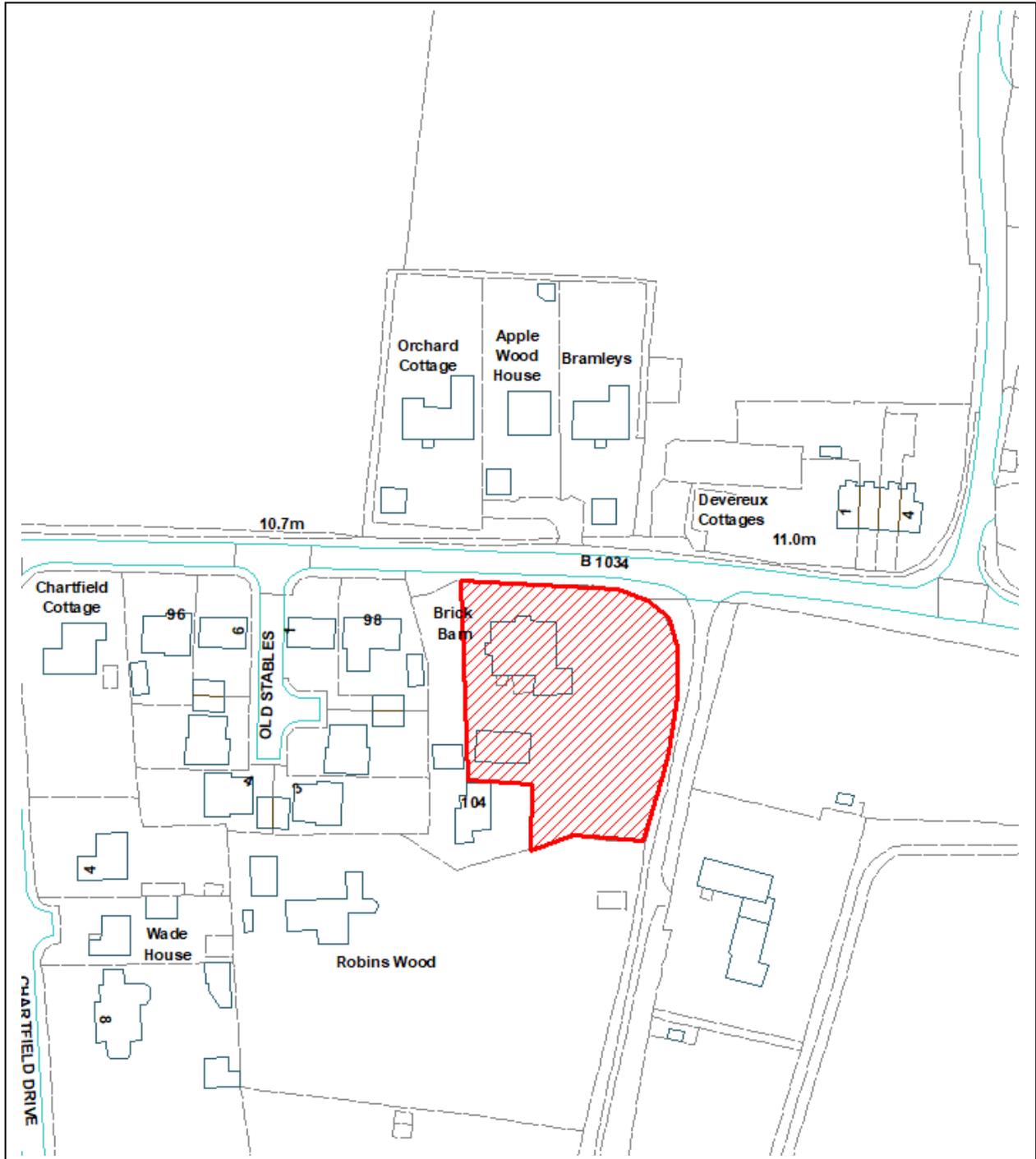


PLANNING COMMITTEE

16 JUNE 2020

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.3 PLANNING APPLICATION – 20/00202/FUL – BRICK BARN RESIDENTIAL CARE HOME
106 WALTON ROAD KIRBY LE SOKEN FRINTON ON SEA CO13 0DB



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Application: 20/00202/FUL

Town / Parish: Frinton & Walton Town Council

Applicant: Mrs Nikki Faber - Loyalty Project

Address: Brick Barn Residential Care Home 106 Walton Road Kirby Le Soken Frinton On Sea CO13 0DB

Development: Change of use from C2 Care Home to Sui Generis Hostel for the Homeless.

