

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
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Application: 22/00890/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr and Mrs Boot

Address: Garfield Nurseries Thorpe Road Kirby Cross

Development: Proposed erection of one dwelling (in lieu of Prior Approval for 1 one-bedroom dwelling, subject of application 22/00045/COUNOT).

1. Town / Parish Council

FRINTON & WALTON
TOWN COUNCIL
24.06.2022

Recommends - Refusal - has not demonstrated need against LP6 and there is a 25% increase in size.

2. Consultation Responses

ECC Highways Dept
07.07.2022

It is noted that the proposal is for a one-bedroom dwelling and is similar to previous applications 17/00396/FUL and 22/00045/COUNOT that the Highway Authority did not object to. Access to the development will be from an established private access road, and it is not considered that the one-bedroom dwelling would give rise to a significant increase in vehicle movements to and from the site or result in a material change in the character of the traffic in the vicinity of the site. The proposal offers adequate off-street parking in line with the parking standards, considering these factors:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to mitigation and conditions in relation to cycle parking, Travel packs and provision of the vehicle parking area.

Environmental Protection
16.06.2022

No objection subject to conditions regarding a watching brief for any contamination, asbestos removal and disposal. The submitted CMS is acceptable.

UU Open Spaces
01.07.2022

No contribution is being requested on this occasion.

Tree & Landscape Officer
21.06.2022

The application site is set back a considerable distance from the highway and consequently does not feature in the public realm.

It appears that the position of the proposed new dwelling is such that it may necessitate the removal of part of a row of 'coppiced' Willows. These trees do not merit retention or formal legal protection by means of a tree preservation order.

No other important trees or other significant vegetation will be affected by the development proposal.

In terms of the visibility of the site in its setting it may be possible for there to be distant views of the application site from the Public Right of Way to the north of the application site. In this regard it would be desirable to secure new soft landscaping, on the northern boundary of the application site in order to soften and screen the proposed new dwelling and to ensure that it is satisfactorily assimilated into its setting.

3. Planning History

17/00396/FUL	Proposed detached dwelling, garage and bin/bike store.	Refused	12.06.2017
22/00045/COUNOT	Proposed conversion of an agricultural building into one dwellinghouse.	Prior Approval not required	02.03.2022

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework July 2021
National Planning Practice Guidance

Statutory guidance -Technical housing standards: nationally described space standard Published 27 March 2015

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 Plan (adopted January 2021)

SP1 Presumption in Favour of Sustainable Development
SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP3 Spatial Strategy for North Essex
SP4 Meeting Housing Needs
SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

SPL1 Managing Growth
SPL2 Settlement Development Boundaries
SPL3 Sustainable Design
LP1 Housing Supply
LP4 Housing Layout
LP7 Self-Build and Custom-Built Homes
PPL3 The Rural Landscape
PPL4 Biodiversity and Geodiversity
PPL5 Water Conservation, Drainage and Sewerage
PPL10 Renewable Energy Generation
CP1 Sustainable Transport and Accessibility

Supplementary Planning Guidance:

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)
Essex County Council Development Management Policies 2011
Essex County Council Parking Standards Design and Good Practice Guide 2009
Tendring Provision of Open Recreational Open Space for New Development SPD 2008 (Open Space and Play SPD)

Status of the Local Plan

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.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

5. Officer Appraisal

Site Description

The application site is located on the northern side of Thorpe Road (B1033), accessed via a long driveway between Nos 18 and 20 (The Willows farmhouse - a Grade II Listed Building) Thorpe Road. The site, is located outside of the defined settlement development boundary of Kirby Cross and is considered to be a countryside location. In terms of the 'blue line' site location plan as submitted with the application, the applicant owns a large area of land around the proposed site, (some 4 acres), comprising of a number of stables, a manège and open land to the rear which is used for the keeping of poultry and cropping of hay following the cessation of the nursery business which operated on the site. Further north is open agricultural land.

To the south is a small wildlife sanctuary, attached to The Willows, grazing and stabling are present to the rear of No. 18 Thorpe Road, with a mix of residential properties to the south and east of the site.

The site is not located within a Conservation Area and is sited within Flood Zone 1 which has a low risk of flooding.

Relevant History

In March 2022 it was deemed that Prior Approval (namely in regard to access, flooding, design, noise, natural light, space standards and contamination) for the conversion of an agricultural building (the subject of application ref: 22/00045/COUNOT), into one, 1. No. bed dwelling was not required. This scheme is referred to in the submitted Planning Statement as the 'fall back' scheme and is discussed in more detail in the appraisal of the application below.

