

## **DELEGATED DECISION OFFICER REPORT**

<b>AUTHORISATION</b>	<b>INITIALS</b>	<b>DATE</b>
Case officer recommendation:	JJJ	28/11/2023
Planning Manager / Team Leader authorisation:	ML	30/11/2023
Planning Technician final checks and despatch:	ER	01/12/2023

**Application:** 23/00136/FUL **Town / Parish:** Ardleigh Parish Council

**Applicant:** Evolve (Colchester) Limited

**Address:** Crown Business Centre Old Ipswich Road Ardleigh

**Development:** Proposed erection of B8 storage and distribution units with ancillary mezzanine office space and associated access amendments, parking and landscaping.

### **1. Town / Parish Council**

Ardleigh Parish Council did not respond to a consultation on the application.

### **2. Consultations Responses**

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

#### **ECC Highways Dept**

The information submitted with the application has been assessed by the Highway Authority and conclusions reached based on a desktop study in conjunction with a site visit. The site is situated on the Old Ipswich Road and the existing access offers good visibility in both directions. Although the speed limit in force is 60-mph there is evidence from recent speed surveys undertaken in the vicinity of the site that the local road configuration generates lower vehicle speeds than the signed speed limit and therefore the access junction should operate safely when considering the available visibility. It is noted that the current proposal, will see the site access being widened in order to accommodate the Heavy Goods Vehicles that would be attracted to the warehouse units. When compared to the previous B1 use for this part of the site B8 use will see a far less vehicle trip generation, considering these factors:

**From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:**

1. Prior to occupation of the development, the visibility splays shall be provided in principal and accord with the details shown in Drawing Numbered IT2334/TS/02 and drawing annotated "Proposed visibility splays and revised junction warehouse

development". Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.  
**Reason:** To ensure that all vehicles using the private drive access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM1.

2. No occupation of the development shall take place until the following have been provided or completed:

a) A priority junction off Old Ipswich Road to provide access to the proposed site as shown in principle on planning application, 'Proposed visibility splays and revised junction warehouse development', drawing number: IT2334/TS/02.

b) Kerb radii measuring a maximum or no more than 15 metres.

c) A straight section of carriageway to be provided from the entrance junction for 22 metres.

d) 2-metre-wide footway on both sides of the junction and continued around the kerb radii to tie into existing footway.

e) Appropriate pedestrian crossing facilities (drop kerbs/ tactile paving) each side of the junction.

f) Waiting restrictions (Red Route restriction) shall be provided on Old Ipswich Road either side of the site access junction and opposite the junction and the extent of the restrictions to be agreed in advance with the Local Planning Authority in consultation with the Highway Authority.

g) Any other reasonable items to ensure the access is in accordance with current policy standards.

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

*Officer Comment: The above measures can be secured through an appropriately worded planning condition except point (f) which will be secured via a s106 legal agreement. Point (g) is not precise so fail to meet the tests for planning conditions/s106 regulations.*

3. No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.

**Reason:** To ensure that loose materials are not brought out onto the highway, in the interests of highway safety and in accordance with Policy DM1.

4. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, including any parking spaces for the mobility impaired, has been hard surfaced, sealed and marked out in parking bays. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

**Reason:** To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided in accordance with Policy DM8.

5. Prior to first occupation of the proposed development, the Developer shall submit an updated workplace travel plan to the Local Planning Authority for approval in consultation with Essex County Council. Such approved travel plan shall be actively implemented for a minimum period of 5 years. It shall be accompanied by a monitoring

fee of £6,760 (plus the relevant sustainable travel indexation) to be paid before occupation to cover the 5-year period.

**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.

Officer comment: *The above requirement will be secured in a section 106 legal agreement.*

6. Prior to occupation of the development an appropriate Traffic Management Plan shall be provided outlining a designated route to and from the development for all HGV movements via the Crown Interchange/ A12/A120 to be agreed in advance with the Local Planning Authority in consultation with the Highway Authority.

**Reason:** To control the location and direction of HGV vehicle movements to and from the site in the interests of highway safety and Policy DM1.

Officer comment: *The above requirement will be secured in a section 106 legal agreement.*

7. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors,
- ii. loading and unloading of plant and materials,
- iii. storage of plant and materials used in constructing the development,
- iv. wheel and underbody washing facilities.
- v. Before and after condition survey to identify defects to highway in the vicinity of the access to the site and where necessary ensure repairs are undertaken at the developer expense when caused by developer.

**Reason:** To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and 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.

Officer comment: *The elements suggested under conditions 1, 3, 4 and 7 above will be Secured through appropriately worded planning conditions.*

**Notes:**

(i) Prior to any works taking place in the highway the developer should enter into an S278 agreement with the Highway Authority under the Highways Act 1980 or Minor Works Authorisation to regulate the construction of the highway works.

(ii) The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority.

(iii) A RSA1 for the proposed access and footway improvement scheme to be provided, ideally to be carried out by Essex Highways (to avoid the issue of additional items being identified at RSA2 stage which can then delay technical approval)

[roadsafety.audit@essexhighways.org](mailto:roadsafety.audit@essexhighways.org)

(iv) The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate.

**Informative:**

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](mailto: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.

**Environmental Protection**

**Noise:** In relation to the submitted NIA, dated September 2022, I can confirm we are satisfied with the document and the methodology employed. Some recommendations have been highlighted in the report, of which the EP Team request are implemented and adhered to, should this proposal be approved –

- Noise from fixed installations and plant units – section 8 of the report outlines the predicted levels of noise experienced at Noise Sensitive Receptors (NSR); table 8.2 confirms the recommended limits imposed on the machinery, so as to not exceed levels at the nearest NSR. Namely *daytime levels of 49dB (L Ar,Tr (dB) ) and night time levels of 39dB (L Ar,Tr (dB))*.

Officer comment: *To impose a blanket requirement to adhere to this specification will fail the test of enforceability. Instead, details of a scheme for sound insulating material will be requested as part of a planning condition.*

- Noise from Construction activities – Threshold values for working hours, including daytime, night time and weekends are shown in table 9.1; we are satisfied with these levels and would like to ensure these are implemented, monitored and adhered to throughout the construction process.

Office comment – *the above requirement will fail the test of preciseness and enforceability. Should the developer repeatedly fail to adhere to the stipulated noise levels this may result in statutory noise nuisance which fall under legislation separate to planning.*

- Noise from car parking and vehicles on completed development – predicted level of noise emissions are shown in section 10 of this report; section 10.2.8 relates to the HGV yard section and outlines the need for the erection of close boarded fencing on both yards – *“HGV yards of both units would require acoustic screening by a close boarded timber fence, provided with no gapping and a minimum surface mass of 10 Kg/m2 in order to protect residents”* We would request this screening is installed, in accordance with the above recommendations.

Officer Comment: *To impose a blanket requirement to adhere to this specification will fail the test of enforceability. Details of a scheme for acoustic screening around both yards will be requested as part of a planning condition.*

**Contaminated Land:** With reference to the submitted ground investigation report, dated September 2018; I can confirm we are satisfied with the document and the methodology in relation to contaminated land. The report outlines that all samples taken were below the relevant standard guideline values, and as such the risk to construction workers and end users is considered low. However, as a matter of caution, taking into account the location of the site, the EP Team would request a Watching Brief in relation to contaminated land is adhered to throughout the construction process. 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; or o treatment of material on site to meet compliance targets so it can be re-used; or o removal from site to a suitably licensed landfill or permitted treatment facility.
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.*

*Officer comment: Given the already developed nature of the site officers consider that the above mentioned suggested condition would fail to meet the NPPF tests of preciseness and reasonableness as such an informative will be recommended advising the developer of potential contamination risks on site.*

#### **Tree & Landscape Officer**

**13.02.2023**

The application site is in the process of being developed and the applicant has submitted an Arboricultural Impact Assessment (AIA) in order to show the extent of the constraint that existing trees are on the development potential of the land.

It should be noted that Section 5 of the AIA refers to a search made with Colchester Borough Council regarding TPO's affecting the site.

As the application site is within the administrative boundaries of Tendring District Council the enquiry should have been directed to this Council.

