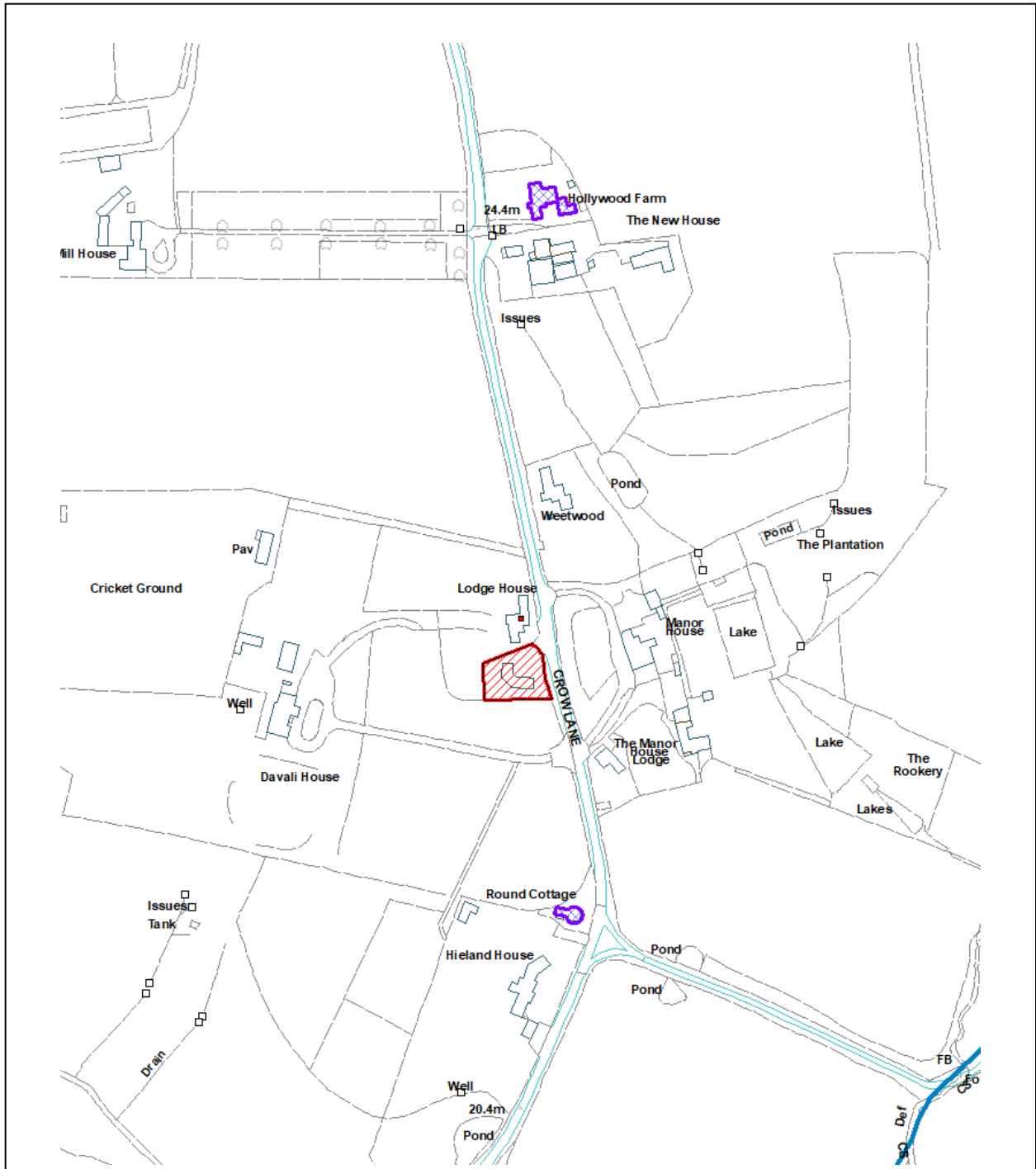


PLANNING COMMITTEE

16th February 2023

REPORT OF THE DIRECTOR (PLANNING)

