

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	NH	30/09/2021
Planning Development Manager authorisation:	TF	30/09/2021
Admin checks / despatch completed	DB	30.09.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	30.09.2021

**Application:** 21/01386/COUNOT                      **Town / Parish:** Brightlingsea Town Council

**Applicant:** Mr and Mrs Nunn

**Address:** 3 New Street Brightlingsea Colchester

**Development:** Change of use of first floor to 1no. residential flat.

### **1. Town / Parish Council**

Not Applicable

### **2. Consultation Responses**

ECC Highways Dept  
20.09.2021

The observations below are based on submitted material, google earth image dated April 2019. The site is in a central location and it is noted that there are several existing residential properties in the vicinity with no off-street parking. There are existing parking restrictions present outside the existing building and in part on the surrounding streets. The site is located in the centre of the village with close access to public transport facilities and good local amenities. Considering these factors:

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

1. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

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

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

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

3. A financial contribution of £2,000 (index linked) towards the introduction of any future residents parking scheme for the surrounding roads subject to any scheme being put forward by the North Essex Parking Partnership. The contribution (£2,000) will be returned to the applicant if a scheme is not forthcoming at the end of the 3-year period, from the date of first occupation.

Reason: To control and manage the location of on street parking for the area to minimize inconsiderate parking in the interests of highway safety and Policy DM1.

Note: the financial contribution will form part of a Section 106 contribution which will be for the North Essex Parking Partnership.

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

Informative:

1: In main urban areas with frequent and extensive public transport, cycling and walking links, the EPOA Parking Standards recommend that a reduced parking standard provision may be applied to residential developments. A reduced parking standard provision level can be applied to this proposal as it is located very close to regular public transport services and/ or public car parking facilities.

Informative:

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](mailto:development.management@essexhighways.org) or by post to:

SMO1 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT

2: 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.

### **3. Planning History**

21/01386/COUNOT	Change of use of first floor to 1no. residential flat.	Current
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### **4. Relevant Policies / Government Guidance**

Not Applicable

## **Status of the Local Plan**

Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (the Framework).

The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26<sup>th</sup> January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets were found sound and have been fixed, including the housing requirement of 550 dwellings per annum.

Paragraph 48 of the Framework 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 the policies of the Framework. In this regard 'Proposed Modifications' to the emerging Section 2 of the 2013-33 Local Plan, which contains more specific policies and proposals for Tendring, has been examined and hearing sessions have now closed. The main modifications recommended to make the plan legally compliant and sound were considered at the Council's Planning Policy and Local Plan Committee on 29<sup>th</sup> June 2021. The Council held a six-week public consultation on the Main Modifications and associated documents which began on 16<sup>th</sup> July 2021. The consultation closed at 5pm on 31<sup>st</sup> August 2021 and adoption is expected later this year. Section 2 will then join Section 1 as part of the development plan, superseding in full the 2007 Local Plan. Section 2 of the 2013-33 Local Plan is therefore at a very advanced stage of preparation and should be afforded considerable weight.

In relation to housing supply:

The Framework requires Councils 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, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, the 'tilted balance' at paragraph 11 d) ii) of the Framework is engaged. This requires applications for housing development be granted permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Following the adoption of Section 1 of the 2013-33 Local Plan and the Council's 'Objectively Assessed housing Need' of 550 dwellings per annum there is no housing shortfall. The Council is able to report a comfortable surplus of housing land supply over the 5 year requirement. The 'titled balance' at paragraph 11 d) ii) of the Framework does not therefore apply to applications for housing.

## **5. Officer Appraisal (including Site Description and Proposal)**

### **Class MA - commercial, business and service uses to dwellinghouses**

#### **Permitted development**

MA. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

#### **Development not permitted**

## **MA.1.**

(1) Development is not permitted by Class MA -

- (a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

*The building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. The proposal complies.*

- (b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

*The use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval. The proposal complies.*

- (c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;

*The cumulative floor space of the existing building changing use under Class MA does not exceed 1,500 square metres. The proposal complies.*

- (d) if land covered by, or within the curtilage of, the building -

- (i) is or forms part of a site of special scientific interest;
- (ii) is or forms part of a listed building or land within its curtilage;
- (iii) is or forms part of a scheduled monument or land within its curtilage;
- (iv) is or forms part of a safety hazard area; or
- (iv) is or forms part of a military explosives storage area;

*The land is not covered by or within the curtilage of any of the areas (i) to (iv). The proposal complies.*

- (e) if the building is within -

- (i) an area of outstanding natural beauty;
- (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
- (iii) the Broads;
- (iv) a National Park; or
- (iv) a World Heritage Site;

*The building is not located within of any of the areas (i) to (iv). The proposal complies.*

- (f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

*The site is not occupied under an agricultural tenancy. The express consent of both the landlord and the tenant has been obtained. The proposal complies.*

- (g) before 1 August 2022, if -

- (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
- (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

*The proposed development is not of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021 and there is no direction under article 4(1) restricting such a development. The proposal complies.*