Such a search would have revealed TPO/98/13 Colchester Golf Range, Old Ipswich Road, Colchester. The TPO affords formal legal tree protection to T1 to T13b of the AIA.

Nevertheless, only a minor incursion into the Root Protection Areas (RPA's) of T13 and T13b is required in order to implement the development proposal and the proposed work will not adversely affect the health or long-term viability of the trees.

None of the other preserved trees are affected by the development proposed.

In terms of the direct impact of the proposed development on other trees the report establishes that T19 a small Oak will need to be felled to facilitate the proposed development and the conifers contained in G1 will be cut back to the boundary prior to the erection of protective fencing.

The removal of the small Oak and the cutting back of the coniferous hedge will not adversely affect the amenities of the locality.

With regard to soft landscaping the applicant has provided details of a tree and shrub planting including a new hedge on the boundary with the Old Ipswich Road comprising indigenous species. The proposed new planting is sufficient to satisfactorily soften, screen and enhance the appearance of the proposed development.

**Anglian Water Services Ltd**

No response

**Building Control and Access Officer**

No response

**Highways England**

**15.02.2023**

Referring to the consultation on a planning application dated 25th January 2023 referenced above, in the vicinity of the A12 and A120 that forms part of the Strategic Road Network, notice is hereby given that National Highways' formal recommendation is that we:

- a) offer no objection (see reasons at Annex A);
- b) recommend that conditions should be attached to any planning permission that may be granted (see Annex A - National Highways recommended Planning Conditions & reasons);
- c) recommend that planning permission not be granted for a specified period (see reasons at Annex A);
- d) recommend that the application be refused (see reasons at Annex A)

Highways Act 1980 Section 175B is/is not relevant to this application.

This represents National Highways' formal recommendation and is copied to the Department for Transport as per the terms of our Licence.

Should the Local Planning Authority not propose to determine the application in accordance with this recommendation they are required to consult the Secretary of State for Transport, as set out in the Town and Country Planning (Development Affecting Trunk Roads) Direction 2018, via [transportplanning@dft.gov.uk](mailto:transportplanning@dft.gov.uk) and may not determine the application until the consultation process is complete.

The Local Planning Authority must also copy any consultation under the 2018 Direction to [PlanningEE@nationalhighways.co.uk](mailto:PlanningEE@nationalhighways.co.uk).

Annex A National Highways' assessment of the proposed development

National Highways has been appointed by the Secretary of State for Transport as a strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such we work to ensure that it operates and is managed in

the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

Upon a review of the supporting documents, we note the Site should not result in a significant impact on the SRN based on the previously consented schemes (15/00985/OUT, 17/02204/FUL (NH issued no objection), 20/01372/FUL).

However, we would like to see further evidence behind the background information. As a sensitivity test, we would request the TRICS data to be reviewed and explain the difference in approach compared to the previous trip generation undertaken as part of the previous Traffic Statement report (December 2017), we would also like the trip generation to include the following;

- Date range to not exceed 10 years - assessment range of 01/01/99 to 24/09/20 is not representative of existing trip generation;
- Exclude any surveys undertaken during the Covid-19 period, this includes the period between 01/03/20 to 31/08/2021; and,
- Justify the changes to the trips rates generated as part of the previous Traffic report (December 2017).

Officer Comment: *The applicant has since provided additional information that demonstrates the proposed warehouse scheme would attract lower traffic levels compared to the extant office proposal.*

As additional information has been requested and to enable the applicant to provide this data to us, we therefore, recommend the application to not be determined before 24th March 2023. If we are in a position to respond earlier than this, we will withdraw this recommendation accordingly.

Standing advice to the local planning authority

The Climate Change Committee's 2022 Report to Parliament notes that for the UK to achieve net zero carbon status by 2050, action is needed to support a modal shift away from car travel. The NPPF supports this position, with paragraphs 73 and 105 prescribing that significant development should offer a genuine choice of transport modes, while paragraphs 104 and 110 advise that appropriate opportunities to promote walking, cycling and public transport should be taken up.

Moreover, the build clever and build efficiently criteria as set out in clause 6.1.4 of PAS2080 promote the use of low carbon materials and products, innovative design solutions and construction methods to minimise resource consumption.

These considerations should be weighed alongside any relevant Local Plan policies to ensure that planning decisions are in line with the necessary transition to net zero carbon.

### **National Highways**

Referring to the consultation on a planning application dated 25th January 2023 referenced above, in the vicinity of the A12 and A120 that forms part of the Strategic Road Network, notice is hereby given that National Highways' formal recommendation is that we: a) offer no objection (see reasons at Annex A);

Annex A

National Highways' assessment of the proposed development National Highways has been appointed by the Secretary of State for Transport as a strategic highway company under the



provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such we work to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity. Upon a review of the supplementary documents provided by the Applicant's consultant (Intermodal Transportation), which directly addresses the key concerns raised in National Highways (NH) previous response (Feb 2023). We consider the sensitivity test undertaken by the Intermodal Transportation as part of the technical note provided to be sufficient in evidencing the proposed development will not result in an impact on the local SRN network - the proposed warehouse scheme would attract lower traffic levels compared to the extant office proposal.

Consequently, we offer no objection to this application and withdraw our current holding objection.

**Colchester City Council**

**22.02.2023**

Colchester City Council raise no objection to the principle of the proposed development but would like to make an observation in relation to the increase in scale and alteration to the design of the proposed buildings in that this results in a large bulk of built form with limited articulation fronting the road.

**Essex County Council Archaeology**

**21.02.2023**

A programme of archaeological evaluation has been completed on the above site in response to an earlier application. The report has been received and approved and no further archaeological investigation was required. No archaeological investigation will be required for the above application.

**Essex County Council Heritage**

The application is for proposed erection of B8 storage and distribution units with ancillary mezzanine office space and associated access amendments, parking and landscaping.

The proposal site is in close proximity of Grade II Listed Forge Cottage and Gatehouse Farmhouse, and within the setting of 17th Century The Crown Inn.

The principle of development for this site has already been established with planning application 18/02118/FUL for the development of 90 small B1 & B8 use commercial units with ancillary facilities, associated car parking and landscaping; and the construction of 5 commercial office blocks with B1 use with associated car parking and landscaping. Therefore, this advice will only pertain the scale and design of the current proposal.

The revised scheme is considerably larger in scale than the approved and visually more visually predominant within the streetscape and the wider setting of The Crown, Forge Cottage and Gatehouse Farmhouse, which is still very agricultural and open in character.

As per Paragraph 130 of the NPPF, new developments shall be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

The proposed development also fails to make a positive contribution to local character and distinctiveness, a requirement set in Paragraph 197c of the NPPF.

**Essex County Council Ecology**

**06.02.2023**

Holding objection due to insufficient ecological information on European Protected Species (bats)

**Summary**

We have reviewed the documents supplied by the applicant, relating to the likely impacts of development on designated sites, protected & Priority habitats and species and identification of proportionate mitigation.

We are not satisfied that there is sufficient ecological information available for determination of this application. This is because no ecological report has been submitted in support of this application.

We note that the Arboricultural Impact Assessment (Hallwood Associates, July 2022) identifies the removal of a tree T19, an Oak as a result of the development, which could impact upon bats if potential roosting features are present. Therefore, the LPA does not have certainty of the likely impacts to protected species nor any mitigation to avoid impacts, and potentially an offence of disturbing or destroying bats or their roost.

As a result, a Preliminary Roost Assessment for bats should be undertaken by a suitably qualified ecologist to inform the need for any further bat surveys and, if necessary, mitigation & compensation for impacts from this application. These may need to be secured by a condition of any consent or a mitigation licence from Natural England.

As reasonable enhancements for biodiversity will also be needed, we consider it reasonable to recommend that a Preliminary Ecological Appraisal should be submitted by the applicant's ecologist to provide adequate assessment of the proposal. Any surveys must be undertaken by suitably qualified ecologists, at the appropriate time of year, using standard methodologies, and professional judgement should be used to come to reasoned conclusions as to the likelihood of species being present and affected by the proposed development.