A.2 PLANNING APPLICATION – 22/01286/FUL – THE LODGE HOUSE CROW LANE TENDRING CLACTON ON SEA CO16 9AP



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Application: 22/01286/FUL

Town / Parish: Tendring Parish Council

Applicant: Group Captain (Rtd) J.E. Warner OBE and Mrs N. Warner

Address: The Lodge House Crow Lane Tendring Clacton On Sea Essex CO16 9AP

Development: Replacement dwelling following approval (under planning permission 21/01957/FUL) for conversion of office/garage building into a dwelling.

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 so materially different in regards to siting and footprint compared to the existing building on site which benefits from planning approval for a conversion (from office/garage) into a dwelling (under TDC planning ref 21/01957/FUL). Moreover, in respect of proposed design and external appearance, the proposal is considered to be acceptable and will meet the design expectations of relevant local and national policies. The maximum ridge height of the proposal marginally exceeds the ridge height of the existing building by 50cm (currently the ridge height is 4.7m and the proposal will increase the height to 5.2m). The proposed dwelling will continue to utilise an existing private access off Crow Lane with good visibility splays in both directions.
- 1.3 In the absence of any material harm resulting from the development in regards to its individual appearance, impact on the wider streetscene and the character and appearance of the rural landscape, the application is recommended for approval. Furthermore, the proposal would not result in any detrimental impact on neighbour amenity and there are no concerns raised in regard to parking and highway safety matters.

Recommendation:

That the Planning Manager be authorised to grant planning permission subject to the conditions as stated at paragraph 8.2, or varied as is necessary to ensure the wording is enforceable, precise and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained.

2. **Planning Policy**

- 2.1 The following Local and National Planning Policies are relevant to this planning application.
- 2.2 National:

National Planning Policy Framework July 2021 (NPPF)
National Planning Practice Guidance (NPPG)
- 2.3 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
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
HP5	Open Space, Sports & Recreation Facilities
DI1	Infrastructure Delivery and Impact Mitigation
LP1	Housing Supply
LP4	Housing Layout
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL9	Listed Buildings
PPL10	Renewable Energy Generation
CP1	Sustainable Transport and Accessibility

2.4 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.

3. Relevant Planning History

91/00497/FUL	Extensions and minor alterations to dwelling house	Approved	26.06.1991
03/01223/FUL	Extension to kitchen/breakfast room	Approved	06.08.2003
20/00661/FUL	Conversion of office/garage into a dwelling.	Refused	31.07.2020
21/00151/COUNOT	Proposed conversion of offices into a dwelling.	Determination	22.03.2021
21/01957/FUL	Proposed conversion of office/garage into a dwelling (revised submission following prior approval of application 21/00151/COUNOT for use of building as a dwelling)	Approved	23.02.2022

4. Consultations

Parish Council	<p>Tendring Parish Council resolved to object on a number of grounds as outlined below:</p> <p>Overdevelopment. TDC will be aware of the history of this site, in particular these three previous planning applications:</p> <ol style="list-style-type: none"> (1) 20/00661/FUL, an application to convert from office use to residential, which was refused primarily because the site is outside the settlement boundary in the local plan (both the old one in force at that time and the then-emerging plan, since adopted) (2) 21/00151/COUNOT, the granting of permission as permitted development (Class O) to convert just that part of the current building that was used as offices to residential, despite the fact that the amount converted would have been impractical as an independent residence. (3) 21/01957/FUL, an application to replace the Class O permitted development above, seeking to convert the whole
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building to residential use. Essentially this was the same application as 20/00661/FUL but this time it was approved by TDC.

Having got to the point where approval has now been granted for what the applicants originally asked for, we now have the current application to further increase the size of the property – at the front, back and corner – through a complete demolition and rebuild. The planning statement suggests that the new property would only come slightly forward of the current building line however this is misleading. The current property effectively stops almost 6 metres behind where the new proposal comes to, with the structure in front of that being little more than a lean-to structure, as this picture shows:



The new proposal would bring the full roof height almost 6 metres closer to the road than the existing structure, with the effect of visually doubling the length of that wing as seen from the road. There is also an increase in size to the back, which will affect the roof view on the right-hand side of this picture, and an infill of the angled section in the middle.