Proposal

The application proposes one new 1 No. bed dwelling in lieu of the prior approval granted for the agricultural building which was the subject of application 22/00045/COUNOT. It is proposed to demolish this agricultural building and construct a new dwelling some 16m east of the existing building, along with associated amenity space and parking/turning area.

The proposed new dwelling is a bungalow with a uniform rectangular footprint and a dual pitched roof, with an eaves height of some 2.6m and a ridge height in the region of 4.8m. The proposed dwelling has a gross internal area of around 56sqm which is approximately 12sqm more than the existing agricultural building, around a 25% increase in floor space.

The proposed dwelling comprises of one bedroom, bathroom, and an open plan kitchen and lounge area.

The external materials proposed are brickwork and slate tiles.

Representations

Five representations have been received following a public consultation which included a site notice posted at the site and neighbour consultation letters sent out to the nearest adjacent properties.

Summary of matters raised:

- Objections are raised which were also raised as part of Garfield Nurseries previous planning application 17/00396/FUL which was refused. What has changed now? Applicant lives close to the site.
- Result in an increase in applications for other land owners nearby to submit applications for residential properties in similar backland locations
- The site is unsuitable for back land development and is outside the settlement development boundary
- Loss of privacy to nos 18 and 20 Thorpe Road, either side of the access way
- Construction traffic would need to access the site via an unsuitable dirt driveway/lane which is not strong enough or designed for this amount of vehicle use.
- Muddy conditions could build up on highway impacting on highway safety
- Increased vehicle movements could impact the structure of the nearby Grade II Listed Building, residential amenity and highway safety onto Thorpe Road impacting on the bus stop.
- The lane is already used by many commercial vehicles between the hours of 6am-10pm
- Concerns raised re access for vehicles to empty septic tank and for access for emergency vehicles.
- Fencing along the track had already been damaged by vehicles using this access way and larger construction vehicles could cause further damage allowing animals to escape
- Harris fencing to be put in place along the track for the duration of the construction
- Impact on views from the residential dwelling nearby
- Too much new development in the area
- Agricultural land and is not suitable for residential purposes.
- Area subject to surface water flooding
- Concerns raised with works required to be undertaken to connect services to new dwelling and impact on the accessway.

All applicable material considerations have been dealt with in the assessment section of the report.

Assessment

Principle of Development

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). The development plan for Tendring Council comprises of the adopted Tendring District Local Plan 2013-2033 and Beyond Sections 1 and 2.

Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements. The application site lies outside of the defined settlement boundary of Kirby Cross in the adopted 2013-2033 Local Plan. The proposed development would therefore extend outside the area planned to provide growth for this settlement. In view of the housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement.

Policy SPL2 supports new development within defined SDBs which would encourage sustainable patterns of growth and carefully control urban sprawl. Within a defined SDB, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans. Under Policy SPL1 Kirby Cross (including Walton and Frinton) is classified as a Smaller Urban Settlement, which benefits from a range of existing infrastructure and facilities and are considered to be able to support larger -scale growth, within the SDB.

With regard to development outside of the defined SDB, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies in this plan (covered below).

'Fallback Position' Assessment

In this case, Prior Approval has been granted for the conversion of the existing agricultural dwelling to a new dwelling. The existing building is sited within the wider site, within the blue line denoting ownership, but outside of the red edge defining the application site. This is considered by the applicant to provide a 'fall-back' position.

It is established in case law that permitted development rights can legitimately represent a fall-back position when considering alternative proposals for development of the same site. This is taken to be the area of land edged in red which denotes the application site.

The relevant legal principles relating to the fall-back position were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fall-back test:

"First whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is "yes" a comparison must be made between the proposed development and the fall-back use."

The notion of Class Q providing a lawful fall-back position was subsequently and comprehensively dealt with at the landmark Court of Appeal case, Mansell vs Tonbridge and Malling Borough Council [2017], which concluded that a realistic fall-back position in regard to Class Q would amount to a material consideration in the determining of an application.

The existing location of the agricultural building which was the subject of the Prior Approval application is within a built up group of existing buildings/stables. The proposed new dwelling, is some 16m further east than the existing building.

