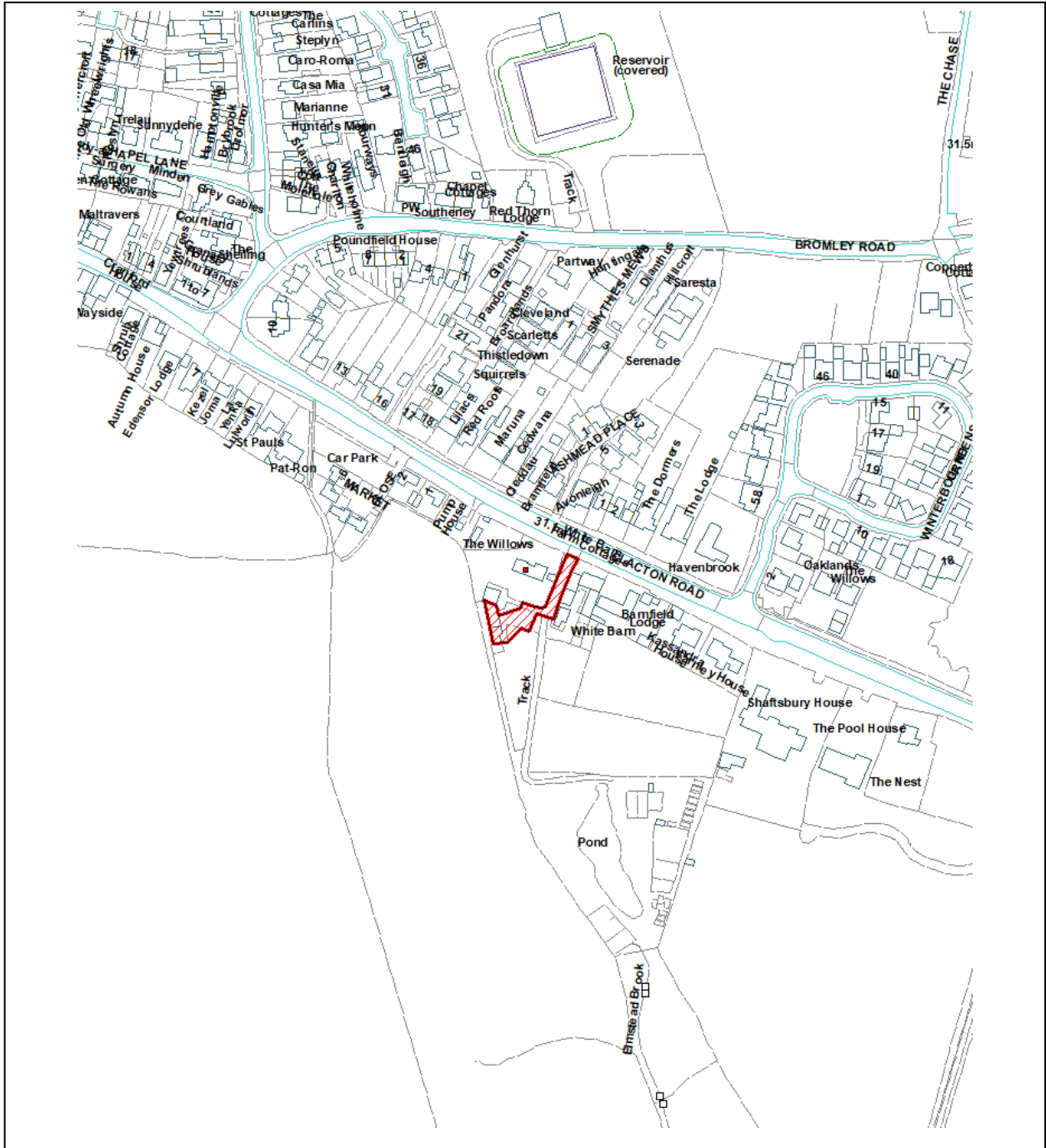


PLANNING COMMITTEE

13th APRIL 2023

REPORT OF THE DIRECTOR OF PLANNING

**A.2 PLANNING APPLICATION – 22/02038/FUL – WHITE BARN FARM CLACTON ROAD
ELMSTEAD CO7 7DB**



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Application:	22/02038/FUL	Expiry Date:	31st January 2023
Case Officer:	Michael Pingram	EOT Date:	19th April 2023
Town/ Parish:	Elmstead Market Parish Council		
Applicant:	Mr and Mrs Jennings		
Address:	White Barn Farm Clacton Road Elmstead, Colchester CO7 7DB		
Development:	Erection of one dwelling (in lieu of Prior Approval for one dwelling, subject of application 22/01288/COUNOT).		

1. Executive Summary

- 1.1 The application is referred to Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any defined settlement development boundary and has a recommendation of approval.
- 1.2 The proposed dwelling is not considered to be materially different in regard to siting or footprint to the development approved under prior approval 21/01288/COUNOT and is similar in scale and appearance to dwellings and other built form within the wider area. The overall height of the proposal exceeds that of the existing building, however this is not considered to result in significant harm.
- 1.3 The Council's Tree and Landscape Officer has raised no concerns, while sufficient parking and private amenity space is provided, and there will not be significant harm to existing neighbouring amenities. Essex Highways Authority have also raised no objections.

Recommendation: Approval

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

2. Planning Policy

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

National:

National Planning Policy Framework July 2021 (NPPF)

National Planning Practice Guidance (NPPG)

Local:

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

SP1 Presumption in Favour of Sustainable Development

SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)

SP3 Spatial Strategy for North Essex

SP7 Place Shaping Principles

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

SPL1 Managing Growth

SPL3 Sustainable Design

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL10 Renewable Energy Generation and Energy Efficiency Measures

HP5 Open Space, Sports & Recreation Facilities

DI1 Infrastructure Delivery and Impact Mitigation

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate

buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the ‘tilted balance’).

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

3. Relevant Planning History

22/01288/COUNOT	Application for prior approval for the conversion of an agricultural building into one dwelling.	Prior Approval not required	08.09.2022
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4. Consultations

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.

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.tendingdc.gov.uk/online-applications/>.

