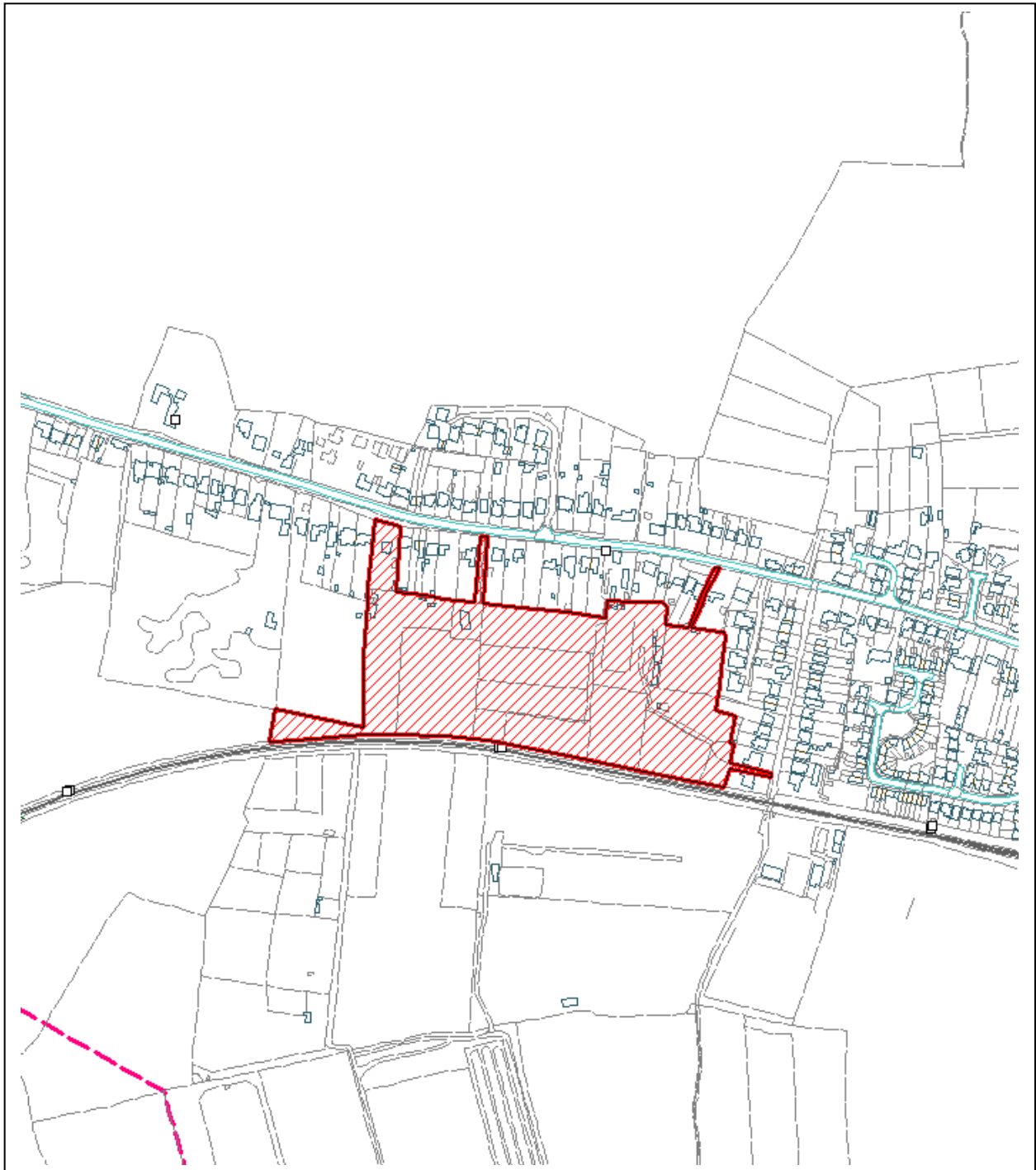


PLANNING COMMITTEE

14 January 2020

REPORT OF THE HEAD OF PLANNING

A.1 PLANNING APPLICATION – 19/01269/DETAIL – 171 THORPE ROAD AND LAND TO REAR OF 121-183 THORPE ROAD AND 4-20 CHAPEL LANE KIRBY CROSS FRINTON ON SEA CO13 0NH



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Application: 19/01269/DETAIL

Town / Parish: Frinton & Walton Town Council

Applicant: Mr David Burns - Taylor Wimpey East London

Address: 171 Thorpe Road and Land to rear of 121-183 Thorpe Road and 4-20 Chapel Lane Kirby Cross Frinton On Sea Essex CO13 0NH

Development: Demolition of two dwellings and reserved matters application for 110 no. residential units following outline planning permission 15/01710/OUT

1. Executive Summary

- 1.1 This reserved matters application is referred to Planning Committee at the request of Members when determining the outline planning application. The development also represents a departure from the adopted Development Plan, being located outside the settlement development boundary in the Tendring District Local Plan 2007.
- 1.2 The Council refused a planning application (15/01710/OUT) that sought outline planning permission for the demolition of one dwelling and outline planning permission for the erection of up to 110 no. residential units, with all matters reserved except for access. Members refused the application contrary to the Officer recommendation. The applicant appealed that decision and in September 2016 a Planning Inspector granted the outline permission, subject to a S106 legal agreement and nineteen conditions.
- 1.3 The application site is situated on land that lies between the rear gardens of properties on the southern side of Thorpe Road and the railway line, and to the west of properties fronting onto Chapel Lane, at the western end of the village of Kirby Cross. The site covers an area of 4.8 hectares, the majority of which comprises former horse paddocks, but it also includes the detached bungalow and garden at no.171 Thorpe Road and land that will provide three further pedestrian connections from the main body of the application site to Thorpe Road and Chapel Lane.
- 1.4 The site is flanked to the north and east by the rear gardens of dwellings on Thorpe Road and Chapel Lane; to the south by the railway line; and the west by a wooded area beyond which is farmland.
- 1.5 The submitted application seeks the approval of Reserved Matters for Appearance, Landscaping, Layout, and Scale, pursuant to condition 1 imposed upon the grant of outline planning permission. Approval is now sought for the erection no.110 dwellings, comprising a mix of 2, 3 and 4-bedroom two-storey houses, including no.8 dwellings that are to be gifted to the Council for use as Affordable Housing (in accordance with the S106 secured under the outline permission).
- 1.6 This represents an alternative reserved matters proposal to that approved under 18/01728/DETAIL for 105 dwellings in November 2019 (following completion of the RAMS legal agreement), following approval by Members at Planning Committee on 12th August 2019.
- 1.7 The scheme has been revised following discussions with Planning Officers and is now considered to be acceptable, with a layout that responds positively to site constraints and opportunities, including the presence of numerous trees that are protected by Tree Preservation Orders. At the centre of the development a public green, with small play area,

is proposed and this will help to create a sense of place. The layout is arranged so that the new homes face inwards from the boundaries of the site, so as to reduce the impact on the amenity of the existing residents adjoining the site and to provide an appropriate soft edge to this new village boundary.

- 1.8 Finally, with regard to ecology, the applicant has agreed to suitable mitigation measures for the loss of barn owl and reptile habitats on the site and a package of measures to mitigate against increased recreational pressure arising from these new dwellings on the relevant European sites, in line with the aspirations of the emerging RAMS (Recreational disturbance Avoidance and Mitigation Strategy).

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 of £122.30 per dwelling 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.

National Planning Policy Framework 2019 (NPPF)

- 2.1 The NPPF sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.2 Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The NPPF doesn't change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan, it should be approved and where it does not it should be refused – unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:
- an economic role;
 - a social role; and
 - an environmental role.
- 2.3 These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs

of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.

- 2.4 Paragraph 38 of the NPPF states “Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”

National Planning Practice Guidance (PPG)

- 2.5 The PPG provides additional planning guidance from Central Government on a range of issues, including, but not limited to: Air Quality; Climate Change; Design, Flood risk and coastal change; Light Pollution; Natural Environment; Noise; and Travel Plans, Transport Assessments and Statements.

Status of the Local Plan

- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 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.

