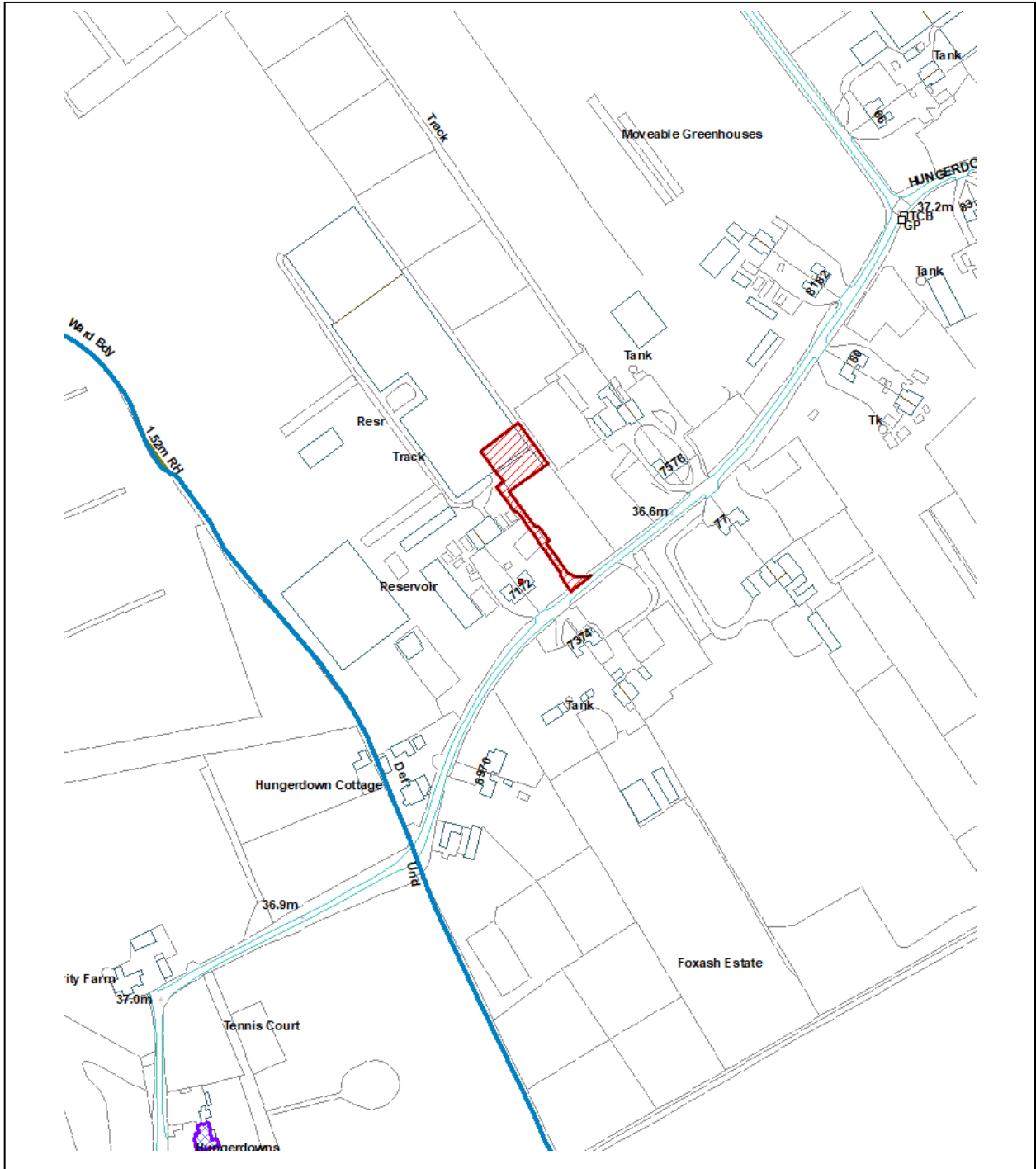


PLANNING COMMITTEE

16 FEBRUARY 2023

REPORT OF THE DIRECTOR OF PLANNING

**A.5 PLANNING APPLICATION – 22/01423/FUL – LAND AT 72 HUNGERDOWN LANE  
LAWFORD MANNINGTREE CO11 2LX**



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**Application:** 22/01423/FUL