<p><u>UU Open Spaces</u> 17.01.2023</p> <p>No contribution is requested on this occasion.</p>
<p><u>ECC Highways Dept</u> 06.01.2023</p> <p>The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material. It is noted that the site is situated on the A133 Clacton Road that is subject to a 30-mph speed limit. The site consists of the host property, an agricultural building, and associated land. The agricultural building was used to store agricultural equipment and machinery in relation to the agricultural use at the site. The proposal will share the established vehicular access with the host dwelling, when compared with the former agricultural use, the level of activity will be on a par or possibly reduced. The proposal will provide adequate parking and turning, considering these factors:</p> <p>From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:</p> <p>1. Prior to occupation of the dwelling, the access at its centre line shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 90 metres in both</p>

directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by the dwelling and retained free of any obstruction at all times.

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

2. Prior to the occupation of the dwelling and as per the Essex Parking Standards (Parking Standards: Design and Good Practice, Sept 2009) 6 metres should be provided behind each parking space to allow for manoeuvring.

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

3. The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

4. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

5. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

And recommends informatives.

Environmental Protection

11.01.2023

With reference to the above application, please see below for comments from the EP Team:

Construction Method Statement: we are satisfied with the submitted CMS, and have no adverse comments to make.

Contaminated Land: Section 5.1 of the submitted planning statement indicates that the LPA had no previous concerns in relation to a previous application (22/01228/COUNOT) with respect to land contamination; we would like to highlight that the EP team indicated concerns due to the historical use of the land, and as a result of discussion with the relevant planning officer, a Watching Brief in relation to contaminated land was requested. As such, and in the pursuit of reasonableness and consistency, should this application be approved, the EP Team

request a Watching Brief be conditioned (on any subsequent approval) and adhered to throughout the demolition and construction phase. We request that the LPA are contacted in the event of unexpected ground conditions being encountered during construction and that the below minimum precautions are undertaken until such time as the LPA responds to the notification. I would also advise that the developer is made aware that the responsibility for the safe development of the site lies with them.

