

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	JJ	07/09/2023
Planning Manager / Team Leader authorisation:	ML	08/09/2023
Planning Technician final checks and despatch:	JJ	08/09/2023

Application: 21/02173/OUT **Town / Parish:** Elmstead Market Parish Council

Applicant: B Whiting - John Whiting Ltd

Address: Land East of Bottles Hall Clacton Road

Development: Outline application (All Matters Reserved) for proposed erection of 11 commercial units and associated parking.

1. Town / Parish Council

There is no consultation response from Elmstead Parish Council on the planning file.

2. Consultation Responses

Anglian Water Services
Ltd
24.01.2022

ASSETS

Section 1 - Assets Affected

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

WASTEWATER SERVICES

Section 2 - Wastewater Treatment

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

Section 3 - Used Water Network

Development may lead to an unacceptable risk of flooding downstream. Anglian Water will need to plan effectively for the proposed development, if permission is granted. We will need to work with the applicant to ensure any infrastructure improvements are delivered in line with the development. In order to make an accurate network capacity assessment, we require the submission of a foul water strategy showing the proposed connection point, conveyance method and pump discharge rate if applicable. We therefore request a condition requiring an on-site drainage strategy. (1) INFORMATIVE - Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact Development Services Team 0345 606 6087. (2) INFORMATIVE - Notification of intention to connect to the public sewer under S106 of

the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact Development Services Team 0345 606 6087. (3) INFORMATIVE - Protection of existing assets - A public sewer is shown on record plans within the land identified for the proposed development. It appears that development proposals will affect existing public sewers. It is recommended that the applicant contacts Anglian Water Development Services Team for further advice on this matter. Building over existing public sewers will not be permitted (without agreement) from Anglian Water. (4) INFORMATIVE - Building near to a public sewer - No building will be permitted within the statutory easement width of 3 metres from the pipeline without agreement from Anglian Water. Please contact Development Services Team on 0345 606 6087. (5) INFORMATIVE: The developer should note that the site drainage details submitted have not been approved for the purposes of adoption. If the developer wishes to have the sewers included in a sewer adoption agreement with Anglian Water (under Sections 104 of the Water Industry Act 1991), they should contact our Development Services Team on 0345 606 6087 at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with Sewers for Adoption guide for developers, as supplemented by Anglian Water's requirements.

Section 4 - Surface Water Disposal

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

From the details submitted to support the planning application the proposed method of surface water management does not relate to Anglian Water operated assets. As such, we are unable to provide comments on the suitability of the surface water management. The Local Planning Authority should seek the advice of the Lead Local Flood Authority or the Internal Drainage Board. The Environment Agency should be consulted if the drainage system directly or indirectly involves the discharge of water into a watercourse. Should the proposed method of surface water management change to include interaction with Anglian Water operated assets, we would wish to be reconsulted to ensure that an effective surface water drainage strategy is prepared and implemented. The applicant has indicated on their application form that their method of surface water drainage is via SuDS. If the developer wishes Anglian Water to be the adopting body for all or part of the proposed SuDS scheme the Design and Construction Guidance must be followed. We would recommend the applicant contact us at the earliest opportunity to discuss their SuDS design via a Pre-Planning Strategic Enquiry. The Lead Local Flood Authority (LLFA) are a statutory consultee for all major development and should be consulted as early as possible to ensure the proposed drainage system meets with minimum operational standards and is beneficial for all concerned organisations and individuals. We promote the use of SuDS as a sustainable and natural way of controlling surface water run-off. We please find below our SuDS website link for further information.

<https://www.anglianwater.co.uk/developers/drainage-services/sustainable-drainage-systems/>

Section 5 - Suggested Planning Conditions

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

Used Water Sewerage Network (Section 3)

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

FOR THE ATTENTION OF THE APPLICANT - if Section 3 or Section 4 condition has been recommended above, please see below information:

Next steps

Desktop analysis has suggested that the proposed development will lead to an unacceptable risk of flooding downstream. We therefore highly recommend that you engage with Anglian Water at your earliest convenience to develop in consultation with us a feasible drainage strategy.

If you have not done so already, we recommend that you submit a Pre-planning enquiry with our Pre-Development team. This can be completed online at our website <http://www.anglianwater.co.uk/developers/pre-development.aspx>

Once submitted, we will work with you in developing a feasible mitigation solution.