1. Executive Summary

- 1.1 The application has been referred to Planning Committee at the request of Councillor Knowles due to concerns with the negative impact on neighbours and previous poor Care Quality Commission (CQC) reports.
- 1.2 The application relates to Brick Barn Residential Care Home located at 106 Walton Road within the Parish of Kirby-le-Soken. The site lies a short distance from the edge of the Kirby-le-Soken Settlement Development Boundary as defined within the adopted Tendring District Local Plan 2007 but is within the extended Kirby-le-Soken Settlement Development Boundary as defined within the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 1.3 The application seeks full planning permission for the change of use of the existing Care Home (within use Class C2 of the Town and Country Planning (Use Classes) Order 1987 as amended) to a Hostel for the Homeless (a "sui generis" use) including internal alterations reducing the current accommodation from 15 bedrooms to 9.
- 1.4 This application follows a previously refused application under planning application reference 19/01532/FUL for the proposed change of use from care home to HMO (House in Multiple Occupation) with no alterations. Since this previous application, it has come to light that the proposal will involve internal alterations and the use will in fact fall under the definition of a Hostel and not a HMO as previously considered by officers. The facility will be supported by 4 full time staff and 4 part time staff and therefore does not result in the loss of the employment use and does not require assessment under the provisions of Saved Policy ER3 of the adopted Tendring District Local Plan 2007.
- 1.5 Given the current shortage of affordable homes in the district, facilities such as this play a vital role in providing short term accommodation for sections of society, which is supported by national policy.
- 1.6 The site is located within easy walking distance of the local convenience store and post office with other facilities and employment opportunities within the village. There are bus stops in close proximity to the site providing regular services to Walton, Frinton and Clacton, and also offering a service to Colchester. The sustainability of the site is reflected in the Council's inclusion of the site within the extended settlement development boundary in the emerging Local Plan.
- 1.7 The proposed use will see a reduction in residents to 9, which will in turn reduce the number of associated movements and potential for any noise or disturbance to neighbouring properties.
- 1.8 The proposal will ensure a vacant premises is brought back into use; facilitating new employment and providing a valuable contribution to the housing mix for the District in a

sustainable location recognised by National and Local Plan policies. The application is therefore recommendation for approval subject to conditions.

Recommendation: Full Approval

- a) Subject to the conditions stated in section 8.2

2. Planning Policy

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

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

COM6 Provision of Recreational Open Space for New Residential Development

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

ER3 Protection of Employment Land

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG10 Conversion to Flats and Bedsits

HG14 Side Isolation

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

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

CP1 Sustainable Transport and Accessibility

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP11 HMO and Bedsits

PPL4 Biodiversity and Geodiversity

SP1 Presumption in Favour of Sustainable Development

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Status of the Local Plan

- 2.2 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.
- 2.3 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, with further hearing sessions in January 2020. The Inspector issued his findings in respect of the legal compliance and soundness of the Section 1 Plan in May 2020. He confirmed that the plan was legally compliant and that the housing and employment targets for each of the North Essex Authorities, including Tendring, were sound. However, he has recommended that for the plan to proceed to adoption, modifications will be required – including the removal of two of the three Garden Communities 'Garden Communities' proposed along the A120 (to the West of Braintree and on the Colchester/Braintree Border) that were designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033.
- 2.4 The three North Essex Authorities are currently considering the Inspector's advice and the implications of such modifications with a view to agreeing a way forward for the Local Plan. With the Local Plan requiring modifications which, in due course, will be the subject of consultation on their own right, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications – increasing with each stage of the plan-making process.
- 2.5 The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will progress once modifications to the Section 1 have been consulted upon and agreed by the Inspector. 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.

