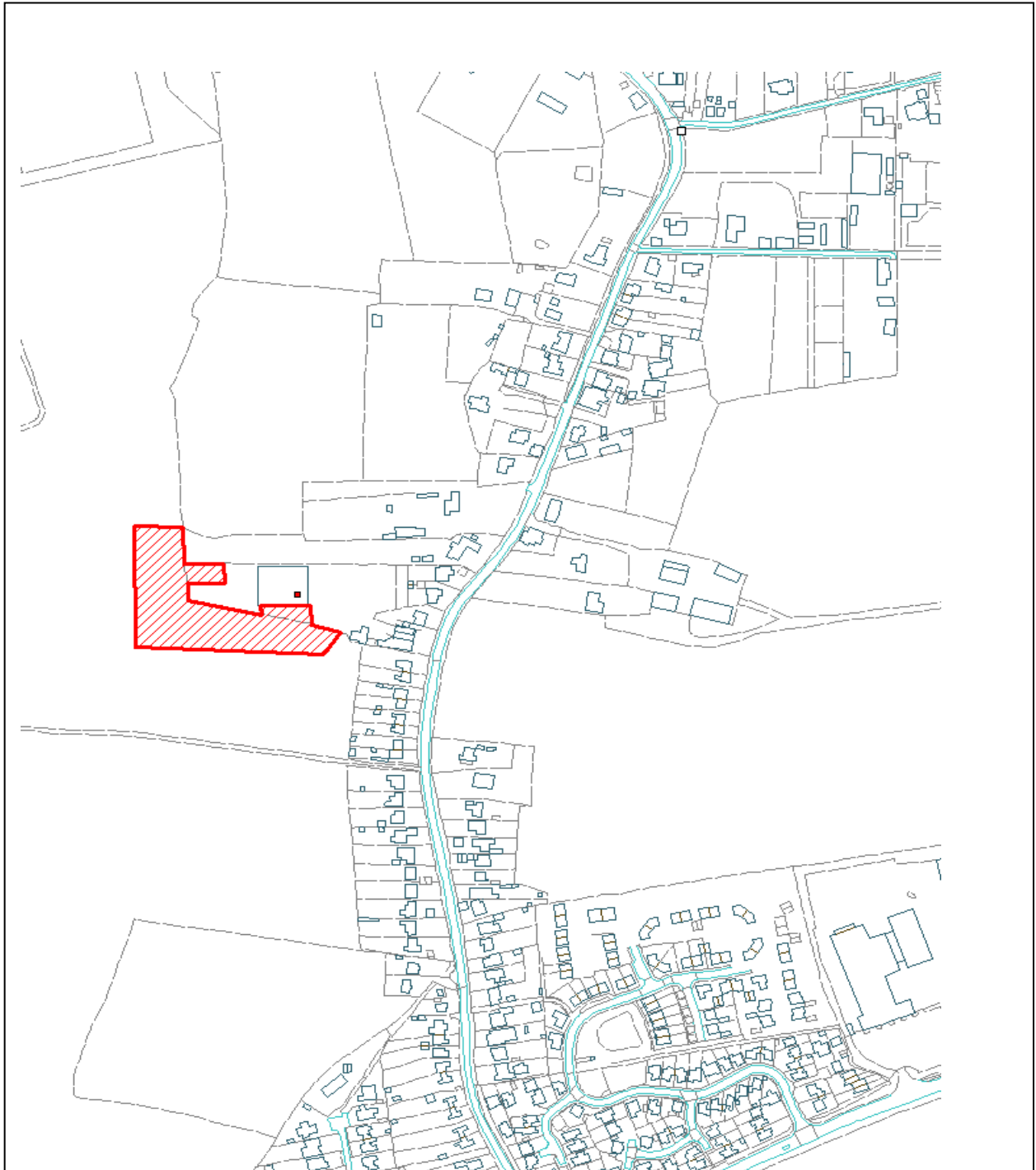


PLANNING COMMITTEE

07th DECEMBER 2021

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.2 PLANNING APPLICATION – 21/00186/FUL – CROSSWAYS CENTRE FRATING ROAD GREAT BROMLEY COLCHESTER ESSEX



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Application: 21/00186/FUL

Town / Parish: Great Bromley Parish Council

Applicant: Mr Gray Rowe - PalletPlus

Address: Crossways Centre Frating Road Great Bromley Colchester CO7 7JW

Development: Erection of warehouse extension, loading bay extension, service yard extension and formation of SuDS attenuation pond (part retrospective).

1. Executive Summary

- 1.1 Crossways Centre is located within Frating which is a 'Smaller Rural Village'. Access would not be via the primary highway network. Instead, it would be from the B1029 Frating Road. The site is not a protected or allocated employment site and the proposal is for a B8 storage and distribution use. The site is located outside of the settlement development boundary.
- 1.2 The proposal is for a warehouse extension (approximately 762m² in footprint, measured externally), and loading bay extension (approximately 464m² in footprint, measured externally), and extension of the site's service yard area onto adjacent agricultural land.
- 1.3 The proposal does not meet the criteria for being an acceptable location for an expanded B8 storage and distribution use, and the proposal is considered to result in unacceptable highway safety impacts. Although it would not harm the landscape character, it is considered the proposal would have a harmful effect on the character and appearance of the area. The proposal would also harm the living conditions of the occupants of neighbouring dwellings.
- 1.4 Whilst the economic benefits of approving the scheme are acknowledged, they are not considered to outweigh the identified harms. The proposal is considered to be contrary to the development plan, and refusal of planning permission is therefore recommended.

Recommendation:

That the Head of Planning be authorised to refuse planning permission for the development, for the reasons set out within Section 8.1 of the report below.

2. Planning Policy

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

National Planning Policy Framework 2021 (the Framework)
Planning Practice Guidance

Local:

Saved Tendring District Local Plan 2007 Policies (the 2007 Local Plan)

QL2	Promoting Transport Choice
QL11	Environmental Impacts and Compatibility of Uses (part superseded)
COM1	Access for All
COM2	Community Safety

COM21	Light Pollution
COM31a	Sewerage and Sewage Disposal
EN1	Landscape Character
ER2	Principal Business and Industrial Areas
EN4	Protection of the Best and Most Versatile Agricultural Land
EN6	Biodiversity
EN6b	Habitat Creation
EN11a	Protection of International Sites: European Sites and Ramsar Sites
EN12	Design and Access Statements
EN13	Sustainable Drainage Systems
EN17	Conservation Areas
EN23	Development with the Proximity of a Listed Building
ER1	Employment Sites
ER7	Business, Industrial and Warehouse Proposals
TR1	Transport Assessment
TR1a	Development Affecting Highways
TR2	Travel Plans
TR3a	Provision for Walking
TR7	Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond (the 2013-33 Local Plan)

Section 1 (adopted):

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

Section 2 (emerging):

SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
PPL1	Development and Flood Risk
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL8	Conservation Areas
PPL9	Listed Buildings
CP1	Sustainable Transport and Accessibility
DI1	Infrastructure Delivery and Impact Mitigation

Supplementary Planning Guidance:

Essex County Council Development Management Policies 2011 (the Highways SPD)
Essex County Council Parking Standards Design/Good Practice Guide 2009 (the Parking SPD)
Tendring Landscape Character Assessment 2001 (TLCA)

Status of the Local Plan

2.2 Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (the Framework).

