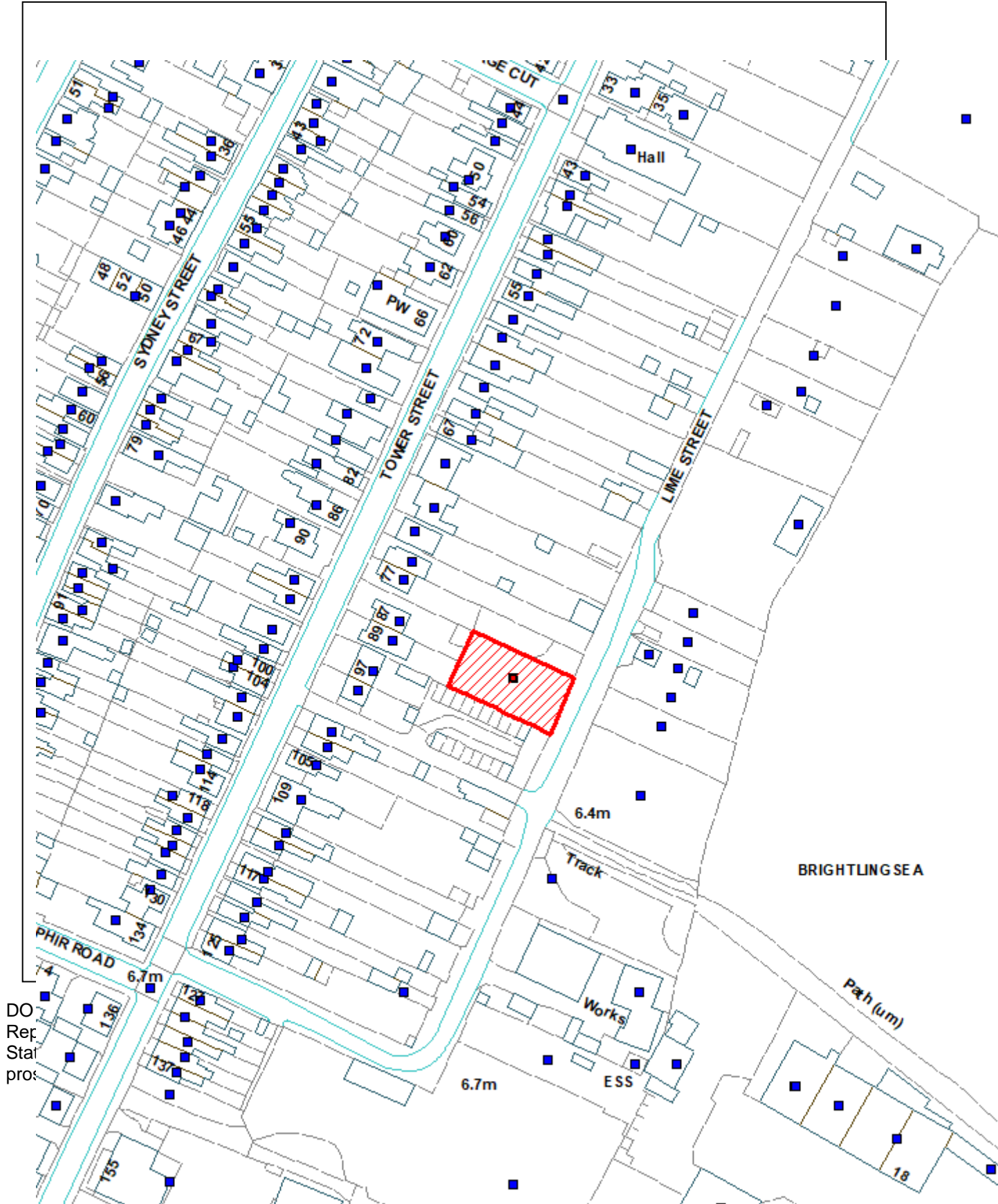


PLANNING COMMITTEE

18th January 2022

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.3 PLANNING APPLICATION – 20/00907/FUL – LAND REAR OF 87 TO 89 TOWER STREET LIME STREET BRIGHTLINGSEA



Application: 20/00907/FUL

Town / Parish: Brightlingsea Town Council

Applicant: Mr Tim Clarke

Address: Land rear of 87 to 89 Tower Street, Lime Street, Brightlingsea

Development: Proposed use of land to form annexed garden ground and erection of storage building, and siting of two water tanks, and retrospective siting of two water tanks and summerhouse (4 water tanks in total).

