Vehicle Parking at New Development

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN17 Conservation Areas

EN23 Development within the Proximity of a Listed Building

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

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

PPL4 Biodiversity and Geodiversity

PPL8 Conservation Areas

PPL9 Listed Buildings

LP1 Housing Supply

LP2 Housing Choice

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

01/01840/FUL	New Cottage	Refused	17.12.2001
16/01886/TCA	1 No. Cherry tree - fell	Approved	15.12.2016
17/01933/FUL	Proposal for one dwelling.	Refused	10.04.2018
18/00781/FUL	One dwelling.	Refused Dismissed at appeal	27.07.2018
18/01574/TCA	2 No. Blackthorn - remove, 1 No. - Multi-trunk (species unknown) - remove, 2 No. Cherry Trees - remove	Approved	15.10.2018

### 4. Consultations

Essex County Council  
Highways

As with the previous Planning Application: 18/00781/FUL the Highway Authority retain some concerns that the access onto the High street /B1033 is narrow, with an adverse effect on visibility and therefore the safety of both pedestrians and drivers, but consider that the increased vehicle movements associated with this one additional property could be considered to be within an acceptable tolerance and note that there are no recorded personal injury collisions at the connection of Mill Lane to

the High Street.

This does not in any way detract the underlying principal of seeking to avoid the intensification of usage of PROW by private vehicular means in order to avoid associated maintenance and safety issues that would otherwise impact the public usage. It remains that intensification (site dependent) will, more often than not, result in a frequency and volume of vehicular movement that is well beyond levels afforded by established prescriptive rights and therefore give rise to public nuisance issues. Such matters must continue to be material to the determination of all future planning applications where intensification is likely to result.

In consequence, any further development along this land/footpath beyond this application would be unacceptable and would be objected to.”

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

1. Prior to the first occupation of the proposed dwelling, the proposed vehicular access shall be constructed to a width of 4.8m and shall be provided with an appropriately constructed connection to Mill Lane.
2. Prior to the proposed access on the proposed dwelling being brought into use, an 2.4m x 11m visibility splay in both directions, shall be provided on both sides of that access onto the Public Right of Way and shall be retained and maintained free from obstruction clear to ground thereafter. These splays must not form part of the vehicular surface of the access.
3. No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.
4. All off street car parking shall be in precise accord with the details contained within the current Parking Standards being provided within the site which shall be maintained free from obstruction and retained thereafter.
5. The Cycle / Powered two wheeler parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.
6. Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.
7. Prior to the occupation of the proposed

development, the developer shall make good and effect any repairs necessary to the surface and sub surface of Mill Lane, Public Footpath No11 (Thorpe Le Soken) which have been unavoidably caused by the construction and fitting out phases of the proposed development to the specifications of the highway Authority entirely at the developers own expense.

8. 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

9. The public's rights and ease of passage over public footpath No.11 (Thorpe Le Soken) shall be maintained free and unobstructed at all times.

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

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

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This

includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

## **5. Representations**

5.1 One letter of representation has been received from District Councillor Daniel Land, stating the following:

- The development is in a poor location at the bottom of a narrow unmade road which doubles as a PROW.
- It's deep in the conservation area, in close proximity to some local historical landmarks. Thorpe High Street is a busy main road, with access from Mill Lane causing additional troubles on the road network at peak times.
- This development will have an impact on the neighbours on their visual amenity and privacy.
- The area at the bottom of this tiny lane is not suitable for heavy vehicles servicing a building site and will disrupt local residents and people using the busy footpaths