To fully assess the impacts of the proposal the LPA need ecological information for the site, particularly for bats, European Protected Species. These surveys are required prior to determination because Government Standing Advice indicates that you should "Survey for bats if the area includes buildings or other structures that bats tend to use or there are trees with features that bats tend to use nearby".

The results of these surveys are required prior to determination because paragraph 99 of the ODPM Circular 06/2005 highlights that: "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."

This information is therefore required to provide the LPA with certainty of impacts on legally protected species and be able to secure appropriate mitigation either by a mitigation licence from Natural England or a condition of any consent. This will enable the LPA to demonstrate compliance with its statutory duties, including its biodiversity duty under s40 NERC Act 2006 and prevent wildlife crime under s17 Crime and Disorder Act 1998.

Additionally, no biodiversity enhancement measures are identified in the documents provided. We recommend that, to secure net gains for biodiversity, as outlined under Paragraph 174d and 180d of the National Planning Policy Framework 2021, reasonable biodiversity enhancement measures will need to be provided.

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

We look forward to working with the LPA and the applicant to receive the additional information required to support a lawful decision and overcome our holding objection.

Please contact me with any queries.

Officer response: *See relevant section in main body (assessment section) of report below*

#### **Waste and Recycling Manager**

No response

#### **ECC Planner Minerals**

**15.02.2023**

The 'application site' forms the basis for the minerals and waste safeguarding assessment set out below.

This response deals with mineral policy matters and waste policy matters in turn. A spatial representation of the application site and the matters discussed can be found in Appendix One. A list of relevant designations and specific facilities which would potentially be affected are listed, with their most recent planning application reference where relevant, in Appendix Two.

Mineral Matters

Safeguarding Mineral Resources

The entirety of the application site is located within land which is designated as a Mineral Safeguarding Area (MSA) and therefore the application is subject to Policy S8 of the Essex Minerals Local Plan 2014 (MLP). The MLP can be viewed on the County Council's website via the following link:

<https://www.essex.gov.uk/minerals-waste-planning-policy/minerals-local-plan>

Policy S8 of the MLP requires that a non-mineral proposal located within an MSA which exceeds defined thresholds must be supported by a Minerals Resource Assessment to establish the existence, or otherwise, of a mineral resource capable of having economic importance. This will ascertain whether there is an opportunity for the prior extraction of that mineral to avoid the sterilisation of the resource, as required by the National Planning Policy Framework (Paragraph 210). The NPPF requires policies that encourage the prior extraction of mineral where it is practical and environmentally feasible.

At 1.05ha, the area of land associated with the proposed development that lies within an MSA for sand and gravel does not exceed the 5ha threshold upon which local resource safeguarding provisions are applied for this mineral (please see Appendix One).

Therefore, a Minerals Resource Assessment (MRA) would not be required as part of a planning application on this site.

## Mineral Infrastructure Matters

The application site passes through a Mineral Consultation Area associated with Crown Quarry as shown in Appendix One and listed in Appendix Two. With regard to Mineral Consultation Areas, Policy S8 of the MLP seeks to ensure that existing and allocated mineral sites and infrastructure are protected from inappropriate neighbouring developments that may prejudice their continuing efficient operation or ability to carry out their allocated function in the future. Policy S8 of the MLP defines Mineral Consultation Areas as extending up to 250m from the boundary of an infrastructure site or allocation for the same.

Paragraph 187 of the NPPF states that "Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."

Due to the proposed project passing through a Mineral Consultation Area, a Mineral Infrastructure Impact Assessment (MIIA) is required as part of the planning application. The MWPA has designed a generic schedule of information requirements that should be addressed as relevant through an MIIA. The detail to be provided should be in proportion to the nature of the proposed application.

(Please see document titled 'Rec'd 15.02.23 - Consultee Response - ECC MINERALS' for table)

A MIIA is expected to be evidence based and informed by quantified information. It is recognised that the requirements of an MIIA may be addressed through other evidence base documents, such as those addressing transport, odour and noise issues. In these instances, it would be acceptable for the MIIA to signpost to the relevant section of complementary evidence supporting the planning application. The MWPA welcomes early engagement to clarify the requirements of MIIA.

## Waste Matters

### Safeguarding Waste Infrastructure

Policy 2 of the WLP seeks to ensure that existing and allocated waste sites and infrastructure are protected from inappropriate neighbouring developments that may prejudice their continuing efficient operation or ability to carry out their allocated function in the future. Policy 2 defines Waste Consultation Areas as extending up to 250m from the boundary of existing or allocated waste infrastructure, unless they are Water Recycling Centres, where the distance increases to 400m.

The WLP can be viewed on the County Council's website via the following link:  
<https://www.essex.gov.uk/minerals-waste-planning-policy/waste-local-plan>

The application site does not pass through a Waste Consultation Area (WCA) and therefore, a Waste Infrastructure Impact Assessment (WIIA) is not required as part of the planning application.

### Site Waste Management Plan

Paragraph 8 of the NPPF recognises the importance of "using natural resources prudently and minimising waste" to ensure the protection and enhancement of the natural environment and to achieve sustainable development. It also reiterates the need to mitigate and adapt to

climate change and move towards a low carbon economy. An efficient and effective circular economy is important to achieving these objectives.

Policy S4 of the Minerals Local Plan (2014) advocates reducing the use of mineral resources through reusing and recycling minerals generated as a result of development/ redevelopment. Not only does this reduce the need for mineral extraction, it also reduces the amount sent to landfill. Clause 4 specifically requires:

"The maximum possible recovery of minerals from construction, demolition and excavation wastes produced at development or redevelopment sites. This will be promoted by on-site re-use/ recycling, or if not environmentally acceptable to do so, through re-use/ recycling at other nearby aggregate recycling facilities in proximity to the site."

It is vitally important that the best use is made of available resources. This is clearly set out in the NPPF and relevant development plan documents. We would therefore recommend that, in lieu of these issues being addressed prior to a decision, conditions are attached to require the applicant to prepare an appropriately detailed waste management strategy through a Site Waste Management Plan.

A SWMP would be expected to:

- present a site wide approach to address the key issues associated with sustainable management of waste, throughout the stages of site clearance, design, construction and operation,
- establish strategic forecasts in relation to expected waste arisings for construction,
- include waste reduction/recycling/diversion targets, and monitor against these,
- advise on how materials are to be managed efficiently and disposed of legally during the construction phase of development, including their segregation and the identification of available capacity across an appropriate study area.

**Following the submission of a Mineral Infrastructure Impact Assessment by the Applicant, ECC Minerals and Waste Responded on 23 April 2023 as follows:**

This response deals with the Minerals Infrastructure Impact Assessment (MIIA). A spatial representation of the application site can be found in Appendix One. A list of relevant designations and specific facilities which would potentially be affected are listed, with their most recent planning application reference where relevant, in Appendix Two.

**Mineral Infrastructure Impact Assessment**

Paragraph 2.3.1.4 of the MIIA states that in relation to noise, "the proposed development itself is not considered to be of the highest order of sensitivity to noise emissions, as it is a commercial/industrial operation.", this is accepted.

Paragraph 2.3.2.3 of the MIIA states that "some dust could be transported to The Site", however, "the quarry itself has its own dust management procedures which would mitigate this issue". With regard to this, the MWPA note that the Environmental Statement submitted with the extant permission for the quarry (ref: ESS/57/04/TEN) outlined that inter-alia subject to appropriate mitigation measures and good site practice any airborne dust resulting from operations would likely remain within the site. Such measures and good practice were then formally secured by way of Condition 40 attached to the permission granted.

Permission for the quarry was granted prior to the development of the intervening buildings, such that the dust management plan approved does not explicitly take these intervening buildings into account, nor clearly any potential impact on the currently proposed development. That said, in the context that mineral extraction is moving away from the proposed development site and that the measures secured by way of the extant permission should seek to keep dust nuisance within the site extents, it is not considered that this potential impact would, in this instance, warrant an objection to the proposed development.

It is accepted that “the proposed development would not impede access to and from the quarry in any way”, as stated in paragraph 2.3.3.2 of the MIIA, and that “the proposed development is not particularly sensitive to landscape impacts as it is a commercial / industrial development.”, as stated in paragraph 2.3.4.3.