Minimum requirements for dealing with unexpected ground conditions being encountered during construction.

1. 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.
2. 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.
3. 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.
4. 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.
5. The testing suite will be determined by the independent geo-environmental specialist based on visual and olfactory observations.
6. Test results will be compared against current assessment criteria suitable for the future use of the area of the site affected.
7. Where the material is left in situ awaiting results, it will either be reburied or covered with plastic sheeting.
8. 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.
9. Any areas where unexpected visual or olfactory ground contamination is identified will be surveyed and testing results incorporated into a Verification Report.
10. A photographic record will be made of relevant observations.
11. 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;
 - o treatment of material on site to meet compliance targets so it can be re-used;
 - o removal from site to a suitably licensed landfill or permitted treatment facility.
12. A Verification Report will be produced for the work.

REASON: It is the responsibility of the developer to ensure the safe development of the site and to carry out any appropriate land contamination investigation and remediation works. The condition is to ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

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.

*INFORMATIVE 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). 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.

Tree & Landscape Officer

03.01.2023

The main body of the application site does not contain any trees or other significant vegetation.

To the west of the existing stables there is a small Oak tree which is a reasonable specimen however the tree does not feature prominently in the public realm.

Also to the west of the existing stable there is a drainage ditch between the existing structure and the Oak that will be acting as a barrier to root activity. Consequently the renovation of the existing building or its demolition and replacement with a new dwelling will not have an adverse impact on the long term viability of the tree.

Taking the location and position of the proposed dwelling into account there is little public benefit to be gained by new soft landscaping associated with the development proposal.

5. Representations

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

6. Assessment

Site Description

- 6.1 The application relates to a building located to the south-west of White Barn Farm, which itself is a part single part two storey detached residential property located along the southern section of Clacton Road within the parish of Elmstead Market.
- 6.2 The building subject of this application is a single storey building formerly used to store agricultural equipment and machinery in relation to poultry kept at site, and is accessed via Clacton Road to the north-eastern corner of the site.
- 6.3 The surrounding area includes a series of residential properties to the northern side of Clacton Road, with more sporadic built form along the southern site. Approximately 100 metres to the north-west is a car park, with the main hub of Elmstead Market located approximately 400 metres to the north-west. To the south and south-west of the site are large areas of grassed land, although the land further to the south-west has planning permission for the erection of 62 dwellings.
- 6.4 The site lies adjacent to, but outside of, the defined Settlement Development Boundary for Elmstead Market within the adopted Local Plan 2013-2033.

Description of Proposal

- 6.5 This application seeks full planning permission for the replacement of a former agricultural building with one detached dwelling, which will be single storey and served by two bedrooms.
- 6.6 The proposed property would have a gross floor area of 115sqm, and would represent an alternative development to the Prior Approval for one dwelling subject of application 21/01288/COUNOT, which had a gross floor area of approximately 124sqm. The site will be accessed by the existing access located to the north-western corner of the site.

Site History

- 6.7 Under planning reference 21/01288/COUNOT, prior approval permission was granted in September 2022 for the conversion of the agricultural building subject of this planning application, into one dwelling. This was allowed as assessed against Class Q of the Town & Country Planning (General Permitted Development) (England) Order (2015). Within the determination of this application the Council did not express any concern on the grounds for consideration of the notification application, namely access, flooding, design, noise or contamination.

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 Elmstead Market within the adopted 2013-2033 Local Plan. The proposed development would therefore extend outside the area planned to provide growth for this settlement. In view of the housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement.
- 6.10 Policy SPL2 supports new development within defined Settlement Development Boundary's (SDB) which would encourage sustainable patterns of growth and carefully control urban sprawl. Within a defined SDB, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.
- 6.11 The proposal therefore results in conflict with policies SP3 and SPL2. In this case, however, the principle of residential development on this site has been established through the prior approval consent granted under planning permission 21/01288/COUNOT in September 2022. The current proposal represents an alternative design to the previously granted permission, which is considered to form a material consideration in respect of the application and denotes what is considered to be a viable fall-back position as outlined below.