If a foul or surface water condition is applied by the Local Planning Authority to the Decision Notice, we will require a copy of the following information prior to recommending discharging the condition:

Foul water:

- Feasible drainage strategy agreed with Anglian Water detailing the discharge solution including:
 - Development size
 - Proposed discharge rate (Should you require a pumped connection, please note that our minimum pumped discharge rate is 3.8l/s)
 - Connecting manhole discharge location (No connections can be made into a public rising main)
 - Notification of intention to connect to the public sewer under S106 of the Water Industry Act (More information can be found on our website)
- Feasible mitigation strategy in agreement with Anglian Water (if required)

Tree & Landscape
Officer
26.01.2022

The application site is currently in use for commercial purposes and there are no trees or other significant vegetation in the main body of the land. There are large, established and important trees close to the boundary of the site and other smaller trees and vegetation in the area of the proposed new access road.

At the present time the application site benefits from a good level of screening provided by relatively young planting on a bund around the external perimeter of the site. It would be highly desirable for this established landscape feature to be retained.

In terms of the impact of the development proposal on the above trees and hedges the applicant has provided a detailed tree survey and report. The report accurately describes the health and condition of existing trees and the extent to which they are a constraint on the development potential of the land. The information contained in the report is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction. Recommendations.

The tree report adequately demonstrates that the development of the land could take place without causing harm to the important trees on the application site and on adjacent land.

In terms of soft landscaping it will be important to retain and strengthen existing planting. This should be secured as a reserved matter.

ECC Highways Dept
11.03.2022

The information submitted with the application has been fully assessed by the Highway Authority and conclusions reached based on a desktop study in conjunction with a site visit. The site is situated on a stretch of the A133 Clacton Road that is subject to a de-restricted speed limit and is classed as a Strategic Route in the County Council's Route Hierarchy. The current vehicular access serving the proposed site is purely for agricultural purposes only.

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

1. The proposal would intensify the use of an existing access onto A133 Clacton Road (strategic route) where the proposed site access and geometric layout off the A133 Clacton Road, is not in accordance with current safety standards. The main function of this highway is that of carrying traffic freely and safely between centres of population. The existence of an access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety.

2. Although the applicant has demonstrated adequate visibility splays could be achieved at the vehicular access onto the A133 Clacton Road in accordance with the design speed of the A133 Clacton Road, the applicant has not demonstrated whether the visibility splays can be achieved within the limits of public highway and/or land in the control of the applicant. The visibility splays must be achieved within the limits of public highway and/or land in the control of the applicant.

3. The proposed location of the site access would introduce a point of conflict with existing junctions on the south side of Clacton Road (Lanswood Park and Forres developments) and impact on the existing designated right turn lanes for both developments and crossing facilities serving the bus stops in this location. This would lead to potential collisions for right turning vehicles and queuing back of vehicles onto the A133 Clacton Road both of which would result in an unacceptable degree of hazard to all highway users to the detriment of highway safety.

4. Due to the design speed of the A133 Clacton Road, the new access should be designed and constructed in accordance with the Design Manual for Roads and Bridges. This is not the case and therefore the new access would result in an unacceptable degree of hazard to all highway users to the detriment of highway safety.

5. As far as can be determined from the information provided a Stage 1 Road Safety Audit has not been undertaken on the proposal to determine the impact on the local highway network.

The proposal is therefore contrary to policy DM1, DM2, and DM7 contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Essex County Council
Ecology
17.03.2022

Thank you for consulting Place Services on the above application.

No objection subject to securing biodiversity mitigation and enhancement measures

Summary

We have reviewed the Preliminary Ecological Appraisal (Liz Lord, November 2021) relating to the likely impacts of development on designated sites, protected species and Priority species & habitats and identification of appropriate mitigation measures.

We are satisfied that there is sufficient ecological information available for determination of this application.

This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in the Preliminary Ecological Appraisal (Liz Lord, November 2021) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly nesting birds, bats, and reptiles.

We also support the proposed reasonable biodiversity enhancements including bat boxes, bird boxes, and a new native species hedgerow, which have been recommended within the Preliminary Ecological Appraisal (Liz Lord, November 2021) to secure net gains for biodiversity, as outlined under Paragraph 174d of the National Planning Policy Framework (2021). The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Layout and should be secured by a condition of any consent.

In addition, the Preliminary Ecological Appraisal (Liz Lord, November 2021) highlights that it is likely bats could be foraging/commuting within and around the site. Therefore, if any external lighting is to be proposed, it is advised that a sensitive lighting scheme is developed to minimise any impacts. This should summarise the following measures will be implemented:

- Light levels should be as low as possible as required to fulfil the lighting need.
- Warm White lights should be used at <3000k. This is necessary as lighting which emit an ultraviolet component or that have a blue spectral content have a high attraction effect on insects. This may lead in a reduction in prey availability for some light sensitive bat species.
- The provision of motion sensors or timers to avoid the amount of 'lit-time' of the proposed lighting.
- Lights should be designed to prevent horizontal spill e.g. cowls, hoods, reflector skirts or shields.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013.

