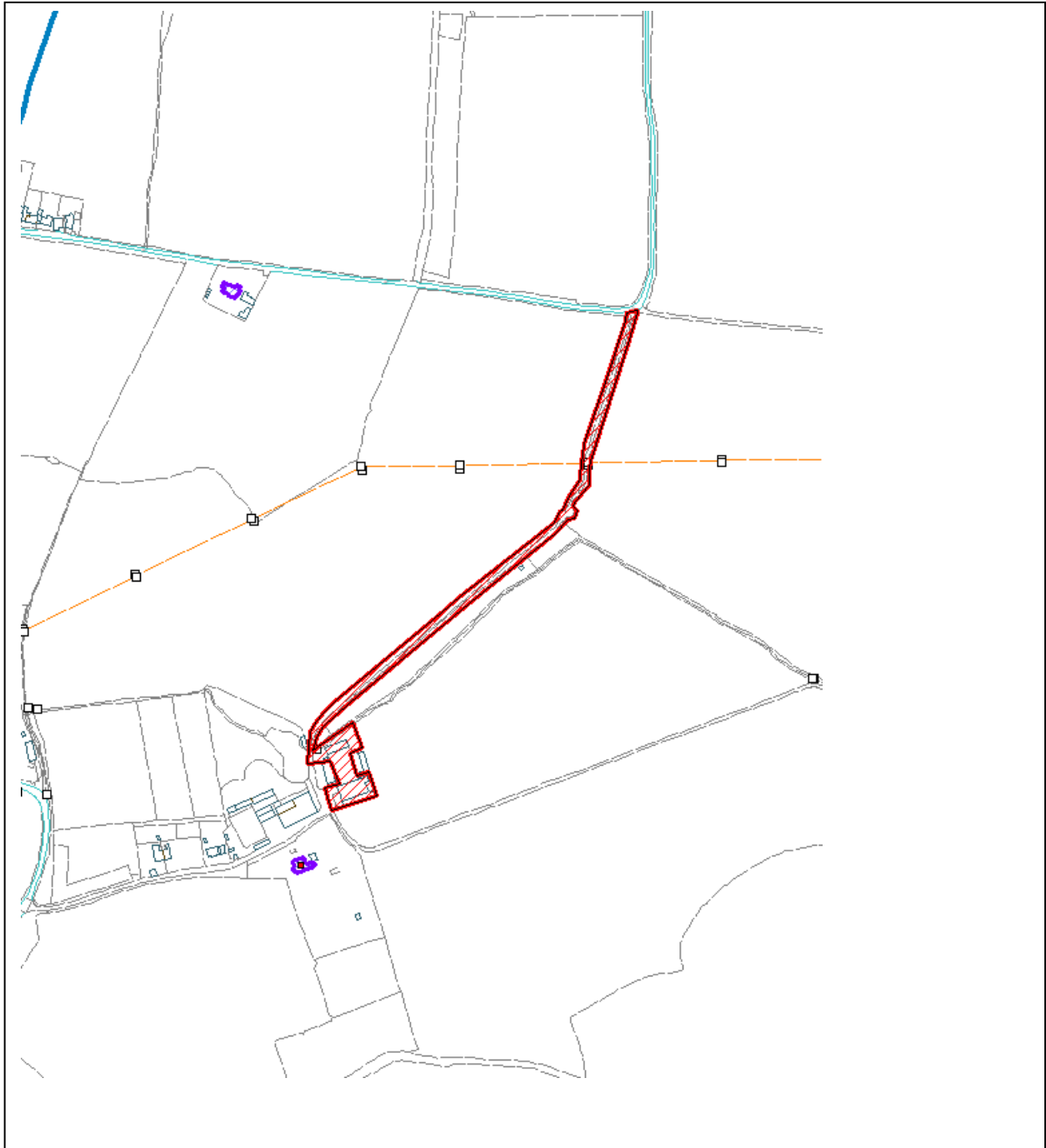


PLANNING COMMITTEE

15 FEBRUARY 2024

REPORT OF THE DIRECTOR OF PLANNING

**A.2 PLANNING APPLICATION – 23/01418/FUL – BRAHAM HALL FARM BENTLEY ROAD
LITTLE BROMLEY MANNINGTREE CO11 2PS**



DO NOT SCALE

© Crown Copyright and database right 2024. Ordnance Survey Licence No.100018684.