**Town / Parish:** Lawford Parish Council

**Case Officer:** Michael Pingram

**Expiry Date:** 21<sup>st</sup> February 2023

**Applicant:** K Wazny

**Address:** Land at 72 Hungerdown Lane Lawford Manningtree CO11 2LX

**Development:** Erection of two 3-bedroom cottages (in lieu of Prior Approval for two x 3-bedroom dwellings, subject to application 21/00057/COUNOT).

## 1. Executive Summary

- 1.1 The application is referred to Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any defined settlement development boundary, and has a recommendation of approval.
- 1.2 The proposed dwelling is not considered to be materially different in regard to siting or footprint to the development approved under prior approval 21/00057/COUNOT and is similar in scale and appearance to dwellings and other built form within the wider area. The overall height of the proposal exceeds that of the existing building, however this is not considered to result in significant harm.
- 1.3 Following revisions to a previously refused scheme of a similar nature, namely to utilise the existing vehicular access point to the south-western corner of the site as opposed to forming a new access, Essex Highways Authority raise no objections.
- 1.4 The Council's Tree and Landscape Officer has also raised no concerns, while sufficient parking and private amenity space is provided, and there will not be significant harm to existing neighbouring amenities.

### **Recommendation:**

That the Planning Manager be authorised to Grant Planning Permission subject to conditions as stated in Section 8.2 (or as need to be varied) and those as may be deemed necessary by the Planning Manager.

## 2. Planning Policy

The following Local and National Planning Policies are relevant to this planning application.

National:

National Planning Policy Framework July 2021 (NPPF)

National Planning Practice Guidance (NPPG)

Local:

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

SP7 Place Shaping Principles

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

SPL1 Managing Growth

SPL3 Sustainable Design

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

HP5 Open Space, Sports & Recreation Facilities

DI1 Infrastructure Delivery and Impact Mitigation

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

### **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.

**3. Relevant Planning History**

01/01067/FUL	Proposed first floor side extension. Two storey side extension:- 1 1/2 storey rear extension together with associated alterations (demolition of existing single storey rear extension) to provide additional accommodation to existing house	Approved	22.08.2001
99/01824/FUL	Proposed extension to existing glasshouse to form agricultural storage shed	Approved	09.02.2000
21/00057/COUNOT	Application for prior approval for the conversion of an agricultural building into 2 dwellings.	Determination Prior Approval not required	17.03.2021
21/01728/FUL	Proposed erection of two 3-bedroom cottages, in lieu of Prior Approval for two x 3-bedroom dwellings	Refused	03.08.2022

**4. Consultations**

UU Open Spaces 06.10.2022	<p>Recommendation</p> <p>No contribution is being requested from Open Spaces on this occasion. Should there be further development at this site a contribution may be required in the future.</p>
ECC Highways Dept 06.10.2022	<p>The information submitted with the application has been fully assessed by the Highway Authority and conclusions reached based on a desktop study in conjunction with a previous site visit. Based on the submitted site plan it is noted that access onto Hungerdown Lane will remain unaltered for the host and proposed dwellings and has reverted back to previous proposal submitted under planning application: 21/00057/COUNOT. When compared with the former agricultural use, the level of activity will be no greater. The proposal provides adequate parking and turning for the proposed dwellings and proposes an informal passing place along the private drive, considering these factors:</p>

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

1. As indicated on the visibility splay plan and prior to occupation of the development, the private access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 97 metres to the north-east and 2.4 metres by 95 metres to the south-west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the private access is first used by vehicular traffic from the development and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

2. Prior to occupation of the development a minimum size 5 vehicular turning facility, (8m x 8m) shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

3. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

4. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, sealed and if required marked out in parking bays. The vehicle parking area and associated turning 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.

5. Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

6. The Cycle / Powered Two-wheeler parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.

	<p>Reason: To ensure appropriate cycle / powered two-wheeler parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.</p> <p>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.</p> <p>And recommends informatives.</p>
<p>Tree &amp; Landscape Officer 24.01.2023</p>	<p>Following a further site visit and consideration of my previous analysis of the impact of the proposed development on the local landscape character, made in respect of planning application 21/01728/FUL, it is considered that the position of the proposed dwellings and the degree to which they feature in the public realm is such that the proposed change will not affect the public's perception, use or enjoyment of the local environs.</p> <p>As previously stated there are no trees or other significant vegetation on the application site and as the application site is set back some distance from the highway the proposed dwellings will not be visible from the highway or from any adjacent Public Rights of Way.</p> <p>Consequently, although the proposed development will result in a minor change to the character of the area the degree of change will not significantly affect the wider landscape character.</p>

## 5. **Representations**

- 5.1 Lawford Parish Council have not provided any comments on the application.
- 5.2 There have been no other letters of representation received.

## 6. **Assessment**

### Site Description

- 6.1 The application relates to a building located to the north-east of the dwelling at Number 72 Hungerdown Lane, which falls within the Parish of Lawford. The application site constitutes an existing access from Hungerdown Lane and a driveway leading to an area of land which contains the building referred to above, a single storey agricultural building and a section of land to the rear of that building.
- 6.2 The wider site, shown as being in the same ownership of the proposal site contains a single semi-detached dwellinghouse (Number 72) and other associated outbuildings. Open paddock land extends to the north-west of the application site.
- 6.3 There is dense belt of vegetation on the north-eastern boundary and a boundary hedgerow adjacent to the highway. The character of the area is typically rural by nature, although it is noted there is sporadic built form throughout Hungerdown Lane that provides a more urban feel.

- 6.4 The site lies outside of the defined Settlement Development Boundary for Lawford within the adopted Local Plan 2013-2033.

#### Description of Proposal

- 6.5 This application seeks full planning permission for the replacement of a former agricultural building with two detached dwellings, each of which will be two storeys and served by three bedrooms.
- 6.6 Each of the proposed properties would have a gross floor area of 146sqm, resulting in a total floor area of 292sqm, and would represent an alternative development to the Prior Approval for two dwellings subject of application 21/00057/COUNOT, which had a gross floor area of approximately 316sqm. The site will be accessed by the existing access located to the south-western corner of the site.

#### Site History

- 6.7 Under planning reference 21/00057/COUNOT, prior approval permission was granted in March 2021 for the conversion of the agricultural building subject of this planning application, into two dwellings. This was allowed as assessed against Class Q of the Town & Country Planning (General Permitted Development) (England) Order (2015). Within the determination of this application the Council did not express any concern on the grounds for consideration of the notification application, namely access, flooding, design, noise or contamination.
- 6.8 In July 2022, under reference 21/01728/FUL, planning permission was refused for a near identical version of the scheme subject of this current planning application, with the only difference being that the previous application included the addition of a new access to the north-east of the existing access, whereas the current application demonstrates that the site will be accessed via the existing access to the south-western corner of the site.
- 6.9 Application 21/01728/FUL was refused for one reason; the proposed vehicular access and drive to the dwellings was situated adjacent to the north-east boundary where there is an established hedgerow that runs north-east and is in excess of 2 metres in height and set back less than 1 metre from the edge of carriageway. This hedgerow is outside of the control of the applicant, and accordingly the proposal led to the creation of a substandard access where the lack of suitable visibility from the proposed access for both emerging and approaching vehicles would result in an unacceptable degree of hazard to all road users to the detriment of general highway safety.

#### Principle of Development

- 6.10 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.
- 6.11 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 Lawford within 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.
- 6.12 Policy SPL2 supports new development within defined Settlement Development Boundary's (SDB) 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.

- 6.13 The proposal therefore results in conflict with policies SP3 and SPL2. In this case, however, the principle of residential development on this site has been established through the prior approval consent granted under planning permission 21/00057/COUNOT in March 2021. The current proposal represents an alternative design to the previously granted permission, which is considered to form a material consideration in respect of the application and denotes what is considered to be a viable fall-back position as outlined below.

