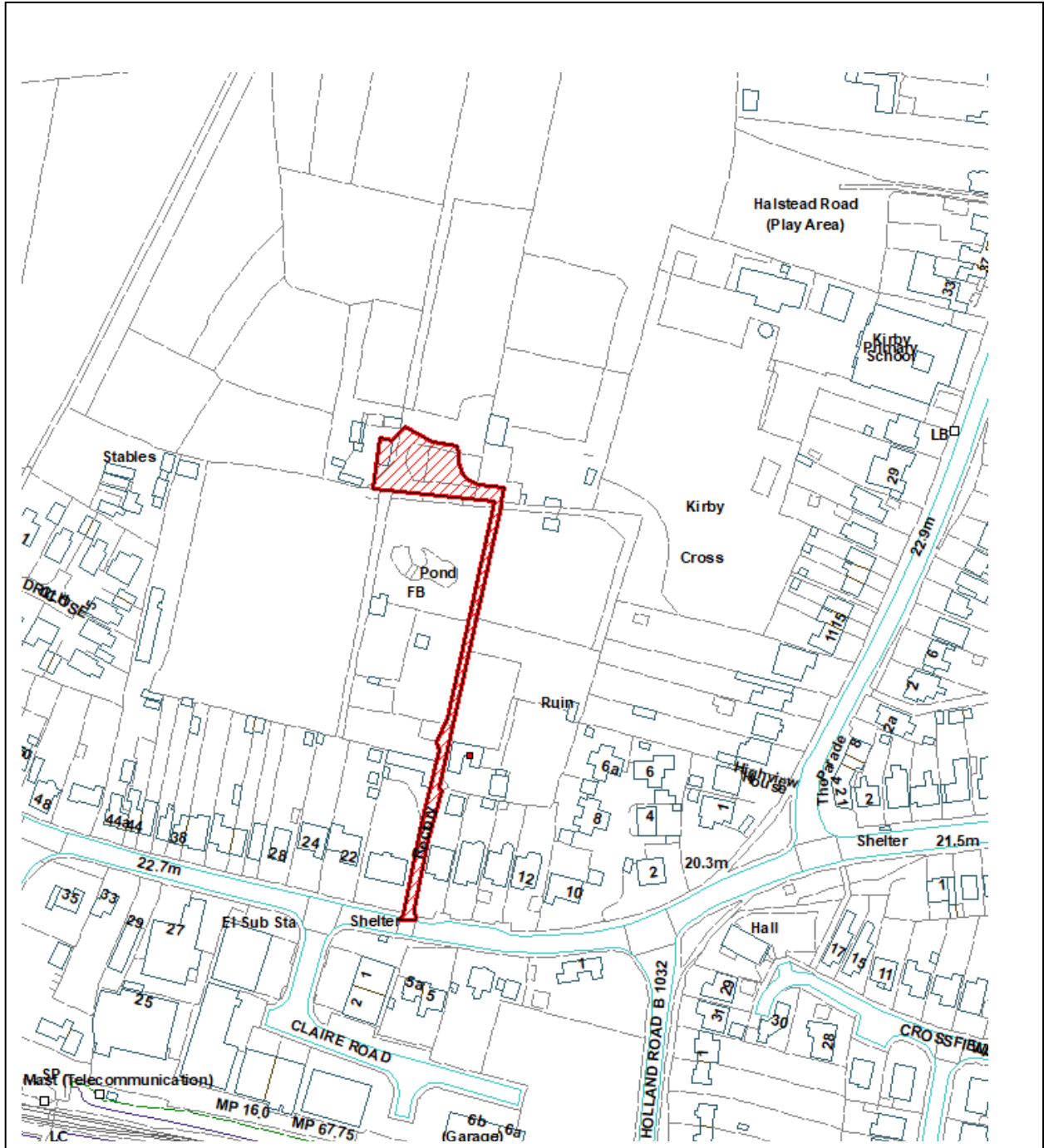


PLANNING COMMITTEE

TUESDAY 14<sup>th</sup> MARCH

REPORT OF THE DIRECTOR OF PLANNING

**A.2 PLANNING APPLICATION – 22/02037/FUL – GARFIELD NURSERIES THORPE ROAD  
KIRBY CROSS FRINTON ON SEA ESSEX**



DO NOT SCALE

© Crown Copyright and database right 2023. Ordnance Survey Licence No.100018684.