The overall effect will be to significantly increase the scale and visual presence of this outbuilding, completely changing its character – and making the residential space massively greater than that which was allowed under the Class O conversion, which was effectively only one downstairs room and the roof space room.

The use of Class O appears to have been a means to an end. Whilst the approval of 21/01957/FUL to use the whole current building would have resulted in no external change and so did not result in an objection from Tendring Parish Council, this latest change pushes the scale of what we believe to be acceptable development on this site too far and starts to have an impact on the character of the area.

Related to this increase in accommodation size, we also have concerns over drainage, as the amount of land indicated on the plan attached to the application does not show sufficient room to install the waste treatment system and associated drainage field at a sufficient distance from the building that would meet current regulations.

Further to that, an increase in accommodation likely means an increase in traffic use – both in terms of vehicle movements in and out of the site and also parking. The current entrance to Lodge House would in effect be a shared entrance for both properties and,

	<p>at its current size and position, looks unsuitable for increased traffic volumes, given the National Speed Limit that applies on Crow Lane.</p> <p>The need to provide parking for Lodge House would also restrict the ability of vehicles to manoeuvre on site in a way that would allow safe access and exit always in a forward direction – and we have concerns over visibility splays.</p> <p>In summary, Tendring Parish Council believes that the new proposal is of a scale that would not be acceptable to TDC as a new build on this site (as evidenced by the refusal of the original smaller proposal 20/00661/FUL) and which massively exceeds the amount of residential conversion that was legally possible under Class O without formal permission.</p> <p>As such, Tendring Parish Council believe that any previous permission granted for the building as it currently stands should not be used as the baseline point for assessing this enlargement, but that it should be seen and assessed as a new build application in its own right.</p> <p>As an additional comment, Tendring Parish Council would ask that, if TDC decide to grant permission, that it remove all permitted development rights for further extension of any kind – including in the roof space – so that a full assessment can be made of any further enlargement application.</p> <p>Officer response: <i>All the above concerns and comments will be addressed in the main body of the report under the 'Assessment' section below.</i></p>
ECC Highways Dept	<p>Having reviewed the submitted information, I note vehicular access for the proposed 3-bedroom dwelling would be gained via an existing access and therefore it would intensify its use and so I need to be comfortable sufficient visibility would be provided within highway and/or land under the control of the applicant.</p> <p>With this in mind, ECC Highways requested the following:</p> <ol style="list-style-type: none"> 1. A scale drawing showing the full extent of the visibility splays proposed. The splays should be based on the posted speed limit or the 85th percentile vehicle speed ascertained from a speed survey. Extent of highway should be coloured (see item 3 below) 2. The results of a speed survey if one is conducted to establish the required visibility. 3. The results of a formal extent of highway search (including the covering letter and/or email) 4. In relation to the parking provision and shared turning area there appears to be limited space for any visitor parking for either property and the impact that potentially will have on the shared turning area that will need to serve the host and proposed dwelling. <p>Officer response: <i>A previous planning application for the conversion (from office/garage) into a 3 bedroom dwelling was approved in February 2022 under TDC planning ref 21/01957/FUL. This extant permission, if implemented, will utilise exactly the same access as proposed under the latest proposal the subject of this report. As part</i></p>