Fallback Position – Material Consideration

- 6.12 It is established in case law that permitted development rights can legitimately represent a fall-back position when considering alternative proposals for development of the same site and this was the case for the previous planning approval.
- 6.13 In summary, the relevant legal principles relating to the fall-back position were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr

Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fall-back test:

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

6.14 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.

6.15 The table below provides a comparison between the original prior approval and the new dwelling proposed under this application:

	21/01288/COUNOT (Prior Approval)	22/02038/FUL (Current Application)
Siting	To the south-west of the site, to the rear of White Barn Farm.	Similar location, however footprint is of an 'L-Shape' so extends slightly further east.
Access	Via the existing access point to the north-east corner of the site from Clacton Road.	Via the existing access point to the north-east corner of the site from Clacton Road.
Appearance	Black boarding.	Black boarding, red brick plinth, pan tiles and black powder coated aluminium windows.
Ridge Height	2.8 metres	3.9 metres
Eaves Height	2.2 metres	2.3 metres
Footprint	124sqm	115sqm
Bedrooms	3 bedrooms	2 bedrooms

6.16 In conclusion, having regard to the above, the application is considered to meet all three tests set out for a viable fall-back position in terms of the legal position set out earlier. There is a fall-back use in the form of the prior approval and it is considered that the proposed development, is, in the main, comparable to that approved under the prior approval, in terms of its siting, size, scale and external appearance. As outlined above in the comparison table, there is a noticeable increase in the ridge height of the new dwelling (although the eaves height remains of a similar size). However, the dwelling is set back in the site and the increased height will not appear significantly out of keeping, so this increase will appear acceptable in this location. Lastly there is a realistic prospect of the prior approval scheme being implemented. Therefore, the fall-back position is given significant weight in the assessment of this application.

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

Visual Impacts

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

- 6.19 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.
- 6.20 The site is located in a semi-rural area, and there are examples of residential development within the immediate vicinity, particularly to the north-east and north of the site, as well as other built form further out along both sides of Clacton Road.
- 6.21 The proposed dwelling would replace an existing structure in broadly the same location. The dwelling would result in a net decrease of approximately 9sqm gross external floor area, with no net increase in the number of dwellings.
- 6.22 The distance of the proposed dwelling from the highway and front boundary hedgerow, approximately 50 metres, will help to obscure the view of the development from Clacton Road, and the new dwelling will also be viewed within the context of the immediate surrounding residential development to the north and north-east. Therefore, in this particular instance it is considered that the location of the dwelling will have no greater impact than the existing agricultural building.
- 6.23 The design of the dwelling will see a detached property of a rural nature that is not dissimilar to the existing structure, albeit with the alteration to an 'L-Shape' design. In addition, the use of a mix of materials including black boarding, red brick plinth, and pan tiles add to the overall acceptable design within this location.
- 6.24 In terms of the proposed scale, while it is noted the dwelling is 1.1 metres higher than the existing building, the dwelling remains single storey and is well set back in the site, and is also set amongst existing built form. Therefore, Officers consider the development would not appear overly incongruous when considered in this context, and equally would not result in an overly harmful impact on the character and appearance of the area or landscape.
- 6.25 Policy LP4 requires that new residential developments will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area. The plans show that this is comfortably adhered to.

Impact to Neighbouring Amenities

- 6.26 The NPPF, at paragraph 130 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.
- 6.27 The site and proposed dwelling is sited a sufficient and significant distance from the nearby neighbouring properties to the north and north-east, and will not result in any loss of sunlight or daylight, particularly given its single storey nature. The separation distances of the proposed dwelling from neighbouring dwellings, along with its single storey nature, means that no loss of privacy or overlooking will occur to neighbouring properties. Therefore, it is considered that the proposed development would not result in any material harm to the living conditions of the occupants of neighbouring dwellings.

