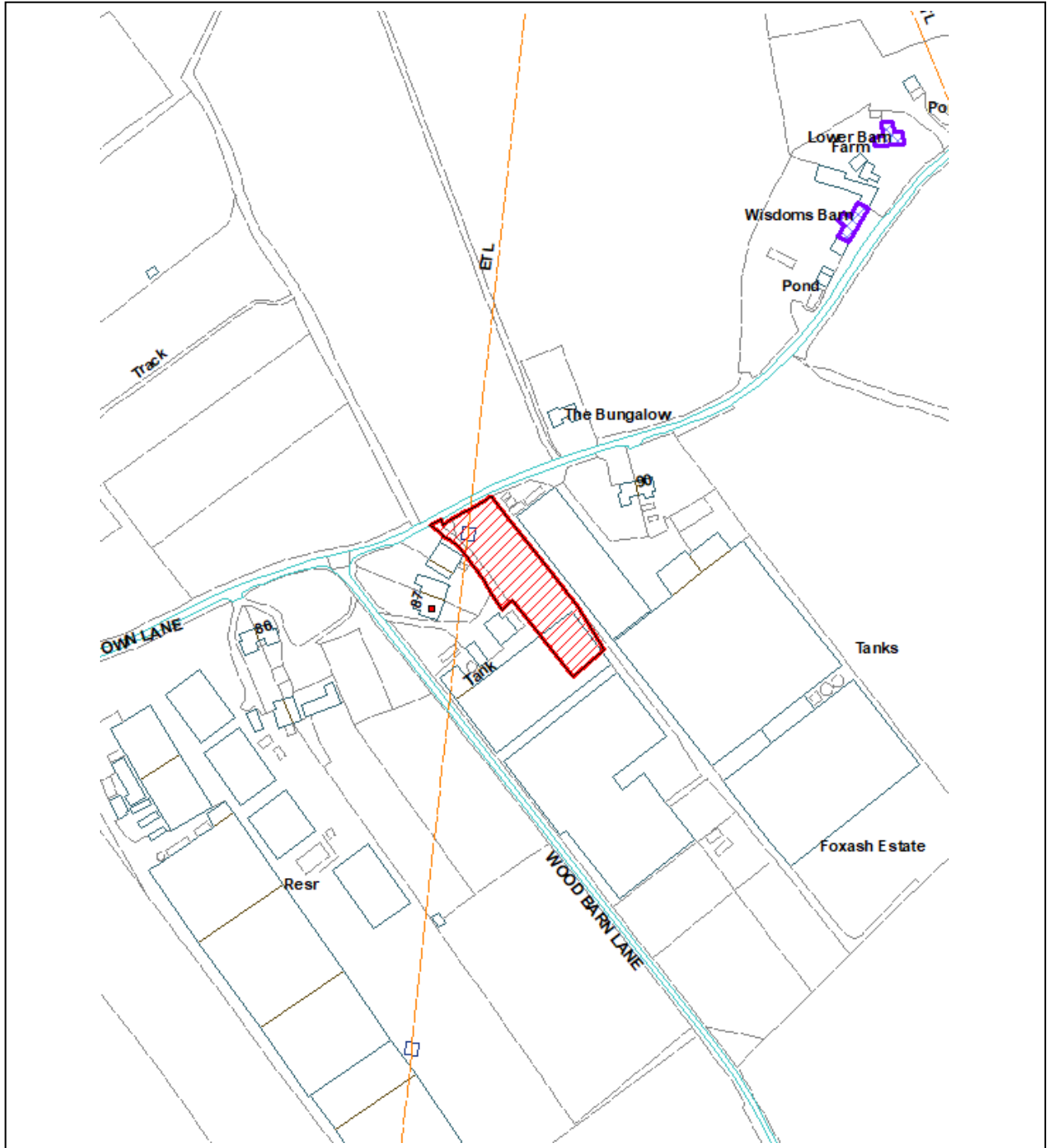


PLANNING COMMITTEE

19 DECEMBER 2023

REPORT OF THE DIRECTOR OF PLANNING

**A.1. PLANNING APPLICATION – 23/01145/FUL – 87 HUNGERDOWN LANE LAWFORD  
MANNINGTREE CO11 2LY**



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<b>Application:</b>	23/01145/FUL	<b>Expiry Date:</b>	6th October 2023
<b>Case Officer:</b>	Michael Pingram	<b>EOT Date:</b>	22nd December 2023
<b>Town/ Parish:</b>	Lawford Parish Council		
<b>Applicant:</b>	Mr and Mrs Richardson		
<b>Address:</b>	87 Hungerdown Lane Lawford Manningtree, CO11 2LY		
<b>Development:</b>	Proposed erection of 1 no. dwelling in lieu of Prior Approval for 1 dwelling, subject of application 23/00739/COUNOT.		

## 1. Executive Summary

- 1.1 The application is referred to Planning Committee as the proposed development would conflict with the requirements of the Development Plan, principally Policy SPL2 (Settlement Development Boundaries) of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022) being located outside of any defined settlement development boundary and has a recommendation of approval.
- 1.2 The proposed dwelling is sited in a different location further along to the east adjacent to the prior approval building, but is of a very similar size, design, and also retains the same number of bedrooms. Officers are content the proposal would not be harmful to the character and appearance of the surrounding area, in part is a desirable improvement over the prior approval 23/00739/COUNOT approved as the new siting reduces impact on neighbouring amenity.
- 1.3 There are no significant issues in respect to neighbouring amenities or harm to trees. Essex Highways Authority have raised no objections and there is sufficient space for parking.

### **Recommendation:** Approval

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

## 2. Planning Policy

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

National:

National Planning Policy Framework July 2021 (NPPF)  
National Planning Practice Guidance (NPPG)

Local:

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

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP7 Place Shaping Principles

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

- SPL1 Managing Growth
- SPL3 Sustainable Design
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL10 Renewable Energy Generation
- HP5 Open Space, Sports & Recreation Facilities
- DI1 Infrastructure Delivery and Impact Mitigation
- CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

### **Status of the Local Plan**

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

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

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

### **Neighbourhood Plans**

There is no Neighbourhood Plan that would apply to this site.

### **3. Relevant Planning History**

23/00739/COUNOT	Prior Approval Application under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for proposed conversion of barn rear of 87 Hungerdown Lane, addition of windows to new rooms.	Prior Approval not required.	04.07.2023