The existing building is also much smaller than the new dwelling proposed as per the comparison table below:

	22/00045/COUNOT (Prior Approval)	22/00890/FUL (New dwelling)
Siting	Building to the front of the existing stables, west of the site.	Building relocated to a new north position within the site and some 16m from the existing agricultural building
Access	Same	Same
Appearance	Concrete pre fab, steel framework and profile metal sheet roof	Brick and slate tiles
Ridge Height	3.4m	4.8m
Eaves Height	2.6m	2.5m
Gross Internal Area	44sqm	56sqm
Bedrooms	1	1

It is not therefore considered that the Prior Approval granted for the conversion of the existing agricultural building would amount to viable 'fall back' position in the circumstances of this application to justify the construction of a brand new larger dwelling in an alternative location within this countryside location.

Notwithstanding the above, it is noted that the existing building is sited outside the red edge application site, potentially precluding itself from being within the scope of this application, and also potentially outside of the control of any conditions that may be added to any grant of planning permission, making them potentially unenforceable, particularly with regard to the demolition of the existing agricultural building.

Secondly, given the size of the agricultural building (some GIA of 44sqm) and its location close to the existing buildings and stables, the Applicant themselves cast doubt on the likelihood of this prior approval conversion being undertaken with regards to the impact on residential amenity of a dwelling so close to the existing stables and other buildings. As part of the Applicant's submission the LPA's attention was drawn to potential issues of smell, noise and dust that could stem from the continued use of the area around the '22/00045/COUNOT' site (referred to above) for agricultural and equestrian purposes. Indeed, in the submitted Planning Statement accompanied by this application, it refers to *'The new build dwelling is proposed to be sited 16m east of the existing agricultural building. This is to ensure that the residential amenity (namely smell, noise and dust) is not affected by the continued use of the site for agricultural and equestrian purposes. This siting will still enable the applicants to tend to the land and animals'*.

In conclusion, having regard to the above, the application fails to meet 2 out of the 3 tests set out for a viable fall-back position in terms of the legal position set out earlier. Whilst there is a fall-back use in the form of the Prior Approval, which satisfies the first test, it is not considered that the proposed development is comparable to that approved under the Prior Approval, due to the proposed development bearing little resemblance to the fall-back position, in terms of its siting, size, scale and external appearance, as outlined above in the comparison table and is in a totally different location, larger in size and externally has the appearance of a brick built bungalow and not a modest converted agricultural building. Also due to the doubt casted by the applicant in terms of whether there is a realistic prospect of the prior approval scheme being implemented due to the location and size of the existing building in the context of the continued use of that area for agricultural and equestrian purposes, the second and third tests are not met. Therefore the fall-back position is given no weight in the assessment of this application.

Given the absence of a viable 'fall back' position, this application amounts to a new dwelling in the countryside outside of the SDB. The proposal is not for affordable housing, nor are there any special circumstances advanced to justify departing from the development plan. Whilst the Planning Statement refers to policies relating to self-build dwellings, it is not considered based on the description of development that this is what is being applied for and therefore this is not a matter for consideration within the assessment of this application. Also, for the avoidance of doubt and for the reasons outlined above the fall-back position is given no weight in the assessment of this application

and the 'one for one replacement' section of Policy LP7 is also therefore not relevant. In any event, that part of Policy LP7 requires a decision maker to assess the impacts of any qualifying development with other policy requirements in the TDC Local Plan (covered elsewhere in this report).

The proposal therefore gives rise to harm through failing to comply with a statutory plan-led approach to the location of future housing. In view of this, the proposal's conflict with policy gives rise to a significant degree of harm. The spatial strategy of Policy SP3 and place shaping principles of Policy SP7 reflect the Framework's sustainable development objectives and the proposal's conflict with both is given full weight. The principle of development is therefore not acceptable in this location.

Design, Scale and Impact on Character and Appearance

The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. (Para 126 NPPF).

Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness. The development should relate well to its site and surroundings particularly in relation to its siting, height, scale, massing, form, design and materials and should respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features.

The existing agricultural building within the wider site is of a modest concrete pre fab and steel framework construction with a profile metal sheet roof and has an agricultural appearance. The building is in close proximity to the other buildings within the wider holding, forming a cluster of buildings in that particular part of the holding. The proposed dwelling is a larger, more substantial brick built residential bungalow and is sited some 16m from the cluster of buildings within the wider holding, thus introducing new built form, on a new application site and into a sparsely developed rural area.

The design of the new bungalow, being a brick built dwelling is considered to be out of place in this rural countryside location and does not reflect or take reference from the simple barn like structures of the other buildings on the wider site, or indeed the wider area that has a rural and agricultural character to it. Whilst the planning statement states that the design takes reference from the new build dwellings further to the east, this development is a group of 10 dwellings of a two storey nature set within a cul de sac arrangement, bordered by residential dwellings to the east and south, and thus are characteristic of the surrounding area. It is also considered that these dwellings are some distance from the application site which is surrounded by open countryside and therefore the connection between the two developments is marginal at best.