- 6.28 Overall the proposal is considered to secure a good standard of amenity for future occupants of the proposed dwelling and would not demonstrably harm the amenities of residents living in the vicinity.

Highway Safety Impacts

- 6.29 Paragraph 108 of the National Planning Policy Framework 2021 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Paragraph 111 of the Framework states that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 6.30 Policy SPL3 (Part B) of the Adopted Local Plan seeks to ensure that access to a new development site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and provision is made for adequate vehicle and cycle parking. Adopted Local Plan Policy CP2 states proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe.
- 6.31 Essex Highways Authority have been consulted and have stated that as the proposal will share the established vehicular access with the host dwelling, and when compared with the former agricultural use the level of activity will be on a par or possibly reduced, they raise no objections subject to conditions relating to visibility splays, 6 metres being behind each parking space, cycle parking provision, the submission of a Residential Travel Information Pack, and storage of building materials being clear of the highway.
- 6.32 Furthermore, the Council's Adopted Parking Standards require that for a dwelling with two or more bedrooms that a minimum of two parking spaces are required. Parking spaces should measure 5.5m x 2.9 metres. The submitted plans show that there is sufficient space within the site to provide the necessary parking for the dwelling.

Impact to Trees and Landscape

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

"The main body of the application site does not contain any trees or other significant vegetation.

To the west of the existing stables there is a small Oak tree which is a reasonable specimen however the tree does not feature prominently in the public realm.

Also to the west of the existing stable there is a drainage ditch between the existing structure and the Oak that will be acting as a barrier to root activity. Consequently the renovation of the existing building or its demolition and replacement with a new dwelling will not have an adverse impact on the long term viability of the tree.

Taking the location and position of the proposed dwelling into account there is little public benefit to be gained by new soft landscaping associated with the development proposal.."

- 6.36 Given these comments, Officers are content that the impact to trees and the areas landscape character will not be significantly harmful.

Drainage

- 6.37 Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Furthermore, Paragraph 185 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.
- 6.38 Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010.
- 6.39 Adopted Policy PPL5 of Section 2 of the Adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour.
- 6.40 In relation to non-mains drainage from non-major development the Environment Agency's advice is that to comply with the Framework and PPG on foul drainage matters, an LPA needs to be satisfied that foul drainage can be provided without adverse impact on the environment. This requires ensuring that both those environmental risks outside of the control of the permit and the relevant considerations in the PPG are addressed. The LPA should also be mindful that the developer will need to address foul drainage matters to get their environmental permit and meet building control regulations. Therefore, they should be confident that it is likely that any necessary permits and approvals can be successfully obtained.
- 6.41 Question 11 of the application form states that it is not intended to connect to a mains sewer. Instead, foul sewage will be disposed of by way of a package treatment plant; the declaration implies that a mains connection is not possible.
- 6.42 In considering the acceptability of the proposed non-mains drainage, the site is not located in close proximity to any dwelling, the site is not close to any designated site of importance to biodiversity, nor is it located within close proximity to any watercourse. The site is not located within a Drinking Water Safeguard Zone or a Source Protection Zone, and the site is sufficiently large enough to accommodate a soakaway. Furthermore, flows from a treatment plant serving one dwelling served by two bedrooms would be very low. Taking all these factors into account, and the absence of a mains connection in close proximity to the site, the proposed foul drainage arrangements are considered to be acceptable.

Financial Contributions – Recreational Disturbance

- 6.43 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.
- 6.44 The application scheme proposes a residential use on a site that lies within the Zone of Influence (Zol) being approximately 3.6km away from the Colne Estuary SAC and SPA. New housing development within the Zol would be likely to increase the number of recreational visitors to these sites and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.
- 6.45 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

- 6.46 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.
- 6.47 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 4.51 hectares of equipped play/formal open space in Elmstead Market, however no contribution is requested on this occasion.