The MIIA states that it is “not considered that the proposed development would impede operations at the quarry due to lighting.”. The MWPA accepts this.

The MWPA accepts that the proposed development is not of a particularly sensitive nature, and that there is not a clear sensitive receptor for any potential impact that required additional assessment to demonstrate that there would be no impact on mineral extraction. However, given the absence of bespoke data, the district authority, as the determining authority, would need to be satisfied that there would indeed be no impact on the proposed development as a result of operations at the safeguarded quarry, including its restoration scheme.

In summary, the MWPA accepts the overarching conclusion of the MIIA which is that “there would be no unacceptable impact upon the ability of the existing safeguarded site (Crown Quarry) to operate as it currently does.”. **On that basis, the MWPA removes its holding objection raised on 15<sup>th</sup> February 2023. and has no further comment to make.**

#### Environment Agency

No response

#### Ardleigh Reservoir Committee

No response

#### Natural England

24.02.2023

Thank you for your consultation on the above dated 06 February 2023 which was received by Natural England on 06 February 2023

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

Natural England's generic advice on other natural environment issues is set out at Annex A.

#### Sites of Special Scientific Interest

Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on statutorily protected sites and has no objection to the proposed development

#### Sites of Special Scientific Interest Impact Risk Zones

The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to consult Natural England on "Development in or likely to affect a Site of Special Scientific Interest" (Schedule 4, w). Our SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI. The dataset and user guidance can be accessed from the [data.gov.uk](https://data.gov.uk) website

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

#### **Economic Growth Team**

**08.02.2023**

Looking at this application from an Economic point of view, the Economic Growth Team supports this application due to the possibility of creating new jobs and safeguarding others.

#### **ECC SuDS Consultee**

**17.11.2023**

#### Lead Local Flood Authority position

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission for 23/00136/FUL based on the following:

#### **Condition 1**

No works except demolition shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:

- Limiting discharge rates to a maximum of 3.4 l/s for the site wide scheme for all storm events up to and including the 1 in 100 year plus 45% allowance for climate change storm event. This rate is inclusive of both the site areas of planning ref 23/00252/FUL (overflow car park) and 23/00136/FUL as the site wide scheme.

- All relevant permissions to discharge from the site into any outfall should be demonstrated, especially as the outfall is outside the planning boundary.
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 45% climate change event.
- Demonstrate that the storage features can half empty within 24 hours for the 1 in 30 plus 45% climate change critical storm event. For the attenuation tanks which are unable to meet the above half drain requirement, it must be demonstrated that each feature is able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus 45% climate change.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753. Two stages of treatment must be provided. Provision of the mitigation indices for the proprietary treatment system.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- An updated drainage strategy incorporating all of the above bullet points including matters already approved and highlighting any changes to the previously approved strategy.

The scheme shall subsequently be implemented prior to first use of the hereby approved development.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site, to ensure the effective operation of SuDS features over the lifetime of the development and to provide mitigation of any environmental harm which may be caused to the local water environment.

### **Condition 2**

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

#### **Reason**

The National Planning Policy Framework paragraph 167 and paragraph 174 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged.

### **Condition 3**

Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

#### **Reason**

To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information prior to occupation may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.



**Condition 4**

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

**Reason**

To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

We also have the following advisory comments:

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

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

- Please note that the Environment Agency updated the peak rainfall climate change allowances on the 10 May 2022. Planning applications with outline approval are not required to adjust an already approved climate change allowance, however, wherever possible, in cases that do not have a finalised drainage strategy please endeavour to use the updated climate change figures

Flood risk assessments: climate change allowances - GOV.UK ([www.gov.uk](http://www.gov.uk))

- Works to a ditch may require a S23 Ordinary Watercourse Consent. Please see the below link.

<https://flood.essex.gov.uk/maintaining-or-changing-a-watercourse/>

Any questions raised within this response should be directed to the applicant and the response should be provided to the LLFA for further consideration. If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us.

**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, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

Please see Appendix 1 at the end of this letter with more information on the flood risk responsibilities for your council.

**INFORMATIVES:**

- Essex County Council has a duty to maintain a register and record of assets which

have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to [suds@essex.gov.uk](mailto:suds@essex.gov.uk).

- Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
- Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in the attached standing advice note.
- It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.
- The Ministerial Statement made on 18th December 2014 (ref. HCWS161) states that the final decision regarding the viability and reasonableness of maintenance requirements lies with the LPA. It is not within the scope of the LLFA to comment on the overall viability of a scheme as the decision is based on a range of issues which are outside of this authority's area of expertise.
- We will advise on the acceptability of surface water and the information submitted on all planning applications submitted after the 15th of April 2015 based on the key documents listed within this letter. This includes applications which have been previously submitted as part of an earlier stage of the planning process and granted planning permission based on historic requirements. The Local Planning

Authority should use the information submitted within this response in conjunction with any other relevant information submitted as part of this application or as part of preceding applications to make a balanced decision based on the available information.

#### **4. Representations**

No third party letters were received following a round of public consultation by way for letters to residents and businesses in the surrounding area and the placement of 3 site notices in close proximity to the site.

#### **5. Planning Policy**

The following Local and National 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  
 PP4 Local Impact Threshold  
 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  
 PPL9 Listed Buildings  
 PPL10 Renewable Energy Generation and Energy Efficiency Measures  
 PPL13 Ardleigh Reservoir Catchment Area  
 CP1 Sustainable Transport and Accessibility  
 CP2 Improving the Transport Network  
 DI1 Infrastructure Delivery and Impact Mitigation

Essex Minerals Local Plan 2014 (MLP)

Of specific reference is policy S8 (Safeguarding mineral resources and mineral reserves) of the MLP

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

### **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>. In summary, without prejudice, the weight that should be applied to Neighbourhood Plans can be understood as follows:

Stage 1: Designated neighbourhood area (Limited Weight)  
 Stage 2: Preparing a draft neighbourhood plan (Limited Weight)  
 Stage 3: Pre-submission publicity and consultation (Limited Weight)  
 Stage 4: Submission of a neighbourhood plan (Limited Weight)  
 Stage 5: Independent Examination (Limited/Significant Weight)  
 Stage 6: Referendum (Significant Weight)  
 Stage 7: Adoption by LPA (Full Weight)

Ardleigh Parish Council has been working to develop the Neighbourhood Plan which will contain specific policies and proposals for the Ardleigh Parish area against which planning applications will be judged; alongside district and national policies.

On the 14th June 2023 an Examiner was appointed for the Ardleigh Neighbourhood Plan. The Examination for the Ardleigh Neighbourhood Plan formally opened on Wednesday 12th July 2023. On the 18th of August 2023, the Examiner sent the Council an Interim Note of Findings which detailed a number of questions and matters of clarification for Ardleigh Parish Council. At the time of writing, it is understood that the Examiner was still awaiting clarification on the points outlined in the interim note of findings as such limited weight is afforded to the Ardleigh Neighbourhood Plan (ANP). The following policies in the ANP are considered relevant to this application:

Policy GDP - General Approach to Development  
 Policy EP - Natural, Built & Historic Environment  
 Policy LGP - Local Green Spaces  
 Policy TP - Transport & Parking

### **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.

## **6. Relevant Planning History**

15/00669/OUT	Outline planning application with all matters reserved for the residential development of 0.2 ha of land to create 4 detached dwellings with associated garaging and parking (following demolition of existing B1a offices and driving range shelter).	Approved	18.12.2015
17/02204/FUL	The construction of 91 small B1 & B8 use commercial units with ancillary facilities, associated car parking and landscaping; and the construction of 5 commercial office blocks with B1 use with associated car parking and landscaping.	Approved	14.08.2018
18/02118/FUL	The construction of 90 small B1 & B8 use commercial units with ancillary facilities, associated car parking and landscaping; and the construction of 5 commercial office blocks with B1 use with associated car parking and landscaping.	Approved	17.06.2019
21/00185/FUL	Erection of single storey Office Building (Use Class B1a) with associated parking, cycle shelter and landscaping	Approved	12.05.2021

23/00136/FUL	Proposed erection of B8 storage and distribution units with ancillary mezzanine office space and associated access amendments, parking and landscaping.	Current
23/00252/FUL	Proposed provision of an overflow car park.	Current

## 7. **Assessment**

### Site Context

The application site is approximately 1.5 hectares in size and is located on the east side of Old Ipswich Road close to the junction 29 interchange between the A12 and the 120. The site is an irregular shape with a wide frontage onto Old Ipswich Road. The A12 is located almost immediately to the west of Old Ipswich Road and runs more or less parallel with Old Ipswich Road for the entire length (of Old Ipswich Road) and up to the A12/A120 interchange further to the south. The area immediately to the east of the site is already developed and consists of a large number of smaller (former) B1 and B8 units which was granted planning permission under Planning consent 18/02118/FUL in 2019. This area and the application site was one site as part of the 18/02118/FUL approval.

