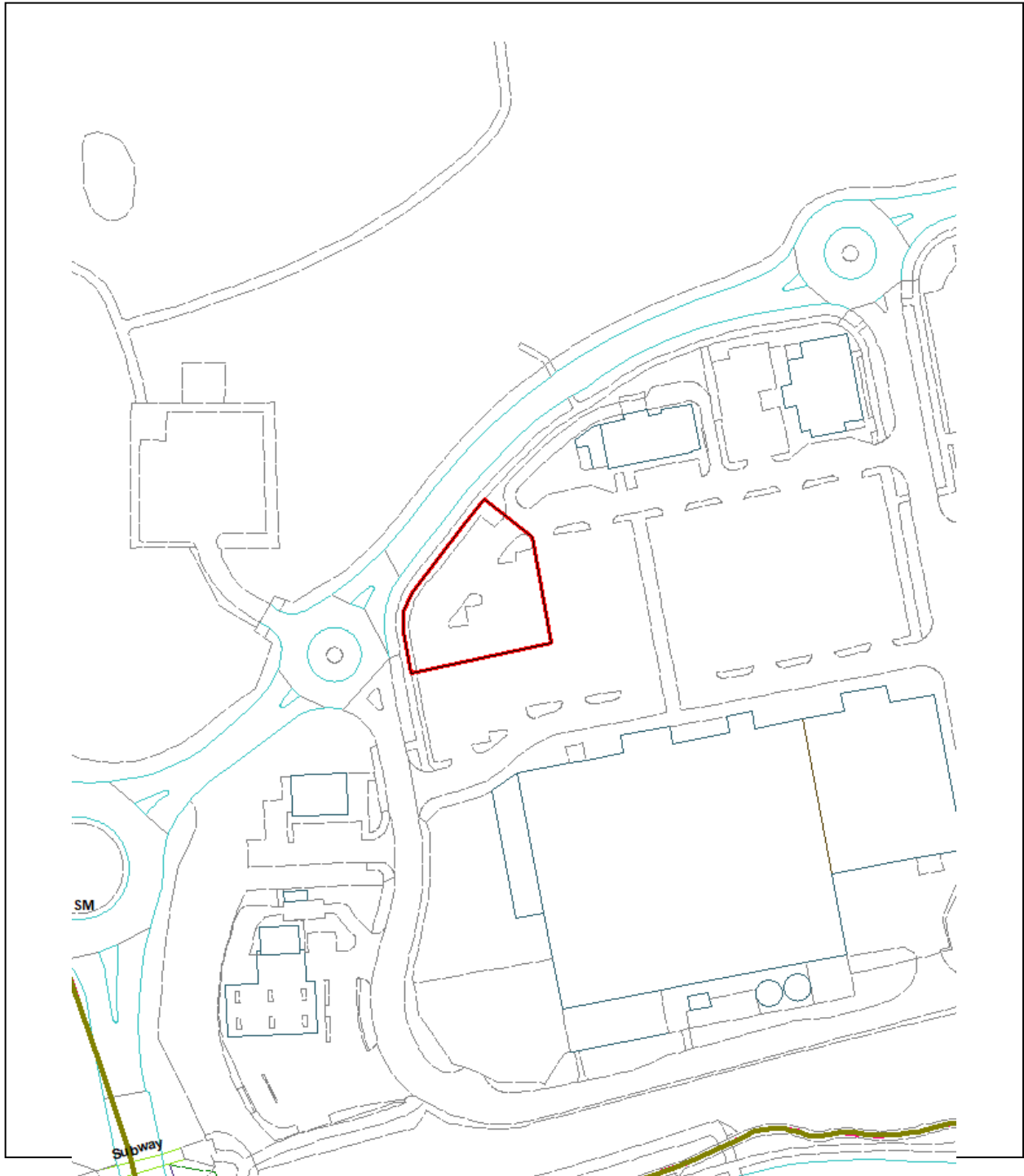


PLANNING COMMITTEE

30<sup>th</sup> March 2022

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

**A.2 PLANNING APPLICATION – 20/00541/OUT – LAND WITHIN CAR PARK BROOK  
RETAIL PARK LONDON ROAD CLACTON ON SEA ESSEX**



DO NOT SCALE

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**Application:** 20/00541/OUT

**Town / Parish:** Clacton Non Parished

**Applicant:** Associated British Foods Pension Trustees Ltd

**Address:** Land Within Car Park Brook Retail Park London Road Clacton On Sea Essex  
CO15 3TP

**Development:** Outline application for the erection of a drive-thru coffee shop or restaurant selling food and drink for consumption on and off the premises (sui generis) and associated works

## 1. Executive Summary

- 1.1 The application is referred to the Planning Committee at the request of St John's Ward Councillor Mark Stephenson, due to concerns over the sequential test and the effect of the proposal on highways and parking considerations.
- 1.2 The proposal seeks outline planning permission with access to be considered. Appearance, landscaping, layout, and scale are reserved matters for consideration under a subsequent application.
- 1.3 The proposal is situated within the settlement development boundary of Clacton-on-Sea, which is a strategic urban settlement in the Local Plan settlement hierarchy. It is therefore an acceptable location for new development in principle. Because the proposal is for a town centre use in an out of centre, edge of settlement location, the retail sequential test has been carried out and passed; there is no sequentially preferable location for the development. The proposal is below the locally set threshold above which a retail impact assessment would be required and it would not therefore conflict with town centre first policy. Subject to conditions, it would also not conflict with Policy HP1 in terms of health considerations.
- 1.4 While the concerns of Councillor Stephenson and B&Q who object to the proposal are acknowledged, the technical evidence submitted with the application, together with the consultation responses of the local highway authority, conclude that the proposal would not have an adverse effect upon the road network or result in any unacceptable highway safety impacts. Therefore, in accordance with Policy CP2 and Paragraph 111 of the Framework, officers would advise that planning permission should not be refused for reasons related to highway matters.
- 1.5 Subject to conditions the proposal would comply with the requirements of the development plan and material considerations do not indicate that planning permission should be refused in this case. Significant weight should be given to the economic benefits and approval is therefore recommended.