- (2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order -
- (a) the following classes of the Schedule as it had effect before 1st September 2020-
- (i) Class A1 (shops);
  - (ii) Class A2 (financial and professional services);
  - (iii) Class A3 (food and drink);
  - (iv) Class B1 (business);
  - (iv) Class D1(a) (non-residential institutions - medical or health services);
  - (v) Class D1(b) (non-residential institutions - crèche, day nursery or day centre);
  - (vii) Class D2(e) (assembly and leisure - indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;
- (b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

### Conditions

#### MA.2.

- (1) Development under Class MA is permitted subject to the following conditions.
- (2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to -
- (a) transport impacts of the development, particularly to ensure safe site access;
  - (b) contamination risks in relation to the building;
  - (c) flooding risks in relation to the building;
  - (d) impacts of noise from commercial premises on the intended occupiers of the development;
  - (e) where -
    - (i) the building is located in a conservation area, and
    - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
  - (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
  - (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and
  - (h) where the development involves the loss of services provided by -
    - (i) a registered nursery, or
    - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost.

### Transport and Highways Impacts of the Development

Essex Highway Authority have been consulted on this application and have stated that the observations below are based on submitted material, google earth image dated April 2019. The site is in a central location and it is noted that there are several existing residential properties in the vicinity with no off-street parking. There are existing parking restrictions present outside the existing building and in part on the surrounding streets. The site is located in the centre of the village with close access to public transport facilities and good local amenities. The highway authority have no objections subject to conditions which will be imposed where necessary. The Highway Authority have requested a condition relating to a financial contribution towards parking. It is considered unreasonable to impose this condition given the sustainable location as the

application site is located within the centre of Brightlingsea which is within close walking distance to local amenities and public transportation.

#### Contamination Risks on the Site

The site is not in an area where there are Contamination Risks on the site.

#### Flooding risks on the site

The site is not in an area where there are Flooding Risks on the site. The proposal complies.

#### Noise Impacts from Commercial Premises on the Intended Occupiers of the Development

The proposal would not result in any material noise impacts. The proposal complies.

#### Conservation Area

The application site is located within the conservation area with three external changes to the front view of new street, where a dummy window will be replaced with a window to match the existing as well as a wider window to the rear elevation. There is also the introduction of a door to the ground floor rear elevation. It is considered that the changes to fenestration are neutral and will cause a minor impact upon the conservation area.

#### The Provision of Adequate Natural Light in all Habitable Rooms of the Dwellinghouses

Habitable Rooms are defined as "any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms".

Drawing No. drawing 962/03 indicates that each habitable room will have adequate natural light.

#### Impact on Intended Occupiers in Regards to General or Heavy Industry, Waste-Management, Storage & Distribution, or a Mix of Such Uses

This criteria is not applicable

#### Impact of the Loss of a Registered Nursery or a Health Centre

The site is not a registered nursery or a health centre and this criteria is not applicable

- (3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

*An application for prior approval for development under Class MA was not made before 1 August 2021. The proposal complies.*

- (4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if in the introductory words in sub-paragraph (5), for "and highways impacts of the development" there were substituted "impacts of the development, particularly to ensure safe site access".
- (5) Development must be completed within a period of 3 years starting with the prior approval date.
- (6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

The provisions of paragraph W (prior approval) apply in relation to that application.

### Procedure for applications for prior approval under Part 3

- (1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.
- (2) The application must be accompanied by -
  - (a) a written description of the proposed development, which, in relation to development proposed under Class C, M, MA, N or Q of this Part, must in the same application include any building or other operations;
  - (b) a plan indicating the site and showing the proposed development;
  - (ba) in relation to development proposed under Classes M, MA, N, O, P, PA and Q of this Part, a statement specifying the net increase in dwellinghouses proposed by the development (for the purposes of this sub-paragraph, "net increase in dwellinghouses" is the number of dwellinghouses proposed by the development that is additional to the number of dwellinghouses on the site immediately prior to the development);
  - (bb) in relation to development proposed under Class Q of this Part, a statement specifying -
    - (i) the number of smaller dwellinghouses proposed;
    - (ii) the number of larger dwellinghouses proposed;
    - (iii) whether previous development has taken place under Class Q within the established agricultural unit and, if so, the number of smaller and larger dwellinghouses developed under Class Q;
  - (bc) in relation to development proposed under Class M, MA, N, O, PA or Q of this Part, a floor plan indicating the total floor space in square metres of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses
  - (c) the developer's contact address;
  - (d) the developer's email address if the developer is content to receive communications electronically; and
  - (e) where sub-paragraph (6) requires the Environment Agency(a) to be consulted, a site-specific flood risk assessment, together with any fee required to be paid

*(a) Section 5 of the Application Form provides a written description of the proposed development and includes any building or other operations. (b) A plan indicating the site and showing the proposed development was received on 5th August 2021. (ba) Section 5 of the application form specifies that there will be a net increase of 1 new dwelling. (bb) Development is not proposed under Class Q. (bc) In relation to development proposed under Class MA, drawing 962/03 indicates the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouse. (c) The developer's contact address is given in response to Question 2 on the application form. The developer's email address if (the developer is content to receive communications electronically) is given in response to question 8 on the application form. (e) Sub-paragraph (6) does not require the Environment Agency(a) to be consulted. The fee required was paid on 4th August 2021.. Procedure W.2, paragraphs (a) to (e) have been met.*

- 2A Where the application relates to prior approval as to adequate natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.