Fallback Position – Material Consideration

- 6.14 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 and this was the case for the previous planning approval.
- 6.15 In summary, 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."*

- 6.16 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.
- 6.17 The table below provides a comparison between the original prior approval and the new dwelling proposed under this application:

	21/00057/COUNOT (Prior Approval)	22/01423/FUL (Current Application)
Siting	To the rear of the site, to the north-east of Number 72 Hungerdown Lane	Similar location, however footprint extends slightly further towards the north
Access	Via the existing access point to the south of the site from Hungerdown Lane	Via the existing access point to the south of the site from Hungerdown Lane
Appearance	Profile metal sheeting with steel framework	Eternit boarding, red brickwork, concrete tiles and UPVC windows
Ridge Height	5.4 metres	7.3 metres
Eaves Height	4.5 metres	4.55 metres
Footprint	316sqm	292sqm
Bedrooms	Both 3 bedrooms	Both 3 bedrooms

- 6.18 In conclusion, having regard to the above, the application is considered to meet all three tests set out for a viable fall-back position in terms of the legal position set out earlier. There is a fall-back use in the form of the prior approval and it is considered that the proposed development, is, in the main, comparable to that approved under the prior approval, in terms of its siting, size, scale and external appearance. As outlined above in the comparison table, there is a



noticeable increase in the ridge height of the new dwelling (although the eaves height remains of a similar size). However, the dwellings are set back in the site and the increased height will not appear significantly out of keeping, so this increase will appear acceptable in this rural location. Lastly there is a realistic prospect of the prior approval scheme being implemented. Therefore, the fall-back position is given significant weight in the assessment of this application.

- 6.19 Therefore given the circumstances of this case, along with the legal position and the prior approval fall-back position, the principle of development for a new dwelling on this site is considered to be acceptable subject to the detailed consideration against other relevant Local Plan policies.

### Visual Impacts

- 6.20 Paragraph 126 of the NPPF states that 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.
- 6.21 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.
- 6.22 Environmentally, it is necessary to consider the impact on the character and appearance of the countryside. The site is located in a largely rural area, however there are examples of residential development within the immediate vicinity, particularly to the east and west of the site, as well as other built form.
- 6.23 The proposed dwellings would replace an existing structure in the same location. The two detached dwellings would result in a net decrease of approximately 24sqm gross external floor area of buildings with no net increase in the number of dwellings.
- 6.24 The distance of the proposed dwellings from the highway and the front boundary hedgerows, approximately 45 metres, will help to obscure the view of the development from Hungerdown Lane, and the new dwellings will be seen in the context of the small group of buildings, namely the semi-detached pair of 71 and 72 Hungerdown Lane, and other buildings on the site. Therefore, in this particular instance it is considered that the location of the dwellings will have no greater impact than the existing agricultural building and it could be argued that the appearance of the dwellings would provide a better design solution.
- 6.25 The design of the two dwellings will see detached properties which incorporate key features to break up the overall bulk of the built form. These include front gables, dormer windows and soldier courses above windows. In addition, the use of a mix of materials including red brickwork and eternit boarding add to the overall acceptable design. Given this, and that the design is not necessarily out of keeping with the neighbouring properties, while the design may not necessarily provide for a distinctive rural feel, Officers do not consider this to be harmful enough to warrant recommending a reason for refusal.
- 6.26 In terms of the proposed scale, while it is noted the dwellings are 1.9 metres higher than the existing building, they are well set back in the site, and set amongst existing built form. Therefore, Officers consider the development would not appear overly incongruous when

considered in this context, and equally would not result in an overly harmful impact on the character and appearance of the area or landscape.

- 6.27 Policy LP4 requires that new residential developments will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area. The plans show that this comfortably adhered to for both dwellings.