3. Relevant Planning History

01/00118/FUL	Side and rear extension	Approved	25.06.2001
19/01532/FUL	Proposed change of use from care home to HMO.	Refused	09.12.2019

4. Consultations

ECC Highways Dept
24.04.2020

ORIGINAL COMMENTS

Further to our previous response dated 10 March, the information that was submitted in association with the application has been fully considered by the Highway Authority. The development has access to sustainable modes of transport including both public transport; walking and cycling therefore:

The Highway Authority does not object to the proposals as submitted.

Informative: 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

ECC Highways Dept
10.03.2020

AMENDED COMMENTS

The Highway Authority does not object to the proposals as submitted.

Informative1: 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
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5. Representations

5.1 Frinton and Walton Town Council recommend refusal on the following grounds;

- No evidence that this type of facility is required in this location.
- Not in a suitable location in a village setting.
- Insufficient internal facilities i.e. kitchen.
- Poor transport links.
- Lack of supporting agencies.

5.2 14 individual letters of objection have been received together with a petition of 4 signatories. The concerns raised can be summarised as follows (officer response in italics);

- Unsustainable location.
- Lack of amenities and employment opportunities.
The site lies within the Kirby-le-Soken Settlement Development Boundary and has therefore previously been considered an acceptable location for development.
- Will devalue property prices.
This is not a material planning consideration.
- Examples of anti-social behaviour from the previous use.
- Was previously poorly run as a care home.
- Previous residents left to roam.
- Poor Care Quality Commission (CQC) reports.
There is no evidence of these issues, but in any case the proposal is to change the use of the site so it would not be reasonable to object to a proposed use on these grounds. Anti-social behaviour is a matter for the police. CQC is a separate body and is not a consideration under planning legislation.
- Loss of employment.
- No evidence of need.
- Insufficient marketing.
The proposal does not result in the loss of employment. The National Planning Policy Framework 2019 supports mixed communities and there is not a requirement to demonstrate need. The proposal does not require assessment against marketing particulars.
- Highway safety concerns.
The proposal seeks a reduction in residents and the Highway Authority do not raise an objection.
- Property is in a poor state of repair.
There is no evidence to suggest this is the case. Upon undertaking a site visit the property does not appear to be in such a state of repair that it could not be capable of the proposed development which does involve some internal alterations.

6. Assessment

6.1 The main planning considerations are:

- Site Context;
- Planning History;
- Description of Proposal;
- Principle of Development;
- Residential Amenities;

- Access and Parking; and,
- Financial Contribution – Recreational Disturbance.

Site Context

- 6.2 The application relates to Brick Barn Residential Care Home located at 106 Walton Road within the Parish of Kirby-le-Soken (also known as Connemara). The site lies on the southern side of Walton Road and comprises a large, two storey property with outbuildings and garden area to the rear. The premises currently lies vacant and has done for some time.
- 6.3 The site is located on the eastern edge of the village with existing dwellings to the west and opposite. The land to north-east and south becomes more rural in character mostly comprising large areas of agricultural land and associated farm buildings. The eastern boundary of the site is enclosed by mature vegetation and trees screening the building as you enter the village.
- 6.4 The site lies a short distance from the edge of the Kirby-le-Soken Settlement Development Boundary as defined within the adopted Tendring District Local Plan 2007 but is within the extended Kirby-le-Soken Settlement Development Boundary as defined within the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.5 The accompanying Planning Statement suggests that the site was last registered as a four bedded care home (D1 Use) for people suffering from complex mental disorders and that the centre has since been deregistered and closed as a care home on the 14/05/2019. However, there are no planning records to confirm this and the lawful use of the building is considered to be a Care Home (C2 Use).