1. **Executive Summary**

- 1.1 The application is referred to the Planning Committee at the request of Ward Councillor Jayne Chapman, due to concern over the scale of the proposed storage building and the site's location (remote from the host dwelling), in an area liable to flooding where historic covenants would preclude the development.
- 1.2 The proposal is situated in an edge-of-settlement location, divorced from the applicant's flatted dwelling in Brightlingsea. Nevertheless, development plan policy would not preclude the proposal in principle and it would not materially harm the character or appearance of the area, or wider landscape. There is a recreational functional need for the development to be located in this location and the proposal is compatible with adjoining land uses. The site is not at risk of flooding and the proposal would not harm the residential amenity of neighbours, having particular regard to privacy and outlook, noise and disturbance. There would be no harm to sites protected for their biodiversity importance, and there is no objection from the Local Highway Authority.
- 1.3 Subject to conditions the proposal would therefore comply with the requirements of the development plan and material considerations do not indicate that planning permission should be refused in this case. Approval is, therefore recommended.

Recommendation:

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

- a) 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:

National Planning Policy Framework July 2021
National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

QL3 Minimising and Managing Flood Risk
QL11 Environmental Impacts and Compatibility of Uses (part superseded)
HG16 Garden Extensions into the Countryside

EN1	Landscape Character
EN3	Coastal Protection Belt
EN6	Biodiversity
EN11a	Protection of International Sites
COM21	Light Pollution
TR1a	Development Affecting Highways
TR4	Safeguarding and Improving Public Rights of Way

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021)

Relevant Section 1 Policies (adopted)

SP1	Presumption in Favour of Sustainable Development
SP7	Place Shaping Principles

Relevant Section 2 Policies (emerging)

SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
PPL1	Development and Flood Risk
PPL2	Coastal Protection Belt
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
CP2	Improving the Transport Network

Supplementary Planning Guidance

*Essex County Council Development Management Policies 2011 (the Highways SPD)
Tendring Landscape Character Assessment 2001 (TLCA)*

Status of the Local Plan

- 2.2 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).
- 2.3 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 26th 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.
- 2.4 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. On 24th November 2021, the Council received the Planning Inspectors' final report on the legal compliance and soundness of Section 2 of the emerging Local Plan. The report has confirmed, that with the inclusion of a number of 'Main Modifications' (which have already been the subject of formal public consultation), the Plan is legally compliant and sound and can now proceed to

adoption. The report is due to be considered by the Planning Policy and Local Plan Committee on 11th January 2022 which is likely to recommend adoption of the Section 2 Local Plan to Full Council on 25th January 2022. On adoption, the new Section 2 Local Plan will join the new Section 1 Local Plan to form the 'development plan' for Tendring and the old 2007 Local Plan will be superseded in full.

- 2.5 Now that the Inspectors' final report is received, the Section 2 Local Plan has virtually reached the final stage of preparation, all objections have been resolved and the Inspector has confirmed that the Plan is sound and therefore in conformity with the Framework. For these reasons, Officers now advise that the emerging Plan should now carry 'almost full weight' in decision making.
- 2.6 Until the new Local Plan is adopted in January 2022, the 2007 adopted Local Plan, legally, will still form part of the 'development plan' and there will still be a requirement to refer to the 2007 Local Plan in decision making. However, the level of weight to be afforded to the policies in the 2007 Plan is reduced to very limited weight given that a more up to date Plan has progressed to such an advanced stage of the plan making process.