5.2 Two letters of representation has been received from one member of the public stating the following:

- Insufficient survey effort provided to establish the presence or absence of Great Crested Newt on or in the vicinity of the site.
- It has been previously reported that a breeding colony of Great Crested Newt exist in the pond less than 5 metres from the site.
- The site has had no survey effort expended on it despite Natural England Standing advice advising that this should be undertaken. Not to do so would be against both the NPPF guidance and indeed would be contrary to English and European Law. A Habitat Suitability Index (HSI) has been undertaken of the pond ecologically connected and adjacent to the site and found that the pond has 'Good' suitability for Great Crested Newt. This indicates that there is an 0.74 suitability for GCN to be present. With a score as high as this it would be unlawful for a decision to be taken to develop the site without the proper survey effort being undertaken. The HSI report has been sent to the council for their information and action.
- It should be clear, as emphasised by the planning inspector, R Sabu that all applications should be considered on their own merits.
- The inspector also made the point that the proposed developments harm to the living conditions of the occupants of neighbouring properties, adverse highway safety and biodiversity impacts, and harm in character and appearance terms were not positive benefits to the appeal scheme. The inspector concluded that they accordingly only had a neutral effect on the planning balance. It is therefore clear that in combination with other material considerations this application should be refused.

## **6. Assessment**

### Site Context

6.1 The application site is located on the western side of Mill Lane and is situated in between 'Little Thatch' to the south and 'Mill Lodge' to the north. Mill Lane is an unadopted, unmade road with a mix of housing types including bungalows, terraces, and detached 1.5 and 2 storey dwellings.



- 6.2 The site lies within the Settlement Boundary for Thorpe -le-soken, as established in the Tendring District Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017). The site lies within the Thorpe-le-soken Conservation Area and located to the east of the site is a Public Right of Way which forms the vehicular access to the site.

#### Principle of Development

- 6.3 The application site is located within the defined Settlement Development Boundary for Thorpe Le Soken, as defined by the Saved Tendring District Local Plan 2007 and the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.4 Policy SPL2 of the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft states that there is a general presumption in favour of new development within defined development boundaries of towns and villages, subject to detailed consideration against other relevant Local Plan policies. The principle for residential development is therefore acceptable subject to the detailed consideration below. The appeal decision also accepted the principle of development.

#### Layout, design and Appearance

- 6.5 The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 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 Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.6 The plan demonstrates that the proposed dwelling will be situated towards the front of the site and accessed via a vehicular access from Mill Lane. The proposed dwelling will be one and a half storeys with a traditional cottage design. The materials proposed are red brick and plain tiles which will be in keeping with the character of the area. Due to the sensitive location of the proposed dwelling, a condition will be attached to this decision to ensure a sample of these materials is provided subject to being agreed by the Local Planning Authority. The design is unchanged from the appeal proposal and the Inspector has not raised any objection to the design.
- 6.7 The residential character of the locality is predominantly linear in form consisting of detached dwellings on fairly spacious plots fronting Mill Lane. Dormer windows to the front of the dwelling are a prominent feature along Mill Lane and therefore the design of this proposal is considered to be in keeping with the character of the area.
- 6.8 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.

#### Impact upon Neighbouring Amenities

- 6.9 The NPPF, in paragraph 17 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'.
- 6.10 The appeal site lies between two detached dwellings; Little Thatch to the south and Mill Lodge to the north. Within the appeal decision, the Planning Inspectorate has stated that, *'the proposed dwelling would occupy almost the full width of the plot such that the flank walls would be in close proximity to the boundaries with the adjacent properties. The flank*

*wall of Mill Lodge is also in close proximity to the boundary and has an existing triple window that currently looks out onto the vacant site'.*