<b>Application:</b>	22/02037/FUL	<b>Expiry Date:</b>	31st January 2023
<b>Case Officer:</b>	Julie Ramsey	<b>EOT Date:</b>	
<b>Town/ Parish:</b>	Frinton & Walton Town Council		
<b>Applicant:</b>	Mr and Mrs Boot		
<b>Address:</b>	Garfield Nurseries, Thorpe Road Kirby Cross Frinton on Sea CO13 0LT		
<b>Development:</b>	Proposed erection of one dwelling (in lieu of Prior Approval for 1 one-bedroom dwelling, subject of application 22/00045/COUNOT). Resubmission of application 22/00890/FUL.		

## 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 on balance, not considered to be materially different in regard to siting or footprint to the development approved under prior approval 22/00045/COUNOT. The overall height of the proposal exceeds that of the existing building, however this is not considered to result in significant harm.
- 1.3 The application has been revised following the previously refused scheme 22/00890/FUL, with the dwelling sited significantly closer to the footprint of the existing agricultural building. The access remains as existing and there are no objections from the Highways Authority.
- 1.4 The Council's Tree and Landscape Officer notes that the application site is set back a considerable distance from the highway and consequently does not feature in the public realm. A row of 'coppiced' Willows may need to be removed, however these trees are not considered to merit retention or formal legal protection by means of a tree preservation order. Soft landscaping is recommended in order to screen the dwelling from views on the northern boundary.
- 1.5 Sufficient parking and private amenity space is provided, and there will not be significant harm to existing neighbouring amenities, subject to conditions and the adherence to the submitted construction management plan.
- 1.6 Conditions are included within the recommendation to ensure the provision of biodiversity enhancements and a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development.

### **Recommendation:** Approval

- 1) That the Director of Planning be authorised to grant \*planning permission subject to conditions as stated at Paragraph 8.2 (or as need to be varied\*) and those as may be deemed necessary by the Director of Planning; and,

2) The informative notes as may be deemed necessary

*\*To account for any errors, legal and necessary updates*

## **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)

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

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  
LP1 Housing Supply  
LP4 Housing Layout  
PPL3 The Rural Landscape  
PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
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**

2.5 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**

17/00396/FUL	Proposed detached dwelling, garage and bin/bike store.	Refused	12.06.2017
22/00045/COUNOT	Proposed conversion of an agricultural building into one dwellinghouse.	Prior Approval	02.03.2022
22/00890/FUL	Proposed erection of one dwelling (in lieu of Prior Approval for 1 one-bedroom dwelling, subject of application 22/00045/COUNOT).	Refused	30.09.2022

### 4. **Consultations**

- 4.1 Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.
- 4.2 All consultation responses are available to view, in full (including all recommended conditions and informatives), 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/>.

**ECC Highways Dept**

**06.01.2023**

The revised proposal is still for a one-bedroom dwelling and is similar to previous application 22/00890/FUL that the Highway Authority did not object to. It is noted that the revised proposal would have an external floor area of 57 square metres an increase of approximately 12 square

metres in residential floor space. Access to the development will remain the same from an established private access road, and it is not considered that the one-bedroom dwelling would give rise to a significant increase in vehicle movements to and from the site or result in a material change in the character of the traffic in the vicinity of the site. The proposal offers adequate off-street parking in line with the parking standards.

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the mitigation and conditions in regards to Cycle Parking provision, provision of a Travel Pack and provision of vehicle parking area,

**Environmental Protection**

**11.01.2023**

Should the above application be approved, the EP Team are requesting a condition be applied in relation to Contaminated Land and an informative in relation to Foul Drainage provision.

Construction Activities: There are no objections to the submitted CMS and have no comments to make in relation to this aspect of the proposal.