3. **Relevant Planning History**

15/01545/FUL	Outbuilding/garage. 73 Tower Street Brightlingsea, CO7 0AN [Adjacent to the application site]	Approved	18.12.2015
13/01355/FUL	Use of land for long term container and boat storage together with tool and plant storage. Land rear of 87 & 89 Tower Street, Brightlingsea CO7 0BH [The application site]	Refused	05.02.2014

4. **Consultations**

ECC Highways
13.04.2021

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

Informative1: The public's rights and ease of passage over Public Footpath Nos. 11 and 12 (Brightlingsea) shall be maintained free and unobstructed at all times.

Informative2: 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 - Development Management
Essex Highways Ardleigh Depot,
Harwich Road,
Ardleigh,

Colchester,
Essex
CO7 7LT

5. Representations

5.1 The application was publicised by site notice and immediate neighbours were notified in writing. Following the receipt of revised plans reducing the scale of the proposed storage building and including retrospective elements, and a revised description of development proposed (in the interests of precision and clarity) neighbours and objectors were re-consulted. In response to the initial consultation 3 neighbour objection letters were received. In response to re-consultation 2 were received. Objection raised therein may be summarised as follows:

- Noise pollution
- Harm to highway safety through increased traffic
- Harm to outlook
- Loss of light and overshadowing
- Previous applications have been rejected
- Damage to the Public Right of Way

5.2 The application is the subject of a call-in request from Ward Councillor Jayne Chapman in the event that approval is recommended. The reasons given are:

- The building is too large (original proposal)
- There are historic covenants that link this piece of land, where it has historically been used for storage, uncovered
- The area is on a flood plain
- The building is stand alone, whereas the other buildings are in back gardens

5.3 Brightlingsea Town Council (BTC) objected to the original proposal on the same grounds as the Ward Councillor. Following re-notification of the revised proposal BTC comment that their objection and previous comments still apply.

6. Assessment

6.1 By way of background, on initial receipt the proposal was accompanied by various plans and 3D visualisations. These were confusing and incompatible with each other. Furthermore, the proposed scale of the storage building was considered to be excessive for its intended purpose, and harmful to both the character and appearance of the area and to the outlook of neighbouring residents. Nevertheless, revised plans addressing these concerns were received. However, following a further site visit it became clear that a small summerhouse and two water tanks had already been sited on the land and some landscaping undertaken. As a result, further revised plans have been sought and a revised description of development has been agreed with the applicant as set out in the header above.

The Site

6.2 Located to the rear of Nos. 87 to 89 Tower Street the site has a frontage facing Lime Street. Public Right of Way Brightlingsea Footpath No. 11 follows the route of Lime Street, which also provides means of vehicular access to the rear of dwellings on Tower Street, and to plots of land to the east, many of which have a variety of garages, boat storage buildings and stables. To one side of the site is a block of flat-roofed pre-fabricated modern garages. On the other side, beyond a small parking area, is an outbuilding/garage approved under application reference 15/01545/FUL. The site is located outside of but adjacent to the Settlement

Development Boundary, as defined in the adopted and emerging local plans. Both include the site with the defined 'Coastal Protection Belt'.

Planning History

- 6.3 As referred to by objectors planning permission for use of the site for the long term storage of shipping containers for boat, tool and plant storage was refused under planning application reference 13/01355/FUL. Three reasons for refusal were given, which may be summarised as follows:
- i) *Lack of compelling functional or critical operational requirement within the Coastal Protection Belt and harm to the character and appearance of the area, contrary to saved Policies EN1 and EN3*
 - ii) *Harm to the living conditions of neighbours, having regard to disturbance, contrary to saved Policy QL11 and the National Planning Policy Framework.*
 - iii) *Harm to highway safety due to the lack of a turning area for vehicles, contrary to saved Policy QL10 [now superseded].*
- 6.4 Adjacent to the site planning permission for an outbuilding/garage of a broadly similar scale and appearance to the current proposal was approved under planning application reference 15/01545/FUL.