#### Impact to Neighbouring Amenities

- 6.28 The NPPF, at paragraph 130 states that development should create 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 SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.
- 6.29 The site and proposed dwellings are sited a sufficient and significant distance from the few nearby neighbouring properties and will not result in any loss of sunlight or daylight. The separation distances of the proposed dwellings from neighbouring dwellings means that no loss of privacy or overlooking will occur to neighbouring properties. Therefore, it is considered that the proposed development would not result in any material harm to the living conditions of the occupants of neighbouring dwellings.
- 6.30 In addition to the above, a condition removing permitted development rights is considered necessary due to the potential impact and harm from extensions and outbuildings to the character and appearance of the landscape and rural character, and is suggested in the event the application is recommended for approval. This would be considered reasonable given the fact that the proposal effectively represents an alternative permission to that approved under the prior notification application which does not benefit from permitted development rights.
- 6.31 Overall the proposal is considered to secure a good standard of amenity for future occupants of the proposed dwelling and would not demonstrably harm the amenities of residents living in the vicinity.

#### Highway Safety Impacts

- 6.32 Paragraph 108 of the National Planning Policy Framework 2021 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Paragraph 111 of the Framework states that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 6.33 Policy SPL3 (Part B) of the Adopted Local Plan seeks to ensure that access to a new development site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and provision is made for adequate vehicle and cycle parking. Adopted Local Plan Policy CP2 states proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe.
- 6.34 Within the determination of the previous planning application (reference 21/01728/FUL), Essex Highways Authority objected to the proposal as it would lead to the creation of a new substandard access onto Hungerdown Lane, where the lack of suitable visibility from the proposed access for both emerging and approaching vehicles would result in an unacceptable degree of hazard to all road users to the detriment of general highway safety.

- 6.35 Following this decision, the proposed application has been revised to ensure that the site will be accessed via the existing access point to the south-western corner of the site off Hungerdown Lane, which aligns with the access agreed within planning permission 21/00057/COUNOT. Accordingly, Essex Highways Authority have confirmed that they have no objections subject to conditions relating to visibility splays, a vehicular turning facility, boundary planting, the vehicle parking area, and cycle parking provision.
- 6.36 Furthermore, the Council's Adopted Parking Standards require that for a dwelling with two or more bedrooms that a minimum of two parking spaces are required. Parking spaces should measure 5.5m x 2.9 metres. The submitted plans show that there is sufficient space within the site to provide the necessary parking for both dwellings.

#### Impact to Trees and Landscape

- 6.37 Paragraph 174 of the National Planning Policy Framework (2021) states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and should protect and enhance valued landscapes.
- 6.38 Policy PPL3 of the local plan requires that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted.
- 6.39 The Council's Tree and Landscapes Officer has been consulted, and has stated the following:

*"Following a further site visit and consideration of my previous analysis of the impact of the proposed development on the local landscape character, made in respect of planning application 21/01728/FUL, it is considered that the position of the proposed dwellings and the degree to which they feature in the public realm is such that the proposed change will not affect the public's perception, use or enjoyment of the local environs.*

*As previously stated there are no trees or other significant vegetation on the application site and as the application site is set back some distance from the highway the proposed dwellings will not be visible from the highway or from any adjacent Public Rights of Way.*

*Consequently, although the proposed development will result in a minor change to the character of the area the degree of change will not significantly affect the wider landscape character."*

- 6.40 Given these comments, Officers are content that the impact to trees and the areas landscape character will not be significantly harmful, although recommend conditions be included in relation to full details of soft landscaping.

#### Drainage

- 6.41 Paragraph 174 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 185 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.
- 6.42 Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required.

Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010.

- 6.43 Adopted Policy PPL5 of Section 2 of the Adopted Local Plan 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. 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.
- 6.44 In relation to non-mains drainage from non-major development the Environment Agency's advice is that to comply with the Framework and PPG on foul drainage matters, an LPA needs to be satisfied that foul drainage can be provided without adverse impact on the environment. This requires ensuring that both those environmental risks outside of the control of the permit and the relevant considerations in the PPG are addressed. The LPA should also be mindful that the developer will need to address foul drainage matters to get their environmental permit and meet building control regulations. Therefore, they should be confident that it is likely that any necessary permits and approvals can be successfully obtained.
- 6.45 Question 11 of the application form states that it is not intended to connect to a mains sewer. Instead, foul sewage will be disposed of by way of a package treatment plant; the declaration implies that a mains connection is not possible.
- 6.46 In considering the acceptability of the proposed non-mains drainage, the site is not located in close proximity to any dwelling, the site is not close to any designated site of importance to biodiversity, nor is it located within close proximity to any watercourse. The site is not located within a Drinking Water Safeguard Zone or a Source Protection Zone, and the site is sufficiently large enough to accommodate a soakaway. Furthermore, flows from a treatment plant serving two dwellings served by three bedrooms would be very low. Taking all these factors into account, and the absence of a mains connection in close proximity to the site, the proposed foul drainage arrangements are considered to be acceptable.