### **Recommendation:**

That the Assistant Director for 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 (the Framework)*  
*National Planning Practice Guidance (The PPG)*

*Tendring District Shared Strategic Section 1 Local Plan (January 2021)*  
*Tendring District Section 2 Local Plan (January 2022)*

Relevant Section 1 Policies

SP1 Presumption in Favour of Sustainable Development  
SP3 Spatial Strategy for North Essex  
SP6 Infrastructure and Connectivity  
SP7 Place Shaping Principles

Relevant Section 2 Policies

SPL1 Managing Growth  
SPL2 Settlement Development Boundaries  
SPL3 Sustainable Design  
HP1 Improving Health and Wellbeing  
PP1 New Retail Development  
PP2 Retail Hierarchy  
PP4 Local Impact Threshold  
PP5 Town Centre uses  
PPL1 Development and Flood Risk  
PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
PPL10 Renewable Energy Generation and Energy Efficiency Measures  
CP1 Sustainable Transport and Connectivity  
CP2 Improving the Transport Network

Supplementary Planning Guidance

*Essex County Council Development Management Policies 2011 (the Highways SPD)*  
*Essex County Council Parking Standards Design and Good Practice Guide 2009*

**Status of the Local Plan**

2.2 Planning law requires that decisions on 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 (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

**3. Relevant Planning History**

03/01413/DETAIL	Submission of amended reserved matters pursuant to planning permission 02/02418/DETAIL	Approved	15.10.2003
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02/02418/DETAIL	Comprehensive mixed use development comprising retail warehousing, 3 restaurants, car parking, access roads, junctions, footpaths and cycleways, country park, formation of Pickers Ditch walkway and TIC facility (part submission of reserved matters pursuant to planning permission 02/01974/FUL and conditions 6, 7, 8, 13 and 20 imposed upon planning permission 99/00523/OUT)	Approved	05.03.2003
02/00898/DETAIL	Reserved matters in respect of access arrangements in accordance with condition 01 of planning permission 99/0523/OUT	Approved	30.07.2002
99/00523/OUT	Comprehensive mixed use development comprising retail warehousing, restaurant/PH, car parking, access roads, junctions, footpaths & cycleways, country park, formation of Pickers Ditch walkway, park & ride car park & bus waiting area & TIC facility	Refused (Allowed on appeal)	29.10.2001
94/00384/OUT	Outline planning application for retail/leisure and park	Withdrawn	07.01.1999

#### 4. Consultations

ECC Highways Dept  
04.02.2021

[Following initial objection] The additional information that was requested and submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material.

The Transport Assessment accompanying the planning application has been considered in detail and the Highway Authority is satisfied that, the number of trips generated by the proposal on the highway network would be unlikely to be severe. Typically a roadside service facility does not generate many new trips to the network; the occasional customer will make a special trip, but generally people stop when already on-route (so called pass-by trips), so it is anticipated only some of these will be new to the network. Given these considerations:

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

conditions:

1. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
  - i. the parking of vehicles of site operatives and visitors
  - ii. loading and unloading of plant and materials
  - iii. storage of plant and materials used in constructing the development
  - iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

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

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety and in accordance with Policy DM 1 & 6.

3. The proposed amended island located on the corner of the proposed parking area shall be provided in accordance with drawing no. SP04.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM1.

4. The existing bollards at the KFC loading bay to be relocated further from the kerb to provide additional overhang space for the delivery vehicles accessing the loading bay and amendments to the lining at the loading bay.

Reason: To ensure that delivery vehicles using the site can do so in a controlled manner, allowing them to enter fully and improve on the existing layout in the interests of highway safety and in accordance with Policy DM1.

5. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, including any parking spaces for the mobility impaired, has been hard surfaced, sealed and marked out in parking bays. The vehicle parking area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

Reason: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided in accordance with Policy DM8.

6. Prior to the development becoming operational a Delivery and Servicing Plan, and a Car Park Management Plan shall be submitted to, and agreed in writing with, the Local Planning Authority. The Plans to include the following, and be adhered to at all times:
  - i. Service vehicles servicing the site of maximum length 11.52 metres shall be used to service the coffee shop.
  - ii. Deliveries and refuse collection to the development to be managed in advance and limited to outside of operational hours only.
  - iii. An area to be kept clear outside operational hours to facilitate servicing and refuse collection for the coffee shop.
  - iv. A parking management strategy to be in place limiting customers to a maximum 90-minute stay only.
  - v. All parking spaces to be provided for customers only. No staff parking to be permitted to park on site.