- 2.3 The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26th January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets were found sound and have been fixed, including the housing requirement of 550 dwellings per annum.
- 2.4 Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and the degree of consistency with the policies of the Framework. In this regard 'Proposed Modifications' to the emerging Section 2 of the 2013-33 Local Plan, which contains more specific policies and proposals for Tendring, has been examined and hearing sessions have now closed. The main modifications recommended to make the plan legally compliant and sound were considered at the Council's Planning Policy and Local Plan Committee on 29th June 2021.
- 2.5 The Council held a six-week public consultation on the Main Modifications and associated documents which began on 16th July 2021. The consultation closed at 5pm on 31st August 2021. On 24th November 2021, the Council received the Inspectors' final report and schedule of main modifications. Subject to a number of modifications, the plan is legally compliant and meets the Government's soundness requirements. Adoption is anticipated early next year. Section 2 will then join Section 1 as part of the development plan, superseding in full the 2007 Local Plan. Section 2 of the 2013-33 Local Plan is therefore at a very advanced stage of preparation and should be afforded considerable weight.

3. Relevant Planning History

19/00216/FUL	Proposed construction of covered loading bay to existing warehouse building.	Approved	01.05.2019
13/00921/LUEX	Mixed or composite use for Class B8 storage, vehicle repair and maintenance (sui generis) and transport depot (sui generis).	Split decision (considered earlier)	07.07.2014
12/00430/FUL	Variation of condition 03 of planning permission TEN/1729/81 to include use as a distribution warehouse.	Approved	11.06.2012
12/01182/LUEX	Existing Lawful Use Certificate for use as a transport depot, warehouse and distribution centre, and commercial vehicle repair workshop (Breach of Condition 3 of TEN/1729/81) and breach of condition 07 of TEN/1729/81 (hours of operation).	Refused	20.05.2013
12/00430/FUL	Variation of condition 03 of planning permission TEN/1729/81 to include use as a distribution warehouse.	Approved	11.06.2012

12/00482/FUL	Erection of warehouse.	Approved	08.08.2012
07/00893/FUL	Erection of canopy to create covered loading area.	Approved	20.07.2007
98/01525/FUL	(Crossways Centre, 17 Frating Road, Great Bromley) Erection of poles for lighting and CCTV	Approved	02.02.1999
93/00912/FUL	Continuation of display and sale of vehicles	Refusal	12.10.1993
95/01011/FUL	Variation of condition No. 7 of consent TEN/1729/81 to permit the use of bays 1, 2, 3 up to 6pm on Saturdays for the repair and maintenance of commercial vehicles.	Withdrawn	06.10.2004
95/01010/FUL	Variation of condition No. 3 of consent TEN/1729/81 to include the use of bays 5, 6, 7 and 8 by Systematic Logistics Ltd for all purposes falling within Class B8 of the Use Classes Order	Approved	18.10.1995
TEN/1211/84	Additional Office Accommodation	Approved	
TEN/1729/81	Proposed commercial vehicle repair workshop	Approved	
TEN/496/62	Installation of two pumps and tanks for petrol filling station	Approved	

4. Consultations

TDC Tree & Landscape Officer
05.05.2021

The application site consists of land that currently forms part of the existing operational land and adjacent land that is in agricultural use. The current extent of The Crossways Centre is separated from the adjacent agricultural land by an established hedgerow comprising several specimen Oaks.

It is apparent that the proposed change of use of land and the incorporation of agricultural land into the adjacent operational facility would result in the removal of the existing boundary hedgerow and trees and have the potential to adversely affect the character and appearance of the area.

In terms of the amenity value of the hedgerow and the trees contained therein it was noted that the hedgerow species comprise of primarily Hawthorn (Crataegus

monogyna) and Blackthorn (*Prunus spinosa*) with specimen Oaks (*Quercus robur*) at irregular intervals.

The hedgerow is in reasonable condition although the Oaks are showing weak extension growth and die-back within their crowns possibly as a result of the relatively recent concreting and hard surfacing within the existing Crossways Centre,

As the hedgerow is on the boundary of land being used for commercial purposes it does not fall within the scope of The Hedgerow Regulations 1997 and does not fall within the scope of any other legislation under which it could be afforded formal legal protection.

The trees, along with the hedgerow, help to screen the site although the degree to which overlooking occurs is limited to those points within the rear gardens of properties close to the application site. The site cannot be seen from the public highway to the east and there are no Public Rights of Way to the west from which views of the application site are available [corrected in further comment of 29.09.21 below]. Consequently the trees have low amenity value and the local landscape character will not be significantly altered or otherwise affected by the development proposal.

On balance it is considered that the condition of the trees and their low amenity value means that they do not meet the criteria under which they merit formal legal protection by means of a Tendring District Council Tree Preservation Order.

In terms of soft landscaping the applicant has submitted a plan showing the position of a noise reduction barrier and new planting on the whole length of the southern and western boundaries of the application site. If the proposed 3m wide boundary planting comprised of indigenous species and contained specimen trees then in the long term the development proposal would result in an increase in the total length of the hedgerow on the boundary of the application site.

In the long term the proposed soft landscaping would replicated the current level of screening.

Further information will be required in relation to plant species and specification for the proposed new planting which should incorporate new specimen Oak trees at approximately 10 -12m centres. This information could be provided prior to the determination of the application or secured by a condition attached to any planning permission that may be granted.

on the boundary with the adjacent agricultural land.

The scheme is both simple and comprehensive. It is sufficient to secure a satisfactory level of screening and would result in a net increase in the length of the hedge and the number of specimen oaks contained in the hedge.

TDC Tree & Landscape Officer
29.09.2021

Notwithstanding, and in addition to, previous consultation responses these comments are submitted to correct an inaccuracy in a previous consultation response and to provide an assessment of the scope and efficacy of the Landscape and Visual Technical Note submitted by the applicant to quantify the impact of the development proposal on the local landscape character.

Firstly, in order to address the inaccuracy, included in a previous consultation response, it is not correct to say that there are no Public Rights of (PROW) to the west of the application site from which views of the application site are available.

Footpath GB166-14 runs south from Harwich Road, Gt Bromley to Morehams Farm and then becomes a Permissive Path southwards towards the A133. The application site can be viewed from part of the PROW and from the Permissive Path,

In order to assess the impact of the development on the local landscape character the applicant has provided a Landscape and Visual Technical Note that has been completed in accordance with national advice set out in 'Guidance for Landscape and Visual Impact Assessment (GLVIA) third edition (published by the Landscape Institute and the Institute of Environmental Management and Assessment 2013), and 'An Approach to Landscape Character Assessment' (published by Natural England, 2014).

The Technical Note recognises in Section 5.1.2 that harm to the landscape character will result from the change of use of land from agriculture to commercial use, but that the scale of the change is 'minor' and that it will have only a limited impact on the plateau landscape character.

The conclusion section of the Technical Note states that *'In visual terms the extended development will only be visible from a very limited number of locations' and that 'in any event these locations already experience a view of built development and that any changes will be seen in that context'*

In terms of its efficacy the Landscape and Visual Technical Note it is considered that the document accurately describes the existing baseline qualities of the

local landscape character, in accordance with the published National, County and District level Landscape Character Assessments.

It is also considered that the Landscape and Visual Note provides a realistic reflection of the degree to which the development proposal will affect the local landscape character.

Therefore, taking into account the level of screening that will be achieved by the soft landscaping associated with the development proposal, it is clear that neither significant change nor harm would result from the implementation of the development as proposed.

ECC Highways Dept
24.09.2021

The information that was submitted in association with the application has been fully considered by the Highway Authority. A site visit was undertaken in conjunction with this planning application. The original and additional information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated March 2021.