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### **4. Consultations**

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

#### **UU Open Spaces - Summary**

**11.09.2023**

No contribution is being requested on this occasion. The current facilities are adequate to cope with this development.

#### **ECC Highways Dept**

**01.09.2023**

The information submitted with the application has been assessed by the Highway Authority and conclusions have been drawn from a desktop study with the observations below based on submitted material. No site visit was undertaken in conjunction with this planning application. It is noted, as with the earlier application, access to the site is via an existing established vehicular access, there was no initial concerns with this under the approval 23/00739/COUNOT. Whilst the site is located in the countryside, it is not considered that the proposal would give rise to a significant increase in vehicle movements to and from the site or result in a material change in the character of the traffic in the vicinity of the site. Given the scale of the proposed development and the area to be available for parking within the site, which complies with Tendring District Council's adopted parking standards, 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. There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the road junction / access is first used by the development and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between users of the access and the public highway in the interests of highway safety in accordance with policy DM1.

2. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

3. Prior to the occupation of the dwelling the internal layout and parking shall be provided in principle with drawing number:

o Drawing: P01 Rev. B Amended proposed block plan, floor plan, and elevations.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM1.

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

Reason: To ensure that 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. The powered two-wheeler/cycle parking facilities as shown on the approved plan are to be provided prior to the first occupation of the development and retained at all times.

Reason: To ensure appropriate powered two-wheeler and bicycle parking is provided in accordance with Policy DM8.

6. Any new or replacement boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

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

**Tree & Landscape Officer**

**18.08.2023**

The existing building to which planning application 23/00739/COUNOT relates is set back into the plot of the host property and is not clearly visible from a public place or from the highway. Its renovation and change of use would not adversely affect the visual appearance of the locality.

The land identified for proposed position of the new dwelling is set to grass and planted with several small fruit trees. The trees do not feature prominently in the public realm and do not merit retention of formal legal protection by means of a Tendring District Council tree preservation order.