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

Tendring District Local Plan (Adopted 2007)

QL1: Spatial Strategy

QL2: Promoting Transport Choice

QL3: Minimising and Managing Flood Risk

QL9: Design of New Development

QL10: Designing New Development to Meet Functional Needs

QL11: Environmental Impacts

QL12: Planning Obligations

HG1: Housing Provision

HG3: Residential Development Within Defined Settlements

HG3a: Mixed Communities

HG4: Affordable Housing in New Developments

HG6: Dwellings Size and Type

HG7: Residential Densities

COM1: Access For All

COM2: Community Safety

COM6: Provision of Recreational Open Space for New Residential Developments

COM21: Light Pollution

COM22: Noise Pollution

COM23: General Pollution

COM29: Utilities

COM31a: Sewerage and Sewage Disposal

EN1: Landscape Character

EN2: Local Green Gaps

EN4: Protection of the Best and Most Versatile Agricultural Land

EN6: Biodiversity

EN6a: Protected Species

EN6b: Habitat Creation

EN11a: Protection of International Sites: European Sites and Ramsar sites

EN12: Design and Access Statements

EN13: Sustainable Drainage Systems

EN23: Development within the Proximity of a Listed Building

TR1a: Development Affecting Highways

TR1: Transport Assessment

TR3a: Provision for Walking

TR5: Provision for Cycling

TR6: Provision for Public Transport Use

TR7: Vehicle Parking at New Development

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

SP1: Presumption in Favour of Sustainable Development

SP2: Spatial Strategy for North Essex

SP3: Meeting Housing Needs

SP5: Infrastructure and Connectivity

SP6: Place Shaping Principles

SPL1: Managing Growth

SPL2: Settlement Development Boundaries

SPL3: Sustainable Design

HP1: Improving Health and Wellbeing

HP3: Green Infrastructure

HP5: Open Space, Sports and Recreation Facilities

LP1: Housing Supply

LP2: Housing Choice

LP3: Housing Density

LP4: Housing Layout

LP5: Affordable and Council Housing

PP12: Improving Education and Skills

PPL1: Development and Flood Risk

PPL3: The Rural Landscape

PPL4: Biodiversity and Geodiversity

PPL5: Water Conservation, Drainage and Sewerage

PPL9: Listed Buildings

CP1: Sustainable Transport and Accessibility

CP2: Improving the Transport Network

CP3: Improving the Telecommunications Network

Other Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide for Residential and Mixed-Use Areas.

Essex Design Guide (2005)

Urban Place Supplement (2007)

3. Relevant Planning History

15/01710/OUT	Demolition of one dwelling and outline application for up to 110 no. residential units with all matters reserved except for access.	Refused Allowed at appeal	12.04.2016
16/00804/OUT	Demolition of one dwelling and outline application for up to 109 no. residential units with all matters reserved except for access.	Withdrawn	09.11.2016
18/01728/DETAIL	Demolition of one dwelling and reserved matters application for	Approved	21.11.2019

105 no. residential units.

4. **Consultations**

ECC SuDS	<p>No objection. Initially ECC SuDS issued a holding objection as this application contained no further information on the detailed surface water drainage arrangements for the development.</p> <p>ECC SuDS are now aware that a drainage strategy was agreed as part of the outline permission and that there is a condition attached to the outline permission that requires submission and approval of further drainage details. On the basis that there will be a separate application to discharge this planning condition, which ECC SuDS will assess, they have withdrawn their holding objection.</p>
Housing Services	<p>The applicant is proposing to gift 4 x 2 bed houses and 4 x 3 bed houses to the council. Although this is a different mix than what was agreed with the original applicant, I can confirm that my department is happy with the new proposal as suggested by the applicant. Details of the specification for the gifted units will need to be agreed with the Council's Housing Services Officer.</p>
Anglian Water Services Ltd	<p>Wastewater Treatment - The foul drainage from this development is in the catchment of Walton On The Naze Water Recycling Centre that will have available capacity for these flows</p> <p>Used Water Network - Development may lead to an unacceptable risk of flooding downstream. Anglian Water (AW) will need to plan effectively for the proposed development, if permission is granted. We will need to work with the applicant to ensure any infrastructure improvements are delivered in line with the development. AW recommend a planning condition requiring the submission of a foul water strategy outlining the proposed connection point and discharge regime.</p> <p>Surface Water Disposal - The preferred method of surface water disposal would be to a sustainable drainage system (SuDS) with connection to sewer seen as the last option. Building Regulations (part H) on Drainage and Waste Disposal for England includes a surface water drainage hierarchy, with infiltration on site as the preferred disposal option, followed by discharge to watercourse and then connection to a sewer.</p> <p>From the details submitted to support the planning application the proposed method of surface water management does not relate to Anglian Water operated assets. As such, we are unable to provide comments on the suitability of the surface water management.</p>
ECC Highways	<p>The Highway Authority initially requested several amendments to the internal road layout drawing. Following receipt of revised plans, from a highway and transportation perspective the impact of the proposal is now acceptable to Highway Authority subject to the following mitigation and conditions:</p>

1 Prior to the occupation the internal road and footway layout shall be provided in principal and accord with drawing number TW019-PL-02 Rev L

2 Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the LPA.

4. Each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles and each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

5. All single garages should have a minimum internal measurement of 7m x 3m and all double garages should have a minimum internal measurement of 7m x 5.5m

6. The proposed/any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

7. 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.

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

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

10. With the proposed southern footway in front of plots 27 to 31 this needs to run adjacent to the carriageway as for these driveways there is a potential for the footway to be blocked if a third car parks at the very end of the drive.

Historic England

On the basis of the information available to date, we do not wish to offer any comments, but suggest that the views of the Council's specialist conservation and archaeological advisers, as relevant.

Network Rail

No response received to consultation

Natural England

No objection subject to appropriate mitigation being secured. The development site falls within the 'Zone of Influence' (Zol) of one or more of the European designated sites and it is therefore anticipated that, without mitigation, new residential development in this location is 'likely to have a significant effect' on one or more European designated sites, through increased

recreational pressure, either when considered 'alone' or 'in combination' with other plans and projects.

NE are satisfied that the mitigation described in the Council's Appropriate Assessment is in line with their strategic-level advice and the mitigation should rule out an 'adverse effect on the integrity' (AEOI) of the European designated sites that are included within the Essex Coast RAMS from increased recreational disturbance.

Appropriate planning condition or obligation is attached to any planning permission to secure the on-site mitigation measures, including links to footpaths in the surrounding area. The financial contribution should be secured through an appropriate and legally binding agreement.

Essex County
Council Ecology

We have reviewed the updated Barn Owl Ecological Advice Note (SES, Nov 2019) which takes account of a revised construction programme and identifies alternative mitigation & monitoring. It still relates to the likely impacts of development on Barn Owl, a legally Protected species. Surveys undertaken in 2019 indicated evidence of Barn Owl nesting so mitigation is needed to facilitate the consented demolition of building 1 in order to maintain the breeding site locally and conserve the population of Barn Owl.

We have also reviewed the submitted Reptile Mitigation Strategy (SES, Nov 2019) based on updated reptile surveys to ensure the mitigation previously recommended in the Phase 2 Ecological Survey and Assessment report (SES, 2015b) for the application approved at Appeal, is still fit for purpose when secured by a condition of any consent of this application.

We are satisfied that the measures proposed in the updated Barn Owl Ecological Advice Note will, with fencing to restrict access to the on-site replacement nesting box, enable the LPA to demonstrate its compliance with its statutory duties including its duties to protect Schedule 1 bird under the Wildlife & Countryside Act 1981 and to prevent wildlife crime under s17 Crime & Disorder Act 1998. We welcome confirmation that reptiles present on site can still be accommodated on the development site and that measures identified in the Reptile Mitigation Strategy should be secured for implementation in full to avoid any offence.

The mitigation measures and/or works identified in the Updated Barn Owl Ecological Advice Note should be secured and implemented in full. The on-site Barn Owl nest box will still be installed in the approved location (See Appendix 5 of the above report) on completion of all construction likely to disturb it. Two nest boxes will also be provided off site, one on adjacent land (within 500m of the current nesting site and installed within the winter of 2019/20) and one donated to Essex Wildlife Trust to be installed within the wider landscape.

We note that a further survey for Barn Owls using Building 1 to

be demolished must be undertaken prior to commencement of development by a Natural England Barn Owl licence holder to establish the current usage of the site by Barn Owl.

As future monitoring of all three barn owl boxes will need to be undertaken by a suitable qualified licenced barn owl ecologist, we recommend that the LPA secures a commitment from the applicant for a Barn Owl monitoring strategy under a mirror condition to 18/01728/DETAIL, to ensure the monitoring reports are provided to the LPA in line with para 6.12 of the submitted Barn Owl advice note. This will provide certainty for the LPA of the likely impacts on Barn Owl and reptiles, Protected species, and with appropriate mitigation measures secured, the development can be made acceptable. This will enable the LPA to demonstrate its compliance with its statutory duties.

Recommend two conditions as detailed within the recommendation.

Essex Police

Essex Police would like to see this developer incorporate Crime Prevention Through Environmental Design (CPTED) in respect of this development pursuant to the NPPF and the Tendring Local Plan policy PL4 which requires development to '*minimise the opportunities for crime and anti-social behaviour by ensuring good surveillance, clear definition between public and private spaces*'.