The site is situated on a stretch of Frating Road that is subject to a 30MPH speed limit that is predominately residential. The current vehicular access serving the site is situated in between two private dwellings and has a continuous drop kerb serving a forecourt. Access to the rear of the premises is between two existing buildings with a height restriction and only wide enough for a single vehicle.

There is evidence of parking on the front forecourt and issues with heavy goods vehicles stacking up on Frating Road waiting to enter the site. In addition, there appears to be evidence of two road traffic collisions involving vehicles from the company in the vicinity of the site access, the most recent incident occurred around 5.30am on Tuesday 14th September and was attended by Essex Police.

From a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reasons:

1. The proposal would intensify the use of an existing access onto B1029 Frating Road (secondary distributor) where the existing access has deficiencies in geometric layout which is not in accordance with current safety standards. The main function of this highway is that of carrying traffic freely and safely between centres of population. The existence of an access in this location is a matter of fact and therefore some degree of conflict and

interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety.

2. Although the proposal is within a semi-urban location there is limited public transport facilities, currently the site has to rely on off-site parking and particularly in light of the revised SUDs proposal required for the site this practice is likely to continue, as such the overall parking provision is considered to be inadequate for the density and size of the application. The proposal if permitted would set a precedent for future similar developments which would likely lead to inappropriate parking detrimental to the general safety of all highway users and undermine the principle of seeking to discourage on-street parking in the locality.

The proposal is therefore contrary policies DM1, DM3 and DM8 contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

1: As far as can be determined from the submitted information the existing entrance to the rear of the site will be unchanged and only wide enough for a single vehicle to enter and leave the site at any one time. There is evidence of heavy goods vehicles having to wait to enter the site now; the expansion of the site will have a detrimental impact on additional vehicle movements that will be using the site; leading a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety.

2: Due to the existing width of the site access there is a concern that articulated lorries will cause an unacceptable degree of hazard to highway users and have no alternative but to wait on the forecourt to allow a vehicle(s) to exit the site potentially blocking the footway and/or straddle the carriageway to the detriment of highway safety particularly as there is no segregation between pedestrian and vehicle movements at the existing entrance forcing pedestrians into the carriageway.

3: As far as can be determined from the submitted information the current business employs 54 full-time employees and with the proposed expansion this will increase by 27 full-time employees. The revised car parking provision indicates 47 spaces plus 2 blue badge

parking spaces. The overall parking for heavy goods vehicles highlights a total of 40 spaces. For light industry B8 use (storage and distribution) you would be looking at 1 space per 150sqm, there is evidence that off-site parking already occurs. During a site visit approximately 27 vehicles were recorded using this off-site parking area adjacent to Frating Road.

4: No details or information on whether the Developer shall be responsible for the provision and implementation of a Workplace Travel Plan, for employment sites with 50 or more employees, approved by Essex County Council.

TDC Waste Management
22.02.2021

No comments.

TDC Environmental Protection
26.11.2021

Noise:

The submitted Noise Impact Assessment dated November 2020 confirms the undertaking of a relevant noise assessment in relation to the proposal, including that of the Wheel Washing Facility. The report shows that existing noise levels determined at appropriate locations, would not be adversely increased by the introduction of a wheel washing facility. However, it has come to our attention that the wheel washing facility is no longer within the proposal and as such the predicted measurements and impact can be disregarded. However the report still addresses the noise from the HGV's and site activity and stated that ambient levels of the current operations were measured to be 64dB(A)(LAeq 15mins), however there are no predictions for the impact of the increase in HGV movement and site activities may have on this level. In light of this there is some uncertainty as to whether the proposal would result in a significant increase in ambient noise, which may result in an adverse impact to nearby residential dwellings. And as such, with specific reference to the recommendations, shown in section 2, pages 4 – 5; it is noted that these provisions are being implemented under the recommendation of the applicant, rather than any requirement for mitigation highlighted in the report; these measures should assist in the reduction of perceived noise, and we would not be adverse to their implementation, and as such would request this is attached to any approval. These recommendations are outlined in section 2 of the aforementioned report and relate to the provision and installation of acoustic screening. This will assist in dampening any further sound emitted as a result of site activity

I can confirm that the EP Team are satisfied with the contents of the above report and would suggest the above proposed attenuation screening are conditioned on any subsequent approval, so as to ensure any

disturbance from these activities is minimised.

REASON: to protect the amenity of nearby residential dwellings and minimise any potential adverse impact associated with increased noise

*NB: As you are aware the EP Team have been and are currently in receipt of complaints concerning an alleged noise nuisance emanating from the site; the details of the complaints relate to noise associated with site activity and noise associated with vehicular movement off site (movement of HGV entering and leaving the site). I can advise that we have not, at this time, identified a statutory nuisance emanating from the current operations. However our most recent investigation is still ongoing, and as such we will continue to monitor the situation. The submission of a noise complaint, does not, at this time, negate the above comments

Lighting:

Any lighting of the development shall be located, designed and directed [or screened] so that it does not [cause avoidable intrusion to adjacent residential properties/ constitute a traffic hazard/cause unnecessary light pollution outside the site boundary]. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers.

REASON – to protect the amenity of nearby residential dwellings

Air Quality:

With reference to the potential impact increased HGV movement may have on the current air quality of the vicinity, the EP Team are requesting confirmation on the predicted increase in movement from the site. Available information suggests that increasing the site will therefore reduce the movement of vehicles as there will be space for the fleet on site, where as currently vehicles are arriving on site to drop off, and then having to leave for the evening, and then return for the morning. The proposal would indicate this would in fact reduce the number of vehicle movements to and from the site? However, we have also received information indicating that this proposal would actually increase the vehicle movement? As a result of this confusion we would like confirmation on the expected vehicular movements. We would look to request an Air Quality assessment if there is an increase of:

- 500 LGVs (outside of an Air Quality Management Area) and/or
- Increase by 100 HGVs (outside of an Air Quality

Management Area)

This would be identified as daily, on local roads with a nearby receptor. Further information on this and information on assessment criteria in relation to Land Use Planning and Development Control: Planning for Air Quality (Institute of Air Quality Management), can be found at: air-quality-planning-guidance.pdf (iaqm.co.uk)

REASON: to protect public health

TDC Building Control and Access
Officer
14.04.2021

No comments.

Anglian Water Services Ltd
26.02.2021

ASSETS

Section 1 - Assets Affected

Our records show that there are no assets owned by Anglian Water or those subject to an adoption agreement within the development site boundary.

WASTEWATER SERVICES

Section 2 - Wastewater Treatment

The foul drainage from this development is in the catchment of Great Bromley Water Recycling Centre that will have available capacity for these flows

Section 3 - Used Water Network

Development may lead to an unacceptable risk of flooding downstream. Anglian Water will need to plan effectively for the proposed development, if permission is granted. We will need to work with the applicant to ensure any infrastructure improvements are delivered in line with the development. In order to make an accurate capacity assessment, we require the submission of a foul drainage strategy showing the proposed discharge location and conveyance method.

We therefore request a condition requiring phasing plan and drainage strategy.

(1) INFORMATIVE - Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact Development Services Team 0345 606 6087.

(2) INFORMATIVE - Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact

Development Services Team 0345 606 6087.

(3) INFORMATIVE - Protection of existing assets - A public sewer is shown on record plans within the land identified for the proposed development. It appears that development proposals will affect existing public sewers. It is recommended that the applicant contacts Anglian Water Development Services Team for further advice on this matter. Building over existing public sewers will not be permitted (without agreement) from Anglian Water.