The site boundary with the highway is planted with a boundary hedge comprising of hedging conifers. There is a young Sweet Chestnut (*Castanea sativa*) close to this boundary. The conifer hedge and the Sweet Chestnut are shown as retained on the Block Plan.

It is noted that the proposed dwelling would be relatively well screened and that it would not be a prominent feature in its setting, however in terms of the impact of the proposed development on the local landscape character it is considered that a new dwelling in the proposed location is not in keeping with the local settlement pattern and that it would contribute to the gradual erosion of the countryside.

Should planning permission be likely to be granted then details of soft landscaping should be secured by a planning condition. Soft landscaping should aim to soften, screen and enhance the appearance of the development. This is likely to involve the retention of existing boundary vegetation or its replacement if it were considered necessary for it to be removed in order to implement the proposed development.

**Essex County Council Ecology**

**28.11.2023**

No objection subject to securing:

- a) a proportionate financial contribution towards Essex Coast RAMS
- b) biodiversity mitigation and enhancement measures

**Summary**

We have reviewed the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures.

The site falls within the evidenced recreational Zone of Influence (ZOI) of Essex Coast RAMS. Therefore, given the residential element of this development is relevant, we note that the LPA has prepared a project level HRA Appropriate Assessment to secure a per dwelling tariff by a legal agreement for delivery of visitor management measures at the designated sites. This will mitigate for predicted recreational impacts in combination with other plans and projects and avoid Adverse Effect on Integrity of the designated Habitats sites.

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

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

The mitigation measures identified in the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly Great Crested Newts and nesting birds.

We also support the proposed reasonable biodiversity enhancements of one triple House Sparrow box or three single house sparrow boxes, which have been recommended by the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) to secure net gains for biodiversity, as outlined under Paragraph 174d of the National Planning Policy Framework (2023). The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Strategy and should be secured by a condition of any consent.

In addition, the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) highlights that it is likely bats could be foraging/commuting within and around the site. Therefore, if any external lighting is to be proposed, it is advised that a sensitive lighting scheme is developed to minimise any impacts. This should summarise the following measures will be implemented:

- o Light levels should be as low as possible as required to fulfil the lighting need.
- o Warm White lights should be used at <2700k. This is necessary as lighting which emit an ultraviolet component or that have a blue spectral content have a high attraction effect on insects. This may lead in a reduction in prey availability for some light sensitive bat species.
- o The provision of motion sensors or timers to avoid the amount of 'lit-time' of the proposed lighting.
- o Lights should be designed to prevent horizontal spill e.g. cowls, hoods, reflector skirts or shields.

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

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

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

#### Recommended Conditions

#### 1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

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

#### 2. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

"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) persons responsible for implementing the enhancement measures;
- e) 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). And if any external lighting is proposed;

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

"A lighting design scheme for biodiversity in accordance with GN:08/23 Bats and Artificial External Lighting (ILP) shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show

how and where external lighting will be installed (through the provision of appropriate lighting plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

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

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

### **Environmental Protection**

**29.08.2023**

Thank you for your consultation regarding the proposed development above. Please find Environmental Protections comments below:

#### Construction Method Statement

I have reviewed the amended construction method statement and can confirm that this is acceptable. It must be noted that the CMS must be complied with during the development of this site.

\*Comments below consistent with 23/00739/COUNOT  
Asbestos

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

#### INFORMATIVE - Foul Drainage:

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

REASON: to protect the health of residents and nearby residential premises.

## **5. Representations**

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



## 6. Assessment

### Site Description

- 6.1 The application site relates to the land located to the rear of 87 Hungerdown Lane, within the parish of Lawford. The building currently on site is single storey and was formerly used as an agricultural storage and vehicle repair shop, and is currently redundant.
- 6.2 The character of the area is typically rural in nature, with large areas of grassed and agricultural land further out to all sides. However, to the immediate north-west are residential and commercial properties, with sporadic forms of development running along Hungerdown Lane itself.
- 6.3 The site is located outside of a recognised Settlement Development Boundary within the adopted Local Plan 2013-2033.