The proposed layout shows dwellings well positioned to protect the more vulnerable rear of the properties; the plans state there will be clearly defined boundaries along with good natural surveillance for the residents however no mention has been made of proposed lighting of the site or recreational pathways.

British Transport
Police

No objection subject to a condition requiring an assessment and potential upgrading of the fence that forms the boundary to the railway line immediately adjacent to the site.

5. Representations

5.1 Frinton and Walton Town Council recommend that the application is refused. Their reasons for objecting to the application are:

- Object to the principle of a housing development on this site as it is outside village settlement boundary; the site is in an unsustainable location being distant from shops, education, healthcare and employment; development would erode the green gap; and would constitute backland development.
- Development would be too close to the railway line
- Proposed development is too dense
- Object to the number of two storey properties and lack of parking
- Object to a single vehicular entrance / exit on to the busy Thorpe Road
- Against having properties with no frontage, shared roads and pavements which reduce the distance between properties and adversely affect resident's amenity.

5.2 Letters objecting to the application have been received from 24 local residents. The objections received raise the following points:

Principle of Development

- A 'green gap' will be lost and houses provided with no facilities or amenities
- There are no shops within walking distance so residents will be forced to drive at a time when there is pressure to reduce reliance on private cars, similarly no entertainment and leisure facilities
- There is a lack of industry locally forcing residents to drive out of the district to find work
- Village infrastructure does not have capacity to provide services for more residents – primary and secondary schools are full; lack of play areas for children; not possible to get appointments to see GP and difficult to see dentist and optician; no Accident & Emergency facilities in Clacton; roads are congested and road surfaces are literally falling apart
- The village has already been subject to considerable development and construction work will further inconvenience residents if more development is allowed
- There are lots of properties for sale in the area, with some new developments proving hard to sell, so there is no need for more new housing. No one will want to live on this development which backs on to a railway line
- With climate emergency being declared this is something that will have a further impact on the environment, health and wellbeing of all current residents
- The new houses will not all be affordable for first time buyers

Design & Layout

- The number of dwellings is too high and the density will result in future problems
- Cannot see any Visitor Parking on the plans. With many households having more than two cars access for service vehicles could be restricted
- There is not enough space being provided for all the children that will live in the family housing that is now proposed for the site
- The previous scheme featured single storey dwellings which reduced the impact on existing residents bordering the site
- Very cramped and there is not enough parking for families who are living together longer
- Existing dwellings on Thorpe Road and Chapel Lane are predominantly bungalows so a development of two storey houses is not appropriate
- Three properties are being squeezed in at the entrance to the site. These houses do not respect the building line and they would result in overlooking neighbours bungalows and gardens and block out a lot of our natural light.

Landscape & Ecology

- New dwellings will be built in close proximity to mature oak trees that are in adjoining gardens and may be detrimental to trees health / retention
- Fields have been home to varied wildlife some of which are endangered. Trees and hedgerows along the railway line corridor and the rear of existing properties on Thorpe Road should be retained to retain some of their habitats
- Development will affect muntjac deer, and barn owls which like open fields for hunting. Concerns also raised about tawny owls, bats, voles and garden birds have all been referred to in objection letters
- Trees and hedgerow need protecting to help the birds and wildlife
- Claims that a barn owl has been disturbed despite being a protected species
- Bats fly around this area foraging

Highways

- Thorpe Road is already an extremely busy road and increasing traffic will increase danger

- Inadequate assessment of the impact that this development will have, along with many others, on the highway network, particularly at bottle necks like Thorpe-le-Stoken High Street
- Highway access is unsafe. Speeding along the road is an issue and the location of the access, on a long sweeping bend, means that fast vehicles may not see maneuvering vehicles at the junction.
- Residents on Thorpe Road will be subjected to noise as vehicles brake and accelerate. The occupants at no.176 Thorpe Road would suffer from light pollution from headlights at night
- Increase in traffic due to developments is making it hard to find parking spaces when visiting shops and services
- No bus services serve the development which will force residents to drive their cars
- The highway authority should carry out further surveys of speed and volumes over a number of days and at different times to get a full picture of highway conditions and not rely on one survey from 2016
- One access road to serve 110 dwellings is not enough and another access is required
- Whilst the speed limit passing the entrance is 30 mph vehicles actually pass at 50 to 60 mph and the Councils should undertake their own traffic speed monitoring which will show that the proposed access will not be safe
- Inadequate provision for resident's car parking will result in cars parking inconveniently and unsafely in the carriageway and on adjoining streets
- Pedestrian access from the development to Chapel Lane between no's 20-22 will access onto the private unadopted Chapel Lane. The resulting increase in pedestrian and cyclists will increase the cost of repairs and maintenance which have to be borne by Chapel Lane residents who own the road

Neighbour Amenity

- Concern about the noise that neighbours will be exposed to during the construction period – request that hours of working are restricted to 9-5 weekdays only
- Proposed houses are far too near to current properties adjoining the site resulting in concerns about loss of privacy; light pollution from street lighting; loss of light and noise
- Bungalows on Chapel Lane will be overlooked by four-bedroom houses.
- Only bungalows should be allowed adjacent to existing residential properties – not two storey housing
- New development could increase the risk of flooding to neighbours' properties
- Overshadowing of neighbour's gardens rendering them unsuitable for gardening
- Construction work could cause structural damage to existing properties

Other Matters

- Plans are inaccurate – two new build properties on Chapel Lane are missing from the plan
- Crime in the area is increasing and the police presence is lacking
- Residents want to maintain the village community and don't want more development which will change that
- The access footpath into Chapel Lane should not be allowed as this will make easy access to the railway line, which may encourage children to play on the line.
- The new houses will be built to current minimum eco standards despite massive climate change issues. Missed opportunity to not incorporate solar panels and other Eco features
- No provision for play areas for children

5.3 A further 3 representations were received which made comments on the proposals. A summary of the additional issues raised in these letters is set out below:

- Developers of other properties adjoining the site (no's 121-121c) advised purchasers of those new properties that there would be extra landscaping some 8-metre-wide to screen the development
- Concerns over the lack of an Arboricultural Assessment with the original application and consequent lack of assessment regarding impact on trees protected by Tree Preservation Orders
- Concern that the application does not adequately assess the impact of development on the setting of the Grade II listed property at no.127 Thorpe Road – specifically the extent to which the setting will be altered by properties overlooking the listed building; how the new pedestrian route adjoining the listed building will be enclosed and illuminated; and whether the routing of utility services along the pedestrian route could adversely affect the structural integrity of the listed building
- Unclear what is happening with foul drainage arrangements
- Question whether the pond shown on the plans will be wet or dry and what consequences this might have on the quality and usability of the Public Open Space
- New housing built at no.121 Thorpe Road was restricted to dwellings which only had a single storey and this would indicate that dwellings on this site should also be single storey, particularly where they adjoin the private amenity areas of existing dwellings on Thorpe Road and Chapel Lane

6. **Assessment**

Site Context

- 6.1 The application site is located in the western part of the settlement of Kirby Cross and consists of 4.8 hectares of relatively flat open land which is to the rear of frontage development along Thorpe Road. To the north the site is bounded by the rear gardens of dwellings on Thorpe Road; to the east by a small area of open land to the rear of properties on Chapel Lane; to the south by the railway line; and to the west of the site is a wooded area beyond which is farmland. The site contains a number of mature trees on and close to site boundaries. Hedgerows within the site also contain some large trees.
- 6.2 The site was previously used for the keeping of horses and had included a number of equestrian related structures - stable buildings, shelters and a ménage. Since outline permission was granted horses are no longer kept at the site and the grassland has become overgrown.
- 6.3 In addition to the paddocks the site also includes 171 Thorpe Road which is a detached bungalow that would be demolished to provide the vehicular access to the site. A further dwelling (No.157) is located within the site. There is an existing drive leading to that property which will be used to provide a further pedestrian access to the site from Thorpe Road. Further pedestrian links will be provided from Thorpe Road, between 127 & 129 Thorpe Road, and an access from Chapel Lane.

Planning History

- 6.4 In November 2015 an application was made that sought outline planning permission for the demolition of one dwelling and outline planning permission for the erection of up to 110 no. residential units with all matters reserved except for access (15/01710/OUT). Officers reported the application to Planning Committee in March 2016 and recommended approval of the application. The Committee refused the application as it was considered that the development would be contrary to the 'Local Green Gap' policy; be out of character with the character of Kirby Cross and be harmful to the intrinsic character and beauty of the countryside. The applicant successfully appealed that decision and in September 2016 a

Planning Inspector granted Outline Planning Permission, subject to a S106 legal agreement and nineteen planning conditions.