(4) INFORMATIVE - Building near to a public sewer - No building will be permitted within the statutory easement width of 3 metres from the pipeline without agreement from Anglian Water. Please contact Development Services Team on 0345 606 6087.

(5) INFORMATIVE: The developer should note that the site drainage details submitted have not been approved for the purposes of adoption. If the developer wishes to have the sewers included in a sewer adoption agreement with Anglian Water (under Sections 104 of the Water Industry Act 1991), they should contact our Development Services Team on 0345 606 6087 at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with Sewers for Adoption guide for developers, as supplemented by Anglian Water's requirements.

Section 4 - Surface Water Disposal

The preferred method of surface water disposal would be to a sustainable drainage system (SuDS) with connection to sewer seen as the last option. Building Regulations (part H) on Drainage and Waste Disposal for England includes a surface water drainage hierarchy, with infiltration on site as the preferred disposal option, followed by discharge to watercourse and then connection to a sewer.

From the details submitted to support the planning application the proposed method of surface water management does not relate to Anglian Water operated assets. As such, we are unable to provide comments on the suitability of the surface water management. The Local Planning Authority should seek the advice of the Lead Local Flood Authority or the Internal Drainage Board. The Environment Agency should be consulted if the drainage system directly or indirectly involves the discharge of water into a watercourse. Should the proposed method of surface water management change to include interaction with Anglian Water operated assets, we would wish to be re-consulted to ensure that an effective surface water drainage strategy is prepared and implemented.

Section 5 - Suggested Planning Conditions

Anglian Water would therefore recommend the following planning condition if the Local Planning Authority is mindful to grant planning approval.

Used Water Sewerage Network (Section 3)

We have no objection subject to the following condition: Condition Prior to the construction above damp proof course, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been carried out in complete accordance with the approved scheme. Reason To prevent environmental and amenity problems arising from flooding.

ECC SuDS Consultee
26.10.2021

Lead Local Flood Authority position:

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission based on the following:

The proposed development will only meet the requirements of the National Planning Policy Framework if the measures as detailed in the FRA and the documents submitted with this application are implemented as agreed.

We also have the following advisory comments:

We strongly recommend looking at the Essex Green Infrastructure Strategy to ensure that the proposals are implementing multifunctional green/blue features effectively. The link can be found below.

<https://www.essex.gov.uk/protecting-environment>

Environment Agency

Not received.

5. **Representations**

5.1 The application was publicised by press and site notices and neighbours of the site were notified in writing. In response there were 195 contributors: 132 in support and 63 in objection.

5.2 Objections raised therein may be summarised as follows:

- Inappropriate village location in a 'Smaller Rural Settlement', the least sustainable settlement within the settlement hierarchy, with poor links to the A120 for the type of development proposed.
- The proposal is contrary to saved Policies E3 and ER7, adopted Policy SP3 and the Framework.

- The proposal is located beyond the Settlement Development Boundary.
- Better alternative locations exist, such as the business park in Ardleigh.
- Harm to highway and pedestrian safety due to increased volume of HGV traffic.
- Insufficient parking
- Loss of agricultural land
- Harm to the character and appearance of the area – landscaping would take time to establish
- Harm to landscape character
- Appeals for smaller developments have been dismissed due to harm to character and appearance (19/01872/FUL)
- Harm to the living conditions of neighbours (noise and disturbance, and privacy).
- Harm to Ecology, including protected species
- Increased surface water discharge and therefore risk of flooding.
- Loss of trees/hedgerows
- Light pollution

5.3 Support raised therein may be summarised as follows:

- Benefits to the local economy
- Employment creation
- Provides logistics links for Harwich Freeport
- Support for other local businesses and a network pallet service
- Current arrangements are restrictive and create unnecessary vehicle movements
- The proposal relocates on-site operations away from the adjacent housing

5.4 Great Bromley Parish Council objects to the application for the following reasons:

- Impact on local residents in terms of noise, particularly outside of permitted hours and overnight disturbing sleep
- Light pollution and impact on local residents
- Increased HGV usage on a B road in a residential area
- Change of use of land not in the application
- Permitted hours not being adhered to in accordance with previous conditions
- Flooding issues along Frating Road

5.5 The application is the subject of a call-in request from the Ward Councillor for Frating, Lynda McWilliams, in the event that approval were recommended. The grounds for the call-in request are:

- Highways impact/highway infrastructure
- Increased flood risk
- Impact on neighbours (noise and disturbance/light pollution)
- Effect on the character and appearance of the area

5.6 While refusal of the application is recommended, the application is referred to the Planning Committee at the discretion of the Assistant Director (Planning), due to the employment aspects of the proposal raising more than significant local issues.

6 Assessment

The Site

6.1 Crossways Centre is operated by Pallet Plus as a B8 storage and distribution centre, comprising warehouse building, loading bay and concrete service yard. Broadly speaking the

site is rectangular in shape with a narrow road frontage with Frating Road from which access is taken, through an archway formed in a flat-roofed building at the front of the site, which is set back from the road behind a small forecourt. At the time of application the site included other uses, including a car workshop to the front of the site and a commercial business within the warehouse. To the north and south are dwellings fronting Frating Road. The remainder of the site to the west and south is surrounded by cultivated agricultural land.

The Proposal

- 6.2 Permission is sought for extensions to both the warehouse (approximately 762m² in footprint measured externally), and loading bay (approximately 464m² in footprint measured externally), and extension of the site's service yard area onto adjacent agricultural land. Materials for the extensions described in the application are insulated steel composite sheeting with plastisol coating, to match the existing. Ridge heights would follow those of the existing buildings. Acoustic fencing behind landscaping is proposed to the southern and western boundaries. The fence would measure approximately 3m in height and would be timber boarded. The site measures 0.94 hectares and would approximately double the land take of the overall site area.
- 6.3 Amongst other things, the application is supported by the following main information:
- Full plans, including visualisations
 - Transport Note (and subsequent revisions)
 - Travel Plan
 - Vehicle tracking plans
 - Landscape Visual Technical Note
 - Noise Assessment
 - Preliminary Ecology Appraisal
 - SuDS drainage details (and subsequent calculations/revision).
 - Landscaping Plan
 - Details of boundary fencing
 - Justification for planning application
- 6.4 An HGV washing facility initially proposed as part of the application has now been omitted, in order to accommodate an attenuation basin within the site to enable a Sustainable urban Drainage System (SuDS). During the course of considering the application an unauthorised expansion of the site has been undertaken at the applicants own risk, described by them as an '*emergency expansion area*'. As a matter of procedure, the description has therefore been amended with the agreement of the applicant to reflect this, in order to refer to the part-retrospective nature of the proposal, and to more accurately describe the development proposed (deletion of car wash and inclusion of attenuation basin).
- 6.5 Because some works have already taken place, the proposal ought to be considered, in part, under Section 73A of the Town and Country Planning Act 1990 for development already carried out in part. The Planning Practice Guidance (PPG) makes clear it cannot be assumed that planning permission will be granted, and the Local Planning Authority should take care not to fetter its discretion prior to the determination of any application for planning permission - such an application must be considered in the normal way (Paragraph: 012 Reference ID: 17b-012-20140306).