### Description of Proposal

- 6.4 This application seeks full planning permission for the replacement of the agricultural building with the erection of one dwellings. The proposal would represent an alternative development to the Prior Approval for one dwelling subject of application 23/00739/COUNOT.
- 6.5 The proposed dwelling is to be single storey, with a footprint of 158.4sqm and four bedrooms. Two parking spaces are shown to the front of the dwelling.
- 6.6 The proposed materials are a mix of a red brick plinth, weatherboarding and tin roof.

### Planning History

- 6.7 Under planning reference 23/00739/COUNOT, prior approval permission was granted in June 2023 for the conversion of the agricultural building subject of this planning application into one dwelling. This was allowed as assessed against Class Q of the Town & Country Planning (General Permitted Development) (England) Order (2015). Within the determination of this application the Council did not express any concern on the grounds for consideration of the notification application, namely access, noise, contamination, flooding, location, design or natural light.

### Principle of Development

- 6.8 Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (section 70(2) of the 1990 Town and Country Planning Act and section 38(6) of the Planning and Compulsory Purchase Act 2004). The development plan for Tendring Council comprises of the adopted Tendring District Local Plan 2013-2033 and Beyond Sections 1 and 2.
- 6.9 Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements. The application site lies outside of the defined settlement boundary of Lawford within the adopted 2013-2033 Local Plan. The proposed development would therefore extend outside the area planned to provide growth for this settlement. In view of the housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement.
- 6.10 Policy SPL2 supports new development within defined Settlement Development Boundary's (SDB) which would encourage sustainable patterns of growth and carefully control urban sprawl. Within a defined SDB, there will be a general presumption in favour of new development subject

to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.

- 6.11 The proposal therefore results in conflict with policies SP3 and SPL2. In this case, however, the principle of residential development on this site has been established through the prior approval consent granted under planning permission 23/00739/COUNOT in June 2023. The current proposal represents an alternative design and siting to the previously granted permission, which is considered to form a material consideration in respect of the application and denotes what is considered to be a viable fall-back position as outlined below.

Fallback Position – Material Consideration

- 6.12 It is established in case law that permitted development rights can legitimately represent a fall-back position when considering alternative proposals for development of the same site and this was the case for the previous planning approval.
- 6.13 In summary, the relevant legal principles relating to the fall-back position were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fall-back test:
- 6.14 *“First whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is “yes” a comparison must be made between the proposed development and the fall-back use.”*
- 6.15 The notion of Class Q providing a lawful fall-back position was subsequently and comprehensively dealt with at the landmark Court of Appeal case, Mansell vs Tonbridge and Malling Borough Council [2017], which concluded that a realistic fall-back position in regard to Class Q would amount to a material consideration in the determining of an application.
- 6.16 The table below provides a comparison between the original prior approval and the new dwelling proposed under this application:

	23/00739/COUNOT (Prior Approval)	23/01145/FUL (Current Application)
Siting	Centrally within the site, to the rear of the existing residential properties fronting Hungerdown Lane and Woodbarn Lane.	Similar location, however re-located approximately 20 metres to the east of the existing building.
Access	Via an existing access point to the north of the site from Hungerdown Lane.	Via an existing access point to the north of the site from Hungerdown Lane.
Appearance	Black boarding,	Black boarding, red brick plinth, tin roof, all to match existing building
Floorspace	168sqm	177sqm
Eaves Height	2.5m	2.5m
Ridge Height	5.2m	5.2m
No. Beds	4	4

- 6.17 In conclusion, having regard to the above, the application is considered to meet all three tests set out for a viable fall-back position in terms of the legal position set out earlier. There is a fall-

back use in the form of the prior approval and it is considered that the proposed development, is, in the main, comparable to that approved under the prior approval.

- 6.18 As outlined above in the comparison table, there is an increase in floorspace totalling 9sqm, however this is not considered to be a significant increase, particularly when taking into consideration the height, appearance and number of bedrooms remaining the same.
- 6.19 Therefore, given the circumstances of this case, along with the legal position and the prior approval fall-back position, the principle of development for a new dwelling on this site is considered to be acceptable subject to the detailed consideration against other relevant Local Plan policies.