Reason: In the interests of highway safety to ensure accordance with Policy DM1 and DM19.

7. Prior to the first use of any external lighting / floodlighting within the development site, the light source shall be so positioned and shielded, in perpetuity, to ensure that users of the highway are not affected by dazzle and/or glare, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that users of the highway are

not subjected to glare and dazzle from lighting within the development in the interest of highway safety in accordance with Policy DM1.

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

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

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.

Notes:

- In making this recommendation the Highway Authority has treated all planning application drawings relating to the internal layout of the proposal site as illustrative only.
- Prior to any works taking place in the highway the developer should enter into an S278 agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works.
- All highway related details should be agreed with the Highway Authority.
- The development should be in accordance with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009.

Informatives:

1. All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.
2. 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

3. 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.

ECC Highways Dept  
07.02.2022

The Transport Assessment accompanying the planning application has been considered in detail and it is noted that a further car park survey was undertaken in December 2021. This indicates that there are over a hundred free spaces even with the reduced capacity with the introduction of the new unit. Based on the original and additional information provided, the Highway Authority is still satisfied that, the number of trips generated by the proposal on the highway network would be unlikely to be severe. As stated previously; typically, a roadside service facility does not generate many new trips to the network; the occasional customer will make a special trip, but generally people stop when already on-route (so called pass-by trips), so it is anticipated only some of these will be new to the network. Considering these factors:

The Highway Authority has nothing further to add to our previous comments dated 4 February 2021 for this application.

Building Control and Access  
Officer  
29.05.2020

Insufficient information to comment on for building regulation purposes.

Environmental Protection  
11.06.2020

Having examined the documents attached to the above planning application. I can inform you that I have no objection or request for further information regarding this application for outline planning permission. However when further information regarding the operation of the unit becomes available maybe in terms of a more detailed planning/building control application I would be grateful to be included in the consultees.

## 5. **Representations**

5.1 The application is reported to the Committee at the request of St John's Ward Councillor Mark Stephenson, due to concerns over the following:

- The site already has a KFC, Pizza Hut, Tesco Café, and an adjacent site has a McDonalds and a Public House (Smugglers Cove).
- The proposal is contrary to the sequential approach to considering mixed-use development proposal set out in [now superseded] Policy QL8.



- Access to the site is neither convenient nor attractive, contrary to [now superseded] Policy TR3A.
- Drive-thru proposals encourage the use of the car above other means of transport and this would be contrary to [now superseded] policies COM1, QL2 and QL10.
- The proposal would take up parking spaces used by customers of B&Q, KFC and Pizza Hut. Demand will increase and the proposal would conflict with [now superseded] Policies TR7 and TR8.

5.2 No public representations have been made.

5.3 On behalf of B&Q, RPS Consulting Services Ltd object on the following grounds:

5.4 *Access and Configuration*

- While submitted in outline permission for access is sought, yet two options are shown, neither of which reflect the arrangements for the KFC unit.
- The proposal would be likely to lead to traffic circling around the existing car parking spaces adjacent to B&Q and restrict the use of a large number of spaces available to the store close to its entrance, affecting circulation to the detriment of safety.
- B&Q have occupied the site for over 20 years and there is concern that the proposal could adversely affect the long term viability of the store.

5.5 *Parking*

- The car parking survey within the Transport Statement was undertaken in February 2020 which is not reflective of peak demand; B&Q is busiest at weekends, including Bank Holidays, typically Easter and Spring Bank Holidays when DIY and gardening activities peak.
- The applicant has not considered the impact of a reduction of 40 parking spaces and the provision of the proposal against the adopted Parking standards; the resultant effects would be contrary to Paragraph 109 [now Paragraph 111] of the Framework.
- Because the proposal is not located within a town centre or serviced by frequent bus services, a lower provision of parking is not appropriate in this location.

5.6 *Servicing and Deliveries*

- The Transport Statement does not include tracking or provision for deliveries or emergency vehicles.
- B&Q and Currys PC World benefit from rear service yards. The operator for the proposal has not yet been identified and there have been no discussions with B&Q.

5.7 *Traffic Impact*

- The Transport Statement utilises the TRICS data and trip estimates for a Costa drive-thru in Harwich, yet the proposal is for a coffee shop or a drive-thru restaurant. The surveys are therefore incomparable.
- No junction modelling has been undertaken to support the claims of the Transport Statement that it is unlikely to have a demonstrable impact on the public highway network.

5.8 *Sequential Test*

- The site is located in an out of centre location and the proposal does not support the viability and vitality of Clacton-on-Sea Town centre, which is identified as vulnerable in the Tendring District Council's Retail Study (2016).

- It is not clear if the Sequential Test has been undertaken on the smaller or the larger of the two built floor area figures supplied (between 150 – 380m<sup>2</sup>) and what flexibility has been applied.
- There are a number of opportunities to accommodate the development within the town centre – the sequential test has not been satisfied – the proposal conflicts with town centre first policy.

#### 5.9 *Locational Requirement*

- The Planning and Retail Statement identifies that the proposed development will meet a specific type of need. However, the A133 corridor is already well served by a range of food and beverage outlets – including a new McDonalds - the need is overstated.
- The Planning and Retail Statement does not thoroughly assess identified vacant premises within Clacton town centre, and Covid 19 is likely to mean more sites will become available in the short to medium term.