- 6.5 Thirteen of the planning conditions imposed by the Planning Inspector require the submission and approval of details prior to the commencement of development - Conditions 4 (Phasing Plan), 5 (External Materials), 7 (Tree Protection), 8 (Boundary Walls and Fences) Means of Enclosure), 9 (Surface Water Drainage ('SuDS') System), 10 (SuDS during construction), 11 (SuDS Management), 13 (Cycle Storage), 14 (Ecological Mitigation Statement), 15 (Construction Method Statement), 16 (Noise Mitigation), 17 (Refuse / Recycling), 18 (External Lighting). The applicant will need to submit discharge of conditions application(s) to the Council and gain approval for all these matters prior to the commencement of development. The remaining six planning conditions establish the scope of the planning permission, or are compliance conditions.
- 6.6 The Council's Planning Committee, at their meeting on 12th August 2019, passed a resolution to grant approval of a previously submitted application which sought approval of the Reserved Matters for this development for 105 dwellings. Following completion of the legal agreement to secure the required financial contribution towards RAMS, the decision notice approving the details of the Reserved Matters for application 18/01728/DETAIL was issued on 21st November 2019.

Proposal

- 6.7 This is a new application which again seeks the approval of Reserved Matters for Appearance, Landscaping, Layout, and Scale, pursuant to condition 1 imposed upon the grant of outline planning permission 15/01710/OUT. This application is submitted by a different developer and this application seeks approval for details of Appearance, Landscaping, Layout and Scale that are different to the scheme approved in November 2019. This application seeks approval for a development of 110 dwellings on the site – the maximum number permissible under the Outline Planning Permission.
- 6.8 The description of the outline aspect of the proposed development for 15/01710/OUT, as approved by the Planning Inspector, proposed the demolition of one dwelling and erection of up to 110 no. residential units. The means of accessing the site was approved as part of the Outline planning application. The approved vehicular access to the site will be a new priority junction formed off Thorpe Road, on the site of the bungalow that is to be demolished at no.171 Thorpe Road. The access road shall comprise a 5.5-metre-wide carriageway with 2-metre-wide footways to either side. Three pedestrian accesses were also approved, two onto Thorpe Road and one onto Chapel Lane.
- 6.9 Following discussions between the applicant and Officers, revisions have been made to the application as originally submitted, and include amended drawings as well as additional or revised documents. The application submission comprises:
- Planning application form;
 - Location Plan;
 - Block Plan;
 - Concept Development Plan;
 - Garden Plan;
 - Refuse Collection Plan;
 - Building Heights Plan;
 - Boundary Treatments Plan;
 - Affordable Housing Location Plan;
 - Elevations and Floor Plans for each house type; and garage;
 - Pumping Station and Sub Station Plans;
 - Street Scenes;

- Materials Plan;
- Design & Access Statement;
- Soft Landscape Plans;
- Circular Dog Walking Plan;
- Arboricultural Impact Assessment and Monitoring Reports;
- Root Investigation Report;
- Preliminary Arboricultural Method Statement and Tree Protection Plan;
- Barn Owl Ecological Advice Note;
- Reptile Mitigation Strategy; and
- Heritage Statement.

6.10 Following discussions with the applicant the proposed development has been amended. The principle revisions to the original submission are summarised thus:

- Moving Plot one forward in line with existing development along Thorpe Road, and a new plot 2 added behind;
- Relocating the building line on the eastern boundary to move the new dwellings further away from the boundary with properties on Chapel Lane;
- Changes to the alignment of one of the pedestrian links from the site to Thorpe Road to improve the relationship to a proposed dwelling;
- Elevational changes to some house types, to improve their detailing and appearance;
- Changes to the central block to improve their amenity areas and to better address the streetscene; and
- Improvements to the equipped play area (LAP) proposed for the Central Green.
- Amendments to the road types to conform with the Highway Authority's standards for adoption, including ensuring suitable visibility splays on corner plots and inclusion of additional traffic calming; revisions to the extent of the footways; changes to the car parking arrangements to comply with the Parking Standards;
- The applicant has also submitted an alternative Barn Owl Ecological Advice Note and a Reptile Mitigation Strategy;
- Minor revisions to the mix of housing. The mix of housing now proposed is:

Market Housing – 102 Units

12 x 2-bed houses
 51 x 3-bed houses
 39 x 4-bed houses

Affordable Housing – 8 Units

4 x 2-bed houses
 4 x 3-bed houses

6.11 In totality, the proposal comprises: Vehicle access to the residential development from a new priority junction on Thorpe Road on the site of the bungalow at no.171 Thorpe Road which will be demolished leading to a 5.5m wide road, Formation of two pedestrian links from the site to Thorpe Road (via the access to no.157 Thorpe Road – which is to be demolished – and between 127 & 129 Thorpe Road) and one further pedestrian link to Chapel Lane (between 22 & 24 Chapel Lane); Construction of no.110 dwellings, including no.8 affordable housing units; The provision of public open spaces, including an equipped children's play area; Formation of SUDs, including the construction of an attenuation basin as part of the Central Green; Landscaping and ecological mitigation; and associated parking and access.

Principle of Development

6.12 As noted above, within the Planning History section of the report, the principle of development of this site has already been established. Whilst the Council refused the

original application in 2016 for Outline Planning Permission to develop up to 110 dwellings the applicant appealed that decision to the Secretary of State and in August 2016 a Planning Inspector granted Outline Planning Permission, subject to conditions including the approval of the Reserved Matters. An alternative reserved matters application (18/01728/DETAIL) for 105 dwellings has also been approved in November 2019.

6.13 The Council has received a significant number of objections to this application for approval of the Reserved Matters, however many of the objections do not refer to the Reserved Matters (the Appearance, Landscaping, Layout and Scale of the development) and instead refer to the principle of development – matters such as the suitability of the site for housing development; the need for more housing within the village / district; concerns about the access arrangements and highway safety and capacity; and concerns over infrastructure capacity. As all these matters relate to the principle of development or the access which have both been established by the Planning Inspectors decision none can be considered as part of the determination of this application.

6.14 The main planning considerations for this reserved matters application are:

- Access and Highways;
- Design (Layout, Scale and Appearance);
- Impact on Heritage Assets
- Living Conditions;
- Landscaping;
- Ecology; and,
- Section 106 legal agreement.

Access and Highways

6.15 Where concerning the promotion of sustainable transport, the NPPF in para. 103 states that the planning system should actively manage patterns of growth; and that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Policy QL2 in the adopted Local Plan and Policy CP1 in the emerging Local Plan seek to ensure that developments maximise the opportunities for access to sustainable transport including walking, cycling and public transport.

6.16 Objectors question whether the site is in a sustainable location but the Planning Inspector stated that ‘... the site is in a sustainable location given that there are footpaths and public transport connections and given that there are local shops and a primary school within walking distance’.

6.17 As well as establishing the principle of residential development of the site, access was also approved as part of the outline planning permission. A number of objectors have referred to the highway access arrangements to the site, claiming that this will be unsafe and that traffic speeds on Thorpe Road will make the access unsafe. The Highway Authority were satisfied with the access arrangements and raised no objection to the outline planning application. The access arrangements and highway capacity were considered by the Planning Inspector. Having reviewed the applicants Transport Statement and the Highway Authority recommendation the Inspector concluded that, subject to planning conditions, the development would be acceptable in terms of highway safety and granted the outline planning permission with access approved. As a result, the vehicular access to the site and highway capacity are not matters that the Council can consider as part of this Reserved Matters application.

6.18 The applicant also proposed to provide three additional footway links from the site to surrounding roads – two separate links onto Thorpe Road and a further link to the east, to

connect to Chapel Lane – which will encourage residents to walk and cycle for short journeys.