#### Visual Impacts

- 6.20 Paragraph 126 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 6.21 Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness. The development should relate well to its site and surroundings particularly in relation to its siting, height, scale, massing, form, design and materials and should respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features.
- 6.22 The site is located in a largely rural area, although there are examples of residential development within the immediate vicinity and along Hungerdown Lane, in particular immediately to the north and north-west of the site.
- 6.23 During the lifetime of the planning application, amended drawings have been provided which show the proposed dwelling to now be of a very similar design, and a similar size, to the existing building. Officers had previously raised some concerns that the initial design had material differences to the existing building, both in terms of its height and overall design, but are satisfied that these concerns are addressed through the amended drawings. The proposed dwelling would replace an existing structure in broadly the same location, although relocated approximately 20 metres to the east. While noting a slight increase, the dwelling would result in a similar footprint to the existing building as well as similar form, and there will be no net increase in the number of dwellings. Taken as a whole including the garden proposed, the dwelling remains in context with the built forms to the north/west and is considered to maintain the rural character of the locality.
- 6.24 Policy LP4 requires that new residential developments will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area. The plans show that this is comfortably adhered to.

#### Impact to Neighbouring Amenities

- 6.25 The NPPF, at paragraph 130 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.

6.26 There are residential properties located to the north and north-west of the proposed dwelling, however these are approximately 30 metres apart. Given this significant separation distance, as well as the single storey nature of the proposal and that there is an existing building of a similar size, Officers do not consider that there will be significant harm in respect of overlooking, the dwelling appearing imposing or resulting in loss of sunlight/daylight. Overall this proposal represents an improvement on the relationship as it pulls the active residential use away from existing residential use.

#### Highway Safety Impacts

6.27 Paragraph 108 of the National Planning Policy Framework 2021 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Paragraph 111 of the Framework states that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

6.28 Policy SPL3 (Part B) of the Adopted Local Plan seeks to ensure that access to a new development site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and provision is made for adequate vehicle and cycle parking. Adopted Local Plan Policy CP2 states proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe.

6.29 Essex Highways Authority have been consulted and have stated that from a highway and transportation perspective the impact of the proposal is acceptable subject to conditions relating to visibility splays, the use of no unbound materials, the vehicle parking area, and any replacement planting being set back 1 metre from the highway boundary.

6.30 Furthermore, the Council's Adopted Parking Standards require that for a dwelling with two or more bedrooms that a minimum of two parking spaces are required. Parking spaces should measure 5.5m x 2.9 metres. The submitted plans show that there is sufficient space within the site to provide the necessary parking.

#### Impacts to Trees and Landscape

6.31 Paragraph 174 of the National Planning Policy Framework (2021) states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and should protect and enhance valued landscapes.

6.32 Policy PPL3 of the local plan requires that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted.

6.33 The Council's Tree and Landscape Officer has been consulted on the application, and has provided the following comments:

*"The existing building to which planning application 23/00739/COUNOT relates is set back into the plot of the host property and is not clearly visible from a public place or from the highway. Its renovation and change of use would not adversely affect the visual appearance of the locality.*

*The land identified for proposed position of the new dwelling is set to grass and planted with several small fruit trees. The trees do not feature prominently in the public realm and do not merit retention of formal legal protection by means of a Tendring District Council tree preservation order.*

*The site boundary with the highway is planted with a boundary hedge comprising of hedging conifers. There is a young Sweet Chestnut (Castanea sativa) close to this boundary. The conifer hedge and the Sweet Chestnut are shown as retained on the Block Plan.*

*It is noted that the proposed dwelling would be relatively well screened and that it would not be a prominent feature in its setting, however in terms of the impact of the proposed development on the local landscape character it is considered that a new dwelling in the proposed location is not in keeping with the local settlement pattern and that it would contribute to the gradual erosion of the countryside.*

*Should planning permission be likely to be granted then details of soft landscaping should be secured by a planning condition. Soft landscaping should aim to soften, screen and enhance the appearance of the development. This is likely to involve the retention of existing boundary vegetation or its replacement if it were considered necessary for it to be removed in order to implement the proposed development."*

- 6.34 Given the above comments, a level of harm has been identified in relation to the impact of the development to the rural character of the area. However, on this occasion while these comments are noted it is equally acknowledged that the design provided is also of a rural nature that would be expected in a location such as this, and the scale of the building is comparable to that existing. Therefore, on balance and mindful of the existing prior approval that would have introduced a similar new dwelling in this location if that was to be continued, Officers do not consider the proposal would represent a significant and harmful change to the areas character to the extent it would justify a reason for refusal.