The Principle of Development

- 6.6 When Section 1 of the 2013-33 Local Plan was adopted in January this year saved Policy QL1 and the spatial strategy of the 2007 Local Plan were superseded. The spatial strategy for Tendring is now set out in Policy SP3, under which existing settlements will be the principal focus for additional growth. Emerging Policy SPL1 sets out a settlement hierarchy, within

which Frating is identified as a 'Smaller Rural Settlement'. The proposal is located outside of the proposed settlement development boundary (SDB) under emerging Policy SPL2 (Local Map B.9 Frating). Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role.

- 6.7 The Council wishes to support the growth of existing firms and will grant permission for extensions to established businesses, providing they have an acceptable impact on visual and residential amenity, rural amenity, and transportation considerations.
- 6.8 Saved Policy ER2 directs proposals for employment development towards the principal business and industrial areas and allocated sites set out in Policies QL5 (b) and ER1. In turn, saved Policy QL5 (b) refers to Land East of Pond Hall Farm (27 hectares gross), whereas saved Policy ER1 lists a number of allocated employment sites, none of which include the application site.
- 6.9 The proposal is for the expansion of a storage and distribution operation which falls within the B8 Use Class. Saved Policy ER7 is therefore relevant. Amongst other things, this policy states that in considering proposals for the expansion of warehousing sites the Council will need to be satisfied that the following criteria are met:
- a. the scale and nature of the proposal is appropriate to the locality, including its relationship with adjacent uses;*
- 6.10 Frating is a relatively small village, identified as a "Smaller Rural Settlement" in the settlement hierarchy. The proposed expansion of B8 storage and distribution use in this location would not be a good fit with adjoining residential land uses.
- b. there is no unacceptable impact on amenity in terms of appearance, noise, smell, dirt or other pollution;*
- 6.11 As is considered below, it is considered that the expansion of the use would be likely to have a harmful effect on the character and appearance of the area and result in unacceptable harm to the living conditions of neighbouring residents by virtue of noise and disturbance, harm to outlook and privacy.
- c. satisfactory vehicular access and adequate car parking is provided. Major new industrial or warehousing sites including transport storage operations must have direct access onto the primary route network;*
- 6.12 As is considered below, the existing vehicular access is unsatisfactory and the site does not have direct access to the primary route network; access to the site is via the B1029 which runs through a village.
- d. mains water together with mains sewerage and/or adequate waste water and trade effluent treatment facilities can be made available;*
- 6.13 There is no conflict with this criterion; Anglian Water comment that Great Bromley Water Recycling Centre that will have available capacity for these waste water flows.
- e. the site has acceptable storage facilities. The open storage of goods, containers, waste materials or finished products will not be allowed where such activity is considered to be visually intrusive;*
- 6.14 While the proposal would provide additional warehousing to reduce the amount of open storage, the proposal as a whole is considered to be harmful to visual amenity.

f. in relation to a change of use, that the existing premises are suitable for the purpose;

6.15 There is no conflict with this criterion.

g. in relation to new sites, the need for a comprehensive Design Brief, including a landscaping scheme has been considered and where necessary prepared; and

6.16 The proposal is not for an entirely new site, and landscaping proposals have been submitted. Therefore, there is no conflict with this criterion.

h. opportunities for promoting the movement of freight by rail or through the district's ports are in no way compromised by the development proposed.

6.17 There is no conflict with this criterion.

In rural locations permission may exceptionally be granted for extensions to existing businesses where new employment opportunities would be generated providing the criteria above can be met and the proposals can be accommodated without an adverse impact on the landscape character of the countryside.

6.18 The proposal is in a village location and would create employment opportunities, and it would not harm landscape character. Nevertheless, it would be harmful to the character and appearance of the area and fail to meet a number of the above criteria.

6.19 Emerging Policy PP6 seeks to protect existing employment sites falling within the B8 use class, whereas emerging Policy PP7 provides site allocations for the provision of new B8 storage and distribution uses. The latter states that Proposals for new employment-related development on land outside of allocations will be considered having regard to their potential to support economic growth in the district and the requirements of other policies in the emerging Local Plan.

6.20 For the above reasons, and as is considered in detail below, there is conflict with the criteria of saved Policy ER7. Because the proposal would conflict with other policies in the emerging Local Plan, it would also not meet the requirements of emerging Policy PP7 for being an acceptable location for new employment-related development outside of the site allocations. For these reasons, the proposal is unacceptable in principle.

Highway Safety/Parking

6.21 Saved Policies TR1a, TR3a and TR7, together and amongst other things, require: transport assessments for proposals which are likely to have transportation implications; provision for walking, and; compliance with adopted parking standards. For B8 uses, saved Policy ER7 (c) requires satisfactory vehicular access and adequate car parking is provided, and that major new industrial or warehousing sites including transport storage operations must have direct access onto the primary route network. Emerging Policy SPL3 Part B (a) requires that access is practicable and be able to safely accommodate additional traffic generated.

6.22 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. Paragraph 113 states that all developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

6.23 Essex County Council as Local Highway Authority (ECC Highways) have conducted a detailed site visit and have considered the submitted Transport Note and subsequent revisions. They

observe that the area is predominantly residential and located within a 30 mph restriction. Further, that access to the site is located between residential properties, with a continuous dropped kerb frontage, access to the site being the subject of a width restriction which does not allow for two vehicle passing. The Highway Authority notes that this leads to vehicles stacking on the highway as they wait to enter the site. For a significant B8 storage and distribution use, the width of the site frontage is relatively narrow, and would not appear to be capable of accommodating the radii curves, dropped footway crossing, and pedestrian refuge, that one might expect for development of this nature. In any case, there are no such access improvement proposals before the Council.

- 6.24 Having considered the submitted traffic data and following subsequent clarification, ECC Highways do not find that the proposal would result in residual cumulative impacts on the highway network that would be severe. Nevertheless, they conclude that from a highway and transportation perspective the impact of the proposal is unacceptable; access is via a substandard access onto a secondary distributor road. The access is deficient in terms of its geometry and there is existing conflict and interference with the free-flow of traffic, and intensification of the use would be harmful to highway safety. Furthermore, there are limited public transport facilities, and there is evidence that as a consequence of the introduction of a drainage attenuation pond parking has been displaced from the site. The proposal would fail to meet the required level of parking provision.
- 6.25 During the course of the application a number of revised access proposals were submitted, involving either partial or total demolition of the building at the front of the site. However, discussions with Highways concluded with the informal advice that none of the alternatives would assuage their highway safety objections. In some respects, revised access arrangements would be worse in highway safety terms; for instance, revised vehicle tracking associated with partial demolition would require HGVs to cross onto the opposite side of the carriageway when existing the site. Furthermore, removal of the building at the front of the site would have wider implications for the effect of the proposal on the street scene. In any case, a revised re-submission would be the appropriate way to consider such a fundamental change, in order to ensure that third parties are not prejudiced.
- 6.26 The agent has supplied a copy of the goods vehicles operator's licence dated 18 November 2021 (for 45 motor vehicles and 25 trailers (including semi-trailers)), and states that no objections were made following consultation with the Council. Further, that there would be no increase in HGVs at the site over those currently permitted, and that a planning condition could limit the number of HGVs to those permitted under the licence. However, it is not clear how a limitation on the number of vehicles would translate into traffic movements, or be reasonable and enforceable in view of the nature of the proposal applied for. Because of this, such a condition would be inappropriate - it would fail to meet the tests set out at Paragraph 56 of the Framework.
- 6.27 The agent states that there would be no increase in HGV traffic as a result of the development; the proposal is to secure more efficient operation, and because of this fewer traffic movements would arise as a result. Nevertheless, given the substantial increase in warehouse and loading space, and the overall site area expansion applied for, it is considered highly likely that the proposal would result in increased HGV movements using a substandard access. Having regard to the comments of ECC Highways, it is considered that the proposal would result in an unacceptable impact on highway safety. As a result, the proposal would conflict with saved Policies TR1a, ER7 (c) and emerging Policy SPL3 Part B (a).