Planning History

- 6.6 This application follows a previously refused application under planning application reference 19/01532/FUL for the proposed change of use from care home to HMO (House in Multiple Occupation) with no alterations. The application was considered contrary to Saved Policy ER3 of the adopted Tendring District Local Plan 2007. Policy ER3 of the adopted Tendring District Local Plan 2007 states that land in employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use. The information supplied with the application failed to demonstrate that the site was no longer viable or suitable for any form of employment use.
- 6.7 Since this previous application, it has come to light that the proposal will involve internal alterations and the use will in fact fall under the definition of a Hostel and not a HMO as previously considered by officers.

Description of Proposal

- 6.8 The description of the application has been amended to accurately reflect the proposed development. The application therefore seeks full planning permission for the change of use of the existing Care Home (within use Class C2 of the Town and Country Planning (Use Classes) Order 1987 as amended) to a Hostel for the Homeless (a “sui generis” use).
- 6.9 Hostels were excluded from Use Class C1 Hotels in 1994 and are sui generis, meaning they are in a Use Class of their own always requiring planning permission. There is no definition of a hostel in planning law but it can be understood as providing overnight or short term

accommodation which may be supervised, where people can usually stay free or cheaply. Hostels may provide board, although some may provide facilities for self-catering. The element of supervision should not be relied on as a determining factor to take into account in considering the use class of the premises. Occasionally hostels are used to provide longer-term accommodation, but a hostel is not a residential care home, irrespective of any supervision it may have.

6.10 The alterations to the internal accommodation and layout are summarised below;

Floor Level	Existing (15 bedrooms)	Proposed (9 bedrooms, 1 spare)
Ground Floor Plan	Lounge	<i>No change</i>
	TV Room	becomes Dining Room
	Dining Room	Split into 2 and becomes a Smoking area (off the dining room) and staff area (off the kitchen)
	Kitchen	<i>No change</i>
	Pantry	<i>No change</i>
	Laundry Room	becomes Store Room
	Wet-room	<i>No change</i>
	WC	<i>No change</i>
	Room 1 (including sink)	Combined to become Room 1 (sink to remain)
	Room 2	
	Room 3 (including sink and toilet)	becomes Room 2 (sink and toilet remain)
	Room 4	becomes Laundry Room
	Room 5 (including sink and toilet)	becomes Room 3 (sink and toilet to remain but moved)
Garden room (no internal connection)	<i>No change</i>	
First Floor Plan	Office	<i>No change</i>
	Laundry Room (including toilet)	becomes Bathroom
	Shower Room	<i>No change</i>
	Room 6 (including toilet)	Room 6 (toilet remains and sink added)
	Room 7 (including toilet)	becomes Room 5 (toilet remains and sink added)
	Room 8	Combined to become Room 4 (toilet and sink added to room, communal toilet and sink added with access from hallway)
	Room 9 (including toilet)	
	Room 10 (including toilet)	becomes Staff Room
	Room 11 (including sink)	becomes room 7 (toilet and sink)
	Room 12 (including sink)	becomes spare room (sink remains)
	Room 13 (including sink)	Becomes Room 9 (shower room added)
	Room 14 (including toilet)	becomes Room 8 (toilet and sink remain)
	Room 15 (including sink)	
Garden Room	<i>No change</i>	

- 6.11 As described within the Planning Statement accompanying the application, the premises will be managed on a 24/7 basis and will operate an onsite facility offering various life courses. The application form details that the facility will be supported by 4 full time staff and 4 part time staff.

Principle of Development

- 6.12 The National Planning Policy Framework 2019 (NPPF) states that housing applications should be considered in the context of the presumption in favour of sustainable development and that the Council should deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. It is important to help create mixed and inclusive communities, which offer a choice of housing and lifestyle. It does not accept that different types of housing and tenures make bad neighbours. As such local planning authorities should encourage the development of mixed and balanced communities: they should ensure that new housing developments help to secure a better social mix by avoiding the creation of large areas of housing of similar characteristics.
- 6.13 Given the current shortage of affordable homes in the District, facilities such as this play a vital role in providing short term accommodation for sections of society, which is supported by national policy.
- 6.14 The site is located within easy walking distance of the local convenience store and post office with other facilities and employment opportunities within the village including The Ship Public House, Walton Road Garage, Kirby-le-Soken Church as well as The Red Lion Public House and St. Michael's Church and community hall beyond. In addition, there are bus stops in close proximity to the site providing regular services to Walton, Frinton and Clacton, and also offering a service to Colchester. There is also a footpath on the opposite side of the road providing a link to Frinton and Walton. The sustainability of the site is reflected in the Council's inclusion of the site within the extended settlement development boundary in the emerging Local Plan.
- 6.15 As stated above, the facility will be supported by 4 full time staff and 4 part time staff and therefore does not result in the loss of the employment use and does not require assessment under the provisions of Saved Policy ER3 of the adopted Tendring District Local Plan 2007.