- 6.19 To further encourage residents to use more sustainable means of transport, condition no.12 of the outline planning permission requires the upgrading of the two bus stops on Thorpe Road, west of its junction with Chapel and the provision of a Residential Travel Information Pack for sustainable transport, to the first occupier of each new dwelling.
- 6.20 The Highway Authority have been consulted on this reserved matters application and having reviewed the proposals they requested several amendments to the internal road layout drawing. Following receipt of revised plans the Highway Authority have now confirmed that from a highway and transportation perspective the impact of the proposal is now acceptable subject to a series of conditions covering the design and construction of internal roads and footways; the design and provision of vehicle and cycle parking spaces; and that there be no new planting within 1 metre of the highway or visibility splays. Further conditions are recommended requiring the provision of Residential Travel Information Packs to the first occupants of the new dwellings and a Construction Method Statement which will cover access arrangements for construction traffic but these matters are already covered by conditions that formed part of the Outline Planning Permission and so do not need to be replicated on this decision.
- 6.21 Consequently, from a highway and transportation perspective the impact of the proposal is deemed acceptable to the Highway Authority subject to the imposition of conditions as highlighted within the summary of their consultation response above.
- 6.22 Adopted Local Plan Policy TR7 states that in new residential development there will be a requirement that the parking is provided in accordance with the Councils Parking Standards. The parking standards state that a minimum of 2 spaces per dwelling should be provided for 2 and more bedroom dwellings. Also 0.25 space per dwelling is required for visitor parking. Parking spaces should measure 5.5 metres by 2.9 metres and garages, where to be counted towards parking provision should measure 7 metres by 3 metres.
- 6.23 Whilst a number of objectors have claimed there is insufficient car parking, the proposed development has been laid out in a manner that meets the Council's adopted standards, including the provision of 27 Visitor parking spaces. For some houses the required second parking place is being provided within a garage so Officers recommend that permitted development rights are withdrawn to ensure that the garage is retained for its intended purpose.
- 6.24 In summary, the layout of the development is acceptable, adhering to relevant standards in respect of road design and car parking. The applicant has also demonstrated that pedestrian links will be provided that will link the new development to the existing settlement and its services and facilities

Design (Layout, Scale and Appearance)

- 6.25 Paragraph 124 of the NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Furthermore, Part 11 of the NPPF indicates that development should contribute to and enhance the natural environment and that impacts on biodiversity should be minimised.
- 6.26 Only the access to the site was approved by the Planning Inspector when outline planning permission was granted. There were no other approved drawings listed in the decision letter and there was no masterplan or parameters plan which fixed the layout or scale of the development.

- 6.27 The application proposes a development of no.110 two-storey detached or semi-detached dwellings, with 2, 3 or 4 bedrooms.
- 6.28 The site is situated on the edge of the settlement and the suburban form of development is considered an appropriate style given the site context and as a transition to the countryside beyond. The applicants Design and Access Statement considers the character and appearance of the built form within the village and this has led to a traditional style of architecture being applied to the dwellings with a simple palette of materials with facing bricks being the predominant material, but with weatherboarding and render to provide variation and visual interest. The housing mix and house types are considered acceptable, by creating a development with its own distinctive character whilst also responding to the character and distinctiveness of the surrounding area.
- 6.29 A refuse storage plan has been submitted with the application. The Council's Waste Management team have been consulted on the application and they have raised no objection. The layout will require a number of refuse collection points where refuse crews will collect from, so that both residents and refuse crews do not have to carry refuse an unacceptable distance. No details have been provided of how these refuse collection areas will be constructed. Condition 17 of the Outline Planning permission requires the submission of details of refuse storage and collection points. The applicant will need to provide further details to discharge this condition, including details of appropriately located and designed refuse collection points.
- 6.30 In conclusion on this issue it is considered that the proposal provides an acceptable layout and detailed design in compliance with the NPPF and the development plan.

Impact on Heritage Assets

- 6.31 Policy EN23 of the adopted 2007 Local Plan states development affecting a listed building or its setting will only be permitted where it, amongst other things, does not have an unacceptable effect on the special architectural or historic character and appearance of the building or its setting. These sentiments are echoed in Policy PLA8 of the draft Local Plan. The NPPF also attaches great importance to the protection of the historic environment, including designated heritage assets such as Conservation Areas and Listed Buildings.
- 6.32 The site is not located within a Conservation Area but no.127 Thorpe Road, also known as Mill House, is a Grade II listed building (formerly listed as group of 3 thatched cottages west of Methodist Chapel). The listing states the building dates to the 16th Century with 17th Century alterations. The listed building is adjacent to the proposed footpath link to the north east of the site. The applicant submitted a Heritage Statement as part of the outline planning application which highlighted that the building was already hemmed in by neighbouring properties along Thorpe Road and this had already eroded the setting of the building. The applicant claimed that the significance of the building lies mainly in its surviving architectural features. The Planning Inspector in considering the potential impact on the listed building stated 'There are modern houses on either side of the building. It has a good-sized rear garden which backs onto the appeal site and I saw on my visit that its garden is enclosed to a large extent by trees and hedges'. They considered that it was possible to develop a scheme that would avoid any harm to the setting of the building.
- 6.33 Whilst it is noted that this scheme would introduce two-storey houses to the rear of the listed building, as opposed to bungalows on the previous Reserved Matters application, Officers are satisfied that this proposal would preserve the buildings significance.
- 6.34 The owner of no.127 Thorpe Road has objected to this application citing concerns about the impact that two storey buildings; the new lighting and means of enclosure along the

pedestrian link would have on the setting of the listed building. They have also requested that the Council seek advice from our Historic Buildings Consultant and Officers have discussed the proposals and the neighbour's objection. The Council's Historic Buildings Consultant has confirmed that in light of the Planning Inspectors comments and the grant of Outline Planning permission, and having reviewed the proposed detailed layout, he has confirmed that this raises no concern or need to comment.

- 6.35 Finally the owners of no.127 Thorpe Road are concerned about the potential damage to their building that could be caused if utilities were to be routed along the pedestrian path but this point was raised at the appeal, to which the Planning Inspector concluded that there was no evidence before them to indicate that there would be any harm in this respect.
- 6.36 In conclusion, with the imposition of appropriately worded conditions, Officers consider that the proposals would preserve the setting of the listed building.

Living Conditions

- 6.37 NPPF para. 127 states that planning decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
- 6.38 There are residential properties adjoining the site along the northern and eastern site boundaries. These properties contain a mix of single storey, one and a half storey and two storey dwellings.
- 6.39 A number of objectors do not believe that it is appropriate for two storey housing to be erected to the rear of existing single storey dwellings. The Essex Design Guide (EDG) contains guidance on how new housing development should be laid out in order that the privacy and amenity is protected for both future occupants of new houses, as well as residents living in properties which are next to development sites. A distance of 25 metres is recommended between the rear elevations of properties which are parallel to each other. In addition. The EDG also recommends that for new development which will be parallel rear facing existing dwellings, the new housing should not be erected within 15 metres of the boundary. Officers were not satisfied that the original layout met this guidance and the applicant was required to alter the layout along the eastern boundary to ensure an acceptable relationship to existing properties on Chapel Lane.
- 6.40 On the western side of the site Officers consider the arrangement of Plots 2 and 3 to be acceptable. These new houses are not parallel to the neighbouring properties but stand side on to the neighbours at no.169 and no.173 so that the front and rear elevations will overlook the rear gardens of the neighbour's properties. The developer has acknowledged the sensitivity of these plots and have proposed additional planting along the boundaries and has amended the housetype that will be used on Plot 2 so that the first-floor windows on the rear elevation will only have one 'false' window and one obscure glazed window. To protect neighbouring amenity the EDG also suggests that the area immediately at the rear of properties should not be overlooked as this is often used as a private sitting out area and the new dwellings would not directly overlook these areas. Officers therefore consider that whilst the development will result in some overlooking of those properties rear gardens, on-balance the relationship is acceptable.
- 6.41 In a number of locations dwellings are proposed to be erected near the site boundary / the rear gardens of neighbouring properties, such as Plot 32. These buildings have a blank side gable (other than a small ground floor window to a w/c on one of the house types) that faces towards the neighbouring properties on Chapel Lane or Thorpe Road. Any new openings at first floor level in that elevation would require planning permission unless they

are obscure glazed and non-opening above 1.7m, this would therefore protect neighbouring amenity without needing to impose a planning condition.

- 6.42 Officers have considered the proximity and relationship of the dwellings at Plots 48-51 to the properties to the north. The arrangement of the dwellings is similar to that which the Council previously approved in this part of the site. Whilst the previously approved scheme featured bungalows these were relatively tall single storey dwellings. To reduce the massing of these houses and any sense of overbearing the roof has been hipped. The change to the roof form and the fact that the houses are set off the boundary, with parking bays to the side, means that there would not be material harm to neighbouring properties in terms of light and privacy. In light of all these factors Officers consider the layout and revised houses are on-balance acceptable in this location.
- 6.43 The proposed layout shows a combined foul and surface water pumping station, to the north of the equipped play area and to the south of no.153 & 155 Thorpe Road. There is a landscaped buffer around the pumping station and it complies with relevant 'sewers for adoption' guidance in relation to 15 metre separation to habitable buildings to minimise the risk of odour, noise or nuisance.
- 6.44 The railway line runs along the southern boundary of the site and the layout proposes that dwellings are erected which back onto the line. The Planning Inspector imposed a condition (no.16) which requires details of noise mitigation measures to ensure that residents in these new properties enjoy a reasonable standard of amenity. These details must be submitted and approved prior to the commencement of development.
- 6.45 Policy HG9 of the adopted Local Plan specifies that private amenity space shall be provided to new dwellings with three or more-bedroom houses requiring a minimum of 100 square metres, whilst two-bedroom houses require a minimum of 75 square metres. Each house is provided with a private garden which would meet or exceed the Council's adopted standards.