Proposal

- 6.5 The proposal is part-retrospective (siting of water tanks and summerhouse) and proposes the use of the land to form annexed garden ground to serve the applicant's dwelling at the Waterside Marina and the construction of a storage building with further water tanks. The storage building would be set back 2.5m from Lime Street and would measure 5m to the ridge, 3m to the eaves, with a footprint of 36sqm. To the elevation facing Lime Street the gable would contain a 3.6m wide 2.4m high access doorway, above which a 0.6m high x 2m wide rectangular window would be inserted. The rear gable would have a doorway, above which a further rectangular window would be inserted. Two 6000 litre green water storage tanks have been sited on one side of the site, two further are proposed to the other, adjacent to the proposed storage building. A mono-pitched roofed timber summerhouse has been sited behind the two water storage tanks, measuring 2.1m high and approximately 6sqm in floor space. The water tanks are fed by rainwater from the adjacent garages and the summerhouse houses a solar-powered pump for irrigation.
- 6.6 Some aspects of the proposal have already taken place. Therefore, the proposal ought to be considered in part under Section 73A of the Town and Country Planning Act 1990 for development already carried out in part. The Planning Practice Guidance (PPG) makes clear it cannot be assumed that planning permission will be granted, and the Local Planning Authority should take care not to fetter its discretion prior to the determination of any application for planning permission - such an application must be considered in the normal way (Paragraph: 012 Reference ID: 17b-012-20140306).

Principle of Development

- 6.7 Saved Policy BR4 (Lime Street Area) which is imminently to be superseded is referred to by the applicant in support of the proposal. There is no direct replacement of this policy in the emerging Section 2 Local Plan. However, the site lies outside of this policy area (as it refers to land immediately to the east). Nevertheless, the associated text to this policy is helpful, in that it refers to storage uses in the Lime Street area and recognises that there is a concentration of

such uses close to residential properties on Tower Street, which perform an important function in connection with the recreational activities of the town.

- 6.8 Because the application site is located outside of the Brightlingsea Settlement Development Boundary and the proposal is for the annexed garden ground use of land, saved Policy HG16 which addresses garden extensions in the countryside is broadly relevant. The policy states:

“Proposals for the extension of a domestic garden into the countryside will only be permitted if:

- i. there is no material visual harm to the surrounding countryside;*
- ii. there would be no material loss of existing trees, shrubs or hedgerows or damage to other habitats of nature conservation value;*
- iii. it would not result in a material loss of best and most versatile agricultural land, or otherwise seriously interfere with a neighbouring agricultural enterprise; and*
- iv. it would have no material adverse effect on the amenities of neighbouring properties.*

In order to secure privacy and attain a good standard of visual amenity for the countryside, the planting and retention thereafter of native species trees and hedging will be required. The Council may impose conditions removing Permitted Development Rights within the new area of garden.”

- 6.9 Again, there is no direct replacement of saved Policy HG16 in the emerging Section 2 Local Plan. Instead, it is expected that countryside and landscape protection policies will address such proposals. However, subject to not offending any of the associated criteria and in considering the objection of the Town Council and Ward Member to the remote nature of the proposal, there is nothing in the adopted or emerging local plans that would preclude the principle of use of the land.

- 6.10 Due to the site’s location within the identified Coastal Protection Area saved Policy EN3 and emerging Policy PPL2 are relevant. Both state the Council will protect the open character of the undeveloped coastline and refuse planning permission for development which does not have a compelling functional or operational requirement to be located there. Part b) of Policy PPL2 states that where development does have a compelling functional or operational requirement to be there, its design should respond appropriately to the landscape and historic character of its context, and applicants will be required to demonstrate that any development proposals will be safe over their planned lifetime.