The application dwelling therefore results in a stand-alone dwelling, substantial in form relative to the building the subject of prior approval LPA ref: 22/00045/COUNOT, and is located within countryside outside any settlement development boundary, very much estranged from the overall grain of development in the area and is considered to form a prominent and incongruous built form, out of character with the open rural nature of this countryside/agricultural area. The size, scale, location and external appearance of the new dwelling would be entirely at odds within the local context. The proposal fails to recognise or incorporate any layout or design features commensurate of the local character or sympathetic to the rural, edge of settlement location, thus resulting in harm to the overall open rural character of the countryside and is therefore contrary to the national and local plan policies identified above.

Trees and Landscaping

Policy SPL3 seeks new development that respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. The design and layout of the proposed development should maintain or enhance important existing site features of landscape, ecological, heritage or amenity value.

The application site is an undeveloped part of the wider site, owned by the applicant and as a consequence of the development a number of willow trees to the north boundary would need to be removed. It is not considered that these are worthy of formal protection but provide a degree of screening from the wider open land to the north. Had the application been considered to be acceptable, a full detailed hard and soft landscaping scheme would be required for the site, in particular to secure new soft landscaping, on the northern boundary of the application site in order to soften and screen the proposed new dwelling from the open views to the north. This could have been secured by condition.

Living Conditions of future Occupiers

In March 2015, the government launched a new approach to housing standards and published a new set of streamlined national technical standards. This included publication of Technical housing standards – nationally described space standards (2015) which sets out minimum gross internal floor space, bedroom sizes and storage requirements for new dwellings.

All new dwellings must therefore accord with the Technical housing standards. A one bedroom, one storey dwelling requires a minimum of 39-50sqm of Gross Internal Floorspace (GIA). From the plans submitted the proposed bungalow exceeds the requirements of the space standards. It is also considered that the internal layout is appropriate, with all habitable rooms having adequate natural light. The amenity area proposed is considered to meet the needs and expectations of future residents and is commensurate to the size of dwelling.

Overall the proposal is considered to secure a good standard of amenity and accommodation for future occupants of the proposed dwelling.

Impact on Residential Amenity

The NPPF, Paragraph 130 maintains that policies and decisions should result in new development that creates places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policy SPL3 seeks new development that is designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents, provision is made for adequate private amenity space, waste storage and recycling facilities and the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties. The application site is located within a fairly rural location, with residential dwellings some distance away fronting Thorpe Road.

A Construction Management Plan has been submitted with the application which outlines measures to minimise potential nuisance to nearby existing residents caused by the construction works. This CMP has regard to vehicle movements, working hours, storage of materials, on-site parking, site security, wheel washing facilities, noise control, use of machinery and mobile plant, piling works and both emission and dust control and has been found to be acceptable by the Council's Environmental Protection Officer. Due to the location of the site conditions are recommended in relation to land contamination in the form of a Watching Brief and the requirement for the safe removal of asbestos if present on site.

It is considered that the submitted CMP would mitigate the concerns raised by residents with regard to the construction aspect of the new dwelling. Therefore, it is not considered that this development would impact on the residential amenities of any neighbouring occupiers in any regard.

Highway and Parking Considerations

Paragraph 110 of the Framework seeks to ensure that safe and suitable access to a development site can be achieved for all users. Policy SP7 seeks new development to include parking facilities that are well integrated as part of the overall design. The sentiments of this policy are carried forward within Policies SPL3 and CP1. Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new development.

The Essex County Council Parking Standards 2009 require that dwellings with 1 bedroom be served by a minimum of 1 parking space. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied upon to provide a parking space, should measure 7 metres by 3 metres internally. The submitted plans show that the new dwelling would utilise the existing access from Thorpe Road and will be provided with one parking space that meets policy requirements. It is also considered that there is ample space within the wider site for the parking of other vehicles in relation to the stables operation and for emergency vehicles to access and turn within the wider site.

Subject to the use of conditions, the proposal would accord with Policies SPL3 and CP1 and the Highways and Parking SPDs. The proposal is not therefore considered to result in any unacceptable harm to highway safety.

Water Conservation, Drainage and Sewerage

Paragraph 170 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Furthermore, Paragraph 180 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.

Policy PPL5 states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer, which in this case there is not. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour. The dwelling would be connected to a Klargester BioDisc Domestic Sewage Treatment Plant.