Landscape and Character and Appearance

- 6.28 Saved Policy EN1 seeks to protect the quality of the district's landscape and its distinctive local character, and where possible secure its enhancement, whereas saved Policy E7 (b) requires that there is no unacceptable impact on amenity, in terms of appearance. Adopted Policy SP7

states that development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs.

- 6.29 Emerging Policy PPL3 states that the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance. Policy PPL3 Part A (b) requires that development relates well to its site and surroundings, particularly in relation to its siting, height, scale, massing, form, design and materials. Policy PPL3 Part A (c) requires that development respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features.
- 6.30 The Framework at Paragraph 174 b) states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Under the Tendring Landscape Character Assessment 2001 (TLCA) the site is located within the 7A 'Bromley Heaths' Landscape Character Area. The TLCA describes the Bromley Heaths as an elevated plateau that extends from Colchester to Wix in the east, Thorrington in the south, and corresponds to the highest part of the district. In terms of change the TLCA, amongst other things, recognises pressure for large scale built development at major road junctions with potential for a very high visual impact.
- 6.31 Against this background, the Council's Tree and Landscape Officer has commented that the proposed change of use of land and the incorporation of agricultural land into the adjacent operational facility would result in the removal of the existing boundary hedgerow and trees, and have the potential to adversely affect the character and appearance of the area. The extent of the site, prior to this application, was separated from adjacent agricultural land by an established hedgerow comprising several specimen Oaks. The hedgerow and the trees [now removed] comprised of primarily Hawthorn (*Crataegus monogyna*) and Blackthorn (*Prunus spinosa*) with specimen Oaks (*Quercus robur*) at irregular intervals. The hedgerow was noted as being in reasonable condition, although the Oaks showed weak extension growth and die-back within their crowns, possibly as a result of previous concreting and hard surfacing within the existing Crossways Centre.
- 6.32 Notably, the Council's Landscape Officer further comments that as the hedgerow is on the boundary of land being used for commercial purposes it does not fall within the scope of The Hedgerow Regulations 1997, and does not fall within the scope of any other legislation under which it could be afforded formal legal protection. Trees which have been removed along the existing boundary were considered to be of low amenity value, would not have met the criteria for legal protection, and wider landscape character would not be significantly altered. In the long term the proposed soft landscaping would replicate the previous level of screening. Advice was given that further information would be required.
- 6.33 In response to these comments and officer concern that the proposal has the potential to harm landscape character and the character and appearance of the area, the applicant submitted a Landscape and Visual Technical Note (LVTN), and plans detailing soft landscaping proposals relating to replacement trees and a hedgerow on the boundary of the site. In its own right, in isolation, the landscaping scheme was found to be both simple and comprehensive, and sufficient to secure a satisfactory level of screening which would result in a net increase in the length of the hedge and the number of specimen Oaks.
- 6.34 In a final comment, the Council's Landscape Officer corrected an inaccuracy in previous comments [public visibility from footpaths], and provide an assessment of the scope and efficacy of the LVTN, to quantify the impact of the development on the local landscape character. It was acknowledged that Public Footpath GB166-14 runs south from Harwich Road, Gt Bromley to Morehams Farm, and then becomes a Permissive Path southwards towards the A133. The application site can be viewed from both these routes. The LVTN has been completed in accordance with national advice set out in 'Guidance for Landscape and

Visual Impact Assessment third edition (published by the Landscape Institute and the Institute of Environmental Management and Assessment 2013), and 'An Approach to Landscape Character Assessment' (published by Natural England, 2014).

- 6.35 The LVTN recognises in Section 5.1.2 that harm to the landscape character will result from the change of use of land from agriculture to commercial use, but that the scale of the change is 'minor' and that it will have only a limited impact on the plateau landscape character. The conclusion section of the LVTN states that 'In visual terms the extended development will only be visible from a very limited number of locations' and that 'in any event these locations already experience a view of built development and that any changes will be seen in that context'
- 6.36 In terms of its efficacy, the LVTN accurately describes the existing baseline qualities of local landscape character, in accordance with the published National, County and District level Landscape Character Assessments. The LVTN provides a realistic reflection of the degree to which the development proposal will affect the landscape character. Concluding on the effect of the proposal on landscape character and the level of screening that would be achieved by the proposed landscaping, the Council's Landscape Officer concludes that neither significant change nor harm would result.
- 6.37 Nevertheless, together with the long rear gardens of dwellings to the north and tree lined field boundaries, there is a very regular linear edge to the village. This strong spatial character is apparent in views from the permissive path to the south/southwest and the public right of way to the west/northwest. In these views, the edge of the well-established linear edge of the village is clearly defined by existing planted boundaries. The development would project abruptly to the west beyond the established settlement fringe, and would appear as a somewhat arbitrary extension of the village. HGVs parked on the extended site would be highly visibly. As a result, it would appear as an incongruous projection into the countryside setting of the village.
- 6.38 Furthermore, in the absence of any detailed lighting report or assessment it is likely that external lighting required to facilitate the operation of the development would accentuate the incongruity of its siting and projection into the countryside setting of the village, and the Council cannot be certain that it would not result in unacceptable light pollution of the nocturnal sky. Saved Policy COM21 states that planning permission will not be granted for external lighting for any development if it would cause an unacceptable visual intrusion. Emerging Policy PPL3 states that new development within the rural landscape should minimise the impact of light pollution on the site and its surroundings. Paragraph 185 (c) of the Framework states that planning decisions should limit the impact of light pollution from artificial light on local amenity.
- 6.39 To some extent, proposed landscaping would in time provide the same visual screening as was previously afforded. However, in the short to medium term the development would be conspicuous in terms of its siting and layout, and it would not overcome the awkward and incongruous appearance of the development. Notwithstanding the lack of any identified harm to wider landscape character, for the above reasons, officers consider that the proposal would be harmful to the character and appearance of the area, and significant weight should be given to this harm. As such, the proposal would be contrary to saved Policy E7, adopted Policy SP7, and emerging Policy PPL3 Part A (b). It would also conflict with Paragraphs 174 and 185 (c) of the Framework.

Effect on the Living Conditions of Neighbours

- 6.40 Part-Saved Policy QL11, adopted Policy SP7, and emerging Policy SPL3 together seek to avoid land use conflict and protect the amenity of neighbours. Saved Policy ER7, amongst other things, requires that the scale and nature of a proposal is appropriate to the locality,

including its relationship with adjacent uses, and that there is no unacceptable impact on amenity in terms of appearance, noise, smell, dirt or other pollution. Framework Paragraph 130 (f) states that planning decisions 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.