**UU Open Spaces**

**17.01.2023**

Current Position

There is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby.

Recommendation

No contribution is being requested on this occasion.

**Tree & Landscape Officer**

**22.12.2022**

The application site is set back a considerable distance from the highway and consequently does not feature in the public realm. The position of the proposed new dwelling is such that it may necessitate the removal of part of a row of 'coppiced' Willows. These trees do not merit retention or formal legal protection by means of a tree preservation order.

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

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

**Frinton and Walton Town Council**

**13.01.2023**

Objection – Recommend Refusal - has not demonstrated the need against LP6 and there is a 25% increase in size

## 5. **Representations**

- 5.1 Two representations 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 properties.

### Summary of Matters Raised

- Development could be used to set a longer-term precedence for residential development on this site
- September 2022 reasons for refusal are still valid
- Location outside Settlement Development Boundary
- Land is for agricultural use, keeping animals etc, and not suitable for residential purposes.
- Area suffers from surface water flooding during the winter and periods of rain, new dwelling will exacerbate this.
- The access track is not suitable for residential vehicles,
- Increase in traffic to an already congested road and opposite bus stop
- Similar proposals declined in 2017 and more recently in Sep 2022

(Officer note, 2017 application was for a large, detached dwelling with no Prior Approval fallback position established and 2022 application was sited in a completely new and undeveloped area of the site – for these different merits, both refused).

All applicable material considerations are dealt with in the assessment section of the report below.

## 6. **Assessment**

### Site Context

- 6.1 The application site is located on the northern side of Thorpe Road (B1033), accessed via a long driveway between Nos 18 and 20 (The Willows farmhouse - a Grade II Listed Building) Thorpe Road. The site, is located outside of the defined settlement development boundary of Kirby Cross and is considered to be a countryside location. In terms of the 'blue line' site location plan as submitted with the application, the applicant owns a large area of land around the proposed site, (some 4 acres), comprising of a number of stables, a manège and open land to the rear which is used for the keeping of poultry and cropping of hay following the cessation of the nursery business which operated on the site. Further north is open agricultural land.
- 6.2 To the south is a small wildlife sanctuary, attached to The Willows, grazing and stabling are present to the rear of No. 18 Thorpe Road, with a mix of residential properties to the south and east of the site.
- 6.3 The site is not located within a Conservation Area and is sited within Flood Zone 1 which has a low risk of flooding.

### Relevant History

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

## Proposal

- 6.5 The application proposes one new 1 No. bed dwelling in lieu of the prior approval granted for the agricultural building which was the subject of application 22/00045/COUNOT. It is proposed to demolish this agricultural building and construct a new dwelling adjacent to the site of the existing building, along with associated amenity space and a new parking/turning area.
- 6.6 The proposed new dwelling is a bungalow with a uniform rectangular footprint and a dual pitched roof, with an eaves height of some 2.6m and a ridge height in the region of 4.8m. The proposed dwelling has a gross internal area of around 57sqm which is approximately 12sqm more than the existing agricultural building, around a 25% increase in floor space.
- 6.7 The proposed dwelling comprises of one bedroom, bathroom, and an open plan kitchen and lounge area. The external materials proposed are black weatherboard and slate tiles.

## Assessment

### 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 Kirby Cross in the adopted 2013-2033 Local Plan. The proposed development would therefore extend outside the area planned to provide growth for this settlement. In view of the housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement.
- 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 Kirby Cross (including Walton and Frinton) is classified as a Smaller Urban Settlement, which benefits from a range of existing infrastructure and facilities and are considered to be able to support larger -scale growth, within the SDB.
- 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 (covered below).

### 'Fallback Position' Assessment

- 6.12 In this case, Prior Approval has been granted for the conversion of the existing agricultural dwelling to a new dwelling. The existing building is sited adjacent to the proposed dwelling and inside the red edge application site. This is considered by the applicant to provide a 'fall-back' position.
- 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. This is taken to be the area of land edged in red which denotes the application site.