#### 5.10 *Old Gas Works Site*

- The applicant has failed to have regard to the fact that the Old Gas Works site benefits from planning permission for a comparable café/restaurant (167m<sup>2</sup> against the proposal for between 150-380m<sup>2</sup>) within a sequentially preferable town centre location. They fail to substantiate claims that it will not come forward within the next 12-18 months. With lead in times there is unlikely to be little difference between each site in terms of availability.

5.11 These objections are fully considered below.

### **6. Assessment**

#### 6.1 Site Context

6.2 Brook Retail Park is located to the east of the A133, approximately two miles north-west of Clacton-on-Sea Town Centre. Originally developed in the 2000's the retail park is occupied by B&Q, Currys PC World, a KFC drive-thru and a Pizza Hut Restaurant. To the east is a Tesco store with petrol filling station. On the opposite side of the A133 is Brook Park West, which contains a Lidl store, a McDonald's drive-thru restaurant and a public house. Beyond this is the Hartley Gardens mixed use allocation. Brook Country Park is located to the north on land designated as strategic green gap. To the south and east are residential areas located beyond landscape belts and Pickers Ditch.

#### 6.3 Planning History

6.4 The history of the retail park is set out above. No conditions within this history would preclude the proposal; Condition 19 of outline planning permission reference 99/00523/OUT simply sets a *maximum* provision of 600 parking spaces for the overall site which includes the Tesco store.

#### 6.5 Proposal

6.6 The proposal is in outline for the erection of a drive-thru coffee shop or restaurant, of between 150 – 380m<sup>2</sup>, selling food and drink for consumption on and off the premises (sui generis). Approval is sought for means of access only; permission for the appearance, landscaping, layout and scale of the development are not sought at this stage. Details supplied are indicative only and should be considered as such.

6.7 The application is supported by the following information:

- Application form and certificates;
- Site location plan;
- Block plan;
- Parameter plans (site and elevations, and 3D views);
- Planning Statement, incorporating a Sequential Test;
- Design & Access Statement;
- Transport Statement, incorporating Parking Survey (April 2020);
- Framework Travel Plan (April 2020);
- Technical Note – Response to Highways Comments (January 2021);
- Technical Note – Car Parking Survey (December 2021);
- Sequential test update March 2022;
- Drainage Strategy Report.

6.8 The supplied parameters plans show a maximum height of 6.5m and a minimum of 5.5m.

#### 6.9 Principle of Development

6.10 Strategic Section 1 Policy SP1 states that when considering development proposals the Local Planning Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework. They will always work pro-actively with applicants to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area. Development that complies with the Plan will be approved without delay, unless material considerations indicate otherwise.

6.11 The proposal is situated on an established retail park within the Settlement Development Boundary of Clacton-on-Sea, which is a Strategic Urban Settlement. While the site is not the subject of any specific allocation within the Local Plan the proposal accords with the broad spatial strategy to direct development to existing settlements, set out under Policies SP3, SPL1 and SPL2. The proposal is therefore acceptable in principle.

#### 6.12 Sequential Test

6.13 Policy PP1 New Retail Development states that town centres will be the main focus for new additional retail floor space. In order to plan positively to promote the vitality and viability of the town centres, Policy PP2 Retail Hierarchy establishes locations that should be considered as part of a sequential test. The presumption would be that any proposals for a main town centre use would only be permitted if, firstly, every effort had been made to locate it in the defined centres as a preference.

6.14 Paragraph 6.2.16 of the Section 2 Local Plan recognises that as well as the defined centres listed in Policy PP2, the District also contains a number of large modern retail parks or stand-alone supermarkets/retail outlets that are located in out-of-town centre (or edge-of-town centre) locations that often fulfil a need for bulky-goods retail that cannot be accommodated in town centres. Brook Retail Park is one such location.

6.15 The proposal is for a town centre use (as defined within Annex 2 of the Framework) outside of any defined town centre. In accordance with the above policies and Paragraph 87 of the Framework a sequential test should therefore be applied. Main town centre uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Where a proposal fails the sequential test planning permission should be refused (Paragraph 91).