Renewable and Energy Conservation Measures

- 6.48 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.
- 6.49 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.
- 6.50 The proposal includes a new roof space which has the potential to incorporate solar photovoltaic installation, and car parking areas have the potential for the provision of ULEV charging points for electric cars. While the submission confirms an electric vehicle charging point will be provided to an external wall, this is not sufficient to address the full requirements of PPL10. Therefore, it is considered reasonable and necessary to include a planning condition requiring a scheme, together with a timetable to be submitted for the consideration

and installation of these measures as such a condition is capable of addressing these policy requirements.

7. Conclusion

- 7.1 The proposed demolition of an existing agricultural building and its replacement with a two bedroom dwelling is acceptable in principle following the previous prior approval granted on the site for two dwellings under planning reference 21/01288/COUNOT.
- 7.2 The positioning of the dwelling is very similar to the existing agricultural building, while the level of floorspace will see a slight decrease. The dwelling will result in an increase in height in comparison to the existing building, however Officers do not consider this is significantly harmful to the character and appearance of the area.
- 7.3 There are no significant issues in respect to neighbouring amenities or harm to trees. Essex Highways Authority have raised no objections and there is sufficient space for parking. Accordingly, the application is considered to be policy compliant and is recommended for approval.

8. Recommendation

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives.

8.2 Conditions and Reasons

1 COMPLIANCE REQUIRED: COMMENCEMENT TIME LIMIT

CONDITION: 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 APPROVED PLANS & DOCUMENTS

CONDITION: 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.

Drawing Number JCR-02 Revision B, the documents titled 'Planning Statement', 'Electric Vehicle Charging', 'Construction Method Statement', 'Klargester BioDisc Domestic Sewage Treatment Plant', and the untitled Site Location Plan.

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 HIGHWAYS VISIBILITY SPLAYS

CONDITION: Prior to first use of the access, visibility splays shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 90 metres in both directions, as measured from and along the nearside edge of the carriageway, and shall then be retained in its approved form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

REASON: To ensure vehicles exiting the access would have sufficient visibility to enter the public highway safely and vehicles on the public highway would have sufficient warning of a vehicle emerging in order to take avoiding action.

NOTE/S FOR CONDITION:

It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the ECC Highway Authority. Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by Essex County Council or its agents at the applicant's expense.

4 RESIDENTIAL TRAVEL INFORMATION PACK

CONDITION: Prior to first occupation of each dwelling, a Residential Travel Information Pack (travel pack) shall be provided to each dwelling for use of its first occupiers. The travel pack shall be agreed, in writing, by the Local planning authority prior to provision and shall include a minimum of six one day travel vouchers for use with a local transport operator.

REASON: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

5 HIGHWAYS RESTRICTION

CONDITION: Prior to the first occupation of the development the areas within the site identified for the purpose of loading/unloading/reception and storage of materials and manoeuvring shall be retained thereafter and remain free of obstruction except for the purpose of loading/unloading/reception and storage of materials and manoeuvring and used for no other purpose. Any other area within the site outlined in red not identified shall not be used as loading/unloading/reception and storage of materials and manoeuvring areas.

REASON: To ensure that appropriate loading / unloading facilities are available in the interest of highway safety.

6 CONDITION: If during construction/demolition works evidence of potential contamination is encountered, works shall cease, and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.

b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

c) If no contamination has been discovered during the build, then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

REASON - To ensure that any risks from land contamination to the future users of the land and neighbouring land are minimised.

7 CONDITION: 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 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 refers 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.

The greatest threat to our planet is the belief that someone else will save it and also forgetting that small acts, when multiplied by millions of people, can transform the world. Developments will provide buildings/homes to thousands/millions of people over their lifetime. A well designed sustainable development in the beginning will restrict the contribution each person makes to that threat and help enable them to transform the world.

8.3 Informatives

Positive and Proactive Statement:

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

Highways Informatives:

1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org

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

3: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for

maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

4: Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the Essex Climate Action Commission proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the Essex Developers' Group Climate Charter [2022] and to view the advice contained in the Essex Design Guide. Climate Action Advice guides for residents, businesses and schools are also available.

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). 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.

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/>.