Residential Amenities

- 6.16 Paragraph 127 of the National Planning Policy Framework 2019 states that planning should always seek to secure a high standard of amenity for existing and future users. Policy QL11 of the adopted Tendring District Local Plan (2007) states that development will only be permitted if it will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 supports these objectives.
- 6.17 The proposed internal alterations include enlarged rooms and the provision of wash facilities in each. The site is served by ample garden space to serve the 9 residents. The proposal is therefore considered to result in a good standard of amenity for its future occupants.
- 6.18 The site is located on the edge of the village with the majority of neighbouring dwellings being to the west of the site. There are no building works and the proposal will not result in any loss of outlook or light.
- 6.19 Regard must be had to the existing lawful use which allows accommodation for 15 residents and the associated comings and goings of visitors, staff and deliveries. The proposed use will see a reduction in residents to 9, which will in turn reduce the number associated movements and potential for any noise or disturbance to neighbouring properties. Through

an appropriately worded condition the number of residents will be restricted to a maximum of 9.

Access and Parking

- 6.20 Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted if amongst other things; access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and the design and layout of the development provides safe and convenient access for people. The sentiments of this policy are carried forward within draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.21 Access to the site is gained via an existing driveway. The site can accommodate 9 parking spaces and 1 disabled parking space together with two motorcycle spaces. The development will involve the installing of new bike racks on the site which will be secured by condition.
- 6.22 Essex County Council Highway Authority raise no objection to the proposal.

Financial Contributions – Recreational Disturbance

- 6.23 Under the Habitats Regulations, Where necessary, a proportionate financial contribution will be secured in line with the Essex Coast RAMS requirements to ensure that this proposal will not have an adverse effect on the integrity of the above European sites from recreational disturbance, when considered 'in combination' with other development.
- 6.24 This residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites, but is approximately 600 metres from the Hamford Water SAC, SPA and Ramsar.
- 6.25 In this instance, the proposal will result in fewer residents than currently allowed within the existing care home. Therefore, the number of visitors to Hamford Water is likely to decrease as a result of the development and a proportionate financial contribution is not considered necessary in this instance.

7. Conclusion

- 7.1 The proposal will ensure a vacant premises is brought back into use; facilitating new employment and providing a valuable contribution to the housing mix for the District in a sustainable location recognised by national and local plan policies.

8. Recommendation

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives.

8.2 Conditions and Reasons

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

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

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Floor Plan MH-3596.

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

- 3) The use hereby approved shall only be occupied by a maximum of 9 residents at any one time.

Reason – In order to control the intensity of the use in the interests of residential amenities.

- 4) Prior to the occupation of the development, details of the siting and design of secure, convenient, covered Cycle parking that accords with the Parking Standards shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained in its approved form unless otherwise agreed in writing by the Local Planning Authority.

Reason - To ensure appropriate cycle parking is provided in the interest of highway safety and to promote alternative sustainable modes of transport.

- 5) Prior to the occupation of the development, a detailed Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Management Plan shall provide for;

- Staffing hours and shift patterns;
- Responsibilities and duties of staff on site during each shift;
- Record management of residents and the duration of their stay; and,
- Full details of the operation times and details of courses being offered.

The use shall be carried out in strict accordance with the approved Management Plan unless otherwise agreed in writing by the Local Planning Authority.

Reason – To ensure the use is appropriate in this location as insufficient information has been provided with the application.

8.3 Informatives

Positive and Proactive Statement

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

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

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the

application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.