Application:	23/01418/FUL	Expiry Date:	6th December 2023
Case Officer:	Michael Pingram	EOT Date:	20th February 2024
Town/ Parish:	Little Bromley Parish Council		
Applicant:	Messrs Lord and Peterson		
Address:	Braham Hall Farm Bentley Road Little Bromley, Manningtree CO11 2PS		
Development:	Erection of two dwellings. (in lieu of prior approval for the conversion of an agricultural building into two dwellings 23/00549/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 slightly different location to the east but 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, therefore, that the proposal would not be harmful to the character and appearance of the surrounding area.
- 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, whilst ECC Ecology have removed their initial holding objection following the submission of additional photographic evidence that the building to be demolished would not have potential for the roosting of bats.

Recommendation: Approval subject to Unilateral Undertaking

- 1) On appropriate terms as summarised below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control to secure the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters:
 - Financial contribution in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) totalling £156.76 per dwelling (index linked)
- 2) That the Head of Planning and Building Control be authorised to grant planning permission subject to the agreed section 106 agreement and 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,
- 3) The informative notes as may be deemed necessary.

Or;

- 4) That in the event of the Head of Planning and Building Control or requirements referred to in Resolution (1) above not being secured and/or not secured within 12 months that the Head of Planning and Building Control be authorised to refuse the application on appropriate grounds at their discretion.

2. **Planning Policy**

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

National:

National Planning Policy Framework 2023 (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
- PPL9 Listed Buildings
- 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

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.tendingdc.uk/content/neighbourhood-plans>

3. Relevant Planning History

10/01023/LBC	Replacement of 26 no. windows and 1 no. door.	Approved	10.11.2010
21/00093/COUNOT	Application for prior approval for the conversion of three agricultural buildings into 4 dwellings.	Determination	15.03.2021
21/01896/COUNOT	Prior Approval for the conversion of three agricultural buildings into 4 dwellings.	Determination (Prior Approval required)	23.12.2021
23/00549/COUNOT	Prior Approval Application under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of three agricultural buildings into 4 dwellings.	Determination (Prior Approval not required)	30.06.2023

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

07.11.2023

Play Space - current deficit:

- Deficit of 0.23 hectares of equipped play in Little Bromley

Formal Play - current deficit:

- Deficit of 0.46 hectares of open space Little Bromley

Settlement provision:

- Currently there is no provision of open space or play facilities in Little Bromley

Contribution necessary, related, and reasonable?
to comply with CIL Regs*

- No contribution is being requested on this occasion.

Identified project*:

(In consultation with Town / Parish Council on upcoming projects or needs for maintenance)

- N/a

Essex County Council Ecology

04.01.2024

Thank you for re-consulting Place Services on the above application.

No objection subject to securing:

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

Summary

Further to our comments on 25th October 2023, we have reviewed the photos sent by the agent (received 2nd January 2024) 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. Given the residential element of this development is relevant, the LPA will need to prepare 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.

Upon review of the photos sent by the agent (received 2nd January 2024), we note that the barn, proposed to be demolished, does not have potential for roosting bats. As a result, the LPA has certainty of the likely impacts of bats, European Protected Species.

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.

We also support the reasonable biodiversity enhancements, which are recommended to secure net gains for biodiversity, as outlined under Paragraph 180d of the National Planning Policy Framework (December 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, it is likely bats could be foraging/commuting within close proximity and around the site. Therefore, if any external lighting is to be proposed, it is advised that a sensitive lighting scheme is developed to minimise any impacts. This should summarise the following measures will be implemented:

- Light levels should be as low as possible as required to fulfil the lighting need.
- Warm White lights should be used at <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.
- The provision of motion sensors or timers to avoid the amount of 'lit-time' of the proposed lighting.
- Lights should be designed to prevent horizontal spill e.g. cowls, hoods, reflector skirts or shields.

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

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

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

Recommended conditions

1. 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) 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).

And if any external lighting is proposed;

2. 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 (Institute of Lighting Professionals) 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).

ECC Highways Dept

24.10.2023

The information submitted with the application has been assessed and conclusions have been drawn from a desktop study with the observations below based on the submitted material and in conjunction with a previous site visit/meeting. It is noted that this application is similar to earlier applications 23/00549/COUNOT, 21/00093/COUNOT and 21/01896/COUNOT. Mitigation proposals have been incorporated within this application, in particular associated with the existing Public Right of Way that shares part of the private track that will serve the two dwellings, 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. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

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

2. The proposed development shall not be occupied until such time as domestic car parking for a minimum of two vehicles per dwelling has been provided in accordance with the Parking Standards, details to be agreed with the Local Planning Authority. The agreed car parking shall be retained at all times for such purpose.