We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

Recommended conditions

1. CONCURRENT WITH RESERVED MATTERS ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Liz Lord, November 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This will include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction including advice on precautionary measures for mobile species such as hedgehogs. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details."

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

2. CONCURRENT WITH RESERVED MATTERS PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT LAYOUT

"A Biodiversity Enhancement Layout, providing the finalised details and locations of the enhancement measures contained within the Preliminary Ecological Appraisal (Liz Lord, November 2021) shall be submitted to and approved in writing by the local planning authority.

The enhancement measures shall be implemented in accordance with the approved details prior to occupation and all features shall be retained in that manner thereafter."

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

3. CONCURRENT WITH RESERVED MATTERS PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

"A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority."

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

Please contact us with any queries.

Environmental Protection There appear to be no response available from Environment Protection on the case file. Environmental health matters including considerations such as contaminated land are covered in the main body of the report.

ECC SuDS Consultee
01.06.2022

As the Lead Local Flood Authority (LLFA) this ECC provides advice on SuDS schemes for major developments. ECC have been statutory consultee on surface water since the 15th April 2015. In providing advice this Council, and their appointed consultants, looks to ensure sustainable drainage proposals comply with the required standards as set out in the following documents:

- Non-statutory technical standards for sustainable drainage systems
- Essex County Council's (ECC's) adopted Sustainable Drainage Systems Design Guide
- The CIRIA SuDS Manual (C753)
- BS8582 Code of practice for surface water management for development sites.

Lead Local Flood Authority position.

Having reviewed the documents which accompanied the planning application, we would recommend the issuing of a holding objection on the basis of the following:

The information provided does not allow us to assess the flood risk (*of the*) development. Please provide information as required within the new ECC SUDS design guide:

<https://www.essexdesignguide.co.uk/suds/what-we-expect/>

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

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

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- Sequential Test in relation to fluvial flood risk;
- Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- Safety of the building;
- Flood recovery measures (including flood proofing and other building level resistance and resilience measures);
- Sustainability of the development

In all circumstances where warning and emergency response is fundamental to managing flood risk, ECC advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

Should further correspondence be required, please contact the SuDS team directly using the below details.

3. Planning History

00/00052/FUL	Proposed first floor extension and replacement of flat roof with pitch roof	Approved	05.05.2000
00/00085/FUL	Sale of commercial vehicles - Area G	Refused	07.04.2000
00/01145/FUL	Erection of boundary wall	Refused	31.08.2000
00/01146/FUL	Change of use of land and buildings to provide commercial vehicle sales area, customer car parking, vehicle parts store and compound for vehicles	Refused	31.08.2000
01/01098/FUL	Demolition of vehicle storage building and erection of new vehicle storage building (unit E)	Approved	20.08.2001
02/00493/FUL	Siting of mobile vehicle crusher	Approved	05.12.2002

96/00612/FUL	(Part Bottles Hall, Elmstead Market) Change of use from warehousing (B8) to light industrial (B1) warehousing (B8)	Approved	16.07.1996
97/00452/FUL	Change of use to use Unit F as partly for retail lorry spares and Area G for lorry parking, repair and salvage, together with a Change of Use for Unit A from office to a dwelling for the use by the owner's son	Approved	03.06.1997
97/00453/FUL	(Unit B2 and Area J, Bottles Hall, Clacton Road, Elmstead) Change of use of storage to storage with first floor over. New shopfront and part use of Area 'J' outside display	Approved	03.06.1997
97/00802/FUL	(Bottles Hall Industrial Site, Clacton Road, Elmstead Market) Variation to Condition 3 imposed upon planning permission TEN/97/0452 relating to hours of operation	Refused	28.08.1997
98/00470/FUL	To erect new perimeter fencing to Area J, with hedge planting facing Clacton Road	Approved	21.07.1998
99/01288/FUL	Conversion of top floors to 2 no. flats	Refused	11.11.1999
99/01721/FUL	Change of use from car parking and outside display to parking of 20-25 commercial vehicles incidental to the use of remainder of the site (Area J)	Refused	02.02.2000
03/00252/FUL	Variation of Condition 06 - Application No. TEN/97/00452 to allow dismantling of vehicles within Area H.	Approved	18.12.2003
03/02438/FUL	Permanent siting of vehicle crushing machine	Approved	19.02.2004
05/01035/FUL	Relocation of vehicle crushing machine	Approved	05.08.2005
06/00306/FUL	Erection of vehicle waste product bay (retrospective)	Withdrawn	14.01.2008
06/00541/FUL	Continued use of land for storage and parking. Extension to established vehicle salvage and repair yard.	Approved	22.05.2006