Although details of the type of system have been submitted no FDA1 Foul drainage assessment form has been received. This makes it more difficult for the Council to be certain any application for an environmental permit would not be refused, or if any concerns of pollution or nuisance may arise. Nevertheless, the required details in this regard can be secured by way of a condition to any grant of planning permission.

Ecology and Biodiversity Implications

Policy PPL4 seeks to protect and enhance the local biodiversity and geodiversity. Whilst the site is not of any specific designation, it is considered to be within a fairly rural setting. The development has scope to include wildlife friendly, native planting and habitat boxes for roosting bats and nesting birds. These measures will contribute to biodiversity net-gain in accordance with Paragraph 174(d) of the NPPF (2021).

These measures can be adequately secured by suitable conditions to any grant of planning permission.

Renewable Energy

Policy PPL10 addresses renewable energy generation and energy efficiency measures for residential development involving the creation of one or more dwellings. Measures including electric car charging points should be considered. Paragraph 112 e) of the Framework states that

applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. This can reasonably be dealt with by the use of a planning condition to any grant of planning permission.

Heritage Matters

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act imposes a statutory duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest.

Paragraph 194 of the National Planning Policy Framework ("the Framework") requires applicants to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.

Paragraph 202 of the Framework adds that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

No Heritage statement has been submitted with the application in accordance with the above requirements and therefore no assessment has been made by the applicant on the impact of the proposal on the setting of the nearby Listed Building, The Willows farmhouse.

However given the existing access is unchanged along with the considerable separation distance from the proposed new dwelling and the Listed Building and the existing buildings both within the wider site and within neighbouring properties adjacent to the accessway, it is not considered that the proposed new dwelling, would have a harmful impact on the setting of the Listed Building.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS):

Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.

This new residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites, 5900 metres from Hamford Water SPA and RAMSAR and 4217 metres from Colne Estuary RAMSAR and SPA and Essex Estuaries SAC.

The Council's Habitats Regulation Assessment has concluded that, with the proposed mitigation, the project would not have an Adverse Effect on the Integrity of the sites included within the Essex Coast RAMS and therefore the proposal is in accordance with the Essex Coast RAMS SPD.

However, new housing development within the Zol would be likely to increase the number of recreational visitors to Colne Estuary; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

In accordance with Natural England's advice there is no requirement to consult them due to the specified mitigation.

A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Conclusion

While it is acknowledged that there is a valid Prior Approval consent to convert the existing agricultural building to a residential dwelling and thus establishing a residential use within the wider site. This building is not included within the red edge of the application site for this application and for the reasons outlined in the report it is not considered that a viable fall-back position exists. Furthermore the location of the dwelling, outside of any defined settlement development boundary, within a sparsely developed countryside area, coupled with its size, scale and external appearance is out of character with this rural countryside location.

Therefore taking into consideration the current planning policy position established by the adoption of the new Local Plan and the Council being able to comfortably demonstrate a five year housing land supply, the Council does not need to look beyond identified settlements to meet its housing requirement, and the proposal is harmful by failing to comply with a statutory plan-led approach to the location of future housing. Accordingly the application is recommended for refusal.

6. Recommendation

REFUSAL – FULL

7. Reasons for Refusal

1. Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements. The application site lies outside of any defined settlement boundary in the 2013-2033 Local Plan. The proposed development would therefore extend beyond the area planned to provide growth.

In view of the housing land supply position, the Council does not need to look beyond Identified settlements to meet its housing requirement. The proposal therefore gives rise to harm through failing to comply with a statutory plan-led approach to the location of future housing. In view of this, the proposal's conflict with policy gives rise to a significant degree of harm. The spatial strategy of Policy SP3 and place shaping principles of Policy SP7 reflect the National Planning Policy Framework (2021) sustainable development objectives and the proposal's conflict with both is given full weight. The principle of development is therefore not acceptable in this location. The availability of a building subject to an approved Prior Approval for Class Q is acknowledged, however due to the relocation of the dwelling and the increase in size, scale and external appearance, is given no weight in the decision making process as to set aside compliance with the development plan.

2. The proposed dwelling, by virtue of its size, scale, location and external appearance would result in a prominent and incongruous building that would fail to respect the local landscape character, resulting in a development that appears out of place in this rural countryside location. The proposed development is therefore detrimental to the rural character and appearance of the area. The development is therefore contrary to the objectives of the National Planning Policy Framework (2021) and Policy (Section 1) SP7 and Policies (Section 2) SPL3 and PPL3 of the Tendring District Local Plan.

8. Informatives

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

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