#### Impact on Protected Species

- 6.35 Paragraph 174 of the Framework states planning decisions should contribute to and enhance the natural and local environment, by minimising impacts and providing net gains for biodiversity.
- 6.36 Paragraph 180(a) of the NPPF confirms that in assessing planning applications where significant harm to biodiversity as a result of a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.
- 6.37 Adopted Policy SP7 requires that all new development should incorporate biodiversity creation and enhancement measures. Adopted Policy SPL3 Part A(d) includes that the design and layout of development should maintain or enhance ecological value.
- 6.38 Given that the application site has the potential for hosting protected species, notably bats, Officers requested the submission of a Preliminary Ecological Assessment (PEA). This assessment has since been provided and concludes that there will either be no impact or a negligible impact to amphibians, bats, reptiles, badgers, water voles, dormice and invertebrates.
- 6.39 The report does, however, outline that the building provides limited nesting opportunities for birds, and the disturbance and destruction of an active nest could have a negative effect on some bird species at site level. There will also be a negligible loss of foraging habitat in the context of the surrounding environment. Therefore, it is suggested that demolition works take place during September to February, to avoid the bird nesting season, and that either one triple house sparrow box or three single sparrow boxes are erected to the northern elevation of an outbuilding to the west of the application site.
- 6.40 ECC Place Services (Ecology), upon consultation, initially raised a holding objection due to a lack of ecological information supporting the application. However, following the submission of the PEA, they have removed their objection, confirming there is sufficient ecological information available to determine the application. However, they have recommended that conditions relating to mitigation measures and a biodiversity enhancement strategy be included. A further

condition relating to wildlife sensitive lighting is recommended in the event any external lighting is proposed as part of the application. While no lighting is proposed, Officers recommend a condition requesting future details be provided should this take place in the future.

### Foul Drainage

- 6.41 Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Furthermore, Paragraph 185 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.
- 6.42 Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010. A completed Foul Drainage Assessment Form 1 (FDA1) form, or equivalent information, should accompany all planning applications where use of a non-mains system is proposed for foul drainage. The operation of small sewage discharges such as those from septic tanks or package treatment plants is regulated under the Environmental Permitting Regulations 2016 (EPR).
- 6.43 Adopted Policy PPL5 of Section 2 of the Adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour.
- 6.44 The application form accompanying the application has stated that the development would be connected to a package water treatment plant. This does not adhere to the above local and national policy requirements which seek to connect new development to an existing public foul sewer.
- 6.45 Given the above, a completed Foul Drainage Assessment Form 1 (FDA1) form has been completed and received on 11<sup>th</sup> August 2023. The FDA1 form confirms that it is not feasible to connect to the public foul sewer as at the shortest point is over 30 metres. Therefore, consideration can be given to a package treatment plant. The drainage system proposal can be summarised as follows:
- System will be at least 10m from a watercourse, permeable drain and land drain;
  - System will be located at least 7m from the habitable part of a building;
  - Vehicular access for emptying within 30m is possible;
  - The system can be maintained or emptied without the contents being taken through a dwelling;
  - Maintenance of the system will be via a contract;
  - Estimated total flow in litres per day is 1100.
- 6.46 Following this the information provided is acceptable on this occasion, and therefore notwithstanding the lack of connection to a public foul sewer there is no objection raised.

### Financial Contributions – Recreational Disturbance

- 6.47 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.
- 6.48 The application scheme proposes a residential use on a site that lies within the Zone of Influence (Zoi) being approximately 3.1 kilometres from the Stour and Orwell Estuaries SPA and RAMSAR. New housing development within the Zoi would be likely to increase the number of recreational visitors to these sites and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.
- 6.49 A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

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

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

#### Renewable and Energy Conservation Measures

- 6.52 Paragraph 112 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.
- 6.53 Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.
- 6.54 The application is supported by a Design and Access Statement, which outlines renewable energy provisions, including free standing EV charging point next to the parking spaces, water butts, an air source heat pump, solar panels and a recycling area. Officers are content this meets the requirements of the above policies.