Landscaping

- 6.46 Part 15 of the NPPF indicates that development should contribute to and enhance the natural environment and that impacts on biodiversity should be minimised.
- 6.47 The main body of the application site is set to grass that has become overgrown since the use of the site for the keeping of horses ceased.
- 6.48 The site contains several mature trees on and close to site boundaries and within the centrally situated hedgerow. There are two Tree Preservation Orders on the site – The trees covered by the 1998 order (TPO/98/19) are predominantly English Oaks that are situated to the north of the westernmost section of the application site intended for use as public open space and attenuation pond. The second order, which was made in 2016 (16/01/TPO) protects 1 Ash and 10 Oak trees, situated on the eastern boundary of the land and in the hedgerow that runs from north to south, to the south of 155 Thorpe Road.
- 6.49 Condition no.7 of the Outline Planning Permission required the submission of tree protection measures, however Officers requested that the applicant submit an Arboricultural Impact Assessment (AIA) with this Reserved Matters application to allow Officers to assess the potential impacts of the development on the trees on and around the site. The Council's Tree and Landscape Officer has assessed this report and commented that the proposed layout would allow the retention of all the protected trees on the site that are covered by tree preservation order. Some minor works to remove branches from trees on the eastern boundary are proposed but the Council's Tree and Landscape Officer is satisfied that sufficient information has been provided to show that the health, condition and long-term

viability of retained trees will not be adversely affected by the construction of the development. The applicant will need to formally discharge Condition no.7 of the Outline Planning Permission which requires that the development is carried out in accordance with the tree protection measures approved by the Council.

- 6.50 The applicant has provided comprehensive soft landscaping details and it is considered that this will adequately soften, screen and enhance the appearance of the development.
- 6.51 Additional information has also been provided in relation to the attenuation basin which has a 1 metre levels change between the top and bottom of the basin with a 1 in 3 slope so represents a usable area in relation to recreation, except following storm events when it will serve its intended purpose.
- 6.52 The plans also show the existing overhead power lines which cross a section of the site proposed for open space to be buried underground. As per the previous reserved matters approval this forms a recommended planning condition.

Ecology

- 6.53 When the Outline planning permission was granted the Inspector considered the potential impact of development on ecology, including protected species. Condition 14 of the Outline planning permission states that no development shall take place until an Ecological Mitigation Scheme and Management Plan has been submitted to and approved by the Council. The scheme shall include survey information to establish whether any protected species would be affected by the development and the detail of any necessary mitigation measures.
- 6.54 Since the Outline Planning Permission was granted the Council has received a number of representations in respect of a pair of Barn Owls that had been reported to be observed at the site.
- 6.55 One representation has claimed that a local resident has previously observed workmen carrying out activities intended to frighten barn owls which might be present on the site. This is a potentially serious matter as barn owls are listed on Schedule 1 of the Wildlife and Countryside Act, 1981; therefore, the birds, their nests, eggs and young are fully protected. The resident who made this statement went on in their representation to state that they had reported the matter to the Police for investigation and as a result the Council's responsibility is to ensure that any barn owls on the site are protected from harm arising from the proposed development.
- 6.56 Officers have requested that the applicant produce an updated report which considered the likely impact of development on the Barn Owls. The report produced by the applicants Ecologist confirms evidence of owls nesting in an old metal and asbestos shed on the site – a structure that would be demolished to facilitate the development.
- 6.57 Due to the need to demolish the building containing the nest the applicant proposes a barn owl mitigation strategy. The strategy has four strands – the implementation of a buffer zone (if development commences before mitigation has been implemented), on-site mitigation, off-site compensation and pre-demolition survey.
- 6.58 *Pre-demolition survey & Buffer Zone* – to ensure that the subject building containing the nest is not demolished until a suitably qualified ecologist has established that the nest is not in use, or in the event that it is in use by owls then no development including demolition is allowed, until such time as the Barn Owl Strategy is approved by the Council.

- 6.59 *Off-site compensation* - Two barn owl nest boxes will be provided offsite: one in adjacent land and one donated to Essex Wildlife Trust, to be used within 500m of the current nesting site. These boxes are intended to help mitigate the loss of the building which contains a nest.
- 6.60 *On-site mitigation* - One further barn owl nesting box will be installed within the south-western corner of the application site post development completion as to not face any disturbance during the development.
- 6.61 Future monitoring of each barn owl box undertaken by EWT or a suitable qualified licenced barn owl ecologist will also be required to demonstrate that the strategy has been implemented to maintain the breeding site locally and preserve the local conservation status of this species. The Council's ecological advisor has reviewed the applicants Strategy and is satisfied that the measures proposed in that report will suitably mitigate for the impact on this protected species subject to the three conditions contained within the recommendation.
- 6.62 Surveys in 2015 and 2019 have identified a small population of common lizard and slow worm on the boundary of the site as well as a juvenile adder. The applicant has submitted a Reptile Mitigation Strategy as a result. The Strategy proposes that under the supervision of a suitably qualified ecologist the habitats within the site will be manipulated so as to drive the reptiles towards a reptile receptor area within the south western corner of the site and disperse into adjoining suitable habitats off site along the southern boundary. Once the ecologist is satisfied the reptiles have been moved reptile fencing will be erected to prevent them from returning into the development site. The receptor area will also be provided with two hibernacula which will provide hibernation, foraging and basking opportunities for reptiles. The Council's ecological advisor has reviewed the applicants Strategy and is satisfied that the measures proposed in that report will suitably mitigate for the impact on this protected species.
- 6.63 The development falls within the 'Zone of Influence' (Zol) for one or more of the European designated sites scoped in the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This residential development lies within the Zol for Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries SAC. Hamford Water SPA and Ramsar site are the closest European sites and are located around 5.7km northeast of the application site. The outline planning permission did not secure a contribution towards RAMS or mitigation to contain recreation within and around the development site. In the contemporary context of the Council's duty as competent authority under the Habitats Regulations, it is anticipated that without mitigation, such new residential development would have a likely significant effect on the sensitive features of the coastal European sites, through increased recreational pressure when considered 'in combination' with other plans and projects. It is considered that the proposal falls within the scope of RAMS as 'relevant development'.
- 6.64 One recommended way of trying to avoid increasing recreational pressures on the coastal European sites is to encourage dog walkers to exercise their dogs near their homes and not drive to the protected sites. The applicant has submitted a plan which identifies a 4.5km walking route utilising the public open space within the site and public rights of way network to the north of the site. The previous Reserved Matters application identified alternative circular walking routes which involved crossing the railway line. It is evident that there is a safe, attractive circular walking route from the site and Officers recommend a condition that this route is publicised within the Residents Travel Information Packs that are required by Condition no.12 of the Outline Planning Permission.

- 6.65 Natural England state that provided their guidance is adhered to, an 'adverse effect on the integrity' (AEOI) of the European sites included within the Essex Coast RAMS from increased recreational disturbance can be ruled out subject to the mitigation sought and to be secured by condition and planning obligation.
- 6.66 The Council has produced a Habitat Regulations Assessment (HRA) setting out the mitigation that is proposed – namely the dog walking routes, that will be publicised to new residents, and the provision of a dog waste bin, and a RAMS payment of £122.30 per dwelling (£13,453 based on 110 dwellings), is proposed to be included within a Unilateral Undertaking (UU), pursuant to S106 of the Town and Country Planning Act 1990, to fund strategic off-site measures. These measures should be targeted towards increasing the relevant European sites' resilience to recreational pressure (such as schemes to provide wardens at the protected sites who will help manage and educate visitors) and be in line with the aspirations of the emerging RAMS. In their consultation response Natural England confirm that they have no objection to the proposal subject to the specified mitigation being secured through planning condition and legal obligation. The applicant has accepted the need for a unilateral undertaking to legally secure payment of the required financial contribution and this is currently with them for action.

Section 106 legal agreement

- 6.67 The Planning Inspector accepted a legal agreement to secure planning obligations as part of the grant of outline planning permission. This specified financial contributions to provide additional capacity for primary education places (at Kirby Primary Academy, Hamford Primary Academy, and/or Frinton-on-Sea Primary School) and the health service (£33,300 for additional healthcare services at Thorpe Surgery and/or Caradoc Surgery). The agreement also covered public open space requirements, including a sum for future maintenance of the Open Space as this will be transferred to the District Council.