*The application relates to prior approval as to adequate natural light; adequate natural light is provided in all the habitable rooms of the dwellinghouses. Procedure W.2A has been met.*

- (3) The local planning authority may refuse an application where, in the opinion of the authority -
  - (a) the proposed development does not comply with, or

- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,
- any conditions, except for conditions in paragraph M.2(1)(f), paragraph N.2(1)(e), paragraph O.2(1)(e), paragraph PA.2(1)(v), or paragraph Q.2(1)(g) limitations or restrictions specified in this Part as being applicable to the development in question.

*The local planning authority are not refusing the application. Procedure W.3 (a) or (b) are not applicable.*

- (4) Sub-paragraphs (5) to (8) and (10) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval

*The local planning authority are not refusing the application. Procedure W.4 is not applicable.*

- (5) Where the application relates to prior approval as to transport and impacts of the development, particularly to ensure safe site access, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult -
- (a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road;
  - (b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and
  - (c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.

*The Highways Authority were consulted on 09.08.2021. Procedure W.5 has been met.*

- (6) Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency(b) where the development is -
- (a) in an area within Flood Zone 2 or Flood Zone 3; or
  - (b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.

*The application does not relate to prior approval as to the flooding risks on the site. Procedure W.6 has been met.*

- (7) The local planning authority must notify the consultees referred to in sub-paragraphs (5) and (6) specifying the date by which they must respond (being not less than 21 days from the date the notice is given)

*The local planning authority notified the consultees referred to in sub-paragraph (5) specifying that they must respond by 30th September. Procedure W.7 has been met.*

- (8) The local planning authority must give notice of the proposed development -
- (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which
    - (i) describes the proposed development;
    - (ii) provides the address of the proposed development;



- (iii) specifies the date by which representations are to be received by the local planning authority; or
- (b) by serving a notice in that form -
  - (i) on any adjoining owner or occupier; and
  - (ii) where the proposed development relates to part of a building, on any owner or occupier of the other part or parts of the building

*The local planning authority gave notice on 12th August 2021 of the proposed development by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which described the proposed development, provided the address of the proposed development and specified the date by which representations are to be received by the local planning authority. Procedure W.8 has been met.*

- (9) The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include -
  - (a) assessments of impacts or risks;
  - (b) statements setting out how impacts or risks are to be mitigated; or
  - (c) details of proposed building or other operations

*The local planning authority did not require the developer to submit such information in order to determine the application. Procedure W.9 has been met.*

- (10) The local planning authority must, when determining an application -
  - (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);
  - (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in February 2019, so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and
  - (c) in relation to the contamination risks on the site
    - (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c), and
    - (ii) if they determine that the site will be contaminated land, refuse to give prior approval.

*The local planning authority did, when determining an application, take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8), had regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in February 2019, so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and, in relation to the contamination risks on the site, determined whether the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c). Procedure W.10 has been met.*

#### Space Standards:-

In March 2015, the government launched a new approach to housing standards and published a new set of streamlined national technical standards. This included publication of Technical housing standards - nationally described space standard. On 30 September 2020 Housing Secretary Robert Jenrick announced that new homes delivered through permitted development rights would have to meet the Nationally Described Space Standard.

	No. of Bedrooms	No. of Bed Spaces	Storeys	Min Requirement	Actual Floorspace	Compliance
	2	3	2	70	70	Yes

- (11) The development must not begin before the occurrence of one of the following -
- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
  - (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
  - (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

*Procedure W.11 must be met by the developer.*

- (12) The development must be carried out -
- (a) where prior approval is required, in accordance with the details approved by the local planning authority;
  - (b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1),
- unless the local planning authority and the developer agree otherwise in writing

*Procedure W.12 must be met by the developer*

(13) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

*The local planning authority is granting prior approval subject to conditions reasonably related to the subject matter of the prior approval. Procedure W.13 has been met.*

- (14) When computing the number of days in sub-paragraph (8)(a), any day which is a public holiday must be disregarded.

*When computing the number of days in sub-paragraph (8)(a), any day which is a public holiday was disregarded. Procedure W.14 has been met.*

## **6. Recommendation**

Prior Approval Not Required

## **7. Conditions**

- 1 Development must be completed within a period of 3 years starting with the prior approval date.

Reason - In order to comply Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

- 2 Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse

Reason - In order to comply Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

**8. Informatives**

Not Applicable

<b>Are there any letters to be sent to applicant / agent with the decision? If so please specify:</b>	YES	NO
<b>Are there any third parties to be informed of the decision? If so, please specify:</b>	YES	NO