#### Financial Contributions – Recreational Disturbance

- 6.47 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.
- 6.48 The application scheme proposes a residential use on a site that lies within the Zone of Influence (Zoi) being approximately 2.7km away from Stour and Orwell Estuaries RAMSAR and SPA. New housing development within the Zoi would be likely to increase the number of recreational visitors to these sites 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.
- 6.49 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.

## Financial Contributions – Open Space and Play Space

- 6.50 Paragraph 54 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.
- 6.51 In line with the requirements of Section 2 Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space. The outcome of the consultation is that there is currently a deficit of 3.44 hectares of equipped play/formal open space in Lawford, however no contribution is requested on this occasion.

## **7. Conclusion**

- 7.1 The proposed demolition of an existing agricultural building and its replacement with two x 3-bedroom dwellings is acceptable in principle following the previous prior approval granted on the site for two dwellings under planning reference 21/00057/COUNOT.
- 7.2 The positioning of the dwellings is very similar to the existing agricultural building, while the level of floorspace will see a slight decrease. The dwellings will result in an increase in height in comparison to the existing building, however Officers do not consider this is significantly harmful to the character and appearance of the area.
- 7.3 There are no significant issues in respect to neighbouring amenities or harm to trees. Following a revision to the previous application to utilise only the existing access to the south-west of the site, Essex Highways Authority have removed their previous objections. Accordingly, the application is considered to be policy compliant and is recommended for approval.

## **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 three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved drawings / documents, and / or such other drawings / documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings / documents as may be subsequently approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard:

Drawing Number WHL-02 Revision D and documents titled 'Visibility Splays Plan' and 'Site Plan', 'Klargester BioDisc Domestic Sewage Treatment Plant', 'Construction Method Statement' and 'Planning Statement'.

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

- 3 Prior to occupation of the development, the private access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 97 metres to the north-east and 2.4 metres by 95 metres to the south-west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the private access is first used by vehicular traffic from the development and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety.

- 4 The proposed development shall not be occupied until such time as the vehicle parking area on the approved plans, has been hard surfaced and sealed. The vehicle parking area and associated turning 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 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.

- 5 Prior to above ground works of the development hereby approved, a hard and soft landscaping scheme shall have first been submitted to and agreed in writing by the local planning authority, including details of any boundary treatment. Thereafter, the hard landscaping and boundary treatment shall be implemented in accordance with the details which may have been agreed prior to first occupation. Soft landscaping shall be implemented in accordance with the details which may have been approved in the first planting season following substantial completion of the development. Any species planted becoming diseased or dying within 3 years of planting shall be replaced to the satisfaction of the local planning authority.

Reason - In the interests of visual amenity, biodiversity enhancement and landscape protection.

- 6 The approved landscaping scheme shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the local planning authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - In order to soften and mitigate the visual impact of the development on the remaining open fields beyond having regard to the semi-rural setting of the site.

- 7 Notwithstanding the provisions of Schedule 2 Part 1 Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extensions, additions, porches or other alterations to the dwellings shall be carried out except in complete accordance with details which shall previously have been approved, in writing, by the Local Planning Authority following the submission of a planning application for such development.

Reason - To minimise and retain control over the amount of development in this rural location and to maintain sustainable development principles.

### 8.3 Informatives

#### Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

#### Highways 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.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

2: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area, it covers, and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

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.

## 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.
- 9.12 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

### **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/>.