- 6.16 Paragraph 88 of the Framework states that when considering edge of centre and out of centre proposals preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
- 6.17 As part of the submitted Planning Statement the applicant has carried out a sequential test. Because they state that the business requirement for the proposal is for a drive thru and is specific to the A133 corridor in north Clacton, and to serve an existing retail destination, neither Clacton Town Centre nor the district centres at Old Road or Great Clacton are considered suitable. Nevertheless, they have sought to identify and consider potential sites in and on the edge of Clacton Town Centre and the two district centres, to see if any are physically capable of accommodating the proposed development. If so, these sites were considered further. The identification of potential sites for assessment was based on site visits (February 2020), a review of the [then] adopted and emerging plans, and a review of premises being marketed where these were available. In view of the further objection received from B&Q highlighting the age of the sequential test and potential effect of Covid 19 on available sites, the applicant has refreshed their sequential test (March 2022).
- 6.18 The applicant has confirmed that the sequential test was carried out on the basis of the lower end of the floorspace figure (150 m<sup>2</sup>). They emphasise that the PPG and relevant case law makes clear that, in undertaking a sequential assessment, there needs to be a recognition that certain main town centre uses will have particular market and locational requirements which mean that they may only be located in a specific location (Paragraph: 012 Reference ID: 2b-012-20190722). They state that those sites identified by RPS / B&Q within Clacton Town Centre are unsuitable because they could not accommodate a drive thru lane.
- 6.19 The applicant states that none of the originally identified potential sites that were accessible on the edge of the two district centres were suitable for their requirements. In relation to Clacton Town Centre, the applicant considered the former M&S site. Also, the former Mothercare and Dorothy Perkins units. Neither were considered suitable due to their size, location and configuration. As part of their development plan review and having regard to the Clacton Town Centre Vision (2007), the applicant also considered the Jackson Road NCP car park site, the Civic Quarter, and the Station Gateway site.
- 6.20 Having regard to the Jackson Road site the applicant notes recent investment in signage and ticketing machines, and that there has been little indication from NCP that there is any appetite for redevelopment. Furthermore, deliverability of the Civic Quarter concept for land around the Library, Town Hall and High Street car park in the short to medium term is uncertain. The Station Gateway comprises land currently used by Fullers, the Sadds Yard industrial area and the railway station car park, where there has been no strong expression from owners to support redevelopment. In view of this, none of these sites have been considered to be available. Because a drive thru café/restaurant might sterilise the development potential of these sites and because they would not meet their locational requirement to the north of Clacton to serve existing facilities at Brook Retail Park, these sites have also been discounted as being unsuitable.
- 6.21 The applicant also identified the Old Gas Works site. However, due to the need for remediation and infrastructure works this was discounted as being unlikely to be available within a 12-18 month period. While the initial objection of B&Q states that the same timescales might be involved in development of the Brook Retail Park site, the passage of time has proved this to have been a reasonable conclusion to draw. Moreover, the Council is currently considering a variation of condition application for the Old Gas Works site (22/00200/VOC), which has not yet been decided, and ground has yet to be broken on the site. It would not therefore be unreasonable to assume that the Old Gas Works Site continues to be unlikely to become available within a reasonable period. Although B&Q state that the locational requirement for

the development is 'overplayed', the applicant justifies this by asserting that it does not meet their identified business need; The Old Gas Works site would not meet the operator's need which is in part to serve an established retail destination.

- 6.22 A further assessment of vacant units becoming available this year considered Jackson House, Edinburgh Woollen Mill, 2 Station Road and 40 Pier Avenue (the former GAME store) all within Clacton. Jackson House was too small, and none of the other sites could accommodate a drive thru lane.
- 6.23 B&Q is concerned with the degree of flexibility shown by the applicant in terms of format and scale. However, what is required by flexibility depends on the facts and circumstance of the case, and needs to be applied sensibly in the context of format and scale. Furthermore, the proposal is for between 150 – 380m<sup>2</sup> and the proposal is for a drive thru facility, and there is no requirement to disaggregate the proposal to the point where the business requirement would not be met.
- 6.24 From the above, officers are satisfied that the sequential test has been robustly applied and that there are no sequentially preferable sites that are available or suitable. As a result, there is no conflict with the above policies in this regard.
- 6.25 Retail Impact
- 6.26 Paragraph 90 of the Framework states that when assessing applications for retail and leisure development outside of town centres which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> gross floorspace).
- 6.27 Local Plan Policy PP4 Local Impact Threshold identifies the locally set floorspace thresholds above which a Retail Impact Assessment is required. Following the WYG Retail Study (2016) a tiered approach is set, with different thresholds based upon the location, role and function of the centre. For Clacton this is set at 929m<sup>2</sup> gross floorspace. Because the proposal is substantially below that (between 150 and 380m<sup>2</sup>), a retail impact assessment is not required. The proposal would not therefore conflict with Policy PP4 or the Framework in this regard.
- 6.28 Highway Safety/Parking
- 6.29 Paragraph 104 of the Framework states that transport issues should be considered from the earliest stages of development proposals, amongst other things, so that: a) the potential impacts of development on transport networks can be addressed; c) opportunities to promote walking, cycling and public transport use are identified and pursued, and e) parking and other transportation considerations are integral to the design of scheme. Paragraph 110 states that it should be ensured that appropriate opportunities to promote sustainable transport modes can be, or have been taken up. Also, that safe and suitable access to the site can be achieved for all users and that the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance. Paragraph 111 of the Framework makes clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.
- 6.30 National planning policy is reflected in Section 2 Policy CP2 Improving the Transport Network, which states that proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or if the residual cumulative impact on the road network would be severe. Amongst other things, Policy SPL3 requires that access to the site is practicable and the highway network will, following any required mitigation, be able to safely accommodate the additional traffic the proposal will generate and not lead to severe traffic

impact. The design and layout of the development should maintain and/or provide safe and convenient access for people with mobility impairments. Adequate vehicle and cycle parking should be provided.