	<p><i>of ECC Highways comments on application 21/01957/FUL they raised no objection and explained that no new or altered means of access is proposed. ECC Highways also confirmed that the previous proposal retains adequate parking and turning for the host and proposed dwelling, they then concluded stating 'considering these factors, from a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to mitigation and conditions'. The current proposal will retain the same amount of hardstanding areas to the north of the proposed dwelling and to the south of the existing house (compared to the previous conversion scheme), as such in all respects it would be unreasonable to request the above information from the Applicant in this instance. More justification on highways safety is available in the 'Highway Safety/Parking' section below.</i></p>
<p>Tree & Landscape Officer 19.08.2022</p>	<p>The application site currently forms part of the residential curtilage of the host property. The boundary of the application site with Crow Lane is demarcated by established vegetation containing two established trees and two small trees. This vegetation currently provides a good level of screening.</p> <p>The retention of the trees is not threatened by the development proposal.</p> <p>No important trees or other significant vegetation will be adversely affected by the development proposal</p> <p>If the existing trees are retained there will be little need to secure additional soft landscaping associated with the development proposal.</p>
<p>UU Open Spaces 07.09.2022</p>	<p>There is currently a deficit of '1.33 hectares of equipped play/formal open space in the village of Tendring.</p> <p>There is only one play area in Tendring located on Heath Road. Recommendation: No contribution is being requested on this occasion.</p>
<p>Environmental Protection</p>	<p>Confirmed that they have no comments to make</p>

5. **Representations**

No third party objections have been received following a public consultation which included a site notice posted at the site and neighbouring consultation letters sent out to the adjacent or nearby properties.

6. **Assessment**

Site Context

- 6.1 Lodge House is the main property on site and consists of a large, early twentieth century detached dwelling located on the western side of Crow Lane. The property is positioned in the centre of a large plot, with a vehicular entrance to the south east of the house. The site

is verdant and benefits from established planting along the front boundary and within the rear garden, visible as a backdrop behind the wall which separates the front/rear gardens.

- 6.2 To the left hand side of the front garden (as one is facing the site) is a large double-range garage with an office suite and associated store at first floor level, this building has a semi-octagonal footprint. The building benefits from a Prior Approval application to convert the office part of it to a dwelling, as well as planning permission for the conversion of office and garage (i.e. the entire building) into a 3 bedroom dwelling (latter granted in February 2022).
- 6.3 The site is located amongst a small cluster of detached houses along this stretch of Crow Lane. The immediate and wider surrounding area is sparsely developed and the character of Crown Lane and the surrounding area consist of medium to large single dwellings, set in large to very large plots, some are set back and others are directly fronting Crow Lane. The area is rural in nature and Crow Lane as well as the wider hinterland has a high level of visual amenity. The site is located in flood zone 1 (low risk of flooding).

Proposal

- 6.4 Planning permission is sought for a replacement dwelling (following approval under planning permission 21/01957/FUL) for conversion of office/garage building into a 3 bedroom dwelling). In other words, the proposal is to demolish the existing building and construct a new 3 bedroom bungalow in its place.
- 6.5 The proposed dwelling will be located in a similar position to the existing office/garage building to be demolished, and will consist of broadly an L-shaped footprint (again similar to the existing office/garage building). The new dwelling will be slightly larger compared to the existing building (see comparison table below) and will be finished in a mixture of red facing brick, render, timber cladding/boarding and plain tiles.
- 6.6 In terms of access, the site is served by an existing access road off Crow Lane and it is proposed to utilise this existing access for the new dwelling, as per the previous approval ref 21/01957/FUL.
- 6.7 The applicant has explained that the conversion of the existing building can provide for a good level of construction and finish, but will not necessarily meet the standards they were hoping to achieve. In this respect, the applicants consider that a purpose designed structure will be of a similar cost to the conversion but will enable far improved sustainable energy levels and higher specification.

Principle of Development

- 6.8 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.
- 6.9 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 nearby Tendring 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.
- 6.10 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 the village of Tendring is classified as a Smaller Rural Settlement (the bottom of the settlement hierarchy), and is therefore considered to be the least sustainable locations for growth because there is a concern that encouraging too much development in these areas will only serve to increase the number of people having to rely on cars to go about their everyday lives. However, these villages are still under pressure to grow and some small-scale development which is sympathetic to the rural and often historic character of the settlement might help younger people to continue to live in the area, keep local shops and services viable and help bring balance to an ageing population.