Old Ipswich Road runs directly adjacent to the majority of the western site boundary and trees/hedgerows and scrub vegetation are also present along this boundary. The site is not within or near to a Conservation Area, although there are statutorily listed buildings further away to the south at Forge Cottage and Gatehouse farmhouse, both located along Crown Lane North and both grade II listed.

In terms of the immediate and wider surroundings, as described above the site is developed and appears as a developed site as well (with the industrial units clearly visible in depth when passing the site along Old Ipswich Road). The wider area is characterised by mixed arable agricultural land, there are residential properties along the west of the A12 (some 180m away) and other light industrial/storage and distribution uses along Old Ipswich Road. The A12 has a strong audible presence in the area and is located a short distance to the west of the site, whilst further industrial premises in the form of SRC Aggregates are located to the north closer to Wick Lane. In some areas along Old Ipswich Road the A12 also has a strong visual presence. Indeed, due to the audible presence of the A12 as well as the predominant built form along Old Ipswich Road, the character of the area changes dramatically (from rural to a mix of light industry dominated by strategic and main distributor roads) as one travels along Old Ipswich Road.

The site can be accessed from the A12 (south-bound) via a slip-road that leads directly to a T-junction on Old Ipswich Road. From the T-junction a 90-degree right turn followed by a distance of approximately 1km in a southern direction leads to the application site. Access from the site onto the strategic road network is possible via Old Ipswich Road (south-bound) where the A12/A120 (junction 29) slip-road is located some 300m from the southwestern corner of the application site. It is also possible for road traffic to access the A12 north-bound via an underpass (going underneath the A12) which is located a short distance to the north of the application site. The underpass links up with Turnpike Close which in turn provides access to the A12 north-bound and other local roads located to the west of the A12. Old Ipswich Road is not subject to a restricted speed limit and therefore the national speed limit of 60mph currently applies although a draft planning permission resolution for a large storage and distribution warehouse on the corner of Wick Lane and Old Ipswich Road is in place and as part of this

resolution the developer is required to contribute towards a change in the speed limit from the current 60mph to a lower speed limit. There are currently no streetlights along Old Ipswich Road, and visibility at the site entrance / exit point is good in both directions.

### Proposal

Planning permission is sought for the proposed erection of B8 storage and distribution units with ancillary mezzanine office space and associated access amendments, parking and landscaping.

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
- Essex Minerals Local Plan 2014 (MLP)

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

The key and most important local plan policy governing new development proposals in use class B2 (General Industry) and B8 (Storage and Distribution) is policy PP7 (Employment Allocations) in the Local Plan.

The site in question forms part of the Crown Business Centre allocated (some 2.3ha of land) as set out in the Local Plan policy PP7 and is allocated for B2 and / or B8. Policy PP7 states proposals for development in use classes B2 and B8 on these allocated sites will be supported. The proposal is therefore wholly in accordance with this key and most important policy (insofar as the principle of development is concerned) and is therefore acceptable in principle.

### Minerals and Waste

The application site is located within an allocated mineral extract site and a mineral safeguarding area (MSA) as per the latest policies map for the West Tendering area, and therefore any future planning application for a development of this nature will be subject to Policy S8 of the Essex Minerals Local Plan 2014 (MLP). The MLP can be viewed on the County Council's website via the following link:

<https://www.essex.gov.uk/minerals-waste-planning-policy/minerals-local-plan>

Policy S8 of the MLP requires that a non-mineral proposal located within an MSA which exceeds defined thresholds must be supported by a Minerals Resource Assessment to establish the existence, or otherwise, of a mineral resource capable of having economic importance. This will ascertain whether there is an opportunity for the prior extraction of that mineral to avoid the sterilisation of the resource, as required by the National Planning Policy Framework (Paragraph 210). The NPPF requires policies that encourage the prior extraction of a mineral where it is practical and environmentally feasible.

ECC Minerals and Waste team initially sought further information in the form of a Minerals Infrastructure Impact Assessment (MIIA) which was provided by the applicant, following re-consultation the ECC Minerals and Waste team confirmed they accept the conclusions in the MIIA and agrees there would be no unacceptable impact upon the ability of the existing safeguarded site (Crown Quarry) to operate as it currently does.

#### 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 benefits from extant planning permission (partially implemented) which include build form along the frontage (western) part of the site in the form of 5 rectangular buildings of up to 8.6m in height facing Old Ipswich Road. The latest proposed will include two industrial units up

to 11 metres in height, the larger one of the two will be set back from Old Ipswich Road by between 20-25 metres. Moreover, the two industrial units will cover a similar area compared to the total area of the 5 rectangular buildings previously approved and as such, the impact on the streetscene, character and appearance of the area will be similar to the previous approval. In reaching this conclusion due regard, and some weight is given to the changing character along Old Ipswich Road and recent LPA approvals for large warehouse developments at Crown Quarry and land on the corner of Old Ipswich Road and Wick Lane.

There is conflicting information in the submission in respect of the final facing materials (drawings refer to different shades of grey whereas design and access statement appear to show different shades of white/blue) – in light of this a condition is considered necessary to seek details of the final facing materials and in this context the LPA will probably prefer different shades of white and light blue to ensure the more substantial buildings blend in with the background sky. The Council's Trees and Landscape officer also raised no objection subject to conditions to ensure the new soft landscaping proposals will be incorporated into the development.

### Impact on Trees and Hedgerows

The vast majority of existing trees and hedgerows around the site will be retained, improved and strengthened, which is welcomed. One Oaktree (T19) is proposed to be removed however the same tree can be removed as part of the previous approval referred to above, as such it would be unreasonable to object to the scheme on the basis of the loss of the Oak tree. In essence, it has been demonstrated, by way of the information contained in the AIA, that the development proposal could be implemented without causing harm to the best trees and hedgerows on the land. The proposal, subject to conditions to ensure the protection of existing trees, will therefore result in no conflict with any relevant policies insofar as the protection and enhancement of existing trees and hedgerows are concerned.

### Heritage

The nearest listed buildings (Gatehouse Farm and Forge Cottage) to the site are located further to the south along Crown Lane north some 350m away and interspersed by hedgerows and intervening, recent developments such as the in-depth part of the Crown Business Centre already in existence and a single storey commercial development (SRC Group) to the south of the southern boundary of the site. The Crown Public House complex (which is not a locally listed or statutorily listed building) is also located between the site and the listed buildings referred to above (but along Old Ipswich Road). There is also an open field of approximately 80m in width between the SRC Groups buildings/southern boundary of the site and Crown Lane North – the listed buildings referred to above are located on the south side of Crown Lane North.

ECC Heritage stated the following:

*The principle of development for this site has already been established with planning application 18/02118/FUL for the development of 90 small B1 & B8 use commercial units with ancillary facilities, associated car parking and landscaping; and the construction of 5 commercial office blocks with B1 use with associated car parking and landscaping. Therefore, this advice will only pertain the scale and design of the current proposal.*

*The revised scheme is considerably larger in scale than the approved and visually more visually predominant within the streetscape and the wider setting of The Crown, Forge Cottage and Gatehouse Farmhouse, which is still very agricultural and open in character.*

*As per Paragraph 130 of the NPPF, new developments shall be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).*



*The proposed development also fails to make a positive contribution to local character and distinctiveness, a requirement set in Paragraph 197c of the NPPF.*

The ECC Heritage objection is lacking in clarity and specifics.