- 6.11 Paragraph 15 of the appeal decision states that *'the proposed building would present a two-storey wall, albeit with a slope at higher level, that would be readily visible from the kitchen window in the flank wall of Mill Lodge. However, the space served by this window is a dual aspect open plan kitchen, which also benefits from a patio door to the adjacent wall which affords a high quality of outlook across the rear garden. Therefore, while outlook from the kitchen window would be affected by the proposed development, due to the nature of the room that this window serves it would result in no material harm to the living conditions of the occupiers of Mill Lodge in this respect'*. The relationship with the neighbouring dwelling is unchanged from the appeal proposal and therefore there is no objection in terms of the impact on Mill Lodge.
- 6.12 In terms of loss of light, *'the window is south facing, and given the close proximity and height of the flank wall of the proposed dwelling, it would reduce the levels of light reaching the kitchen area. However, given that there is a full height patio door on the adjacent wall, the space would still receive adequate light such that the living conditions of the occupiers would not be unduly affected. Moreover, given the function and layout of the room, it is unlikely that the occupiers would spend substantial portions of the day in the space adjacent to that flank window'*. The planning inspectorate noted the guidance within the Essex Design Guide relating to 45 degree angle from the centre of the window and the purpose of the document is as a guide only. It was concluded that *'given the position of the proposed building in relation to Mill Lodge and the open plan nature of the internal spaces, the harm to outlook and light would not be significant such that refusal of permission on this ground alone would be justified'*.
- 6.13 Within paragraph 18 of the appeal decision, the Planning Inspectorate acknowledged the concerns in relation to the effect of the proposed dwelling on the living conditions of occupiers of Little Thatch with regards to outlook. However, the appeal decision states that *'since the proposed building would not be located directly opposite to this side of the house, the outlook from the bedroom window in the flank wall of Little Thatch would not be unduly affected. Furthermore, since the room is unlikely to be occupied during substantial parts of the day, any harm would be very limited such that refusal of permission on this ground alone would not be justified'*.
- 6.14 Paragraph 18 refers to the Planning Inspectorate acknowledging concerns relating to overlooking to the front of Little Thatch. The Inspectorate states that *'the windows on the flank wall of the proposed building facing Little Thatch would be to an ancillary room of the kitchen and a secondary window to the dining area. Therefore, a suitable condition could be reasonably imposed to require these windows to be obscured such that the privacy of the occupants of Little Thatch would not be unduly affected should planning permission be forthcoming'*. A condition will be imposed to ensure that the two windows proposed on the south western elevation show on Drawing No.CML.01 Revisions E shall be non-opening and glazed in obscure glass and retained in this approved form.
- 6.15 Paragraph 19 concluded that *'given the position of the proposed dwelling in front of the building line of Little Thatch, the proposed building would not significantly affect the levels of light reaching the bedroom window. It may be likely that the future occupants of the appeal site would erect a fence along the boundary with Little Thatch that may reduce the levels of light to this room. However, given that the room is less likely to be occupied for substantial parts of the day compared with other spaces, the harm in this respect would be limited. While light levels to the front of Little Thatch may be reduced for certain parts of the day, given that the windows to the front of Little Thatch would continue to receive light from the south, the levels of light available in the dwelling would not be significantly reduced such that the living conditions of the occupiers would be unduly affected'*. The relationship with Little Thatch is unchanged from the appeal proposal and therefore there are no objections in terms of impact upon Little Thatch.

### Impact upon Heritage Assets

- 6.16 Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) state that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.
- 6.17 Policy EN23 of the adopted Tendring District Local Plan (2007) seeks to ensure that any proposals for development that would adversely affect the setting of a Listed Building, including group value and long distance views will not be permitted. Policy PPL9 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) seeks to ensure that the proposals for new developments affecting a listed building or setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric: are explained and justified through an informed assessment and understanding of the significant of the heritage asset and its setting; and are of a scale, design and use materials and finishes that respect the listed building and its setting.
- 6.18 A Planning and Heritage Statement was submitted as part of this planning application describing the proposed development and the impact upon the Conservation Area and Listed Buildings.
- 6.19 As stated within appeal decision, within paragraph 25, the Planning Inspector recognises the *'concerns relating to the effect of the proposed development on The Old Mill and the Grade II Listed Mill Barn Farm in terms of the effect on the setting of these buildings and the living conditions of the occupiers'*. The Inspector explains that *'given the distance between these buildings and the appeal site, and the design and conditions of the occupiers would not be adversely affected by the proposal. Thus, taking these matters together, and in accordance with the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude that the proposed development would preserve the character and appearance of the Conservation Area and the setting of the aforementioned Listed Buildings.'* It is therefore considered that there is no objection in terms of heritage grounds.

### Trees and Landscaping

- 6.20 Unfortunately the vegetation on the application site has been cut down to ground level. There is some re-growth comprising rank and ruderal vegetation including brambles. There is a large Willow in the northernmost corner of the site that will not be affected by the development proposal.
- 6.21 On, or close to the boundary with the adjacent property known as Little Thatch there is an established boundary hedge.
- 6.22 A soft landscaping condition will be imposed to secure new planting on the site frontage to soften the appearance of the development and the retention of the front boundary hedge within the Conservation Area.