06/01283/FUL	Two storey side extension and separate pool enclosure (Re-Submission of 06/00814/FUL)	Approved	29.09.2006
06/01441/FUL	Retention of sleeper wall	Refused	21.12.2006
08/01319/FUL	Change of use of land from agriculture to create a landscape buffer alongside established vehicle breaking yard.	Approved	06.11.2008
10/00913/FUL	Proposed agricultural building to house herd of suckler cows.	Refused	06.10.2010
10/01469/FUL	Proposed agricultural building to house herd of suckler cows (resubmission of application 10/00913/FUL).	Refused	15.02.2011
11/00578/FUL	Change of use of agricultural land to form extension of established vehicle salvage yard for the storage and parking of salvaged commercial vehicles and vehicles acquired for breakage and export (Use Class B8) (Retention of Use).	Approved	21.09.2011
11/00888/FUL	Erection of hay barn.	Approved	27.09.2011
12/00276/FUL	Proposed agricultural building to house suckler calves.	Approved	08.05.2012
14/00118/AGRIC	Lean-to building constructed against the west elevation of an existing cow shed (no interconnecting link).	Determination	19.02.2014
14/00452/FUL	Widening and re-surfacing of established agricultural access and formation of new access track incorporating field gates.	Approved	05.09.2014
14/01020/FUL	Erection of a new agricultural building for the storage of straw bales, feed-quality potatoes, grains and feed mixing equipment.	Approved	02.10.2014
15/00492/FUL	Change of use of land to site mobile home for use and occupation of stockman.	Approved	03.06.2015
17/01311/FUL	Extension to barn for agricultural storage.	Approved	29.09.2017
19/01874/AGRIC	Erection of an agricultural storage barn.	Determination	19.03.2020

21/02173/OUT Outline application (All Matters Current
Reserved) for proposed erection of
11 commercial units and
associated parking.

4. Relevant Policies / Government Guidance

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

National Planning Policy Framework 2023 (the Framework)
Planning Practice Guidance

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

Section 1:

SP1 Presumption in Favour of Sustainable Development
SP3 Spatial Strategy for North Essex
SP5 Employment
SP6 Infrastructure and Connectivity
SP7 Place Shaping Principles

Section 2:

SPL1 Managing Growth
SPL2 Settlement Development Boundaries
SPL3 Sustainable Design
HP1 Improving Health and Wellbeing
HP3 Green Infrastructure
PP7 Employment Allocations
PP12 Improving education and skills
PP13 The Rural Economy
PPL1 Development and Flood Risk
PPL3 The Rural Landscape
PPL4 Biodiversity and Geodiversity
PPL5 Water Conservation, Drainage and Sewerage
PPL7 Archaeology
PPL10 Renewable Energy Generation and Energy Efficiency Measures
CP1 Sustainable Transport and Accessibility
CP2 Improving the Transport Network
DI1 Infrastructure Delivery and Impact Mitigation

Supplementary Planning Guidance:

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

Other relevant documents

Emerging Elmstead Neighbourhood Plan, relevant policies include:

Draft Policy Idea 1. Settlement Development Boundary
Draft Policy Idea 9. Movement, Connectivity and Traffic
Draft Policy Idea 12. Nature Recovery
Draft Policy Idea 13. Health and Wellbeing Service Provision

The draft Elmstead Neighbourhood Plan is going out to public consultation in mid Sept 2023 and therefore only limited weight can be afforded to the relevant policies as set out above.

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), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

5. Officer Appraisal (including Site Description and Proposal)

The application site, known as Bottles Hall, is situated to the north of Clacton Road well outside the settlement development boundary of Elmstead Market which is a Rural Service Centre and located further to the northwest. The site is in use as a vehicle salvage yard for the storage and parking of salvaged commercial vehicles and vehicles acquired for breakage and export. Opposite the site is the newly developed Lanswood Park, providing a range of offices and business facilities, and the Forres Housing Development next to it (to the west). The site also forms part of a safeguarded sand/gravel area as per the local plan policy map. The site is not in a conservation area and there are no listed buildings in close proximity to the site, or indeed further afield.

The application seeks outline consent (all matters reserved) for the erection of 11 commercial Class E(g) light industrial units, with associated parking and bin stores. A proposed layout plan showing how the site can be developed to provide 11 commercial units has been submitted as part of the application.

Assessment

As set out within the Town and Country Planning Act 1990 (section 70(2)) in dealing with planning applications the Local Planning Authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. This is reiterated within paragraph 47 of the NPPF (2023). In accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, the application must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan is defined in section 38(3) (b) of the 2004 Act as "the development plan documents (taken as a whole) that have been adopted or approved in that area".