- 6.31 The site is an established retail destination. It is therefore well served by the existing highway and footpath network and it is close to a bus stop which serves the retail park. Vehicular access to the site would be from Britton Way which links the A133 to London Road. Access from the west would be via the eastern arm of the roundabout off the A133. From the east, access would be via Britton Way from London Road. Both these junctions are of the requisite standard to serve the proposed development and no highway safety concerns are raised by the proposal in these regards. Because none of these roads are trunk roads and the proposal would not result in any adverse impact on the safety of, or queuing on a trunk road, Highways England are not statutory consultees.
- 6.32 B&Q expressed a legitimate concern, that while permission for means of access is sought two options were initially shown. In order to clarify the position a revised block plan was therefore requested and which fixes access to from the first aisle of the car park. Of the two options this would result in the least circuitous access route. Clearly the proposal will have an impact on the existing circulatory route around this part of the retail park as it was originally constructed. Furthermore, there may be some initial confusion by users of it. However, this has been considered and discussed at length with Essex County Council as Local Highway Authority (County Highways). They confirm that it would not result in conditions that would be prejudicial to highway safety and could be adequately addressed by a scheme of directional signage to manage traffic within the car park. Although B&Q are also concerned about the loss of parking to the front of store, where customers would wish to load bulky items into their vehicles, the proposal would still allow for adequate provision front of store, albeit reduced. These considerations are not therefore considered by officers to be a reasonable basis for refusal.
- 6.33 As originally constructed the retail park has 311 parking spaces. The proposal would reduce the number of parking spaces by around 40 spaces. However, a minimum of 271 will be retained for use across the retail units. The submitted Planning Statement cross-refers to the Transport Statement (April 2020) which included a parking survey. In response to an initial objection from County Highways a Technical Note was submitted in January 2021. The survey stated that the parking demand peaked at 134 cars on the Saturday surveyed, indicating that less than half the available spaces were being used even at the busiest time. The survey also indicated that parking for disabled people was more than adequate with no less than 6 free spaces available at any one time during the survey period.
- 6.34 However, because the initial survey was carried out between a Friday and Saturday during February 2020 and in view of the concerns of the adjacent Ward Councillor and the objector, officers felt that this timing was not representative of busier times when peak parking stress could be expected. The applicant was therefore asked to conduct a further parking stress survey which was duly carried out between Friday 3 and Saturday 4 December 2021. Although B&Q are concerned that their busiest times are during Easter and Christmas, this is considered to be more representative of times of increased parking demand.
- 6.35 The new parking survey data for the Saturday also shows a similar occupancy pattern to the February 2020 data; the maximum accumulation recorded in February 2020 was 134 vehicles with an occupancy of 141 recorded in December 2021. When compared to the future parking provision this results in a maximum parking stress of 52.0% across both surveys for a Saturday. The applicant asserts that based on the survey data the loss of parking resulting from the proposal would not impact on customers. County Highways have confirmed that they consider the level of parking provision with the development proposed would be sufficient to meet the needs of the retail park. There is no evidence to dispute this finding.

- 6.36 The submitted transport evidence considers notional queues length with reference to surveys at comparable Costa sites in Banbury and Didcot on a Wednesday and a Saturday, and concludes that the maximum queue observed of eleven vehicles could be accommodated within the retail park, and a maximum of eight vehicles within the site itself.
- 6.37 Due to COVID 19 existing traffic surveys were not possible. As such, traffic flows were obtained for a neighbouring application (as agreed with County Highways). The vehicular impact at the A133 / Britton Way / Little Ravens Way roundabout was considered and it was concluded that there would be a 'negligible impact' on the highway network; the maximum uplift was considered to be less than 1.4%. Of course, it is reasonable to expect many trips will be linked to existing visits to the retail park. Although the objector disputes the basis of trip generation calculations, in terms of the TRICS data studied, these concerns have not been validated by the County Highways response.
- 6.38 The submitted evidence also provides swept path analysis of existing loading bays and demonstrates that vehicles can continue to service KFC. Nevertheless, some minor amendment to bollards and road lining are required as reflected in the recommended highway conditions.
- 6.39 Notwithstanding the absence of objection from County Highways, in order to appreciate how the existing and resultant parking provision with the proposal would fit with current Parking Standards, officers requested an assessment. The assessment provided is as follows:

*Existing*

Land Use	Operator	Floor Area (m <sup>2</sup> )	Total Floor Area (m <sup>2</sup> )	Vehicular Parking Standard	Parking
A1 (Excluding Food Stores)	B&Q	4,862	6,319	Maximum 1 space per 20m <sup>2</sup>	316 Maximum
	Curry's / PC World	1,457			
A3 (excluding Transport Cafes)	Pizza Hut	355	355	Maximum 1 space per 5m <sup>2</sup>	71 Maximum
A5 Hot Food Takeaway	KFC	304.5	304.5	Maximum 1 space per 20m <sup>2</sup>	15 Maximum
<b>Total Permitted</b>					<b>402 Maximum</b>
<b>Parking Provision</b>					<b>311</b>
<i>Proportion of maximum standard</i>					<i>77.4%</i>

*Proposed:*

Development Scenario	Existing Parking Provision	Proposed Provision*	Maximum Standard for the Proposed use	Maximum Standard for the Existing use****	Future Maximum Parking Provision	Proportion of Maximum Standard
Development as A3	311	281	76 Maximum**	402 Maximum	478 Maximum	58.8%
Development as A5			19 Maximum***	402 Maximum	421 Maximum	66.7%

*Notes:*

\* = loss of approximately 30 spaces based on ten spaces provided within the red line

\*\* = based on 380m<sup>2</sup> and a maximum parking standard of 1 space per 5m<sup>2</sup>

\*\*\* = based on 380m<sup>2</sup> and a maximum parking standard of 1 space per 20m<sup>2</sup>

\*\*\*\* = as set out in Table 1

- 6.40 It is clear that at 77.4% of the maximum SPD requirement existing parking provision is lower than the maximum. Furthermore, that figure would be reduced to between 58.8% and 66.7% with the addition of the proposal. However, while that may be and although the concerns of B&Q and the St John's Ward Councillor are well understood, the technical evidence submitted

with the application, together with the consultation responses of County Highways, all lead officers to conclude, on the evidence, that the proposal would not result in residual cumulative impacts on the highway network that would be severe. There may also be additional queuing during busy periods within the car park and this may be inconvenient at times, and circulation routes around this part of the retail park would alter. Nevertheless, none of these considerations would result in unacceptable impacts on highway safety. Therefore, notwithstanding the resultant parking provision against the *maximum* provision set out in the Parking SPD, in accordance with Policy CP2 and Paragraph 111 of the Framework, Officers would advise that planning permission should not be refused on highway grounds.