- 6.11 The preamble to the associated text of Policy PPL2 refers to the origins of the Coastal Protection Belt in Tendring District originally being intended to protect landscape character. It goes on to state that the National Planning Policy Framework (the Framework) requires that local planning authorities should avoid inappropriate development in vulnerable areas [such as those under threat from coastal erosion] and so the Coastal Protection Belt now serves a further purpose; to help ensure new development which does not need to be located within such areas is directed to more sustainable locations. Nevertheless, in this case, the site is not considered to be at undue risk of coastal erosion and it does not appear to be identified for proposed works under the 2010 Essex and South Suffolk Shoreline Management Plan. There is nothing to suggest on the basis of the evidence that the proposal would not be safe over its planned lifetime.

- 6.12 In terms of a compelling functional or operational requirement to be located on the application site, the applicant relies on the fact that they live locally and require boat storage facilities with good access to the marina, together with annexed outdoor amenity space. Having regard to these considerations it is considered that there is a functional and operational recreational requirement for the development to be located in this location. Furthermore, the proposed uses would be a good fit with established surrounding uses in the area.
- 6.13 For the above reasons the proposal is considered to be acceptable in principle, subject to consideration of the associated criteria of the above policies and other main issues, and material considerations, all of which follow below.

Visual Amenity and Landscape Character

- 6.14 The proposal is located between existing storage and garage buildings and other storage buildings are located opposite the site. It is understood that the site was previously connected with No 77 Tower Street and the rear gardens of other dwellings run down to Lime Street either side of the development. The proposal would thereby be in keeping with the established pattern of development in the locality.
- 6.15 The design of the proposed storage building is very similar to an adjacent structure in terms of its massing, scale and detailing. As such, it would respond positively to local character. The summerhouse and water tanks are very minor structures and have not had a harmful effect. Although the plans are single-line drawings and somewhat lacking in detail, they are sufficient to describe the development proposed. Subject to the use of conditions to require the prior approval of precise details of external materials and finishes, the storage building would not harm the character and appearance of the area. Thus, the proposal would not conflict with the place shaping principles of adopted Section 1 Policy SP7. However, conditions should also be imposed to require prior approval of any boundary treatment to Lime Street, and permitted development rights for such future works should be removed, both in the interests of protecting the visual amenity of the area.
- 6.16 Saved Policies EN1 and EN3, and emerging Policy PPL3, together, seek to protect landscape character. Emerging Policy PPL2 a) seeks to protect the open character of the undeveloped coastline. The site is located within the 3B Brightlingsea Coastal Slopes Character Area, which is highly sensitive to change, as a result of its visibility and its importance as a setting for the Colne Estuary and its tributaries. However, the proposal is small in scale and it is not considered harmful to landscape character; for the above reasons the development is located within an area that is in use as garden ground containing similar developments. Accordingly, the proposal would not conflict with these policies in landscape terms.

Impact on Residential Amenity

- 6.17 Criterion iv) of saved Policy HG16, saved Policy EN3, and adopted Section 1 Policy SP7, together, require that proposals do not have a harmful effect on the living conditions of neighbours. Having regard to the relatively modest scale of the proposed building and good separation from neighbours on Tower Street, it is considered that the proposal would not be overbearing or result in any unacceptable loss of daylight or sunlight. The proposal is not for residential occupation and there would not therefore be any issues in relation to window to window separation distances. The rear elevations of dwellings on Tower Street are already seen in public views from the Public Right of Way along Lime Street. Because of this, there would be no undue loss of privacy. Furthermore, the proposal is for a private not business use unlike earlier proposals which were refused, and it would not therefore result in any unacceptable level of noise and disturbance having regard to existing land uses. For these reasons, officers consider that the proposal would not conflict with the above policies in terms of the effect of the development on neighbouring residential amenity. However, conditions are recommended to

require prior approval of any external lighting, and to limit the use to that applied for and for no B8 storage and distribution or any other commercial use.