- 6.14 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:
- 6.15 *"First whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is "yes" a comparison must be made between the proposed development and the fall-back use."*
- 6.16 The notion of Class Q providing a lawful fall-back position was subsequently and comprehensively dealt with at the landmark Court of Appeal case, Mansell vs Tonbridge and Malling Borough Council [2017], which concluded that a realistic fall-back position in regard to Class Q would amount to a material consideration in the determining of an application.
- 6.17 The existing location of the agricultural building which was the subject of the Prior Approval application is within a built up group of existing buildings/stables. The proposed new dwelling, is adjacent to the agricultural building on the eastern side, with the front elevation turned to face south west.
- 6.18 The existing building is somewhat smaller than the new dwelling proposed as per the comparison table below:

	22/00045/COUNOT (Prior Approval)	22/00890/FUL (New dwelling)
Siting	Building to the front of the existing stables, west of the site.	Building re-orientated with front facing SW, adjacent to the exiting agricultural building
Access	As existing	As existing with new parking and turning area proposed
Appearance	Concrete prefab, steel framework and profile metal sheet roof	Black weatherboarding
Ridge Height	3.4m	4.6m
Eaves Height	2.6m	2.6m
Gross Internal Area	44sqm	57sqm
Bedrooms	1	1

- 6.19 It is therefore considered that the Prior Approval granted for the conversion of the existing agricultural building would amount to viable 'fall back' position in the circumstances of this application and is to be demolished to construct a new larger dwelling in a similar location, within the existing built-up area of the wider site.
- 6.20 In conclusion, having regard to the above, the application, on balance, is considered to meet all 3 tests set out for a viable fall-back position in terms of the legal position set out earlier. There is a fall-back use in the form of the Prior Approval and it is considered that the proposed development, is, in the main, comparable to that approved under the Prior Approval, in terms of its siting, size, scale and external appearance.
- 6.21 As outlined above in the comparison table, there is an increase in the height and floor space of the new dwelling, however this is considered to be reasonable in this rural location, for a one bed dwelling and is not so out of character with the other buildings in the vicinity in terms of external appearance, with the use of black weatherboarding. Given the location of the proposed dwelling, adjacent to the agricultural building it is considered that there is a realistic prospect of the prior approval scheme being implemented, as the siting is similar. Therefore, the fall-back position is given significant weight in the assessment of this application.



- 6.22 Therefore given the circumstances of this case, along with the legal position and the Prior Approval fall-back position, the principle of development for a new dwelling on this site is considered to be acceptable subject to the detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.

#### Design, Scale and Impact on Character and Appearance

- 6.23 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).
- 6.24 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.
- 6.25 The existing agricultural building within the wider site is of a modest concrete pre fab and steel framework construction with a profile metal sheet roof and has an agricultural appearance. The building is in close proximity to the other buildings within the wider holding, forming a cluster of buildings in that particular part of the holding. The proposed dwelling, albeit larger and higher than that existing, is sited adjacent to the existing agricultural building and within close proximity to the other buildings within the wider holding and is therefore not considered to be out of place in this rural location.
- 6.26 The design of the new bungalow, is simple and unassuming and the use of black weatherboarding is considered to reflect the simple barn like structures on the wider holding. This would somewhat mitigate the prominence of the new dwelling in this rural setting and the dwelling would be viewed in context with the other built form on site, maintaining the open and agricultural character of the area.

#### 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 application site is within the built up area of the wider site, owned by the applicant and it is possible that as a consequence of the development a number of willow trees to the northern boundary would need to be removed. The Council's tree and landscaping officer does not consider that these are worthy of formal protection via a TPO. The trees and vegetation to the north, provide a degree of screening from the wider open land to the north, and it is therefore considered reasonable to secure a full detailed hard and soft landscaping scheme for the site, in particular to secure new soft landscaping, on this northern boundary of the application site in order to soften and screen the proposed new dwelling from the open views from the north into the site. to the north. These details can be secured by condition.