#### 6.41 Public Health

6.42 Amongst other things, Paragraph 92 c) of the Framework states that planning decisions should aim to achieve healthy places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs. For example, through access to healthier food. Criterion d) of Policy HP1 Improving Health and Wellbeing states that the Council will work to improve the health and wellbeing of residents in Tendring, by working in collaboration with partners, including Public Health, to avoid a concentration of fast food takeaways where the number of outlets would be likely to harm public health objectives, particularly in deprived communities, local areas of poor health and near schools.

6.43 Within a short distance of the site there are existing Pizza Hut, KFC and McDonald's outlets, a public house and a Tesco Café. This is not however an uncommon arrangement on larger retail parks. While the applicant disagrees that the proposal would result in an over-concentration of fast food takeaways in this location, they have confirmed that their client would be happy to accept a condition to restrict the sale of hot food to ancillary sales, meaning that the premises could only be occupied by a coffee shop led operator, as opposed to one specialising in hot foot takeaways.

6.44 In terms of distance to schools the proposal is over 400m from the nearest – Cann Hall Primary to the south west and a similar distance from Great Clacton Junior School. The nearest senior school (White Hall Academy) is almost a mile away. Furthermore, the area in which the site is located is not especially deprived, and there is little evidence that it is an area of poor health. Moreover, healthier menus and nutritional information are commonly supplied by operators to ensure healthier diet choices can be made. Bringing all these considerations together, officers do not feel it would be reasonable to refuse planning permission due to public health concerns in this case.

#### 6.45 Visual Amenity

6.46 The proposal is for a small drive thru unit within an established retail park, adjacent to two structures that are similar in scale and form to the submitted broad parameter plans. The building would follow the peripheral siting of these smaller structures in an arc at the edge of the site. As such, the siting and indicative scale of building proposed would be appropriate to its context and it would not harm the character and appearance of the area. Detailed appearance is a matter that would be considered at reserved matters stage. As such, there is no conflict with Policies SP7 or SPL3 in this regard.

#### 6.47 Renewable Energy/Energy Efficiency Measures

6.48 Policy PPL10 requires that all development proposals should demonstrate how renewable energy solutions appropriate to the building's site and location have been included in the scheme. For new buildings, they should be designed to facilitate the retro-fitting of renewable energy installations. Measures to be considered include electric vehicle rapid charging points. Paragraph 112 e) of the Framework states that applications for development should be



designed to enable the charging of plug-in and other ultra-low emission vehicles in safe, accessible, and convenient locations.

6.49 The applicant has confirmed that they are content with a condition to require a scheme for the provision of electric vehicle charging points. Renewable energy and efficiency measures would be considered at reserved matters stage when detailed proposals would be drawn up, in order to fully comply with the requirements of Policy PPL10.

6.50 Drainage

6.51 The hard to soft landscaping ratio of the site would not change under the proposal (if anything it is likely to reduce) and the application is supported by a drainage strategy report which includes a preliminary foul and surface water drainage assessment. The report concludes that the proposal would not be at risk of flooding and that surface water could be managed by existing car park surface water infrastructure. Nevertheless, in order to comply with Policy SPL3 Part B criterion g), a condition should be attached to require precise details of a drainage scheme which incorporates sustainable drainage measures.

6.52 Other Matters

6.53 Amongst other things, Paragraph 81 of the Framework states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The proposal would create up to twelve full time equivalent jobs and there would be some limited economic benefits during construction. It would be right to attach substantial weight to these positive aspects of the development.

6.54 Because the site is remote from existing and planned residential development it would not give rise to harm to the living conditions of existing or future occupants, having regard to noise and disturbance. Nor would it therefore be necessary to restrict opening hours.

6.55 Conditions

6.56 If Members are minded to approve the application then standard time limits for outline permission/reserved matters submissions should be applied and the approved plans specified. The maximum gross floorspace should be restricted by condition. Appearance, scale, layout and landscaping are all reserved matters and so conditions are not necessary in these regards at this stage.

6.57 Pre-commencement conditions should require a Construction Management Plan, in the interests of highway safety. Delivery and Servicing and Car Park Management Plans should be required for the same reason. In order to prevent glare to road users and prevent unnecessary light pollution a condition is necessary to control external lighting. While appearance is a reserved matter, details of any external plant and/or machinery should be required in the interests of protecting visual and aural amenity.

6.58 A condition to require details of electric vehicle charging points has been agreed. The applicant is also agreeable to a condition to require the drive thru to be occupied by a coffee shop led operator with hot food sales being ancillary (as opposed to a hot food take-away led operator). While principally agreed in the context addressing policy HP1 health considerations as has been set out above, this is also necessary because County Highways confirm the application has been assessed on this basis, in terms of queuing and the effect upon the highway network.