Taking the issues raised by ECC Heritage in turn, whilst the proposed warehouse (Unit A) will be some 4 metres higher than the previous commercial building approved (currently proposed warehouse building will be 11m high whereas the approved commercial building is 7.3m high in this area), the proposed warehouse building will be set some 30m away from the southern boundary of the site. The approved warehouse building, at 7.3m in height, is shown to be 20m away from the southern boundary, in other words, 10 metres closer. The impact of the previously approved commercial building in this southern part of the site will therefore be similar, or arguably slightly more intrusive than the current proposal when the combination of heights and proximities to the southern boundary are taken into account – this factual information seems to have been missed by ECC Heritage.

There is also intervening development between the site and the heritage assets, as well as an agricultural field of some 40-50 metres in width before Crown Lane north is reached.

ECC Heritage have not quantified the level of heritage harm that will ensue however officers agree that there is likely to be less than substantial harm to the identified heritage assets, the weight that can be given to the heritage comments outlined above is therefore reduced for the reasons given – but there will nevertheless be harm. The less than substantial harm to the identified heritage assets is nevertheless an element that results in policy conflict and therefore weighs against the proposal. The 'Planning Balance and Conclusion' section below will weigh up any public benefits of the scheme against the harm identified.

#### Effect on the Living Conditions of Neighbours

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.

There are no dwellinghouses abutting the site and the nearest dwellinghouses are located on the south of the site (Crown Lane North) some 60m away from the southern boundary of the site

as well as residential properties on the west side of the A12 some 200m from the site access. The Crown Inn to the south of the site offers residential accommodation on the upper floors and this building is located approximately 40m from the southern boundary of the site.

In terms of opening hours, the site is located next to Old Ipswich Road and the busy A12, the area is vibrant with other vibrant uses around and close to the site, the Applicants proposal is for an unrestricted 24hrs use given the nature of the proposal, therefore having regard to all of the above and the fact that other, similar developments in the area have unrestricted 24hrs use, coupled with the recommended conditions to protect residential amenity (such as sound insulation requirements), it is considered unreasonable to restrict this proposed facility in this context.

In all respects, the latest proposal will have a similar, if not lesser impact on nearby residential properties compared to the previous extant permission referred to above, as such it is considered that the proposal will be acceptable from a residential amenity perspective.

#### Highway Safety/Parking

The ninth bullet of Policy SP7 requires all new development includes parking facilities that are well integrated as part of the overall design. Policy CP1 states that proposals for new development must be sustainable in terms of transport and accessibility, and therefore should include and encourage opportunities for access to sustainable modes of transport, including walking, cycling and public transport. Part B of Policy SPL3, criterion a), requires that access to the site is practicable and the highway network will, following any required mitigation, be able to safely accommodate the additional traffic the proposal will generate and not lead to a severe traffic impact. Amongst other things, criterion f) requires adequate vehicle and cycle parking.

Paragraph 104 of the Framework states that transport issues should be considered from the earliest stages of development proposals, amongst other things, so that:

- a) *the potential impacts of development on transport networks can be addressed;*
- b) *opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;*
- c) *opportunities to promote walking, cycling and public transport use are identified and pursued;*
- d) *the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and*
- e) *patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.*

Paragraph 105 states that the planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making

Paragraph 111 of the Framework makes clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.

Within this context, Paragraph 112 states that applications for development should:

- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;*
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and*
- e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.*

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

As set out elsewhere in this report, the site already benefits from extant planning permission (partially implemented) which also include build form along the frontage (western) part of the site in the form of 5 rectangular buildings (commercial office blocks), which, in terms of total floorspace, is in fact less than the current proposal for 2 warehouse units (the 2 B8 warehouse units with a combined gross floor area of 3,791 sqm would replace the previously approved 4,270 sqm of 5 No. B1 office blocks).

ECC Highways have been consulted and, as set out in the consultation section above, raise no objection subject to a number of suggested conditions. These conditions have been reviewed and are generally considered to meet the NPPF tests for planning conditions (with minor amendments where required to make them precise), except for condition 2 (g) and condition 7 (point v only) (not precise, reasonable and enforceable). A total of three elements recommended as conditions are considered to be elements that need to be secured as part of a section 106 legal agreement, these include:

- To promote sustainable transport and comply with the accessibility requirements of the development plan and the Framework, the submission of a workplace travel plan is necessary, such approved travel plan shall be actively implemented for a minimum period of 5 years and shall be accompanied by a one-off monitoring fee of £6,760 (plus the relevant sustainable travel indexation) to be paid before occupation to cover the 5-year period.
- A Traffic Management Plan shall be provided outlining a designated route to and from the development for all HGV movements via the Crown Interchange/ A12/A120 to be agreed in advance with the Local Planning Authority in consultation with the Highway Authority;

- A financial contribution towards waiting and parking restrictions on Old Ipswich Road either side of the site access junction and opposite the access junction TRIGGER: The extent of the restrictions to be agreed in writing in advance with the Highway Authority and prior to commencement of any development, and agreed scheme implemented in full before the development hereby approved is first brought into use.

These contributions are considered necessary to make the development acceptable in planning terms; they are considered to be directly related to the development; and fairly and reasonably related in scale and kind to the development, and therefore meet the statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework. As such, and in the event that planning permission is granted, this will be secured in a section 106 legal agreement.

Following revised information and a re-consultation, Highways England have now withdrawn their objection as set out in the consultation section.

Ultimately the proposal, for the reasons given above, and subject to conditions and a legal agreement, is considered to be acceptable and in accordance with the relevant policies set out in this section.

### Renewable Energy

Paragraph 7.9.3 of the Section 2 Local Plan highlights that in 2019 the Council declared a climate emergency, committing it to the preparation of an action plan with the aim of making its own activities carbon neutral by 2030, and acting as a community leader to encourage communities and developers to reduce carbon emissions and tackling climate change.

Policy SPL3 states that all new development should incorporate climate change adaptation measures and technology from the outset including reduction of emissions, renewable and low carbon energy production, passive design, and through green infrastructure techniques, where appropriate. Under Policy PPL10, there is a requirement for all development proposals to demonstrate how renewable energy solutions, appropriate to the building(s) site, and location have been included in the scheme and for new buildings, be designed to facilitate the retro-fitting of renewable energy installations.

Paragraph 112 e) of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

Paragraph 152 states:

*“The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.”*

Paragraph 157 states:

*“In determining planning applications, local planning authorities should expect new development to:*

*A - comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and*

*B - take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.”*

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 it was not possible to seek amended details from the applicant prior to the report being finalised. In this case it is considered to be appropriate to use a condition for this element of the development because this unacceptable part of the proposal can be argued to be 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 benefits from an extant permission, is in flood zone 1 (lowest risk of flooding) as such there is no need to carry out a sequential test. In terms of surface water flooding, following the submission of revised information ECC Suds have removed their objection subject to the inclusion of conditions which are all considered to meet the NPPF tests for planning conditions. With the inclusion of conditions, no policy conflict can be identified.

#### Protected Areas, Species and Biodiversity

Local Plan Policy PPL4 requires that sites designated for their international, European and national importance to nature conservation will be protected from development likely to have an adverse effect on their integrity. The policy states that as a minimum there should be no significant impacts upon any protected species. The preamble to Policy PPL4 states that where a development might harm biodiversity, an ecological appraisal will be required to be undertaken, and the potential for harm should be considered and addressed in any application.

Policy SPL3, Part A criterion d), requires that the design and layout of development maintains or enhances site features, including ecological value.

Paragraph 174 d) of the Framework requires that planning decision should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains

for biodiversity. Paragraph 180 d) states that opportunities to improve biodiversity in and around developments should be integrated as part of their design.

Paragraph 180 states that when determining applications, local planning authorities should apply the following principles:

- a) *if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) *development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) *development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*
- d) *development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.*

ECC Ecology lodged a holding objection stating there is insufficient ecological information available for determination of this application. This is because an Arboricultural Impact Assessment (Hallwood Associates, July 2022) identifies the removal of a tree T19, an Oak as a result of the development, which, according to ECC Ecology could impact upon bats if potential roosting features are present. Therefore, their position is that the LPA does not have certainty of the likely impacts to protected species nor any mitigation to avoid impacts, and potentially an offence of disturbing or destroying bats or their roost.