### Highway safety

- 6.23 Essex County Council Highways have been consulted on this application and have stated that although there were concerns with planning application 18/00781/FUL, the access onto High Street is narrow, with an adverse effect on visibility and therefore the safety of both pedestrians and drivers, but consider that the increased vehicle movements associated with this one additional property could be considered to be within an acceptable tolerance and note that there are no recorded personal injury collisions at the connection of Mill Lane to the High Street.

- 6.24 This does not in any way detract the underlying principal of seeking to avoid the intensification of usage of PROW by private vehicular means in order to avoid associated maintenance and safety issues that would otherwise impact the public usage. It remains that intensification (site dependent) will, more often than not, result in a frequency and volume of vehicular movement that is well beyond levels afforded by established prescriptive rights and therefore give rise to public nuisance issues. Such matters must continue to be material to the determination of all future planning applications where intensification is likely to result. In consequence, any further development along this land/footpath beyond this application would be unacceptable and would be objected to.
- 6.25 The Planning Inspector in paragraph 27 of the appeal decision acknowledges '*local concerns regarding highway safety and congestion relating to Mill Lane and High Street including during the construction process and I note the evidence relating to damage to The Oaks*'. The inspector also recognises '*the evidence relating to the use of Mill Lane as a Public Footpath. However, while I acknowledge that the Highways Authority objected to previous proposals for the site, it has not raised any objections on this proposal in this regard and from the evidence before me I see no reason to disagree with this assessment*'.
- 6.26 There is sufficient parking to the front of the host dwelling to meet Essex County Council Parking Standards requirement of 5.5 metres by 2.9 metres. There is therefore no objection on highway safety grounds.
- 6.27 The Highway Authority does not raise any objection to the proposal subject to conditions relating to vehicular access, visibility splays, no unbound materials, off street parking, cycle parking, boundary hedge 1 metre back from highway, repairs to public footpath and construction method statement. All of the conditions will be imposed apart from the condition relating to off street parking as the application site can accommodate sufficient parking.

#### Financial Contributions – Open Space

- 6.28 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".
- 6.29 On this occasion, a contribution is not required from the Public Realm team.

#### Habitat Regulations Assessment

- 6.30 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 Areas of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against the in-combination recreational impact from new dwellings.
- 6.31 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 likely significant effect the proposal may have on European Designated Sites.
- 6.32 The application site lies within the Zone of Influence (Zol) of Hamford Water SPA and Ramsar Site. Within the Appeal paragraph 9, the Planning Inspector stated that the

appellant has 'provided a signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 during the course of the appeal seeking to ensure the payment of a financial contribution prior to the commencement of development'. However, the UU provided by the appellant 'does not refer specifically to Essex Coast RAMS or to Hamford Water SPA and Hamford Water Ramsar site, the sites that would be adversely affected by the proposal. Consequently, there is a possibility that it would not mitigate the harm caused by the proposed development. Moreover, NE's interim advice<sup>2</sup> states that "in the interim period before the RAMS is adopted, a financial contribution should be agreed with and collected from the developer, prior to commencement, on the basis that it can be used to fund strategic 'off site' measures (i.e. in and around the relevant European designated site(s))" (my emphasis). Since the relevant European designated sites are not explicitly identified in the UU it would not meet this requirement. The inspector concluded in paragraph 11 of the appeal decision that 'the UU therefore would conflict with Regulation 122 of the Community Infrastructure Levy regulations 2019 (as amended)'.

- 6.33 Following legal advice the Council has now changed the wording in its unilateral undertakings to be CIL compliant. 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. Approval is recommended subject to completion of the UU within 6 months of the committee date.