6.59 In their consultation response County Highways also recommend conditions to require details of the internal parking layout and footways. However, layout is a reserved matter and so these details would fall to be considered under any subsequent detailed application. Cycle parking facilities should however be required to promote sustainable transport opportunities in order to comply with Policy CP1 and the Framework.

6.60 A condition is also recommended to require amendments to KFC's loading bay bollards/lining, in order to allow greater space for deliveries with the proposed development in the interests of highway safety. Amended kerbed islands as may be required should be required to be shown under any reserved matters layout.

## **7. Conclusion**

7.1 From the above the proposal is acceptable in principle. The sequential test has been passed and there is no requirement for an impact assessment. Subject to conditions, the proposal would not result in unacceptable impacts on highway safety, or residual cumulative impacts on the road network that would be severe. The proposal would not harm the character and appearance of the area, residential amenity, or public health considerations. As a result the proposal would not conflict with the provisions of the development plan or the Framework. There are economic benefits of the proposal that should be given significant weight, and no other material considerations indicate that planning permission should be refused.

## **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 two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. No development shall be commenced until plans and particulars of "the reserved matters" referred to in the above conditions relating to appearance, landscaping, layout and scale have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: The application as submitted does not provide sufficient particulars for consideration of these details.

4. The development hereby permitted shall be carried out in accordance with the following approved plans (strict accordance with regard to the location, broad accordance with regard to the parameters):

Site Location Plan, Drawing No 0100 Rev C  
Parameter Plan – Site Plan, Drawing No 0150 Rev E

Parameter Plan – Site Elevations, Drawing No 0151 Rev C  
Parameter Plan – 3D Views, Drawing No 0152 Rev C

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

5. The gross floorspace of the development hereby approved shall not exceed 380m<sup>2</sup>.

Reason: For the avoidance of doubt and in the interests of highway safety.

6. The development shall be occupied by a coffee shop led operator and sales of hot food shall be ancillary only.

Reason: In the interests of public health in accordance with Policy H1, and in the interests of highway safety because the highway implications of the proposal have been considered on this basis.

7. Prior to the commencement of development, a Construction Management Plan shall have been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i) The parking of vehicles of site operatives and visitors;
- ii) Loading and unloading of plant and materials;
- iii) Storage of plant and materials used in constructing the development, and;
- iv) Wheel and underbody washing facilities.

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

8. Prior to the commencement of development, details of electric vehicle charging points and cable enabled parking spaces to be provided shall be submitted to and approved in writing by the local planning authority. The charging points shall be installed in accordance with the approved details prior to first use and thereafter retained for the lifetime of the development.

Reason: In the interests of promoting sustainable travel opportunities and reducing carbon emissions in addressing climate change.

9. Prior to the commencement of development, a scheme for the disposal of foul and surface water shall have first been submitted to and approved in writing by the local planning authority. The scheme shall follow sustainable drainage principles and shall thereafter be installed prior to first use.

Reason: In order to ensure satisfactory drainage details, in the interests of reducing the risk of flooding elsewhere and to protect the water environment.

10. Prior to the commencement of development, the bollards at the KFC loading bay shall be relocated further from the kerb in order to provide additional overhang space for delivery vehicles, and amendments shall be made to the lining of the loading bay, in accordance with a scheme which shall have first been submitted to and approved in writing by the local planning authority. Thereafter, the scheme shall be implemented prior to the commencement of works.

Reason: In the interests of highway safety.

11. Prior to the above ground works, details of all external plant and equipment shall have first been submitted to and approved in writing by the local planning authority. The details shall include expected noise levels. Thereafter, external plant and equipment shall be installed only in accordance with the approved details.

Reason: In the interests of visual and aural amenity.

12. Prior to the first use, details of any external lighting shall have first been submitted to and approved in writing by the local planning authority. The scheme shall be so designed to ensure that lighting is shielded, and that users of the highway are not affected by dazzle and/or glare. Thereafter, external lighting shall be installed only in accordance with the approved details.

Reason: In the interests of highway safety and so as to prevent unnecessary light pollution.

13. As part of any reserved matters submission for the layout, any consequential changes required to kerbed parking islands shall be shown. Thereafter, kerbed parking islands shall be amended in accordance with the approved layout prior to first use.

Reason: In the interests of highway safety.

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

Reason: In order to promote sustainable transport.

15. Prior to first use, a Delivery and Servicing Plan and a Car Park Management Plan shall have first been submitted to and approved in writing by the Local Planning Authority. The Plans shall include the following and be adhered to at all times thereafter:

- a. Service vehicles servicing the site of maximum length 11.52 metres shall be used to service the coffee shop;
- b. Deliveries and refuse collection to the development to be managed in advance and limited to outside of operational hours only;
- c. An area to be kept clear outside operational hours to facilitate servicing and refuse collection for the coffee shop;
- d. A parking management strategy to be in place limiting customers to a maximum 90-minute stay only;
- e. All parking spaces to be provided for customers only. No staff parking to be permitted to park on site, and;
- f. Directional signage within the retail park.

Reason: In the interests of highway safety and protecting the amenity of the locality.

## 8.1 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. 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.
3. 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

4. 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.

## **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/>.