In response, as set out in the planning history section above the site already benefits from an extant planning permission for this part of the site. In addition, there is evidence on file in respect of more recent pre-planning and planning application for the site that TDC planning officers confirmed, especially as part of a recent pre-planning enquiry that no further habitat surveys or ecology appraisals were necessary given the already approved scheme and previously approved and conditioned Habitat survey for the original scheme. Moreover, the Oaktree (T19) that is proposed to be removed can be removed as part of the previous approval referred to above, as such it would be unreasonable to request further surveys on this basis, or to refuse the scheme on the basis that the LPA does not have certainty of the likely impacts to protected species, especially if the area of concern is in regard to potential habitat that can be provided for bats in a tree that can be removed in any event.

As such the proposal is acceptable from an ecological perspective subject to conditions to ensure the enhancement measures as set out in the report are carried out as part of the development.

## **Other Matters**

### EIA Screening Opinion

The Environmental Impact Assessment Regulations (EIA) do not refer specifically to storage and distribution facilities. However, Schedule 2 includes at category 10(a) namely "Industrial estate development projects". The site is not classed to fall within a 'sensitive area' as per the definition of sensitive areas as set out in Regulation 2 of the EIA Regulations. The site area exceeds the 5 hectare threshold, being around 9 hectares and is therefore captured by Schedule 2 of the EIA Regulations and therefore requires EIA Screening which has been submitted by the Applicant under TDC reference 21/02042/EIA. Having regard to the criteria set out in Schedule 2 and the PPG, the proposal and its location, the Council has concluded that the proposal is non-EIA development.

### Town Centre Impact and Referral to the Secretary of State

Only 200 sqm of ancillary office floorspace is proposed in this out of centre location as such no conflict arises with local plan policies PP4 and a referral to the Secretary of State is not necessary (in the event that the planning application is recommended for approval).

## **8. Planning Balance and Conclusion**

The proposal is for two storage and distribution warehouses on an allocated site (for B8 storage and distribution) as such the proposal is acceptable in principle.

The development will result in considerable economic benefits in the form of job opportunities during the construction and ongoing operational phases – significant weight is given to these benefits. The 'less than substantial' harmful heritage impact is considered to be outweighed by these public benefits and due regard is also given to the fallback position of the previous approval which has been partially implemented. If the remainder of the previous approval is implemented it has potential to have a similar impact on the heritage assets much further to the south of the site.

Subject to conditions and a section 106 legal agreement the proposal is acceptable and can be policy compliant in all other respects, and therefore constitutes sustainable development. Accordingly, the proposal is recommended for approval.

## **9. Recommendation**

It is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section 106 legal agreement with the agreed Heads of Terms, as set out below:

- To promote sustainable transport and comply with the accessibility requirements of the development plan and the Framework, the submission of a workplace travel plan is necessary, such approved travel plan shall be actively implemented for a minimum period of 5 years and shall be accompanied by a one-off monitoring fee (plus the relevant sustainable travel indexation) to be paid before occupation to cover the 5-year period.
- A Traffic Management Plan shall be provided outlining a designated route to and from the development for all HGV movements via the Crown Interchange/ A12/A120 to be agreed in advance with the Local Planning Authority in consultation with the Highway Authority;
- A financial contribution towards waiting and parking restrictions on Old Ipswich Road either side of the site access junction and opposite the access junction TRIGGER:

The extent of the restrictions to be agreed in writing in advance with the Highway Authority and prior to commencement of any development, and agreed scheme implemented in full before the development hereby approved is first brought into use.

### Conditions and Reasons

#### COMPLIANCE: TIME LIMIT

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

#### COMPLIANCE: APPROVED PLANS AND DOCUMENTS

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. 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.

#### **Plans Schedule**

- Drawing Number P (000) 010 Rev C – Location Plan
- Drawing Number 602 P7 – Proposed Site Plan
- Drawing Number 603 P3 – Site Section
- Drawing Number 604 P4 – Unit A\_Proposed Ground Floor Plan
- Drawing Number 605 P3 – Unit A\_Entrance & Mezzanine Office
- Drawing Number 606 P3 – Unit A\_Elevation
- Drawing Number 607 P3 – Unit B\_Proposed Ground Floor Plan
- Drawing Number 608 P2 – Unit B\_Entrance and Office
- Drawing Number 609 P2 – Unit B\_Elevation
- Drawing Number 610 P2 – Views
- Drawing Number MR19-125/109 Rev B – Soft Landscape Specification – Phase 02
- Drawing Number 65209047-SWE-XX-XX-D-C-0101 – Surface Water Drainage Strategy

#### **Statements Schedule**

- Design and Access Statement dated January 2023
- Arboricultural Impact Assessment dated 26 July 2023
- Flood Risk Assessment & Surface Water Drainage Strategy by Sweco dated 06/06/2023

Reason - For the avoidance of doubt and in the interests of proper phased planning of the development.

#### FURTHER APPROVAL: AGREEMENT OF MATERIALS

No development shall be commenced above slab level until precise details of the manufacturer



and types and colours of the external facing to be used in construction of all buildings have been submitted to and approved, in writing, by the Local planning authority. Such materials as may be agreed shall be those used in the development and fully applied prior to the first use/occupation.

REASON - To secure an orderly and well-designed finish in the interests of visual amenity and the character and appearance of the development.

#### HIGHWAYS – VISIBILITY RETAINED

Prior to first occupation of the development hereby approved, the visibility splays shall be provided in principle and accord with the details shown in Drawing Number IT2334/TS/02 and drawing annotated “Proposed visibility splays and revised junction warehouse development”. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To ensure that all vehicles using the private drive access do so in a controlled manner, in the interests of highway safety.

#### HIGHWAYS WORKS TO BE PROVIDED

Prior to the commencement of development above slab level a scheme of highway improvements shall be submitted in writing to the local planning authority for written approval to include the following:

- a) A priority junction off Old Ipswich Road to provide access to the proposed site as shown in principle on drawing number: IT2334/TS/02 - Proposed visibility splays and revised junction warehouse development
- b) Kerb radii measuring a maximum or no more than 15 metres.
- c) A straight section of carriageway to be provided from the entrance junction for 22 metres.
- d) 2-metre-wide footway on both sides of the junction and continued around the kerb radii to tie into existing footway.
- e) Pedestrian crossing facilities (drop kerbs/ tactile paving) on each side of the junction.

The highways improvements shall thereafter be implemented in full and in accordance with the approved highways improvements scheme prior to first use of the development hereby approved.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety.

#### NO UNBOUND MATERIALS

No unbound materials shall be used in the surface treatment of the vehicular access and all the internal roads and service yards/parking areas.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety

#### PARKING SPACES ETC RETAINED

The development hereby approved shall not be occupied until such time as all the vehicle parking areas indicated on the approved plans, including any parking spaces for the mobility impaired, has been hard surfaced, sealed and marked out in parking bays. All vehicle parking areas and associated turning areas shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development.

Reason: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided.

#### CONSTRUCTION MANAGEMENT PLAN

No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors,
- ii. loading and unloading of plant and materials,
- iii. storage of plant and materials used in constructing the development,
- iv. wheel and underbody washing facilities.
- v. Details of predicted Noise levels from Construction activities

Reason: To protect the amenity of nearby residential occupiers, to ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety.

#### FURTHER APPROVAL - SOUND MITIGATION MEASURES TO BE AGREED

Before any machinery/plant is first used on the buildings hereby approved as part of this permission and prior to the first use of the both yards hereby approved, where necessary and all machinery/plant and service yard areas shall be enclosed with sound insulating/acoustic material and/or mounted in a way which will minimise transmission of structure borne sound in accordance with a scheme to be approved, in writing, by the Local Planning Authority. The scheme shall thereafter be implemented and maintained as may be approved.

REASON: In the interest of the amenity of neighbouring residents.