- 6.41 There are some benefits associated with the proposal. Acoustic barriers would assist in preventing the transmission of noise emanating from the site. However, they are not dependant on the proposal; they could be installed independently. The proposed warehouse building would act as an acoustic buffer to sound emanating from the site eastwards, and the expanded site area would allow for better circulation of vehicles and allow for the parking away from dwellings at the east of the site. Moreover, the Council's Environmental Protection Team concur with the findings of the submitted noise report, and no statutory noise nuisance would be created.
- 6.42 Nevertheless, the proposal is likely to result in an intensification of the use of the site, and access to Crossways is sandwiched between residential properties. The dwelling to the north is immediately adjacent to the access, and at a slightly lower level. Increased HGV movements would have an unacceptable adverse effect on the amenity of the occupants, having regard to noise and disturbance. It is also highlighted that HGV headlights would shine into the main habitable rooms at the front of this dwelling and cause disturbance at night, and during the late afternoon and early morning in autumn and winter months. Whilst it is accepted that at present this already occurs, intensification of the use would exacerbate this to an unacceptable degree. The use of planning conditions to secure an acoustic and visual barrier would not be capable of overcoming this harm; due to the change in levels and required height, such a requirement would have an overbearing effect on outlook.
- 6.43 Furthermore, at the north western edge the extension of the service yard wraps around the foot of the garden of a dwelling to the north. While this dwelling has an exceptionally long garden, and there is no right to a view across third party land, the appearance of parked HGVs and boundary fencing at the foot of the garden to this property creates an oppressive outlook. Although the property has ample outdoor amenity space adjacent to the dwelling itself, it is apparent that the end of this garden has been well used in the evenings as it faces west. The proposal would also result in a loss of privacy for the occupants. Although proposed landscaping would, in time, soften this impact, the installation of an acoustic barrier would effectively close off the outlook from the end of the garden. Although the harm would be limited in view of the existing high boundary treatment to the south of the garden, and while a significant amount of useable outdoor amenity space would remain available to the occupants that would not be impacted upon, this harm counts against the proposal.
- 6.44 For the above reasons, the proposal would have an unacceptable harmful effect on the living conditions of the occupants of neighbouring dwellings. Significant weight should be attached to this harm, which renders the proposal contrary to saved Policies QL11, ER7, adopted Policy SP7, and emerging Policy SPL3. It would also conflict with Paragraph 130 (f) of the Framework.

Loss of Agricultural Land

- 6.45 Saved 2007 local plan policy EN4 seeks to protect the best and most versatile agricultural land (BMV). BMV land is that which falls within grades 1, 2 and 3a of the Agricultural Land Classification. This policy states that areas of poorer quality agricultural land should be used in preference to that of higher quality land, except where other sustainability considerations suggest otherwise. Also, that development will not be permitted on BMV land unless special justification can be shown.

- 6.46 Paragraph 174 (a) of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan) [emphasis added]. Paragraph 174 (b) states that decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the BMV land, and of trees and woodland [emphasis added].
- 6.47 The planning practice guidance recognises that soil is an essential natural capital asset that provides important ecosystem services – for instance, as a growing medium for food, timber and other crops, as a store for carbon and water, as a reservoir of biodiversity and as a buffer against pollution (Paragraph: 002 Reference ID: 8-002-20190721).
- 6.48 According to the Agricultural Land Classification (ALC) Strategic Map, the site is located on land that is predicted to be grade 1 'Excellent', which is land with no or very minor limitations, where yields are high and less variable than on land of lower quality. However, the ALC Strategic Map is a large scale prediction, and it is not suitable for the definitive classification of any local area or site. Post 1998 ALC Magic Map data is inconclusive, and no detailed site survey report has been submitted. Nevertheless, the proposal would lead to a loss of agricultural land with a site area stated as being just under a hectare, and third party objection is made on this basis.
- 6.49 In the absence of a field survey, the Council cannot be certain there would not be a loss of BMV land and/or conflict with the development plan in this regard. Were this the sole concern, the economic benefits of the proposal might provide special justification. Nevertheless, there is a degree of conflict with saved Policy EN4 which weighs against the proposal.
- 6.50 Following Schedule 4 paragraph (y) of the Development Management Procedure Order 2015, before granting planning permission for large-scale non-agricultural development planning authorities must consult Natural England on all non-agricultural applications that result in the loss of more than 20 hectares (ha) of BMV land if the land is not in accordance with the provision of the development plan. Because the site area is below the threshold and the recommendation is to refuse, no consultation has therefore been necessary.

The Fall-back Position

- 6.51 The site has a complex planning history, as set out above. The applicant asserts earlier planning permissions and lawful use certificates granted create a 'fall-back' position; use of the existing site and buildings for a B8 storage and distribution use is lawful on an unrestricted basis. However, upon reviewing the history of the site in conjunction with Legal Services, officers do not draw the same conclusions; some parts of the existing warehouse building are not covered by a lawful use certificate for B8 use, and conditions of some earlier permissions may continue to apply.
- 6.52 While some weight could potentially be given to the site's history and the certificate of lawful use issued by the Council's identified fall-back position, this is substantially reduced by limitations and conditions. In any case, the proposal is for a significantly greater amount of development, both within and outside the existing buildings, and, for the reasons set out below, the fall-back position would be less harmful. The fall-back position should therefore be afforded limited weight.

Renewable and Energy Conservation Measures

- 6.53 Emerging Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type

should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.

- 6.54 Paragraph 112 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.
- 6.55 The proposal includes a significant amount of new roof space (in addition to that already 'in situ') which have the potential to incorporate solar photovoltaic installation. Car parking areas have the potential for the provision of ULEV charging points. The use of planning conditions to require schemes for the consideration and installation of these measures would be capable of addressing these policy requirements.

Flood Risk and Drainage

- 6.56 Saved Policy EN13 requires that development proposals should normally include Sustainable Urban Drainage Systems (SuDS). Adopted Policy SP7, amongst other things, states that all new development should include measures to promote environmental sustainability, including provision of appropriate water/wastewater and flood mitigation measures. Criterion g) of Part B to Emerging Policy SPL3 requires development reduces flood risk and integrates sustainable drainage within the development. Emerging Policy PPL5 also requires that new development makes adequate provision for drainage and should include SuDS.
- 6.57 Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided. Paragraph 167 of the Framework states that when determining applications local planning authorities should ensure that flood risk is not increased elsewhere, and, where appropriate, applications should be supported by a site specific flood risk assessment (FRA).
- 6.58 There have been a number of recent surface water flooding events in the locality and understandably a number of local residents and Ward Councillor McWilliams are concerned about the effect of the increase in hard surfacing, and potential for surface water run-off to increase the risk of flooding elsewhere. The Parish Council have been liaising with a number of agencies to seek solutions to local drainage problems.
- 6.59 The site area is below 1 hectare in size and therefore the Environment Agency are not a statutory consultee. However, they were consulted but have not commented in this instance. Nevertheless, in view of the well-founded concerns in relation to the risk of flooding and the above policy requirements, officers have worked with the applicant to secure a SuDS solution. Following the introduction of an attenuation basin with micro calculations and multiple revised drainage engineering details, Essex County Council as Lead Local Flood Authority (LLFA) have withdrawn earlier objections. Subject to conditions to require implementation of the submitted measures, the LLFA are satisfied that the development would not increase the risk of flooding.

Protected Species and Biodiversity

- 6.60 Saved Policy EN6 states that development proposals will not be granted planning permission unless the existing local biodiversity is protected and enhanced. Policy EN6 (a) considers protected species, whereas EN6 (b) refers to habitat creation. The fourth bullet of adopted Policy SP7 requires that all new development should incorporate biodiversity creation and enhancement measures. Emerging Policy SPL3 Part A (d) includes that the design and layout of development should maintain or enhance ecological value.