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

3. Prior to the occupation of any of the proposed dwellings, the existing private track at its junction with Chequers Road shall be constructed to a minimum width of 5.5 metres shall be

retained at that width for 6 metres within the site and shall be provided with an appropriate vehicular crossing.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

4. 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.

5. Prior to the occupation of the development one informal passing place (size: 3 metres x 10 metres) shall be surfaced and provided at the fork of public footpath 5.

Reason: To make adequate provision within the private track for the additional traffic generated by the proposed development allowing vehicles to pass and re-pass in accordance with policy DM1.

6. Prior to the occupation of the development the private track from Chequers Road up to the fork of the public footpath 5 shall be widened by an additional 200mm (8 inches) and a 1.2-metre-wide section will be surfaced with a limestone surface dressing using timber edging on both sides of the path for this entire section of the public right of way for that section that shares the route with this part of the private track only.

Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

7. The public's rights and ease of passage over public footpath no. 5 (Little Bromley_157) shall be maintained free and unobstructed at all times.

Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

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.

Environmental Protection

16.10.2023

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

Construction Activities: In order to minimise potential nuisance caused by demolition/construction works, Environmental Protection recommend that the following hours and actions be adhered to, should the application be approved;

o No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.

o No materials produced as a result of the site development or clearance shall be burned on site.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

REASON: to protect the amenity of nearby residential premises

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

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

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

Asbestos: Should any asbestos containing materials be present on the development site, or used within the original construction of the building in question, it must be safely removed by a qualified contractor, with relevant transfer notes being obtained to confirm safe and responsible removal and disposal.

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

*INFORMATIVE - Foul Drainage: The submitted Planning Statement 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). 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.

Essex County Council Heritage

06.12.2023

The application is for proposed erection of two dwellings. (in lieu of prior approval for the conversion of an agricultural building into two dwellings 23/00549/COUNOT). This should be read as an addendum to my previous advise issued on 3rd November 2023.

The removal of the previously proposed balcony represent an improvement, however the revised scheme does not address the main concern about the overly residential character of the proposed dwelling.

It is noted that the current proposal is very similar to the scheme approved under Part 3, Class Q, and this is considered the fallback position, however the extant consent is for the conversion of the existing barn. As such, it is understandable that the design is limited by the constrains of the existing structure. Moreover, we were not consulted at the previous stage as this was approved under Part 3, Class Q and therefore, no concerns have been raised regarding the proposed external materials and the overly residential design.

As it is now proposed to demolish the existing barn, there is the potential for a new development within the setting of the identified heritage asset to look for opportunities to enhance or better reveal its significance, as stated in Paragraph 206 of the NPPF.

5. Representations

- 5.1 Little Bromley 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 at Braham Hall Farm, which is approximately 350 metres to the east of Bentley Road. There are four agricultural buildings on site, previously used for agricultural purposes but currently unoccupied at the time of the site visit, with the two buildings subject of this planning application sited to the northern and southern ends.
- 6.2 The property at Braham Hall is approximately 80 metres from the agricultural buildings. This is a Grade II Listed Building within its own defined residential curtilage and is in separate ownership and is a separate plot from the application site. The buildings subject of this application are not considered to be curtilage listed.
- 6.3 The site falls outside of a recognised Settlement Development Boundary within the adopted Local Plan 2013-2033. The character of the area is largely rural, with large areas of grassed and agricultural land located further out to all sides. There is, however, sporadic built form to the west.

Site History

- 6.4 Under planning reference 23/00549/COUNOT, prior approval permission was granted in June 2023 for the conversion of the agricultural buildings subject of this planning application, as well as the two agricultural buildings sited adjacent to the north-east and north-west, into four dwellings. 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.
- 6.5 The prior approval permission specifically allowed the following:

Barn A (the unit to the south of the site) measured 606sqm and was to be converted to two dwellings, each measuring 203sqm.

Barn B (the unit to the west of the site) measured 142sqm and was to be converted into one dwelling measuring 100sqm.

Barn D (the unit to the east of the site) currently measured 95sqm and was to be converted into one dwelling measuring 78sqm.

In addition, Barn C (the unit to the north of the site) is an existing cartlodge that is proposed to provide parking spaces for the development.

The supporting Planning Statement confirms that works have now commenced, which Officers agree with following the undertaking of a site visit.