#### NOTE/S FOR CONDITION:

This condition shall engage and requires details to be agreed prior to first use. This condition is imposed due to concern/s over potential noise that may harm amenity and is imposed as it is considered necessary to control potential noise that would have otherwise warranted a refusal.

#### FURTHER APPROVAL: MITIGATION TO BE AGREED

Prior to the commencement of development, a scheme of appropriate protected species mitigation measures (including precise details of the timing, any translocation measures deemed necessary and method of protection) shall be submitted to and approved, in writing, by the Local Planning Authority. No development shall be undertaken except in accordance with the approved scheme of mitigation and timings as may be agreed in writing.

Reason: In order to safeguard protected wildlife species and their habitats and because bats may be present on the site and this condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, has the potential to disturb protected species and their habitat.

#### NOTE/S FOR CONDITION:

Any disturbance of protected species can be a criminal offense and you may need to seek professional advice.

#### FURTHER APPROVAL: BIODIVERSITY ENHANCEMENT STRATEGY

Prior to commencement of development a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and 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 NPPF 2023 and s40 of the NERC Act 2006 (Priority habitats & species).

#### PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

Prior to the installation of any external lighting, 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. The scheme shall include position, height, aiming points, lighting levels and a polar luminance diagram.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme prior to first occupation of the development, 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).

#### COMPLIANCE WITH DETAILS AND TIMESCALE REQUIRED - LANDSCAPING SCHEME

All changes in ground levels, soft/hard landscaping shown on the approved landscaping details on drawing number MR19-125/109 Rev B shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development, or in such other phased arrangement as may be approved, in writing, by the Local planning authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the local planning authority.

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

## APPROVAL REQUIRED: LANDSCAPE PROTECTION

No development shall be commenced on site until the existing tree/s on the site, agreed with the Local Planning Authority for inclusion in the scheme of landscaping, have been protected by the erection of temporary protective fences of a height, size and in positions which shall previously have been approved, in writing, with the Local Planning Authority prior to the commencement of development. The protective fences shall be retained throughout the duration of building and engineering works in the vicinity of the tree/s to be protected. Any tree/s dying or becoming severely damaged as a result of any failure to comply with these requirements shall be replaced with a tree or trees of appropriate size and species during the first planting season, or in accordance with such other arrangement as may be approved, in writing, with the Local Planning Authority up to first use or first occupation of the development, following the death of, or severe damage to the tree/s.

Reason: For the avoidance of damage to protected tree/s included within the landscaping scheme in the interests of visual amenity and the character and appearance of the area. This condition is required to be carried out prior to the commencement of any other development to ensure trees are protected early to ensure avoidance of damage or lost due to the development and/or its construction. If agreement was sought at any later stage there is an unacceptable risk of lost and damage to trees.

## SURFACE WATER DRAINAGE SCHEME

Prior to commencement of development a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development shall be submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:

- Limiting discharge rates to a maximum of 3.4 l/s for the site wide scheme for all storm events up to and including the 1 in 100 year plus 45% allowance for climate change storm event. This rate is inclusive of both the site areas of planning ref 23/00252/FUL (overflow car park) and 23/00136/FUL as the site wide scheme.
- All relevant permissions to discharge from the site into any outfall should be demonstrated, especially as the outfall is outside the planning boundary.
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 45% climate change event.
- Demonstrate that the storage features can half empty within 24 hours for the 1 in 30 plus 45% climate change critical storm event. For the attenuation tanks which are unable to meet the above half drain requirement, it must be demonstrated that each feature is able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus 45% climate change.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753. Two stages of treatment must be provided. Provision of the mitigation indices for the proprietary treatment system.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- An updated drainage strategy incorporating all of the above bullet points including matters already approved and highlighting any changes to the previously approved strategy.

The scheme shall subsequently be implemented prior to first use of the hereby approved development.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface

water from the site, to ensure the effective operation of SuDS features over the lifetime of the development and to provide mitigation of any environmental harm which may be caused to the local water environment.

#### SCHEME TO MINIMISE SURFACE WATER RUN OFF/FLOODING DURING CONSTRUCTION

No development shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

Reason: The National Planning Policy Framework paragraph 167 and paragraph 174 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged.

#### MAINTENANCE PLAN

Prior to first use of the development hereby approved a maintenance plan detailing the maintenance arrangements including the company/body responsible for different elements of the surface water drainage system and the maintenance activities/frequencies shall be submitted to and approved in writing, by the Local Planning Authority.

Reason: To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information prior to occupation may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

#### YEARLY LOGS

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason: To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

#### AGREEMENT OF MEASURES TO IMPROVE SUSTAINABILITY OF DEVELOPMENT

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:-

- Details of, including the location of electric car and electric truck charging points
- Agreement of a scheme for water conservation including greywater recycling and rainwater capture/re-use for development hereby approved.
- Where relevant details of, including the location of solar panels.
- Agreement of heating of each building.
- Agreement of scheme for waste reduction.
- Provision of a fibre optic broadband connection to the best possible speed installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing. (If the applicant is unable to achieve this

standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 30mbps) wireless service will be considered.)

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

### **Informatives**

#### Positive Proactive

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.

#### Contamination

Please note that the 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; or o treatment of material on site to meet compliance targets so it can be re-used; or o removal from site to a suitably licensed landfill or permitted treatment facility.
12. A Verification Report will be produced for the work.

### Highways Informatives

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

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

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

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

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.

### **Additional Considerations**

#### Equality Impact Assessment

In making this recommendation/decision, regard must be had to the public sector equality duty (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 that, in summary, include:

- A. Eliminate unlawful discrimination, harassment, and victimization and other conduct prohibited by the Act.
- B. Advance equality of opportunity between people who share a protected characteristic\* (See Table) and those who do not.

C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are significant considerations and material planning considerations in the decision-making process. This is applicable to all planning decisions, including prior approvals, outline, full, adverts, listed buildings, etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below

Protected Characteristic	Analysis Impact
Age	The proposal is not likely to have direct equality impacts on this target group. Neutral.
Disability	The proposal is not likely to have direct equality impacts on this target group. Neutral
Gender Reassignment	The proposal is not likely to have direct equality impacts on this target group. Neutral.
Marriage or Civil Partnership	The proposal is not likely to have direct equality impacts on this target group. Neutral.
Pregnancy and Maternity	The proposal is not likely to have direct equality impacts on this target group. Neutral.
Race (Including color, nationality, and ethnic or national origin)	The proposal is not likely to have direct equality impacts on this target group. Neutral.
Sexual Orientation	The proposal is not likely to have direct equality impacts on this target group. Neutral.
Sex (gender)	The proposal is not likely to have direct equality impacts on this target group. Neutral.
Religion or Belief	The proposal is not likely to have direct equality impacts on this target group. Neutral.

The proposal overall is expected to have a neutral impact on equality in general.

Consultations have been undertaken with relevant communities and groups, including the Parish Council, and no specific concerns or objections were raised regarding equality.

As a result of the above conclusion, no mitigation measures are deemed necessary.

### **Human Rights:**

In making the decision, awareness of and consideration for any implications arising from the Human Rights Act 1998 (as amended) is crucial. It is unlawful for a public authority, such as the Tendring District Council, to act in a manner incompatible with the European Convention on Human Rights. Specific reference is made 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). The recommendation to grant permission is not considered to interfere with local residents' rights to respect for their private and family life, home, and correspondence, or freedom from discrimination, except as necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is permitted to control property use in accordance with the



general interest, and the recommendation to grant permission is considered a proportionate response based on the considerations set out in this report.

**Finance Implications:**

Local finance considerations are a crucial factor for local planning authorities in determining planning applications, to the extent that they are material to the application. e. The New Homes Bonus (NHB) is one such local finance consideration, and its weight is to 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 other considerations.

**Background Papers:**

In making this recommendation, officers have considered all plans, documents, reports, and supporting information submitted with the application, including any amended documentation. Additional information relevant to the assessment of the application, as referenced within the report, also forms 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, accessible [here](#).

Signed John Pateman-Gee

Head of Planning and Building Control

A handwritten signature in black ink, appearing to read 'J Pateman-Gee', with a large, sweeping horizontal stroke above the name.

Date 30/11/2023