- 6.11 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.
- 6.12 The proposal therefore results in conflict with policies SP3 and SPL2. In this case however both a Prior Approval has been granted for the conversion of the office part of the building into residential, as well as full planning permission for the conversion of the entire building into a 3 bedroom dwelling. Being a new build, this proposal represents an alternative design compared to the existing building on site. This 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:

- 6.13 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.
- 6.14 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."

- 6.15 The table below provides a comparison between the previous conversion scheme and the new dwelling proposed under this application:

	21/01957/FUL (Conversion from office/garage to 3-bed dwelling)	22/01286/FUL (New dwelling)
Siting	See 'Site Context' section above	Similar albeit slightly larger footprint and location compared to existing building
Access	The site is served by an existing access road off Crow Lane. Proposed 3-bed conversion scheme will utilise existing access	The site is served by an existing access road off Crow Lane. The new 3-bedroom dwelling will utilise existing access
Appearance	Single storey, cream render, white window frames, tiled roof (dual	Single storey, red facing brick, render, timber cladding/boarding and plain tiles (dual pitched with hipped ends) –

	pitched with hipped ends)	subordinate gable end at rear
Ridge Height	4.7m	5.2m
Eaves Height	2.3m	2.3m
Floor area	155sqm	166sqm
Bedrooms	3	3

- 6.16 The 21/01957/FUL permission remains extant (permission granted in Feb 2022 with a three year time limit) and there is therefore a lawful ability to implement this permission. Clearly with an extant planning permission on site the only rational conclusion can be that there is a likelihood or real prospect of this permission being implemented and the table above contains a comparison between the two schemes.
- 6.17 In conclusion, having regard to the above, the application is considered to meet all 3 tests set out for a viable fall-back position in terms of the legal position set out earlier.
- 6.18 However, this alternative design is still subject to the detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans (covered below).

Layout, Scale and Appearance

- 6.19 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).
- 6.20 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.
- 6.21 The proposed dwelling will be single storey with a dual pitched roof with hipped ends at both the eastern (Crow Lane) and south western corner. There will be a well-defined front entrance facing the parking area immediately to the north-east. The new dwelling, being single storey with hipped end roofs is considered to result in an appropriate form of development in this context. The Parish Council have raised concerns in respect of the design, in particular the eastern projection of the proposed dwelling (facing Crow Lane). There is an existing Conifer hedge along Crow Lane which will can retained as this part of the new dwelling is set a sufficient distance away from the eastern boundary. There is also a well-established hedge along the southern boundary of the site. Both landscape features provide effective screening and the hipped end roof design of the new dwelling will future minimise bulk as seen from Crow Lane and the approach to the site from the south. It is accepted that there will be additional roof volume slightly closer to Crow Lane, as such it is considered necessary and reasonable to impose a planning condition ensuring the Conifer hedge along Crow Lane is retained in perpetuity (should planning permission be granted).
- 6.22 Having regard to the above policy considerations and the fallback position as outlined above, subject to conditions the proposal is considered to be policy compliant in terms of its scale, layout, appearance and design. The proposal will be consistent with Paragraph 124 of the Framework, and, because it would not be at odds with the character and appearance of the area it would accord with the overall thrust of Policies SP7 and SPL3.

Highway Safety/Parking

- 6.23 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.
- 6.24 The Essex County Council (ECC) Parking Standards 2009 require that dwellings with 2 or more bedrooms be served by a minimum of 2 parking spaces. 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.
- 6.25 The submitted plans show that the new dwelling would utilise the existing access off Crow Lane (same arrangement as the previous approval for a 3 bedroom conversion scheme) and there will be sufficient turning space in the form of a hardstanding, as well as space further to the south and north (of the turning area) to provide the required two parking spaces each for the new dwelling and the existing dwelling (Lodge House), resulting in no conflict with the above mentioned policy requirements. ECC Highways were consulted and although they have asked for more information (as outlined in the consultation section above), these requests are considered to be unreasonable because a previous planning application for the conversion (from office/garage) into a 3 bedroom dwelling was approved in February 2022 under TDC planning ref 21/01957/FUL. This extant approval will utilise exactly the same access as proposed under the latest proposal the subject of this report, and there will be a similar amount of hardstanding available for the required parking and turning areas. As part of ECC Highways comments on application 21/01957/FUL they raised no objection and explained that no new or altered means of access is proposed. ECC Highways also confirmed that the previous proposal retains adequate parking and turning for the host and proposed dwelling.
- 6.26 In conclusion, subject to the use of necessary and reasonable conditions previously imposed (on the conversion scheme), 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.