Affordable Housing

- 6.68 The S106 agreement that formed part of the Outline Planning permission specified that affordable housing would be provided on-site, either as 25% of the total number of dwellings erected and transferred to a Registered Provider, or as 8 units which would be transferred to the Council at a nominal charge, in accordance with draft policy LP5 of the emerging local plan.
- 6.69 The applicant has proposed that they will gift 4 x 2-bed houses and 4 x 3-bed houses to the Council. Whilst noting that the mix of housing offered is different to that which the Council accepted on the previous Reserved Matters application (4 x 2-Bed Flats; 2 x 4-Bed Houses and 2 x 2-Bed Bungalows) they confirm they are happy with the applicants offer. The location of the eight Affordable Homes within the development has been shown to be in a single cluster in the bottom south western corner of the site and the Council's Housing Officers consider this arrangement to be acceptable.

Open Space Plan and Specification

- 6.70 Schedule 3 of the legal agreement requires the applicant to submit an Open Space Plan and a specification for the setting out of the Open Space and Local Area of Play (LAP) and for these to be approved by the Council prior to the commencement of development and that the Open Space is subsequently set out and transferred to the Council along with the payment of a commuted sum for maintenance of £42,240. The planning drawings show that a 'Local Area of Play' (LAP) is to be provided as part of the central green. The legal agreement requires submission of the Open Space specification, including the equipped play area, as part of the Reserved Matters application. Additional information has been provided as the original proposal provided insufficient play equipment and associated

fencing. The Council's Open Spaces Officer has advised that the proposed details are acceptable.

Other Matters

Drainage

- 6.71 The Inspector considered the issue of surface water drainage as part of their consideration of the application for Outline planning permission. They concluded that it had been demonstrated that the appellant had presented a feasible surface water drainage strategy for the site. A condition was imposed as part of the Outline planning permission (Condition no.9) which states that no development shall take place until a detailed surface water drainage scheme has been submitted to and approved by the Council. This condition means that the applicant has not been required to provide these details as part of this application for approval of Reserved Matters. The Lead Local Flood Authority – Essex County Council – will assess the detailed scheme when it is submitted and development cannot commence until such time as the scheme is approved.
- 6.72 In respect of foul water drainage in December 2015 Anglian Water advised that the waste water treatment centre and the network of sewers connecting the site to the treatment centre had capacity to accept the foul water flows from the development. Anglian Water now advise that there would be a risk of flooding as the sewers now have insufficient capacity to accommodate the flows safely and they recommend conditions requiring submission of a phasing plan for the development and the agreement and implementation of a foul water drainage strategy. The outline planning permission already requires the submission and agreement of a phasing plan but it is recommended that a condition is added requiring the applicant to agree foul water drainage works prior to the occupation of any phase. The proposed layout shows a combined foul and surface water pumping station, to the north of the equipped play area and to the south of no.153 & 155 Thorpe Road. There is a landscaped buffer around the pumping station and it complies with relevant 'sewers for adoption' guidance in relation to 15 metre separation to habitable buildings to minimise the risk of odour, noise or nuisance.

Boundary Dispute

- 6.73 The Council has received a representation from the owner of no.141 Thorpe Road in which they have claimed that there is a boundary dispute as they consider that the boundary fence erected by the developer is on land that they own. The neighbour has gone on to state that they are pursuing this matter through a conveyancing solicitor. Land ownership disputes are a civil matter and the neighbour will need to pursue this matter through the legal process. It is not a planning matter and should not prevent the determination of this application.

Railway Boundary Fence

- 6.74 The Council has received a representation from the British Transport Police Designing Out Crime Unit. They note that the housing development will result in an increase in public activity adjacent to the railway line. Although the existing railway line boundary fence may be outside the application site British Transport Police recommend that the existing fencing is assessed and an appropriate new boundary fence erected in the event that the existing fence is found to not meet the required standard given the increase in public activity. Network Rail and Essex Police were consulted on the previous applications and whilst neither made such a recommendation, British Transport Police have now, and as the recommendation meets the six tests for a planning condition (necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects) a condition is recommended.

7 **Conclusion**

- 7.1 The application site lies outside the adopted Kirby Cross settlement development boundary but the principle of residential development has already been established by a Planning Inspector granting outline planning permission for the development of up to 110 dwellings.
- 7.2 The submitted application seeks the approval of Reserved Matters (relating to appearance, landscaping, layout and scale) for 110 dwellings pursuant to condition 1 of outline planning permission ref: 15/01710/OUT.
- 7.3 Access to the site – a new vehicular access off Thorpe Road and three pedestrian paths connecting to Thorpe Road and Chapel Lane – were all established during the consideration of the Outline Planning application. The Highway Authority have carefully considered the submitted layout and have confirmed that they have no objection, subject to the imposition of conditions.
- 7.4 Following the submission of revised plans Officers consider that the scale, layout, density, height and massing and overall elevation design of the dwellings is acceptable and would not give rise to an unacceptable loss of amenity for existing residents adjoining the site.
- 7.5 In respect of landscaping the Council's Tree and Landscape Officer considers that the landscaping of the site would be appropriate and with regard to ecology, mitigation measures to enable increasing the relevant Europeans sites' resilience to recreational pressure would be in line with the aspirations of the emerging RAMS, and that the potential impact upon Barn Owls and Reptiles can and will be suitably mitigated.

8 **Recommendation**

- 8.1 The Planning Committee is recommended to grant reserved matters approval 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 new dwelling

8.2 **Conditions and Reasons**

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Site Location Plan – TW019-PL-01
Concept Development Layout – TW019-PL-02 Rev L
Detailed Layout – TW019-PL03 Rev I
Landscape Plan – TW019-PL04 Rev H
HA Location Plan – TW019-PL06 Rev G
Storey Height Plan – TW109-PL08 Rev G
Garden Areas – TW109-PL09 Rev E
Housetype Ashenford NA20a – TW019-HA-NA20a-01 Rev 00
Housetype Ashenford NA20b – TW019-HA-NA20b-02 Rev A
Housetype Coltford NA34 – TW019-HA-NA34-01 Rev 00
Housetype Byford NA32a – TW019-HT-NA32a-01 Rev A
Housetype Byford NA32b (Boarding) – TW019-HT-NA32b-02 Rev A
Housetype Manford NA44 – TW019-HT-NA44-01 Rev B
Housetype Possdale NA40a – TW019-HT-NT40a-01 Rev C
Housetype Possdale NA40c – TW019-HT-NT40c-02 Rev B

Housetype Waysdale NT42 – TW019-HT-NT42-01 Rev B
 Housetype Waysdale NT42a – TW019-HT-NT42a-02 Rev C
 Housetype Waysdale (Boarding) - NT42b – TW019-HT-NT42b-03 Rev B
 Housetype Waysdale NT42c – TW019-HT-NT42c-04 Rev A
 Housetype Canford PA25 – TW019-HT-PA25-01 Rev C
 Housetype Gosford PA34a – TW019-HT-PA34a-01 Rev C
 Housetype Gosford PA34b – TW019-HT-PA34b02 Rev C
 Housetype Gosford PA34c – TW019-HT-PA34c-03 Rev A
 Housetype Easedale PT36a – TW019-HT-PT36a-01 Rev A
 Housetype Easedale PT36c – TW019-HT-PT36c-02 Rev B
 Housetype Yewdale PT37a – TW019-HT-PT37a-01 Rev E
 Housetype Yewdale PT37b – TW019-HT-PT37b-02 Rev B
 Housetype Yewdale PT37c – TW019-HT-PT37c-03 Rev A
 Garage Types – TW019-GR-01
 Garage Types - TW109-GR-02
 Sub-Station - Tw019-sub-01 rev a
 Street Scenes – TW019-ST01 Rev.B
 Soft Landscape Proposals 1 of 10 - 19.4068.01.F
 Soft Landscape Proposals 2 of 10 - 19.4068.02 D
 Soft Landscape Proposals 3 of 10 - 19.4068.03.E
 Soft Landscape Proposals 4 of 10 - 19.4068.04.D
 Soft Landscape Proposals 5 of 10 - 19.4068.05.E
 Soft Landscape Proposals 6 of 10 - 19.4068.06.D
 Soft Landscape Proposals 7 of 10 - 19.4068.07.D
 Soft Landscape Proposals 8 of 10 - 19.4068.08.D
 Soft Landscape Proposals 9 of 10 - 19.4068.09.E
 Soft Landscape Proposals 10 of 10 - 19.4068.10.F
 Updated Barn Owl Ecological Advice Note (SES, November 2019)
 Reptile Mitigation Strategy (SES, November 2019)
 Attenuation Basin Plan
 Circular Dog Walking Route 19.4668.11
 Pump Station Details 5793:101 Rev B
 AIA 7658.D.AIA Rev A
 Root Investigation 7816-D-R1
 Root Investigation 2 7816-D-R1 2
 Preliminary Arboricultural Method Statement Proj, 7658 Rev A
 Arboricultural Monitoring Report Proj. 7816

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

2. All mitigation measures and/or works shall be carried out in accordance with the details contained in the Updated Barn Owl Ecological Advice Note (SES, November 2019) and Reptile Mitigation Strategy (SES, Nov 2019). This may include the appointment of an appropriately competent person e.g. a suitably qualified ecologist holding a Natural England Barn Owl Licence, to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve Protected species and allow the Local Planning Authority to discharge its duties under the Wildlife & Countryside Act 1981 as amended and s17 Crime & Disorder Act 1998 (wildlife crime).