In the District of Tendring and having regard to the location of this site and the nature of the proposed development, the Development Plan consists of:

- 2013-2033 TDC Local Plan

The statutory term 'material considerations' has been broadly construed to include any consideration relevant in the circumstances which bears on the use or development of land: Cala Homes (South)

Ltd v Secretary of State for Communities and Local Government & Anor [2011] EWHC 97 (Admin); [2011] 1 P. & C.R. 22, per Lindblom J. Whilst accepting that the NPPF does not change the statutory status of the Development Plan, para 2 confirms that it is a material consideration and significant weight is given to this in determining applications.

The main issues to consider in assessing this application are whether there is any conflict with Development Plan policies. If there is any conflict, whether the application can be considered to be in accordance with the Development Plan when taken as a whole. If the application is not in accordance with the Development Plan, whether there are any material considerations which indicate that planning permission should be granted. The key and most important material planning considerations relevant to this development proposal are set out below followed by an assessment under each heading.

Principle of Development

Policy PP7 is the key and most important local plan policy governing new employment-related development proposals on land outside of the allocations (in policy PP7) and outside of settlement development boundaries. The relevant part of the policy states such proposals will be considered having regard to their potential to support economic growth in the district and the requirements of other policies in this Local Plan. Whilst the supporting information in the application is scant in respect of the potential for the scheme to support economic growth in the district, the LPA also acknowledge that the application was submitted in 2021 at a time when section 2 of the current local plan was not yet adopted, and a previous set of development plan policies were in place at the time of submission. The above notwithstanding, significant weight is given to the existing ongoing operation on the site (of a vehicle salvage yard) as well as the fact that the site is clearly brownfield and in a B8/employment type use. Having regard to the above as well as the provisions of paragraphs 81 and 118 of the NPPF, officers consider that this outline proposal (all matters reserved) for 11 (Use Class E, Part G) commercial in this location have potential to support economic growth in the district and is therefore acceptable in principle subject to other material considerations (covered below).

Landscape Character and Appearance

The first bullet of relevant Policy SP7 states that new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 Part B criterion c) states that development must respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Amongst other things, criterion d) of Part B requires that the design and layout of development maintains or enhances important existing site features of landscape value.

Paragraph 7.3.3 of the Section 2 Local Plan states that as a largely rural area, Tendring District's countryside is one of its main assets and maintaining an attractive rural environment is important to the quality of life experienced by both residents and visitors. It can also be an important consideration for the location of some businesses and help to expand the tourist economy and related services.

Policy PPL3 is criteria based, and states that the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance, including to:

- a) *estuaries, rivers and undeveloped coast;*
- b) *skylines and prominent views including ridge-tops and plateau edges;*
- c) *traditional buildings and settlement settings;*
- d) *native hedgerows, trees and woodlands;*
- e) *protected lanes, other rural lanes, bridleways and footpaths; and*
- f) *designated and non-designated heritage assets and historic landscapes including registered parks and gardens.*

In addition, new development within the rural landscape should minimise the impact of light pollution on the site and its surroundings, in order to protect rural amenity and biodiversity.

The site is currently used as a vehicle salvage yard for the storage and parking of salvaged commercial vehicles and vehicles acquired for breakage and export.

The proposal is an outline application (all matters reserved) for 11 commercial units and the applicant has satisfactorily demonstrated that the site can accommodate 11 units, each with an approximate internal floor area of 140m², on the site. Other matters such as final appearance, lighting design, overall scale bulk etc will be determined at reserved matters stage in the event of an outline approval coming forward.

Impact on Trees and Hedgerows

It is considered that a development proposal of this nature, and subject to details, could be implemented on site without causing harm to the best trees and hedgerows on the land. The proposal, subject to conditions, will therefore result in no conflict with any relevant policies insofar as the protection and enhancement of existing trees and hedgerows are concerned.

Effect on the Living Conditions of Neighbours and Ground Conditions

The final bullet of Policy SP7 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.

Policy SPL3, Part B criterion e), requires that buildings and structures are designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents. Part B, criterion f), necessitates provision is made for adequate private amenity space. Part C, criterion a), requires that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

Amongst other things, Framework Paragraph 119 states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.

Paragraph 174 provide that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality.

Paragraph 130 f) includes that planning decisions should ensure that developments 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.

The site is situated some 125m from the rear garden boundary of the nearest residential property to the south (Bondi) – this distance is considered to be sufficient to ensure the development will not have an unacceptable impact in terms of loss of light, outlook, unneighbourly sense of enclosure, noise or light spillage. In addition, the application is in outline and detailed matters such as landscaping, screening and other noise insulation measures will be considered at reserved matters stage.