#### 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 one bedroom, one storey dwelling requires a minimum of 39-50sqm of Gross Internal Floorspace (GIA). From the plans submitted the proposed bungalow exceeds the requirements of the space standards. It is also considered that the internal layout is appropriate, with all habitable rooms having adequate natural light. The amenity area proposed is considered to meet the needs and expectations of future residents and is commensurate to the size of dwelling.
- 6.31 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

- 6.32 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.
- 6.33 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.
- 6.34 The application site is located within a fairly rural location, with residential dwellings some distance away fronting Thorpe Road.
- 6.35 A Construction Management Plan has been submitted with the application which outlines measures to minimise potential nuisance to nearby existing residents caused by the construction works. This CMP has regard to vehicle movements, working hours, storage of materials, on-site parking, site security, wheel washing facilities, noise control, use of machinery and mobile plant, piling works and both emission and dust control and has been found to be acceptable by the Council's Environmental Protection Officer. Due to the location of the site conditions are recommended in relation to land contamination in the form of a Watching Brief and the requirement for the safe removal of asbestos if present on site.
- 6.36 It is considered that the submitted CMP would mitigate the concerns raised by residents with regard to the construction aspect of the new dwelling. Therefore, it is not considered that this development would impact on the residential amenities of any neighbouring occupiers in any regard.

#### Highway and Parking Considerations

- 6.37 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.
- 6.38 The Essex County Council Parking Standards 2009 require that dwellings with 1 bedroom be served by a minimum of 1 parking space. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied upon to provide a parking space, should measure 7 metres by 3 metres internally. The submitted plans show that the new dwelling would utilise the existing access from Thorpe Road and will be provided with one parking space that meets policy requirements. It is also considered that there is ample space within the wider site for the

parking of other vehicles in relation to the stables operation and for emergency vehicles to access and turn within the wider site.

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

#### Water Conservation, Drainage and Sewerage

- 6.40 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.
- 6.41 Policy PPL5 states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer, which in this case there is not. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour. The dwelling would be connected to a Klargester BioDisc Domestic Sewage Treatment Plant.
- 6.42 Although details of the type of system have been submitted no FDA1 Foul drainage assessment form has been received. This makes it more difficult for the Council to be certain any application for an environmental permit would not be refused, or if any concerns of pollution or nuisance may arise. Nevertheless, the required details in this regard can be secured by way of a condition to any grant of planning permission.

#### Ecology and Biodiversity Implications

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

#### Renewable Energy

- 6.45 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.
- 6.46 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 can be added to any grant of planning permission.

#### Heritage Matters

- 6.47 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act imposes a statutory duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest.
- 6.48 Paragraph 194 of the National Planning Policy Framework ("the Framework") requires applicants to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.
- 6.49 Paragraph 202 of the Framework adds that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 6.50 No Heritage statement has been submitted with the application in accordance with the above requirements and therefore no assessment has been made by the applicant on the impact of the proposal on the setting of the nearby Listed Building, The Willows Farmhouse which is adjacent to the access from Thorpe Road.
- 6.51 However given the existing access is unchanged along with the considerable separation distance from the proposed new dwelling and the Listed Building along with the existing buildings both within the wider site and within neighbouring properties adjacent to the accessway, it is not considered that the proposed new dwelling, would have a harmful impact on the setting of the Listed Building.

#### Recreational Disturbance Avoidance and Mitigation Strategy (RAMS):

- 6.52 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.
- 6.53 This new residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites, 5900 metres from Hamford Water SPA and RAMSAR and 4217 metres from Colne Estuary RAMSAR and SPA and Essex Estuaries SAC.
- 6.54 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.
- 6.55 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.
- 6.56 In accordance with Natural England's advice there is no requirement to consult them due to the specified mitigation.
- 6.57 A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local

Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

#### Financial Contributions – Open Space and Play Space

- 6.58 Paragraph 54 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.
- 6.59 In line with the requirements of Section 2 Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space. The outcome of the consultation is that there is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby, however no contribution is requested on this occasion due to the small scale of the development proposed.