Trees and Landscaping

- 6.27 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.
- 6.28 The Councils Trees and Landscape officer's view is that the retention of the trees on site is not threatened by the development proposal and no important trees or other significant vegetation will be adversely affected by the development proposal. The proposal is therefore considered to be acceptable from a trees and landscape perspective subject to a condition securing the retention of the Conifer hedge along Crow Lane for the reasons outlined in the 'Layout, Scale and Appearance' section above.

Living Conditions of future Occupiers

- 6.29 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.

- 6.30 All new dwellings must therefore accord with the Technical housing standards. A three bedroom, one storey dwelling requires a minimum of 74-95sqm of Gross Internal Floorspace (GIA). From the plans submitted the proposed building meets the requirements of the space standards. It is also considered that the internal layout is appropriate, with all habitable rooms having adequate natural light.
- 6.31 Amenity spaces in the locale vary in both size and configuration and it is considered that the amenity area proposed is considered to meet the needs and expectations of residents and is commensurate to the size of dwelling and the character of the area.
- 6.32 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

- 6.33 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.
- 6.34 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.
- 6.35 The application site is located within a fairly rural location, neighboured by large dwellings to the north (Lodge House), east and south-west (however the two dwelling to the east and south west are a considerable distance away from the application site).
- 6.36 The proposed development has been designed to minimise any overlooking or loss of privacy issues, being single storey only with main habitable room windows angled away from the area to the north, or set a sufficient distance away from nearby dwellings (specifically the nearest dwelling at Lodge House).
- 6.37 Therefore, given the proposed orientation of the new dwelling, in relation to the existing buildings, the restrained scale, bulk and height of the proposed dwelling and the high likelihood of a residential use occurring on the site in any event, it is not considered that this development would impact on the residential amenities of these neighbouring occupiers in any regard.

Water Conservation, Drainage and Sewerage

- 6.38 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.
- 6.39 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.

- 6.40 The application form, planning statement and domestic sewerage treatment plant information accompanying the application has stated that the development would be connected to a package water treatment plant. The Parish Council is concerned about a lack of space to accommodate the waste treatment system, however the submitted drawings, and specifically the site plan indicate a sizeable area to the rear (west) of the dwelling, within the red line, that is considered to be large enough to accommodate the waste treatment system. Technical matters in respect of private sewage treatment facilities are covered in separate legislation however it is nevertheless considered necessary and reasonable to impose a planning condition seeking to ensure the foul drainage from the development shall be to its own private sewage treatment plant/s which shall be installed and be functionally available for use prior to occupation of the development (should planning permission be granted). This is to ensure that adequate and satisfactory means of foul drainage is provided to avoid pollution and or harm to the environment.

Ecology and Biodiversity Implications

- 6.41 Policy PPL4 seeks to protect and enhance the local biodiversity and geodiversity. The site is not of any specific designation, there is an existing building on site (proposed to be demolished and with a fall-back position to be used as residential). Given the residential land use immediately to the north and the circumstances on site (existing building in use with a residential use fallback position), it is considered that the proposal will not result in a loss of biodiversity or that there will be a harmful impact on ecological features on or nearby the site.