#### Ecology and Biodiversity

- 6.34 Paragraph 174 of the National Planning Policy Framework 2019 requires Local Planning Authorities to protect and enhance biodiversity and geodiversity.
- 6.35 Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the adopted Tendring District Local Plan 2007 state that development proposals will not be granted planning permission unless existing local biodiversity and protected species are protected. These sentiments are carried forward within draft Policy PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.36 Within the appeal, paragraph 22, the Planning Inspector has acknowledged '*concerns relating to clearance works being carried out on the site since the application was determined. However, some of these matters are covered by legislation outside of the planning acts and I have assessed the proposal as presented for appeal against its planning merits – which these matters are extraneous to*'. The appeal statement acknowledges '*the evidence relating to ecology, the Council has stated that it no longer contests this reason for refusal*'. When determining the appeal, the Inspector was aware of the neighbouring pond and the Great Crested Newts which was referred to in the Councils reason for refusal. The inspector concluded that '*from the evidence before me I am satisfied that the ecology of the site would not be unduly affected*'.

## **7. Conclusion**

- 7.1 Appeal reference APP/P1560/W/18/3213632 was dismissed only on the lack of a satisfactory Unilateral Undertaking for RAMS. A UU is currently being prepared to overcome the above concern. The principle of residential development in this location is acceptable and subject to conditions there is not considered to be any material visual harm, harm to neighbouring amenities, harm to ecology and biodiversity, harm to heritage assets or highway safety. Therefore the application is recommended for approval.

## **8. Recommendation**

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and 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 per dwelling

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 numbers CML -01 Revision E and Planning and Heritage Statement dated October 2017.

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

3 Prior to first occupation of the proposed dwelling, the proposed vehicular access shall be constructed to a width of 4.8m and shall be provided with an appropriately constructed connection to Mill Lane.

Reason - To ensure that all vehicles using the private drive access do so in a controlled manner, in the interests of highway safety

4 Prior to the proposed access to the proposed dwelling being brought into use, a 2.4m x 11m visibility splay in both directions, shall be provided on both sides of that access onto the Public Right of Way and shall be retained and maintained free from obstruction clear to ground thereafter. These splays must not form part of the vehicular surface of the access.

Reason - To ensure adequate inter-visibility between drivers of vehicles using the proposed access and pedestrians in the adjoining Public Right of Way, in the interests of highway safety.

5 No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

Reason - To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.

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

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

7 Any new or proposed boundary hedge shall be planted a minimum of 1m back from the highway boundary and 1m behind any visibility splays which shall be maintained clear of the limits of the highway or visibility splays thereafter.

Reason - To ensure that the future outward growth of the hedge does not encroach upon the highway or interfere with the passage of users of the highway and to preserve the integrity of the highway, in the interests of highway safety.

- 8 Prior to the occupation of the proposed development, the developer shall make good and effect any repairs necessary to the surface and sub surface of Mill Lane, Public Footpath No11 (Thorpe Le Soken) which have been unavoidably caused by the construction and fitting out phases of the proposed development to the specifications of the highway Authority entirely at the developers own expense.

Reason - To ensure the continued safe passage of pedestrians on the definitive right of way

- 9 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.

- 10 The public's rights and ease of passage over public footpath No.11 (Thorpe Le Soken) shall be maintained free and unobstructed at all times.

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

- 11 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

- 12 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.

- 13 The mature hedgerow along the south western boundary of the site which is adjacent to Little Thatch shall be retained.

Reason - To ensure retention of the mature hedgerow in the interests of visual amenity.

- 14 The removal of any vegetation for site access/site clearance shall only be carried out by hand stripping and not by using mechanical machinery.

Reason - To protect any wildlife within the site.

- 15 Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), the two windows proposed on the south western side elevation shown on Drawing No. CML 01 Revision E shall be non-opening and glazed in obscure glass and shall thereafter be permanently retained in this approved form.

Reason – To protect the privacy and amenities of the occupiers of the adjoining property.

- 16 Notwithstanding the details shown on the approved drawings, no development shall take place until a plan indicating the positions, design, materials and type of boundary treatments to be erected shall be submitted to and approved by the Local Planning Authority. The approved boundary treatments shall be implemented before the dwellings hereby permitted are occupied.

Reason – In the interests of residential amenities and visual amenity.

### 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.

#### Highways

Informative 1: 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 2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.



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

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

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

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

### Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or

freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### Finance Implications

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

#### **10. Background Papers**

None