#### Environmental Protection

- 6.60 The applicant has submitted a Construction Method Statement, outlining measures to minimise potential nuisance to nearby existing residents caused by the construction works. This CMS has regard to noise control, vehicle movements and working hours, use of machinery and mobile plant, piling works and both emission and dust control and is considered to be acceptable. Due to the location of the site and its previous agricultural use, conditions and Informatives are recommended in relation to land contamination and safe removal of asbestos.

### **7. Conclusion**

The proposed demolition of an existing agricultural building and its replacement with a one bed bungalow is acceptable in principle following the previous prior approval granted on the site for one dwelling under planning reference 22/00045/COUNOT.

On balance, due to the siting of the dwellings close to the existing agricultural building and built form within the wider site, the increase in floorspace and height in comparison to the existing building, is not considered to be significantly harmful to the character and appearance of the area. There are no significant issues in respect to neighbouring amenities or harm to trees. Accordingly, the application is considered to be policy compliant and is recommended for approval.

### **8. Recommendation**

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a Unilateral Agreement for a financial contribution towards RAMS.

#### 8.2 Conditions and Reasons

1. The works to which this consent relate must be begun not later than the expiration of three years beginning with the date of this consent.

REASON: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

NOTE/S FOR CONDITION:

The development needs to commence within the timeframe provided. Failure to comply with this condition will result in the consent becoming lapsed and unable to be carried out. If commencement takes place after the time lapses this may result in unlawful works at risk of both Enforcement Action and Criminal proceedings. You should only commence works when all other conditions requiring agreement prior to commencement have been complied with.

2. The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

Location Plan

Site Plan, Existing and Proposed Floors Plans and Elevations – Drawing – BGN-02 Rev C

Planning Statement – Mollie Folley Stanfords December 2022

Construction Method Statement

Klargester BioDisc Domestic Sewage Treatment Plant details

Electric Vehicle Charging details

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

3. Prior to the first occupation of the dwellinghouse, hereby approved, the existing agricultural building (subject of 22/00045/COUNOT) and shown as being demolished on drawing BGN-02 Rev C) on the site must be completely demolished and all materials resulting therefrom shall be cleared from the site.

Reason - The development hereby permitted has only been supported on the basis that the existing agricultural building be removed from the site to justify their replacement with a single dwelling which ordinarily would be contrary to the development plan which directs new development to sites within settlement development boundaries.

4. Prior to and during construction, if any unexpected ground conditions are encountered during the following processes must be followed:
  - a. All site works at the position of the suspected contamination will stop and the Local Planning Authority and Environmental Health Department will be notified as a matter of urgency.
  - b. A suitably trained geo-environmental engineer should assess the visual and olfactory observations of the ground and the extent of contamination and the Client and the Local Authority should be informed of the discovery.
  - c. The suspected contaminated material will be investigated and tested appropriately in accordance with assessed risks. The investigation works will be carried out in the presence of a suitably qualified geo-environmental engineer. The investigation works will involve the collection of solid samples for testing and, using visual and olfactory observations of the ground, delineate the area over which contaminated materials are present.
  - d. The unexpected, contaminated material will either be left in situ or be stockpiled (except if suspected to be asbestos) whilst testing is carried out and suitable assessments completed to determine whether the material can be re-used on site or requires disposal as appropriate.
  - e. The testing suite will be determined by the independent geo-environmental specialist based on visual and olfactory observations.
  - f. Test results will be compared against current assessment criteria suitable for the future use of the area of the site affected.
  - g. Where the material is left in situ awaiting results, it will either be reburied or covered with plastic sheeting.
  - h. Where the potentially contaminated material is to be temporarily stockpiled, it will be placed either on a prepared surface of clay, or on 2000-gauge Visqueen sheeting (or other impermeable surface) and covered to prevent dust and odour emissions.
  - i. Any areas where unexpected visual or olfactory ground contamination is identified will be surveyed and testing results incorporated into a Verification Report.
  - j. A photographic record will be made of relevant observations.
  - k. The results of the investigation and testing of any suspect unexpected contamination will be used to determine the relevant actions. After consultation with the Local Authority, materials should either be: o re-used in areas where test results indicate that it meets compliance targets so it can be re-used without treatment; or o treatment of material on site to meet compliance targets so it can be re-used; or o removal from site to a suitably licensed landfill or permitted treatment facility.
  - l. A Verification Report will be produced for the work.