Highway Safety/Parking

- 6.18 Access to the site involves crossing Public Rights of Way Brightlingsea Nos. 11 & 12. In view of this and in recognition of the concerns of objectors further information was requested by the Council. In response, the applicant has clarified that the storage use is likely to take place from December to April (1 combination road trailer and 2 laser dinghies), and from the autumn until April (1 classic car). The applicant further states that usage will be typically once or twice a day to gain access to gardening tools and for recreational use. Five days per week in the summer and two days per week, or less, in winter. Travel is stated as being made mostly by foot. Following this clarification, no objection has been raised by Essex County Council as Local Highway Authority.
- 6.19 The proposed use is relatively low key and overall in the context of existing development and surrounding uses the proposal would not result in a significant increase in traffic movements. Furthermore, the character and nature of the traffic would not be commercial. As such, the proposal would be unlikely to result in harm to highway or pedestrian safety. In this respect, the proposal would not therefore conflict with saved Policies TR1A or TR4, adopted Policy SP7, or emerging Section 2 Policy CP2.

Flood Risk

- 6.20 The Concerns of the Ward Member in relation to flood risk are understood. However, the site is located within Flood Zone 1 with the least probability of flooding. The proposal is for a storage use and the small scale of the site does not trigger the need for a Flood Risk Assessment. The proposal is not at risk of flooding and would not unduly increase the risk of flooding elsewhere; rainwater run-off is harvested and re-used.

Landscaping/Biodiversity

- 6.21 The Colne Estuary is designated as a Ramsar site, SAC, SPA, SSSI and NNR. At its closest the site is located 0.36km from the Ramsar, SAC, SPA and SSSI, but it is not located within them. It is considered that the proposal would not affect these sites and so it is not necessary to carry out a Habitat Regulations Assessment. The proposal is not for residential accommodation and thus the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document does not apply. The site has already been partly landscaped which is likely to have increased its biodiversity and value to pollinators. Nevertheless, any remaining hard/soft landscaping features ought to be included within a planning condition to ensure acceptability.

Other matters

- 6.22 The proposal would not affect any designated heritage asset, the site being outside of the Conservation Area and not affecting its setting, and not being located within the setting of any listed building.
- 6.23 As the development has already partly commenced no standard time limit condition is necessary.
- 6.24 Notwithstanding the concern of those who are in objection to the proposal, maintenance of the surface of the Public Right of Way and historic covenants are not material planning matters.

7. Conclusion

7.1 For the above reasons, the proposal is considered to accord with the provisions of the development plan and material considerations do not indicate that planning permission should be forthcoming. Approval is, therefore recommended.

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 carried out in accordance with the following approved plans:

Location Plan Dated 25.07.2020
Site Plan Dated 22.06.2021, Dwg. No. TC 01.22
Elevations and Layout, Dwg. No. TC 01.21
Photographs of Summer House and Water tanks

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

2. The use of the storage building hereby permitted shall be limited to private use only, as set out in the application, and shall not be used for any B8 storage and distribution or any other commercial use.

Reason: In the interest of protecting the residential amenity of neighbours.

3. External lighting shall only be install in accordance with scheme of external lighting which shall have first been submitted to and agreed in writing by the local planning authority.

Reason: In the interest of preventing unnecessary light pollution.

4. Any boundary treatment to Lime Street shall only be erected in accordance with details which shall have first been submitted to and approved in writing by the local planning authority.

Reason: In the interest of visual amenity.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no boundary treatment to Lime Street shall be erected other than as may have been expressly authorised by Condition 4 of this permission.

Reason: In order that such development can be controlled in the interests of visual amenity.

6. External materials and finishes, windows and doors of the storage building hereby approved, and any remaining hard/soft landscaping to be carried out, shall be in accordance with precise details which shall have first been submitted to and agreed in writing by the local planning authority.

Reason: In the interest of visual amenity.

8.3 Informatives

1. 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.
2. The public's rights and ease of passage over Public Footpath Nos. 11 and 12 (Brightlingsea) shall be maintained free and unobstructed at all times.
3. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.
4. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 – Development Management
Essex Highways Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
Essex
CO7 7LT

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.

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/>.