Renewable Energy

- 6.42 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.
- 6.43 The applicant has explained that the main reason for opting to go with a new build proposal (as oppose to the conversion scheme) is because the former will enable them to implement a dwelling with far improved sustainable energy levels and higher specification. As such a condition seeking a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development is considered reasonable and necessary and will be recommended for inclusion in the event that planning permission is granted.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS):

- 6.44 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.
- 6.45 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, 3500 metres from Hamford Water SPA and RAMSAR and 2200 metres from Colne Estuary RAMSAR and SPA and Essex Estuaries SAC.
- 6.46 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.

- 6.47 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.
- 6.48 In accordance with Natural England's advice there is no requirement to consult them due to the specified mitigation.
- 6.49 A unilateral undertaking has been prepared and completed to secure this obligation which ensures 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

- 6.50 Insofar as settlement development hierarchy policies is concerned, it is considered that the proposed development is not consistent with the National and Local Plan Policies identified above, but approval is recommended given the material consideration of the planning history and fall back. The proposal, subject to conditions, is in accordance with all other relevant planning policies and guidance notes. In the absence of material harm resulting from the proposal the application is recommended for approval.

7. Recommendation

- 7.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives as set out in the table below:

7.2 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 plan(s):

Site Plan
Drawing no. WLH-01 Revision B

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

3. The existing Conifer Hedge located along the eastern boundary of the site facing Crow Lane shall be retained in perpetuity at a minimum height 1.8m for the entire length of the eastern boundary of the site up to the southernmost pillar of the curved brick wall at the site access, except as may be necessary to be altered to comply with the requirements of any other conditions of this permission. Should the Conifer hedge die, seriously damaged or seriously diseased it shall be replaced in the next planting season with others of similar size and same species and retained in perpetuity.

REASON: To enable existing landscaping to be protected and retained in the interests of visual amenity.

4. 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 alterations to the dwelling or its roof shall be carried out and no outbuildings, enclosures, swimming or other pools shall be erected 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

5. No development shall commence above slab level until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme such include as a minimum to achieve:-
 - Agreement of provisions to ensure no more than 105 litres per person per day is used
 - Agreement of carbon level
 - Agreement of provisions to ensure the development is zero carbon ready
 - An electric car charging points per dwelling
 - A Water-butt per dwelling
 - Compost bin per dwelling
 - Agreement of heating of each dwelling/building
 - Agreement of scheme for waste reduction

The scheme shall be fully implemented prior to the first occupancy of the development unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

REASON: To enhance the sustainability of the development through better use of water, energy and resources reduce harm to the environment and result in wider public benefit in accordance with the NPPF.

6. All foul drainage from the development hereby approved shall be to its own private sewage treatment plant/s which shall be installed and be functionally available for use prior to the development to which it relates being first occupied/used.

REASON: To ensure that an adequate and satisfactory means of foul drainage is provided to avoid pollution, in the absence of a foul sewer.

7. There shall be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the first occupation of the dwellinghouse hereby approved and shall be retained free of obstruction above 800mm at all times.

REASON: To provide adequate inter-visibility between users of the access and the public highway in the interests of highway safety.

8. Prior to the occupation of the dwelling hereby approved, the shared private drive shall be constructed to a minimum width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Highway Boundary and no unbound material shall be used in the construction of the surface treatment.

REASON: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety.

9. At no point shall gates be provided at the vehicular access. The access shall remain open and free for use thereafter.

REASON: Due to the nature of the access off Crow Lane and the limited space for waiting in front of potential obstructions at the access, and to give vehicles using the access free and unhindered access to and from the highway in the interest of highway safety.

10. As indicated on drawing no. WLH-01 Revision B, 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.

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.

Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017. Please note that any subsequent variation / removal of condition applications (s73 applications) will require a new legal agreement to secure this obligation unless the development has commenced (subject to all necessary condition discharges) and the contribution has already been paid.

Highways:-

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

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.

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.

Additional Considerations

Public Sector Equality Duty (PSED)

- a. 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:
 - b. A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - c. 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
 - d. C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- e. 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.
- f. 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.
- g. 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

- h. 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.
- i. 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).
- j. 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

- k. 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.

- I. 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.

11. Background Papers

- a. 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/>.