REASON - To ensure that any risks (to future users of the land and neighbouring land and to controlled waters, property and ecological systems) arising from any land contamination are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

5. The Construction Method Statement submitted 06/01/2022 shall be strictly adhered to throughout the construction period for the development. The construction shall be undertaken with registration and adherence to a Considerate Constructors Scheme

REASON: To minimise detriment to nearby residential and general amenity by controlling the construction process to achieve the approved development. This condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, by reason of the location and scale of development may result adverse harm on amenity.

6. Prior to the first occupation of the development hereby approved, the vehicle parking area as indicated on the approved plan BGH-02 Rev C has been hard surfaced and sealed. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

REASON: To ensure that the development is provided with appropriate parking and turning area to facilitate safe access to the Highway, in the interests of highway safety

7. No development above slab level shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard, soft and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels. The landscaping works must including a detailed plan, showing species to be used, planting positions, numbers of trees and shrubs and the sizes of the plants at time of planting and include wildlife friendly, native planting and locations for habitat boxes for roosting bats and nesting birds.

REASON: In the interests of visual amenity and the character and appearance of the area.

NOTE/S FOR CONDITION:

Slab level is normally referring to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visually above ground level or seek confirmation from the Local Planning Authority for your development.

Should the landscape works include any new hedgerow, please consider the following planting for a native hedge. Native hedge: 50% hawthorn, 25% blackthorn (but beware - this can spread into adjacent fields), 15% field maple, 2% holly, 2% wild privet, 2% guelder rose, 2% dog rose, 2% buckthorn.

8. All changes in ground levels, soft/hard landscaping shown on the approved landscaping details as submitted and agreed with the Local Planning Authority, shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development, or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

9. 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-butts per dwelling
- Compost bin per dwelling
- Agreement of heating of each dwelling/building
- Agreement of a 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.

NOTE/S FOR CONDITION:

Slab level is normally referring to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visually above ground level or seek confirmation from the Local Planning Authority for your development.

10. No development shall commence above slab level until full details of surface and foul water drainage have been submitted to and approved, in writing, by the Local Planning Authority. No part of the building/s shall be first occupied or brought into use until the agreed method of surface and foul water drainage has been fully installed and is functionally available for use for that building/s. The surface and foul water drainage scheme shall thereafter be maintained as approved.

REASON: To safeguard the ground water environment from harm and minimise the risk of flooding.

NOTE/S FOR CONDITION:

This condition is imposed to ensure the potential impact on a sensitive area is considered and harm avoided that may be detrimental to amenity and the environment.

Slab level is normally referring to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visually above ground level or seek confirmation from the Local Planning Authority for your development.

11. Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and 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, outbuildings, porches or other alterations to the

dwellings shall be carried out except in complete accordance with details which shall previously have been approved, in writing, by the Local Planning Authority following the submission of a planning application for such development.

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

### 8.3 Informatives

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](mailto: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.

#### Foul Drainage:

The application proposes a Sewerage Treatment Plant will be utilised as a way of disposing of foul waste; we would request, should the application be approved, that the Applicant / Agent, ensure the installation is fully compliant with the Environment Agency's Binding Rules and any other relevant Government guidance and British standards, in respect of these systems. Information on this can be found at: Septic tanks and treatment plants: permits and general binding rules: The general binding rules - GOV.UK ([www.gov.uk](http://www.gov.uk)). It is strongly recommended these rules are complied with, as they will minimise any potential nuisance to nearby residential dwellings, assist in preventing a potential Public Health nuisance, and minimise the potential for adverse incidents, of which may result in formal enforcement action.

Asbestos:

Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

## **9. Additional Considerations**

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

### Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

### Finance Implications

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

### **10. Background Papers**

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.