Description of Proposal

- 6.6 This application seeks full planning permission for the replacement of one of the agricultural buildings approved under 23/00549/COUNOT for two dwellings (Barn A), with the erection of two dwellings. The proposal would represent an alternative development to the Prior Approval for two dwellings subject of application 23/00549/COUNOT.

- 6.7 The additional conversion of the buildings located to the east and west of the site (Barns B and D) are separately being carried out in accordance with the plans shown within 23/00549/COUNOT and therefore do not form part of this current application.

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 Little Bromley 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 23/00549/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:

	23/00549/COUNOT (Prior Approval)	23/01418/FUL (Current Application)
Siting	To the southern section of the collection of agricultural buildings.	In the same location to the southern section of the collection of agricultural buildings, although the eastern of the two plots is relocated approximately 2.5 metres to the east.
Access	Via a proposed access point to the north-west of the site.	Via a proposed access point to the north-west of the site.
Appearance	Horizontal cladding, zinc roof and brick plinth	Horizontal cladding, zinc roof and brick plinth
Floorspace	406sqm	406sqm
Eaves Height	5.6m	5.6m
Ridge Height	7.9m	7.9m
No. Beds	Both 4 beds	Both 4 beds

- 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, Plot 4 is slightly relocated approximately 2.5 metres to the east, however this is not considered to be a significant increase, particularly when taking into consideration the height, floorspace 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 135 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 built form within the immediate vicinity and slightly beyond to the west. Within the initial submitted drawings, concerns were raised that the design created a more urbanised appearance with the inclusion of balconies, however following discussions with the agent for the application these have since been removed. The design and appearance of the building, including use of materials, is therefore in-keeping with that approved within 23/00549/COUNOT, and Officers also note the footprint is of a similar level and there are no net increase of dwellings. Taken as a whole,

including the gardens proposed, the dwellings are considered to maintain the rural character of the locality.

- 6.23 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

- 6.24 The NPPF, at paragraph 135 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.
- 6.25 There are residential properties located adjacent to the north-east and north-west of the dwellings, as approved under 23/00549/COUNOT, as well as Braham Hall to the south-west. However, given that the design and scale of the dwellings are very similar to that previously granted prior approval, there is not considered to be any additional impact to the amenities of neighbouring properties. Moreover, Braham Hall is located a significant distance apart, thereby further reducing any potential impacts.

Heritage Impacts

- 6.26 Paragraph 208 of the NPPF states that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 6.27 The application site is located to the north-east of Braham Hall, a Grade II Listed Building. ECC Heritage initially raised concerns with the design of the dwellings, particularly features such as balconies and canopies that contributed to a more residential appearance. Following this, amended drawings were provided to remove the proposed balconies. ECC Heritage, upon re-consultation, expressed continued concerns about the residential character of the proposed dwelling.
- 6.28 Officers acknowledge the concerns raised by ECC Heritage, suggesting that the proposal, while similar to the previously approved scheme under Part 3, Class Q, represents an opportunity to better enhance the setting of the Grade II Listed Building. However, it is important to note that significant weight must be given to the prior approval granted within 23/00549/COUNOT, which the agent has confirmed has since been implemented.
- 6.29 The design of the proposed scheme is near identical to the prior approval, and Officers argue that it would not be reasonable to raise an objection based solely on the grounds of heritage impacts. The design modifications made, including the removal of balconies, aim to address specific concerns raised by ECC Heritage. Additionally, the prior approval consent itself was granted after thorough consideration, indicating that the heritage impacts were previously deemed acceptable and consistent judgement should be applied while recognising the difference in application type.
- 6.30 Given that the design of the two schemes is near identical, and the prior approval has been implemented, Officers do not consider that it would be reasonable to set aside the prior approval and raise objections solely on the grounds of heritage impacts. Notwithstanding the consistency position, the development does represent less than substantial harm. The public benefit derived from housing provision, economic growth, design is considered to outweigh the harm and/or any perceived harm to the heritage asset.

Highway Safety

- 6.31 Paragraph 114 of the National Planning Policy Framework seeks to ensure that safe and suitable access to a development site can be achieved for all users. Paragraph 115 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.
- 6.32 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.
- 6.33 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 the storage of building materials, the access width, the use of no unbound materials, a passing place, surfacing of the public footpath, and no obstruction to the footpath.
- 6.34 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 parking will be within a cartlodge that is being converted to the north of the dwellings, which was also approved within the Prior Approval application as a cartlodge. No objections are raised in this regard.