Due to the existing use of the site there is concern in respect of potential ground contamination, there appears to be no comment on the planning file from Environmental Protection (and due to time pressures to issue a decision there it was not possible to explore the lack of input or missing comments further) however should outline consent be forthcoming it is considered that matters such as ground contamination, and indeed other relevant environmental protection matters could reasonably be dealt with at reserved matters stage or as part of suitably worded planning conditions.

Highways / Transport

The application is accompanied by a transport statement (TS) which includes findings, using TRICS data to illustrate that the ultimate traffic flows (for 11 class E(G) industrial units), according to the

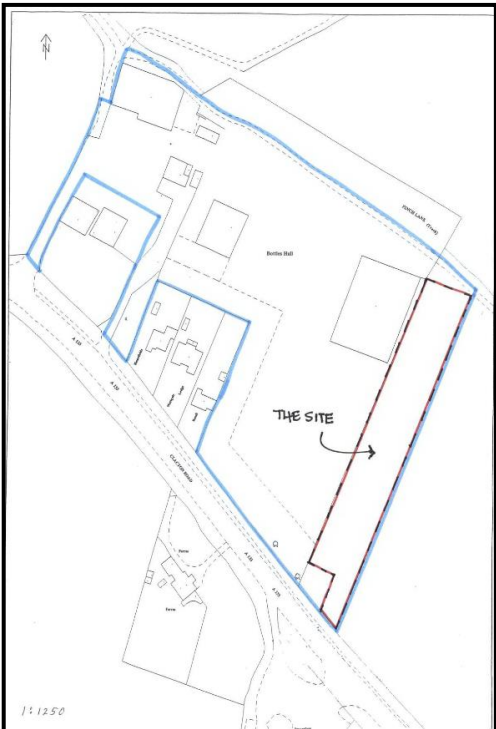
applicant, will be 'low' at approximately 28 – 32 vehicular movements during the morning and evening hours peak traffic periods. The applicant's case, from a traffic flows perspective seems to rely heavily on the TRICS database which has been examined for 'business park developments' of a similar size and location to the proposals, and results which demonstrate, according to the applicants TS that the proposed development traffic flows will be 'low' as set out above. The TS also concludes that the site access priority junction will operate with 'substantial space capacity' and (it is contended by the highways consultant employed by the applicant) that the proposals will not have an impact on the surrounding highway network.

The LPA carried out a consultation with ECC Highways and they disagree.

Firstly, ECC Highways is of the view that the proposal would intensify the use of an existing access onto the A133 Clacton Road, which is a strategic route. In addition, ECC Highways explained that the proposed site access and geometric layout of the A133 Clacton Road is not in accordance with current safety standards. The Highways Authority rightly acknowledges that a degree of conflict and interference to the passage of through vehicles already occurs but states that the intensification of that conflict and interference which this proposal would engender, would lead to the deterioration in the efficiency of the through road as a traffic carrier, to the detriment of highways safety.

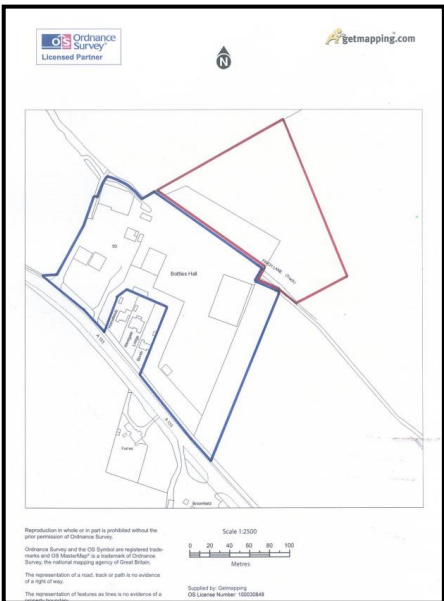
The applicant, in response, have reiterated that the existing access is already in existence and in their opinion capable of serving the entire operation at Bottles Hall. However, the applicant has failed to satisfactorily demonstrate (as part of the submission) how this existing access is capable of serving the entire operation at Bottles Hall. The applicant also stressed that the use of the access is long established, dating back to at least 1985 and that there are no restrictions upon the use of this access, nor is any planning permission for any part of the Bottles Hall site restricted to only using the main access.

Whilst the LPA do not dispute that the existing access is long established and that there are no restrictions upon the use of the (existing) access, the proposal is clearly for a development proposing an 11 unit commercial scheme that will be served by a much altered, heavily engineered access point (compared to the current access) as shown on the proposed layout drawing nr 2168/01 Rev submitted with the application, and an existing access such as this is not an open/unrestricted element that could support any other development proposal. Moreover, the circumstances around the initial 2008 and 2011 planning permissions (ref nrs 08/01319/FUL & 11/00578/FUL) authorising the vehicle salvage yard are very different, especially from a highway safety perspective. Also, application 08/01319/FUL authorised 'a change of use of land from agriculture to create a landscape buffer alongside established vehicle breaking yard', on a much smaller site as per the below extract (which is the site plan submitted with 08/01319/FUL):



As can be seen from the above application 08/01319/FUL, insofar as the site area and access arrangements are concerned, is not comparable with the latest application site and red line plan.