## **7. Conclusion**

- 7.1 The proposed demolition of an existing agricultural building and its replacement with a four bedroom dwelling is acceptable in principle following the previous prior approval granted on the site for a dwelling under planning reference 23/00739/COUNOT.

- 7.2 Whilst the dwelling has been located further east than the existing building, it is of a very similar size and design, will retain the same access and number of bedrooms. Therefore, Officers are content that the proposal would not be harmful to the character and appearance of the surrounding area.
- 7.3 There are no significant issues in respect to neighbouring amenities or harm to trees. Essex Highways Authority have raised no objections and there is sufficient space for parking. Accordingly, the application is considered to be policy compliant and is recommended for approval.

## **8. Recommendation**

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

### 8.2 Conditions and Reasons

#### 1 COMPLIANCE REQUIRED: COMMENCEMENT TIME LIMIT

CONDITION: The development hereby permitted shall be begun not later 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 Section 51 of the Planning and Compulsory Purchase Act 2004.

#### NOTE/S FOR CONDITION:

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

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

Drawing Numbers P01c received dated 2 November 2023, P03b received dated 23 August 2023, P04b received dated 23 August 2023, and document titled 'Preliminary Ecological Appraisal'.

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

#### NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second



role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

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

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

- 3 **CONDITION:** No development above slab level shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard, soft and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels.

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

**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.

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

- 4 **CONDITION:** All changes in ground levels, soft/hard landscaping shown on the approved landscaping details 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.

- 5 **CONDITION:** Prior to first use of the access, visibility splays shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres across the entire site frontage, as measured from and along the nearside edge of the carriageway, and shall then be retained in its approved form. Notwithstanding the provisions of Part 2 Class A of the Town & Country

Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

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

NOTE/S FOR CONDITION:

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

- 6 CONDITION: The access hereby approved shall have a bound material surface and shall be laid out for a minimum distance of 5 metres from the edge of the carriageway prior to first use. The bound material as implemented shall then be retained thereafter.

REASON: In the interests of highway safety to prevent hazards caused by loose materials on the highway.

NOTE/S FOR CONDITION:

Carriageway is the part of a road intended for vehicles rather than pedestrians normally define by kerb if available or edge of a bound surface. It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the ECC Highway Authority. Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by Essex County Council or its agents at the applicant's expense.

- 7 CONDITION: Prior to first occupation of the hereby approved development, the vehicle parking area indicated on the approved plans shall be hard surfaced and sealed. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed in writing 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.

- 8 CONDITION: Any new or replacement boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

REASON: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety.

- 9 CONDITION: Prior to the first occupation of the hereby approved development, all mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Liz Lord Ecology, November 2023) and thereafter maintained as approved.

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations.

10 **CONDITION:** Notwithstanding details received, prior to first occupation of the hereby approved 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;
- 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 and habitats.

11 **CONDITION:** Prior to the erection/installation of any floodlighting or other means of external lighting at the site, details to include position, height, aiming points, lighting levels and a polar luminance diagram shall be submitted to and approved, in writing, by the Local Planning Authority. The lighting shall be carried out and retained as may be approved. There shall be no other means of external lighting installed and/or operated on/at the site except that approved.

**REASON:** In the interests of amenity to reduce the impact of night time illumination on the character of the area and in the interests of biodiversity.

### 8.3 Informatives

Positive and Proactive Statement:

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

## 9. Additional Considerations

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
  - 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
  - 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

- 9.5 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration 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.
- 9.6 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 Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

- 9.7 The proposal overall shall have a neutral impact.
- 9.8 Consultations undertaken with the affected communities or groups have not been required in this case.
- 9.9 No mitigation measures required.

#### Human Rights

- 9.10 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.

- 9.11 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.12 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### Finance Implications

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

#### **10. Background Papers**

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