- 6.61 In accordance with Paragraph 174 of the Framework planning decisions should contribute to and enhance the natural and local environment, by minimising impacts and providing net gains for biodiversity. Section 40 of The Natural Environment and Rural Communities Act 2006 extended the biodiversity duty set out in the Countryside and Rights of Way Act to public bodies and statutory undertakers, to ensure due regard is had to the conservation of biodiversity; “Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”.
- 6.62 The submitted Preliminary Ecological Appraisal (PEA) finds that the proposal falls outside of identified protected sites (statutory and non-statutory) and any SSSI Impact Risk Zones, and would not be expected to have any effect upon protected sites. The hedgerow removed was found to be species poor, but its removal would result in a low level loss of habitat for tree nesting birds, and a low level loss of potential foraging features for bats. Trees to be felled were found to have a low bat roost potential, and no further survey work was recommended. However, as precautionary measures, mitigation in the form of soft landscaping is recommended to avoid any such impacts, together with a ‘soft-fell’ approach to tree felling and the installation of bird and bat roost features.
- 6.63 As the Council’s Landscape Officer has commented, the hedgerow that has been removed would not have been protected under the Hedgerow Regulations, and specimen Oaks that have been removed showed weak extension growth and die-back within their crowns, and would not therefore have warranted protection. The application is supported by a detailed planting scheme that would result in a net increase in the length of hedgerow and the number of specimen oaks. This would deliver net gains in biodiversity and address the findings of the PEA.
- 6.64 Notwithstanding the concerns of objectors, there is no evidence that protected species have been harmed. Subject to the use of conditions to require the implementation of the proposed plantings scheme, the mitigation measures set out in the PEA would be sufficient to ensure no loss of habitat would arise. The proposal would not therefore conflict with the development plan or the Framework in these regards.

Economic and Other Benefits

- 6.65 Pallet Plus is a part of the pallet network, specialising in the palletised freight of goods to the UK, Ireland and Europe. The submitted justification states that the application follows a fire in Europa Way, Parkeston in 2007. Having sought to promote a site at Horsley Cross which was dismissed on appeal, the opportunity to occupy part of the Crossways Centre arose. The applicant has subsequently acquired the site and say it is a suitable location to provide logistics services within Essex. The applicant states that they need to expand their operations, and that suitable employment land within Tendring for such uses is in short supply. Recent agreements with a competitor in Ardleigh are stated as having saved 27 local jobs, and the existing workforce at the time of application was stated as being 81 across various roles. Furthermore, the lease of a site in Ardleigh has expired so relocation to The Crossways Centre is required.
- 6.66 The submission states that an average of 700 deliveries are undertaken every day. The pandemic has led to Government recognition of the role local transport and logistics play in maintaining the essential supply of goods. The application also states that instead of 4 of 5 HGVs delivering to Clacton each day, these are now consolidated onto one vehicle. The local market share is cited as being approximately 65-70% which reduces HGV traffic on local roads. Furthermore, other networks have expressed an interest that would further reduce the carbon footprint of local distribution. Earlier objection to unsustainable locations in terms of access to the local employment market have been addressed by the proposed development of

an existing employment site, with easy access the existing and proposed housing development.

- 6.67 Officers recognise that the effects of the fire in 2007 and unsuccessful earlier attempts to secure permission for an alternative site, and the expiry of leases on other sites operated by the applicant will all have impacted on the business. It is also recognised that the applicant is an important local employer providing storage and distribution services, the demand for which has grown significantly during the pandemic. However, officers cannot agree that there is a lack of suitable employment land within the Tendring District; the emerging Section 2 Local Plan only a matter of days ago has been found legally compliant and sound. Nevertheless, the proposal would assist in employment retention and generation, and support the Council's aims and objectives in this regard. There is general support for such proposals, and the benefits to the local economy are likely to be significant. Significant weight should be attached to these benefits. Furthermore, Paragraph 81 of the Framework makes clear that planning decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Other Matters

- 6.68 An objector refers to a dismissed appeal following refusal of application reference 19/01872/FUL, which was for 5 dwellings. However, the proposal was for a different form of development in a different location, and the merits and site circumstances were not the same. Each case must be considered on its own merits, and this decision should not therefore attract weight.
- 6.69 Some objectors refer to concern over the effect of the development on local air quality. However, while traffic movements are likely to increase, there is little evidence to suggest that air quality would be unduly impacted, and the proposal does not lie within an air quality management area. Although traffic volumes would be likely to increase, it is not anticipated that this would be to the level where an Air Quality Assessment would be required.

7 Conclusions and Planning Balance

- 7.1 The site does not meet the criteria for being an acceptable location for a significant expansion of a B8 storage and distribution use. The development would be likely to have unacceptable effects on pedestrian and highway safety, and harm the living conditions of neighbours. While it would not erode wider landscape character, the scheme would also be harmful to the character and appearance of the area. Significant weight should be given to these harms. Approval would lead to the loss of agricultural land which is likely to be of a high grade, which counts against the development.
- 7.2 There is no evidence the proposal would harm protected species and the proposed landscaping scheme would deliver a net gain in biodiversity. Subject to conditions, the development would not be at risk of flooding, or unduly increase the risk of flooding elsewhere. Energy efficiency, ULEV charging, and renewable energy generation development plan requirements could be addressed via the use of planning conditions. Furthermore, parking provision would meet the required standards. These are all neutral factors in the planning balance.
- 7.3 In its favour the proposal would support job retention and creation, and deliver economic benefits to which significant weight should be given. Due to the terms of earlier planning approvals and the limitations of lawful use certificates granted, the fall-back position is not entirely clear. The proposal would be significantly more harmful, and the fall-back position should therefore be afforded only limited weight.

- 7.4 The combination of the significant weight that should be given to the economic benefits of the development and the limited weight that could be given to the fall-back position do not outweigh the cumulative substantial weight given to the identified harms to pedestrian and highway safety, the character and appearance of the area, and the living conditions of neighbours. While the proposal would contribute towards achieving the Framework's economic objective of sustainable development, it would conflict with the environmental and social objectives. The scheme is severally contrary to the development plan, and planning permission should therefore be refused.
- 7.5 Having regard to the policies of the emerging Local Plan and allocations contained therein, the Council has a sufficient supply of employment land. However, even if it were the case that the Council's policies for the supply of employment land were considered to be out of date and the titled balance set out at paragraph 11 (d) ii of the Framework were therefore engaged, for the above reasons, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

8 Recommendation

The Planning Committee is recommended to refuse planning permission for the following reasons:

Reasons

1. The proposal does not meet the criteria for being a suitable location for a B8 storage and distribution development and it would be harmful to highway and pedestrian safety. As a result, the proposal is contrary to saved Policies TR1a, ER7, and emerging Policy SPL3. It would also be at odds with Paragraph 111 of the Framework.
2. The proposal would have an unacceptable harmful effect on the living conditions of the occupants of neighbouring dwellings, having regard to noise and disturbance, privacy and outlook. Accordingly, the proposal conflicts saved Policies QL11, ER7, adopted Policy SP7, and emerging Policy SPL3. It would also conflict with Paragraph 130 (f) of the Framework.
3. The proposal would be harmful to the character and appearance of the area. Consequently, the development fails to meet the requirements of saved Policy E7, adopted Policy SP7, and emerging Policy PPL3 Part A (b). It would also conflict with Paragraphs 174 and 185 (c) of the Framework.

9 Additional Considerations

Public Sector Equality Duty (PSED)

- 9.3 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:
- 9.4 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.5 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

- 9.6 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.7 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.
- 9.8 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.
- 9.9 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

- 9.10 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.
- 9.11 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).
- 9.12 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

- 9.13 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.

10 Background Papers

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/>.