In terms of application 11/00578/FUL (authorising a retrospective change of use of agricultural land to form extension of established vehicle salvage yard for the storage and parking of salvaged commercial vehicles and vehicles acquired for breakage and export (Use Class B8) – whilst the red line site plan submitted as part of application 11/00578/FUL appears broadly similar to the site plan submitted as part of the latest application (with the exception of the long strip of land required for the access onto/from the A133), the other key difference is that the access was proposed via the established entrance to Bottles Hall which is within the Applicant’s control as indicated by a blue line on the Location Plan (see extract below). As part of application 11/00578/FUL the application did not propose any alterations to the access arrangements as it existed at the time. The access arrangements to the site as it existed back in 2011 appear to have been off the A133 much further to the north-west of the property known as Homefields, as evidenced in the 2012 aerial below the site plan on the next page.



Access arrangements at the wider Bottle Hall Site at around 2012 shown in the image below – blue arrow indicates the existing access as it existed in 2012, and the green arrow indicates the area where the new access is now proposed under the latest application:



The reliance of the applicant on the established nature of the existing access is therefore a matter that can only be afforded very limited weight at best. The application proposes a large-scale commercial operation consist of 11 units, and the proposal will clearly intensify the use of an existing access onto the A133 Clacton Road (a strategic route). The proposed site access and geometric layout off the A133 Clacton Road is therefore not in accordance with current safety standards. The main function of this highway is that of carrying traffic freely and safely between centres of population. The existence of an access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety. The proposal is therefore contrary to Local Plan policies CP2 and SPL3 as well as paragraphs 104 (a) and (e), 110 (b) and 111 of the National Planning Policy Framework 2023.

Secondly, although the applicant has demonstrated adequate visibility splays could be achieved at the vehicular access onto the A133 Clacton Road in accordance with the design speed of the A133 Clacton Road, the application has failed to demonstrate that the required visibility splays at the proposed access and along the A133 Clacton Road can be achieved within the limits of public highway and/or land in the control of the applicant. The proposal is therefore contrary to Local Plan policies CP2 and SPL3 as well as paragraphs 110 (b) and 111 of the National Planning Policy Framework 2023.

Thirdly, the proposed location of the site access would introduce a point of conflict with existing junctions on the south side of Clacton Road (Lanswood Park and Forres developments) and impact on the existing designated right turn lanes for both developments and crossing facilities serving the bus stops in this location. This would lead to potential collisions for right turning vehicles and queuing back of vehicles onto the A133 Clacton Road both of which would result in an unacceptable degree of hazard to all highway users to the detriment of highway safety. The application has also failed to demonstrate that the access would be designed in accordance with the Design Manual for Roads and Bridges. The proposal is therefore contrary to Local Plan policies CP2 and SPL3 as well as

paragraphs 104 (a) and (e), 110 (a), (b), (c) and (d), and 111 of the National Planning Policy Framework 2023.

Finally, the application has failed to determine, through a Stage I Road Safety Audit, the impact of the proposal on the local highway network contrary to Local Plan policies CP2 and SPL3 as well as paragraph 111 of the National Planning Policy Framework 2023.

Renewable Energy

Very little information has been submitted to demonstrate what measures will be taken to improve the sustainability of the development, as such, the scheme fails to demonstrate compliance with the above-mentioned policies. The local planning authority therefore considers this part of the development to be unacceptable, and, due to the highways safety and access concerns outlined above it was not deemed necessary to seek further details from the applicant prior to the report being finalised. In the event that outline planning permission is granted in this case it is considered to be appropriate to impose a condition for this element of the development because this unacceptable part of the proposal is distinguishable from other areas and has the potential to be made acceptable in planning terms subject to compliance with the said condition.

Flood Risk, Surface water and Foul water Drainage

Policy PPL1 states that all development proposals should include appropriate measures to respond to the risk of flooding on and/or off site and that on sites of 1ha or more, development proposals must be accompanied by a Flood Risk Assessment. Furthermore, all major development proposals should consider the potential for new Blue and Green Infrastructure to help mitigate potential flood risk and include such Green Infrastructure, where appropriate.

Policy PPL5 requires that all new development must make adequate provision for drainage and sewage treatment and should include sustainable drainage systems (SuDS). Applicants should explain and justify the reasons for not using SuDS if not included in their proposals. Furthermore, proposals for development must demonstrate that adequate provision exists for sewage disposal.