Impact to Protected Species

- 6.35 Paragraph 180 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. Paragraph 186(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.
- 6.36 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.
- 6.37 ECC Place Services (Ecology) have been consulted on the application and initially confirmed that they were not satisfied sufficient ecological information was available for the determination of the application, as the demolition of the agricultural building had the potential to impact upon bats if potential roosting features are present. Furthermore, the site lies within an Amber Risk Zone for Great Crested Newt, with one potentially suitable waterbody adjacent to the site.
- 6.38 Given the above, a Preliminary Ecological Appraisal was recommended to be provided to show an adequate assessment of the proposal and in order to inform whether there is a need for further, more detailed, surveys to be undertaken, as well as a Preliminary Roost Assessment for potential roost features for bats.
- 6.39 However, in response to this, the agent for the application has highlighted that the building is in the process of being dismantled together with extensive operations to the remainder of the structure and overall site following the granting of Prior Approval consent in June 2023, and then also provided additional photographs of the building. Following this, ECC Ecology have confirmed that upon review of these photographs they note that the barn subject of demolition does not have potential for roosting bats and are now therefore satisfied the Local Planning

Authority has sufficient ecological information to determine the application. They now raise no objections subject to a condition relating to a biodiversity enhancement strategy.

Foul Drainage

- 6.40 Paragraph 180 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 191 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.
- 6.41 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).
- 6.42 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.
- 6.43 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, however Officers are content that it would not be feasible to do so on this occasion.
- 6.44 In considering the acceptability of the proposed non-mains drainage, the site is not close to any designated site of importance to biodiversity, nor is it located within close proximity to any watercourse. The site is not located within a Drinking Water Safeguard Zone or a Source Protection Zone, and the site is sufficiently large enough to accommodate a soakaway. Furthermore, flows from a treatment plant serving two dwellings served by four bedrooms would be very low. Taking all these factors into account, and the absence of a mains connection in close proximity to the site, the proposed foul drainage arrangements are considered to be acceptable.

Financial Contributions – Recreational Disturbance

- 6.45 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.
- 6.46 The application scheme proposes a residential use on a site that lies within the Zone of Influence (Zoi) being approximately 3.8 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.

- 6.47 The applicant is in the process of completing a Unilateral Undertaking to secure the required contribution in accordance with the above policies and regulations.

Financial Contributions - Open Space and Play Space

- 6.48 Paragraph 55 of the National Planning Policy Framework states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 57 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.
- 6.49 In line with the requirements of Section 2 Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space. The outcome of the consultation is that there is currently a deficit of 0.23 hectares of equipped play and 0.46 hectares of formal open space in Little Bromley, however no contribution is requested on this occasion.

Renewable and Energy Conservation Measures

- 6.50 Paragraph 116 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.
- 6.51 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.
- 6.52 The application is supported by a Water, energy and resource efficiency measures document, which outlines a series of renewable efficiency measures to be incorporated within the scheme. As such it is not considered reasonable to include a planning condition requesting any further details on this occasion.

7. Conclusion

- 7.1 The proposed demolition of an existing agricultural building and its replacement with two dwellings is acceptable in principle following the previous prior approval granted on the site for a dwelling under planning reference 23/00549/COUNOT.
- 7.2 Whilst the proposal is located within proximity to a Grade II Listed Building and ECC Heritage have raised concerns that the proposal does not enhance the setting of this heritage asset, the design is very similar to that previously approved (and implemented) within 23/00549/COUNOT. Officers therefore do not consider it reasonable to raise an objection on these grounds. Furthermore, there is not considered to be significant harm to neighbouring amenities or the character of the area, whilst there is sufficient parking provision. ECC Highways also raise no objections.

7.3 Whilst ECC Ecology initially raised concerns due to a lack of Preliminary Ecological Assessment provided, following the submission of additional information and photographs they have removed those concerns. Accordingly, the application is considered to be policy compliant and is recommended for approval.

8. Recommendation

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives, and the prior completion of a section106 legal agreement with the agreed Heads of Terms, as set out in the table below:

CATEGORY	TERMS
Financial contribution towards RAMS.	£156.76 x 1no. dwelling (index linked)

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 1074_A_SC_01-03, 1074_A_SC_03-04, the documents titled 'Water, energy and resource efficiency measures', 'Klargester BioDisc Domestic Sewage Treatment Plant', 'Electric Vehicle Charging', 'Access Details', and the untitled Site Location Plan received dated 11th October 2023.