3. No development shall take place, including demolition, ground works and vegetation clearance, until a biodiversity monitoring strategy for Barn Owls has been submitted to, and approved in writing by, the Local Planning Authority. The purpose of the strategy

shall be to monitor the success of the replacement nest box for Barn Owls. The content of the Strategy shall include the following.

- a) Aims and objectives of monitoring to match the stated purpose.
- b) Identification of adequate baseline conditions prior to the start of development.
- c) Appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the various conservation measures being monitored can be judged.
- d) Methods for data gathering and analysis.
- e) Location of monitoring.
- f) Timing and duration of monitoring.
- g) Responsible persons and lines of communication.
- h) Review, and where appropriate, publication of results and outcomes.

A report describing the results of monitoring shall be submitted to the Local Planning Authority at intervals identified in the strategy. The report shall also set out (where the results from monitoring show that conservation aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed with the Local Planning Authority, and then implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The monitoring strategy will be implemented in accordance with the approved details.

Reason: To allow the Local Planning Authority to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended.

4. Prior to the occupation of each dwelling the internal road and footway serving that dwelling shall be provided in principal and accord with drawing number TW019-PL-02 Rev L Concept Layout Drawing.

Reason: To ensure acceptable vehicle and pedestrian access to each dwelling.

5. Prior to the commencement of any above ground works, details of the estate roads and footways, including the three footway links proposed to Thorpe Road and Chapel Lane (including layout, levels, gradients, surfacing, means of enclosure, lighting, soft landscaping, bollards and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety.

6. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

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

7. Prior to the commencement of any above ground works, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been completed in full accordance with the approved scheme.

Reason: To prevent environmental and amenity problems arising from flooding.

8. Each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles and each vehicular parking space shall have

minimum dimensions of 2.9 metres x 5.5 metres. All single garages should have a minimum internal measurement of 7m x 3m and all double garages should have a minimum internal measurement of 7m x 5.5m

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety.

9. Prior to the development above ground level the details of the number, location and design of a covered parking facility for bicycles shall be submitted to and approved in writing by the local planning authority. The approved cycle parking facility shall be provided prior to occupation of each dwelling that it will serve.

Reason: To ensure appropriate bicycle parking is provided in accordance with the Council's adopted Parking Standards.

10. No dwelling shall be occupied until such time as its car parking/garaging and turning area as shown on the approved plans has been provided. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

11. The garage hereby permitted on Plots 1, 16, 17, 20, 23, 27, 28, 31, 32, 33, 86, 87, 92, 93, 101, 102 and 110 shall only be used for the parking of vehicles or for domestic storage associated with the dwelling and not used for living accommodation.

Reason: To ensure adequate parking and garage space is provided within the site in accordance with the standards adopted by the local planning authority.

12. The bathroom window on the west facing elevation on Plot 2 shall be glazed with obscure glass and shall be so maintained at all times.

Reason: In order to safeguard the privacy of adjoining occupiers.

13. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no additional windows, doors, rooflights, or dormer windows, as permitted by Classes A, B and C of Part 1 of Schedule 2, other than those indicated on the approved plans shall be constructed on the western elevation/roof slope of the dwelling hereby permitted on Plot 2 without first obtaining planning permission from the local planning authority.

Reason: In order to safeguard the privacy of adjoining occupiers.

14. Prior to occupation of Plots 36, 37, 38, 39, 40 or 41 the pedestrian link between the estate road and Thorpe Road, and running between no. 155 Thorpe Road and no. 159 Thorpe Road, shall have been constructed in accordance with the approved details and shall be available for public access and thereafter retained and maintained in the approved form.

Reason: To ensure footways are constructed to an acceptable standard and available for the public to use, to encourage more sustainable modes of transport and to reduce reliance on the private car.

15. Prior to occupation of Plots 54, 55, 56 or 57 the pedestrian link between the estate road and Thorpe Road, and running between no. 129 Thorpe Road and no. 127 Thorpe

Road, shall have been constructed in accordance with the approved details and shall be available for public access and thereafter retained and maintained in the approved form.

Reason: To ensure footways are constructed to an acceptable standard and available for the public to use, to encourage more sustainable modes of transport and to reduce reliance on the private car.

16. Prior to occupation of Plots 64, 65, 66, or 67 the pedestrian link between the estate road and Chapel Lane, running between no. 22 Chapel Lane and no. 24 Chapel Lane, shall have been constructed in accordance with the approved details and be available for public access and thereafter retained and maintained in the approved form.

Reason: To ensure footways are constructed to an acceptable standard and available for the public to use, to encourage more sustainable modes of transport and to reduce reliance on the private car.

17. The Residential Travel Packs that are to be provided pursuant to Condition no.12 of planning permission 15/01710/OUT, shall include the following;

- a) Information regarding the safe use of level crossings over the railway lines and the dangers of failing to use them properly.
- b) Details of the approved circular walking routes to and from the site, which can be used by residents along with specific encouragement for dog walkers to use these routes.

As required by condition no.12 of planning permission (15/01710/OUT) the Residential Travel Information Packs shall have been previously submitted to and approved in writing by the local planning authority, and shall be provided to the first occupant of each new dwelling.

Reason: To promote the safe use of railway level crossings and to encourage the future residents to remain on-site for day to day recreation/dog walking, so as to minimise pressures upon Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries SAC pursuant to the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.

18. The scheme of landscaping as shown on the approved Soft Landscape Proposals Plans, or such other scheme as may be agreed in writing by the local planning authority, shall be carried out during the first available planting season after the commencement of the development. Any trees or plants which die, are removed or become seriously damaged, or diseased within a period of five years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

Reason: To ensure a satisfactory scheme of hard and soft landscaping to enhance the appearance of the development.

19. Prior to the commencement of any above ground works, full details of the route of the underground power line shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: As insufficient information has been provided with the application, in the interests of visual and residential amenity, and the Grade II listed building Mill House at 127 Thorpe Road.

20. Prior to the first occupation of the development hereby approved, a strategy to ensure that there is a boundary fence between the proposed development and the railway line which conforms to Network Rail design standards, shall be submitted to and approved in writing by the Local Planning Authority. The strategy will include full details of the location, construction and condition of the current boundary fence on the railway boundary and in the event that the part or all the existing fence does not conform to current Network Rail standards, details of how an appropriate boundary fence will be provided. Any works specified in the approved strategy shall be carried out in accordance with the approved strategy prior to the first occupation of the development.

Reason: To ensure that the increase in public activity resulting from the development does not result in an increase in trespass or anti-social behaviour on the railway line that would be detrimental to the safety of member of the public and railway users.

8.3 Informatives

1) 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 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.

2) All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to the Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway by the ECC.

3) Prior to occupation, the development shall be served by a system of operational street lighting of design approved from the Highway Authority along the Primary route, which shall thereafter be maintained in good repair.

4) Any tree planting proposed within the highway must be agreed with the Highway Authority. Trees must be sited clear of all underground services and visibility splays and must be sympathetic to the street lighting scheme. All proposed tree planting must be supported by a commuted sum to cover the cost of future maintenance, to be agreed with the Highway Authority.

5) Desktop analysis has suggested that the proposed development will lead to an unacceptable risk of flooding downstream. We therefore highly recommend that you

engage with Anglian Water at your earliest convenience to develop in consultation with us a feasible drainage strategy. If you have not done so already, we recommend that you submit a Pre-planning enquiry with our Pre-Development team.

Foul water drainage strategy will need to include a feasible drainage strategy agreed with Anglian Water detailing the discharge solution including:

Development size; Proposed discharge rate (Should you require a pumped connection, please note that our minimum pumped discharge rate is 3.8l/s); Connecting manhole discharge location (No connections can be made into a public rising main); Notification of intention to connect to the public sewer under S106 of the Water Industry Act.

Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact Development Services Team 0345 606 6087.

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

7) Given the close proximity to the operational railway line, if and before any works are undertaken the developer would need to engage with the ASPRO team (AssetProtectionAnglia@networkrail.co.uk) to ensure the protection of the railway line.

8) 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.

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.