Policy SPL3, Part B criterion g), requires that development reduces flood risk and integrates sustainable drainage within development, creating amenity and enhancing biodiversity.

Paragraph 167 of the Framework provides that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.

The site is located in flood zone 1 (low probably of flooding) and as such the sequential test is passed by virtual of the site being located in an area with the lowest probability of flooding. In terms of surface water flooding/surface water run-off, the site is not located in an area at risk of surface water flooding. The LPA carried out a consultation with the ECC Suds team who raised a holding objection on the basis that the information provided does not allow them to (at put by ECC Suds) 'assess the flood risk (of the) development'. ECC Suds' holding objection in that regard lacks clarity and detail, however the application is also very scant in respect of supporting information on surface water drainage and run off calculations. No such information has been submitted. Notwithstanding this, the application is in outline with all matters reserved, and given the fact that the ECC Suds objection appears to be technical in nature and lacking in terms of specifics, a reason for refusal on failure to provide information to allow them 'to assess the flood risk (of the) development' would be unreasonable especially given the outline nature of the application and the possibility of the LPA to impose suitable and necessary planning conditions to ensure drainage measures and surface water drainage / run off can be adequately mitigated.

Protected Areas, Species and Biodiversity

ECC Place Service (Ecology) was consulted on the application and raised no objection subject to securing biodiversity mitigation and enhancement measures – this can be a condition should outline consent be granted, as such, there is no conflict with the relevant policies as set out in the relevant policy section above.

Third Party Comments

Following the publication of the development proposal in the local press, site notices and formal letters to nearby owners/occupiers, no comments or third party objections have been received.

Planning Balance and Conclusion

The proposal would conflict with the development plan for the reasons outlined in this report. There are some benefits to the scheme which include likely additional job creation during the construction and operational phases of the development and the resultant positive impact on the local economy. There is also potential for a somewhat untidy site to be tidied up through the redevelopment however no details have been submitted in respect of how this could be secured or achieved – nevertheless, some weight is attributed to this benefit. The combined weight given to these benefits is significantly tapered due to the various highway safety issues as identified, and failure of the scheme to provide a safe and suitable vehicular access and will not be outweighed by these clear and significant shortcomings from a highways safety and access perspective.

Ultimately the proposal will result in clear and significant conflict with the relevant highways safety and transport policies of the development plan and relevant provisions in the NPPF and there are no other considerations, including the Framework, that outweigh this conflict. The proposal therefore does not constitute sustainable development and is recommended for refusal for the following reasons:

6. Recommendation

Refuse

7. Reasons for Refusal

1. The proposal will clearly intensify the use of an existing access onto the A133 Clacton Road (a strategic route). The proposed site access and geometric layout off the A133 Clacton Road is not in accordance with current safety standards. The main function of this highway is that of carrying traffic freely and safely between centres of population. The existence of an access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety. The proposal is therefore contrary to Local Plan policies CP2 and SPL3 as well as paragraphs 104 (a) and (e), 110 (b) and 111 of the National Planning Policy Framework 2023.
2. The application has failed to demonstrate that the required visibility splays at the proposed access and along the A133 Clacton Road can be achieved within the limits of public highway and/or land in the control of the applicant. The proposal is therefore contrary to Local Plan policies CP2 and SPL3 as well as paragraphs 110 (b) and 111 of the National Planning Policy Framework 2023.
3. The proposed location of the site access would introduce a point of conflict with existing junctions on the south side of Clacton Road (Lanswood Park and Forres Developments) and impact on the existing designated right turn lanes for both developments and crossing facilities serving the bus stops in this location. This would lead to potential collisions for right turning vehicles and queuing back of vehicles onto the A133 Clacton Road both of which would result in an unacceptable degree of hazard to all highway users to the detriment of highway safety. The application has also failed to demonstrate that the access would be designed in accordance with the Design Manual for Roads and Bridges. The proposal is therefore contrary to Local Plan policies CP2 and SPL3 as well as paragraphs 104 (a) and (e), 110 (a), (b), (c) and (d), and 111 of the National Planning Policy Framework 2023.
4. The application has failed to determine, through a Stage I Road Safety Audit, the impact of the proposal on the local highway network contrary to Local Plan policies CP2 and SPL3 as well as paragraph 111 of the National Planning Policy Framework 2023.

8. Informatives

1. Plans and Supporting Documents

The Local Planning Authority has resolved to refuse the application for the reason(s) set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (accounting for any updated or amended documents):

- Site Plan
- Drawing No 2168/01 Rev A – Proposed Layout
- 2168/03 Rev A – Visibility Assessment
- 2168/04 Rev A – Swept Path Assessment 11.2m Refuse Vehicle

2. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO