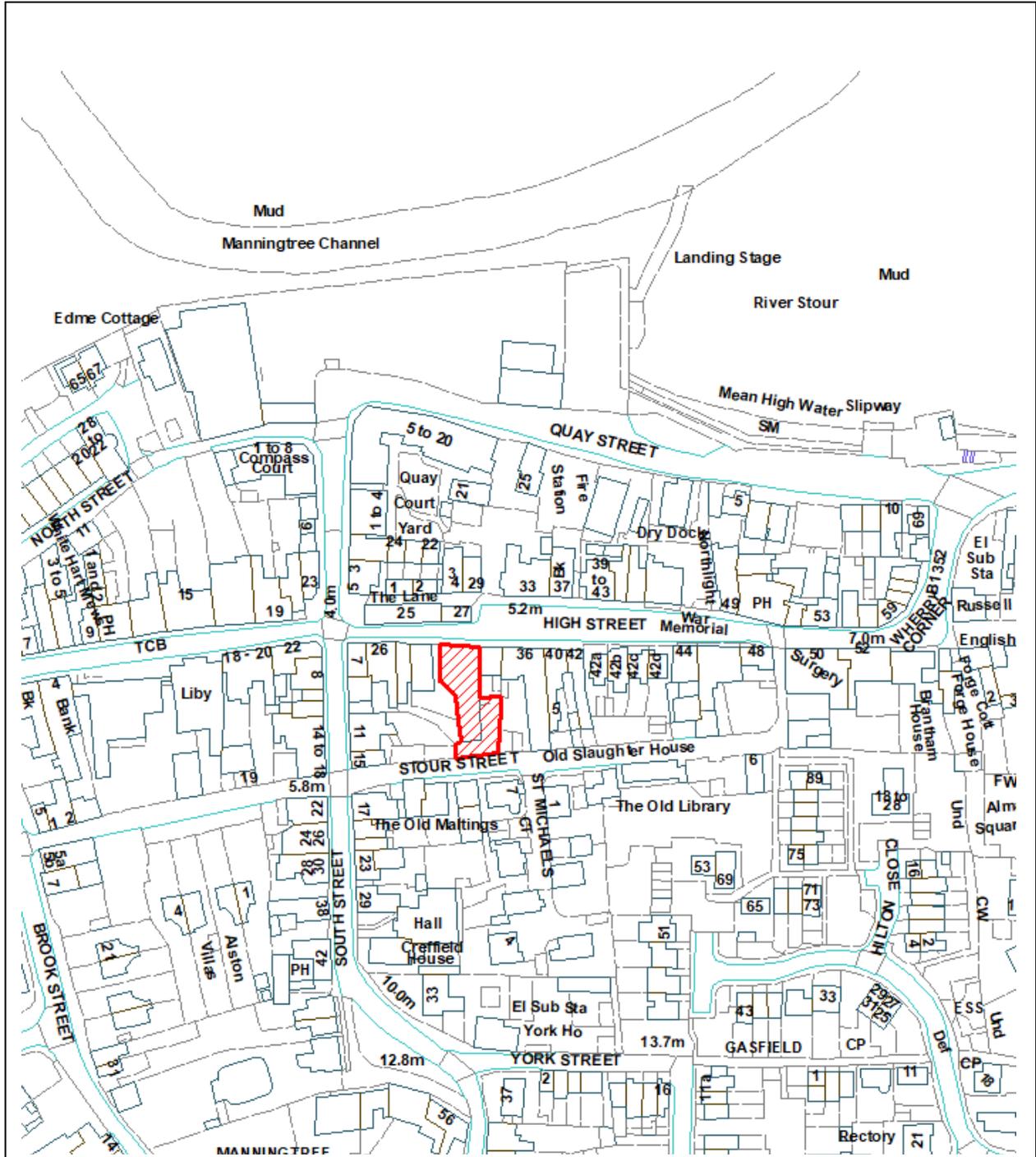


PLANNING COMMITTEE

18th JANUARY 2021

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

**A.4 PLANNING APPLICATION – 21/01270/FUL – TESCO EXPRESS 32 - 34 HIGH STREET
MANNINGTREE CO11 1AJ**



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Application: 21/01270/FUL

Town / Parish: Manningtree Town Council

Applicant: Mr Andy Horwood

Address: Tesco Express 32 - 34 High Street Manningtree CO11 1AJ

Development: Proposed installation of new 1x CO2 gas cooler.

1. Executive Summary

- 1.1 The application is referred to the Planning Committee by Councillor Giancarlo Guglielmi on grounds of the negative impact on the street scene and the Manningtree and Mistley Conservation Area with the incongruous gas cooler sited inappropriately imparting a constant noise by its humming which not only is impacting on neighbours' amenity, but also on their quality of life.
- 1.2 The application seeks retrospective planning permission for the CO2 gas cooler and as part of the application a timber enclosure is proposed.
- 1.3 It is regrettable that the CO2 gas cooler has already been installed prior to a grant a planning permission, however the application presents a development that is acceptable in terms of design, visual impact and heritage considerations and is recommended for approval subject to the necessary conditions set out below.

Recommendation:

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

- 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 July 2021

National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

QL11 Environmental Impacts and Compatibility of Uses (part superseded)

EN5A Area Proposed as an Extension to the Suffolk Coasts and Heaths AONB

EN17 Conservation Areas

EN23 Development Within the Proximity of a Listed Building

EN30 Historic Towns

ER31 Town Centre Hierarchy and Uses

Tendring District Local Plan - Section 1 adopted on 26th January 2021

SP7 Place Shaping Principles

Tendring District Local Plan – Section 2 2013 – 2033 and beyond (December 2021)

SPL3 Sustainable Design

PPL3 The Rural Landscape

PPL8 Conservation Areas

PPL9 Listed Buildings

PP5 Town Centre Uses

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

00/01785/ADV	Shop sign and projecting sign	Refused	05.01.2001
01/01387/ADV	Shop Sign	Refused	15.11.2001
04/01740/ADV	3 No. illuminated fascia signs and 2 No. illuminated projecting signs	Approved	08.11.2004
04/01741/FUL	Conversion of a One Stop Store to a Tesco Express including the installation of an ATM.	Refused	01.11.2004
04/01773/FUL	To install a plant frogbox, located behind a licensed convenience store	Refused	04.11.2004
04/02405/FUL	To install a plant frogbox located behind a licensed convenience store	Refused	15.02.2005
05/00501/FUL	To install a plant condenser unit	Approved	13.05.2005
19/00863/FUL	Installation of perimeter steel balustrading around existing roof for health and safety (retrospective).	Approved	30.08.2019
19/00864/LBC	Installation of perimeter steel balustrading around existing roof for health and safety (retrospective).	Approved	
21/01270/FUL	Proposed installation of new 1x CO2 gas cooler.	Current	

4. Consultations

Essex County Council Heritage
05.08.2021

ECC Heritage unopposed to this application in principle.

Were the applicant to propose reinstating a timber fence to screen the cooler from view they would be supportive of this application. Reinstatement of the fence would also provide an opportunity to store bins and other movable objects at the rear of this building which currently make a negative contribution to the appearance of the Conservation Area.

Were this application to be approved without screening fencing being included in revised proposals, ECC Heritage recommend that a condition is attached to any decision noticed issued securing this screening fencing.

Essex County Council Heritage
08.12.2021

This response follows the first response provided in August 2021. The application site falls within Manningtree and Mistley Conservation Area and is in close proximity to several listed buildings.

It was previously recommended that screening fencing be included to improve the appearance of the service yard. This has now been proposed and is welcomed. There are no objections to the proposed development and it is considered to be in line with Chapter 16 of the NPPF.

TDC Building Control and Access
Officer
29.07.2021

No adverse comments at this time.

TDC Environmental Protection
06.08.2021

The EP Team have the following comments to make -

Noise: it is noted from the submitted documents, with particular reference to the Noise Impact Assessment dated June 2021, that the emission of noise from the unit should not have a detrimental impact on nearby residential properties. Section 2.4 of the NIA confirms the use of Acoustic Wall Lining to assist in minimising the sound, of which is shown in Drawing 02-5096-02D.

Providing the wall lining is implemented as highlighted in these two documents, EP have no reason to object to the proposal.

REASON: to protect the amenity of nearby residential properties.

TDC Environmental Protection
25.08.2021

Acoustic wall lining comes in many shapes and forms but is essentially an absorptive material placed on the wall to dampen the reflective noise from the unit. This is often placed at the time of installation. The best way to ensure that this has been complied with is for the applicant to provide details of the material and a picture of it installed.

The EP Team have looked at the Noise Report and the location of the background noise was chosen to represent that of the noise sensitive property as is often the case when the area in question is not accessible or is subject to the noise of the plant itself. This is recognised and allowed for in BS4142 which is the standard that is used for this type of Noise Impact Assessment. The sound levels used are the levels that are listed by the manufacturer and by using distance attenuation (the way in which a sound level reduces as a listener moves away from a sound source) the acoustician is able to work out the predicted level at the receptor. This is also recognised in BS4142. As such, the EP Team can confirm that they accept the findings of the report and have no further comments to make.

5. Representations

- 5.1 Manningtree Town Council object to the application and make the following comments:
- 5.2 The Town Council fully object to this retrospective planning application for the already installed air conditioner units. The fact that these have already been installed, when the previous units (before the renovation were also refused to be placed in the same exact location) means that the applicant knows that these units both require planning permission to be placed there and also that they do not comply with the regulations needed for them to be placed in a residential area.
- 5.3 This area is within the designated Conservation Area of Mistley and Manningtree from 1969 which TDC later adopted in 2006 and Manningtree and Mistley in 2010. The location of this site is surrounded by listed residential buildings on all sides.
- 5.4 The addition of the air conditioning units is not conducive to the aesthetic of the Listed Buildings within the Conservation Area.
- 5.5 It must also be noted that the residents have reported the noise disturbance from the units, when they kick in at all times of the night waking them up, is another disturbance that they have to endure. It has also meant that those nearest are unable to use their gardens in the finer weather due to the constant noise.
- 5.6 The Manningtree Town Council are unanimous in their objection to this planning application.
- 5.7 18 representations of objection have been received. The concerns raised are summarised below.
- Noise
 - Impact on nearby residents
 - Impact on wider community use venues – Tidal Arts and The Grand Theatre of Lemmings
 - Impact on garden use
 - Impact on health and well being
 - Design, appearance and heritage impacts
 - Impact on Area of Outstanding Natural Beauty and local wildlife
 - Impact on climate change

6. Assessment

Site Context

- 6.1 The application site is located on the southern side of the High Street within the town centre and recognised Historic Town of Manningtree and associated Manningtree and Mistley Conservation Area. The building to which this application relates is part of a terrace of shops facing the High Street and currently accommodates a Tesco Express store. The façade of the building is of Georgian styling with casement windows at first floor and a parapet roof. The shop front at ground floor is of aluminium construction. The building has been extended to the rear to accommodate storage associated with the retail use and for which access is gained from Stour Street. The extension to the store is of red brick construction for functional use only with no particular features of architectural interest. 32-34 High Street is not listed although many of the

surrounding buildings are and the application site also lies just outside of the recently extended designation of the Suffolk Coasts and Heaths Area of Outstanding Natural Beauty.

Planning History

- 6.2 Application refs. 04/01773/FUL and 04/02405/FUL for plant located in a similar position to this application under consideration were refused. The submitted acoustic report on both occasions failed to provide details of where the background noise levels were taken from and therefore the report could not demonstrate that the development could be undertaken without causing noise and nuisance to surrounding properties.
- 6.3 Further to these applications, an application (reference 05/00501/FUL) for a plant condenser unit, located on the flat roof of the Tesco Store, 5 metres from the front elevation was approved. The submitted acoustic report confirmed that the sound level attenuation was an acceptable level subject to a condition securing a suitable enclosure surrounding the plant.

Proposal

- 6.4 This application seeks retrospective planning permission for a CO₂ gas cooler and as part of the application a timber enclosure is proposed.

Design, Appearance and Heritage

- 6.5 Saved Policy QL11 of the adopted Tendring District Local Plan (2007) seeks to ensure that all new development should be compatible with surrounding land uses and minimise any adverse environmental impacts in terms of scale, amenity of nearby occupiers and historic environment. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan – Section 2 2013 – 2033 and beyond (December 2021).
- 6.6 Policy EN17 of the adopted Tendring District Local Plan (2007) seeks to ensure that developments within a Conservation Area preserve and enhance the Conservation Area setting. Policy PPL8 of the Tendring District Local Plan – Section 2 2013 – 2033 and beyond (December 2021) seeks to ensure that any new development within a designated Conservation Area, or which affects its setting, will only be permitted where it has regard to the desirability of preserving or enhancing the special character and appearance of the area, especially in terms of: any important views into, out of, or within the Conservation Area.
- 6.7 Policy EN23 of the adopted Tendring District Local Plan (2007) concerns development within the proximity of a Listed Building and confirms that proposals for development that would adversely affect the setting of a Listed Building, including group value and long distance views, will not be permitted. These sentiments are carried through into Policy PPL9 of the emerging Tendring District Local Plan – Section 2 2013 – 2033 and beyond (December 2021).
- 6.8 The CO₂ gas cooler has already been installed to the rear of the Tesco application site; being completed in June 2021. The CO₂ gas cooler is positioned 0.70 metres from the eastern elevation at ground level and measures 2.22 metres in height, 2.6 metres in width and 0.83 metres in depth. The CO₂ gas cooler itself is of a beige metal construction, consistent with the appearance of retail plant. The acoustic wall lining, grey in colour is also in place, fixed to the eastern elevation behind the CO₂ gas cooler. The appearance of the CO₂ gas cooler in its current form is noticeable from Stour Street although it is also viewed alongside the bright blue metal concertina doors of Tesco and the galvanised cable channelling which also stand out in this location on the already nondescript building. The applicant however, has proposed to screen the CO₂ gas cooler with a 2.5 metre high timber enclosure which will assimilate the structure better in the street scene and appear more sympathetic to the surroundings which comprise mainly the rear of the buildings and garden boundaries of those buildings facing the High Street.

- 6.9 ECC Heritage were consulted on the application and they provided an initial comment which confirmed from a heritage perspective they were unopposed in principle to the proposal but they noted that if a timber fence screen could be erected they would support the proposal. Bringing to attention the other comments of ECC Heritage which asserts that reinstatement of a fence would also provide an opportunity to store bins and other movable objects at the rear of this building shall not be taken into account as although the intention to bring together all of the retail paraphernalia would be welcomed it does not form part of the proposal being considered.
- 6.10 Following the submission of revised drawings including a timber fence enclosure ECC Heritage have confirmed that *“There are no objections to the proposed development and it is considered to be in line with Chapter 16 of the National Planning Policy Framework”*.
- 6.11 The CO2 gas cooler with a timber enclosure in this location is considered acceptable and will not significantly harm the character or appearance of the Conservation Area or have a significant impact on the setting of the listed buildings taking into account its scale, design and positioning in the service area at the rear of the Tesco store.
- 6.12 Should the application be recommended for approval a condition securing the erection of the proposed timber enclosure within three months of the date of the decision will be imposed.

Noise and Environmental Impacts

- 6.13 Policy SPL3 of the Tendring District Local Plan – Section 2 2013 – 2033 and beyond (December 2021) seeks to ensure that new development should be compatible with surrounding uses and minimise any adverse environmental impacts in terms of the amenities of occupiers of nearby properties, minimising the production of greenhouse gases and impact on climate change and unacceptable levels of pollution.
- 6.14 The use of the application site remains as retail, with other retail uses, residential properties and spaces for use by the wider community surrounding the application site there is the potential for existing amenities to be harmed.
- 6.15 As part of this planning application the applicant has commissioned a Plant Noise Impact Assessment. Paragraph 3.1 of the report clearly and correctly identifies the nearest properties and windows with the potential to be impacted by the proposal stating that the closest residential dwelling is approximately 5 metres from the proposal with an intervening boundary wall and two further unobstructed residential windows at distances of 8 and 9 metres away respectively.
- 6.16 The Plant Noise Impact Assessment has been carried out in accordance with BS4142:2014 ‘Methods for Rating and Assessing Industrial and Commercial Sound’. Table 5 on page 8 of the Plant Noise Impact Assessment concludes that the noise levels associated with the proposed plant and equipment would be below the background noise level at existing properties. Following consultation with the Council’s Environmental Health team they confirm that they do not object to the proposals and accept the findings of the report providing the wall lining is implemented. Evidence of the acoustic wall lining in situ has been provided by the applicant and was evident on the Officer’s site visit. On this basis, there are no concerns with the potential impact on amenity of the area.
- 6.17 The applicant has confirmed that the new refrigeration plant uses CO2 as a refrigerant which has a global warming potential (GWP) of 1 per kg of refrigerant. The previous refrigeration plant used a hydrofluorocarbon (HFC) refrigerant known as R404a which had a GWP of 3922 per kg of refrigerant therefore the proposal significantly reduces the global warming impact of the store. In addition, the chilled cabinets (internal within the store) use the latest technology such as EC (electronically commutated) fans and electronic expansion devices which improve efficiency and

reduces the kW duty of the cabinets. The chilled cabinets all have doors on the cabinets reducing 6.18 the overall refrigeration load by around 30% of the previous installation. The CO2 gas cooler also uses inverter technology on the compressors improving the control of the system reducing the overall energy usage at the retail store.

6.19 The need for new development must be carefully balanced against the requirement to conserve and enhance the Natural Beauty of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty. In this case, it is considered that there is no significant impact on local wildlife and the extension to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty due to the location of the minor development proposal contained within the busy town centre for an existing retail use surrounded by a mix of uses and town centre activity.

Other Considerations

6.20 The Council's Building Control Officer has no adverse comments at this time.

7 Conclusion

7.1 The proposal will not result in any adverse impact on the character and appearance of the Conservation Area, the settings of the surrounding listed buildings or the Suffolk Coast and Heaths Area of Outstanding Natural Beauty. In addition, the proposal will avoid adverse impacts upon the environment in terms of noise and climate change and therefore in the absence of any material harm resulting from the development, the application is recommended for approval.

8 Recommendation

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

8.21 Conditions and Reasons

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

DRAWING NO.'s
02_5096_02D_R2
02_5096_02E_R2
03_5096_03B_R2
03_5096_03C_R2

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

- 2 The development hereby permitted shall be implemented and thereafter operated in accordance with the Plant Noise Impact Assessment Report dated 2nd June 2021 and submitted on 15th July 2021.

Reason - To protect the character and amenities of neighbouring areas by ensuring that measures are implemented to avoid any noise nuisance.

- 3 The timber fence enclosure hereby approved and shown on DRAWING NO.'s 02_5096_02D_R2, 02_5096_02E_R2, 03_5096_03B_R2 and 03_5096_03C_R2 must be erected within 3 months of the date of this decision, maintained and retained in perpetuity.

Reason - In order to maintain the character of the conservation area in the interest of visual amenity.

8.22 Informatives

None

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/>.