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 the first occupation of the development the areas within the site identified for the purpose of loading/unloading/reception and storage of materials and manoeuvring shall be retained thereafter and remain free of obstruction except for the purpose of

loading/unloading/reception and storage of materials and manoeuvring and used for no other purpose. Any other area within the site outlined in red not identified shall not be used as loading/unloading/reception and storage of materials and manoeuvring areas.

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

- 6 CONDITION: Prior to first use the existing private track at its junction with Chequers Road shall be constructed to a minimum width of 5.5 metres for a distance of at least 6 metres measured from the nearby edge of the carriageway and shall then thereafter be retained.

REASON: In the interests of highway safety to ensure vehicles can enter and leave the site in a safe manner ensuring opposing vehicles can pass in the interest of highway safety.

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: 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.

- 8 CONDITION: Prior to the occupation of the hereby approved development, one informal passing place (3metres x 10 metres) shall be surfaced and provided at the fork of public footpath 5. This shall then be retained in this form thereafter.

REASON: To make adequate provision within the private track for the additional traffic generated by the proposed development allowing vehicles to pass and re-pass.

- 9 CONDITION: Prior to the occupation of the hereby approved development, the private track from Chequers Road up to the fork of the public footpath 5 shall be widened by an additional 200mm (8 inches) and a 1.2-metre-wide section will be surfaced with a limestone surface dressing using timber edging on both sides of the path for this entire section of the public right of way.

REASON: To ensure the continued safe passage of the public on the definitive right of way and accessibility.

- 10 CONDITION: The public's rights and ease of passage over public footpath no. 5 (Little Bromley_157) shall be maintained free and unobstructed at all times.

REASON: To ensure the continued safe passage of the public on the definitive right of way and accessibility.

- 11 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.

- 12 CONDITION: Prior to the commencement of development details of the construction methodology and timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall incorporate the following information:-

- a) Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
- b) Details of the loading/unloading/storage of construction materials on site, including details of their siting and maximum storage height.
- c) Details of how construction and worker traffic and parking shall be managed. This shall include routing of all traffic and any directional signs to be installed and where.
- d) Details of any protection measures for footpaths and trees surrounding the site.
- e) Details of any means of access to the site during construction.
- f) Details of the scheduled timing/phasing of development for the overall construction period.
- g) Details of measures to control the emission of dust and dirt during construction, and including details of any wheel washing to be undertaken, management and location it is intended to take place.
- h) Details of the siting of any on site compounds and portaloos.
- i) Details of the method of any demolition to take place, including the recycling and disposal of said materials resulting from demolition.
- j) Site waste management plan (that shall include reuse and recycling of materials)
- k) Scheme for sustainable construction management to ensure effective water and energy use.
- l) Scheme of review of complaints from neighbours.
- m) Registration and details of a Considerate Constructors Scheme
- n) Details on the provision, location and management of any show home/s or reception, including opening times, parking and advertisements (including flags and directional signs).

The said methodology as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

REASON: To minimise detriment to nearby residential and general amenity by controlling the construction process to achieve the approved development. This condition is required to be agreed prior to the commencement of any development as any construction process, including

site preparation, by reason of the location and scale of development may result adverse harm on amenity.

NOTE/S FOR CONDITION:

You are strongly advised to discuss this condition with the Local Planning Authority and if possible/available local residents likely to be affected by this development prior to submission of details.

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

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

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

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

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

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

- 14 **CONDITION:** Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order with or without modification):- no enlargement, improvement, insertion of new openings or other alteration of the dwellinghouse(s) shall be carried out, except pursuant to the grant of planning permission on an application made in that regard.

REASON: To enable the Local Planning Authority to retain control over the development in the interests of the amenity of the locality and to safeguard local distinctiveness.

- 15 **CONDITION:** Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order with or without modification):- no garage, car port, fence, gate, wall or any other means of enclosure, building or structure shall be erected except pursuant to the grant of planning permission on an application made in that regard.

REASON: To enable the Local Planning Authority to retain control over the development in the interests of the amenity of the locality and to safeguard local distinctiveness.

8.3 Informatives

Positive and Proactive Statement:

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

Highways Informatives:

i. 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.

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

iii. The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath no. 5 (Little Bromley_157) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

iv. The granting 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. The applicant should be advised to contact the Public Rights of Way team regarding public footpath 5 by email at PROWPlanning@essexhighways.org prior to works starting on the private track.

v. 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.

9. Additional Considerations

Public Sector Equality Duty (PSED)

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

- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

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

Finance Implications

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

10. Background Papers

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