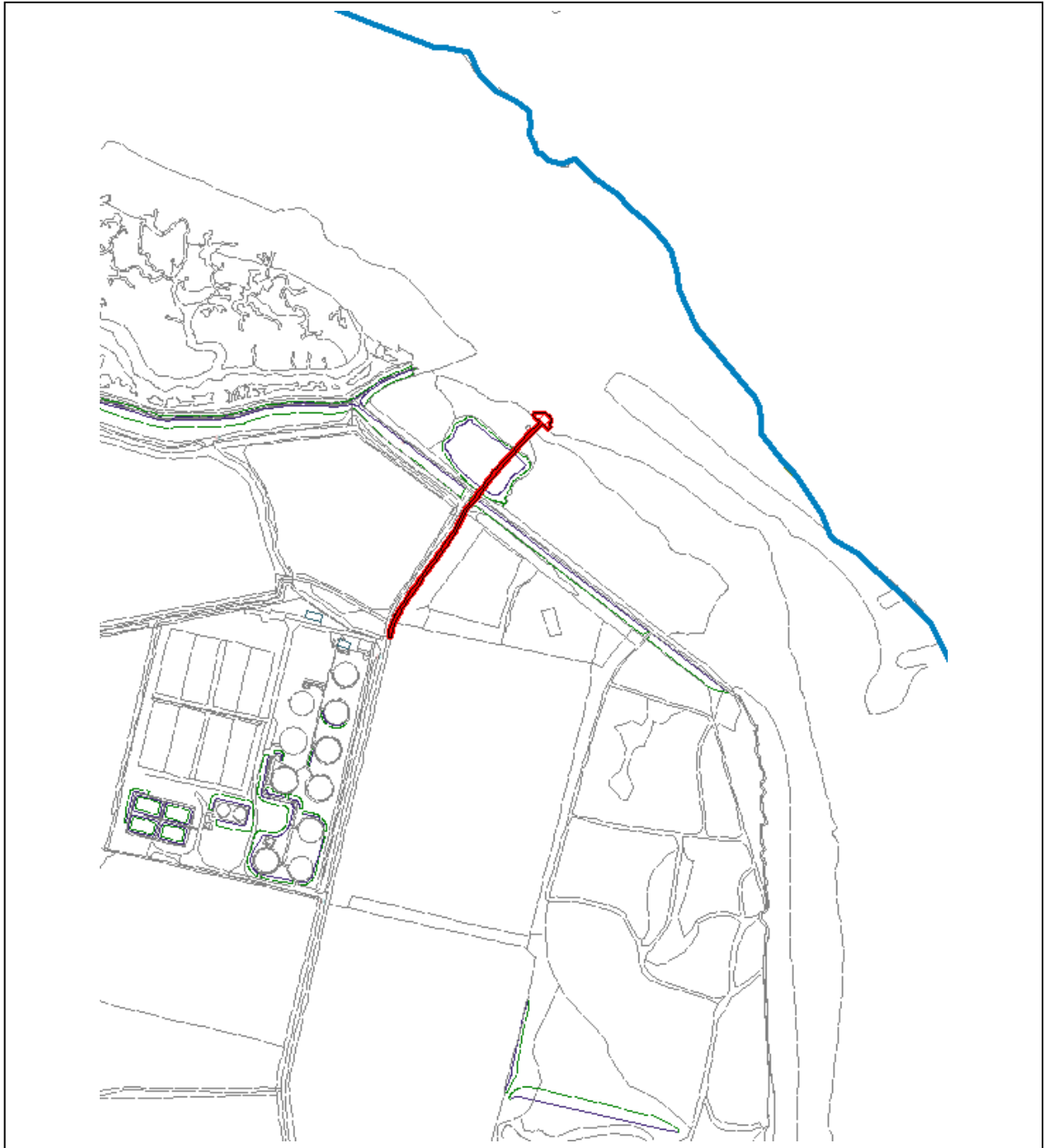


**PLANNING COMMITTEE**

**15 FEBRUARY 2024**

**REPORT OF THE DIRECTOR OF PLANNING**

**A.3 PLANNING APPLICATION – 23/01601/FUL – THE NAZE PENINSULAR OLD HALL LANE  
WALTON ON THE NAZE CO14 8LG**



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|                      |  |                     |                    |
|----------------------|--|---------------------|--------------------|
| <b>Application:</b>  | 23/01601/FUL   | <b>Expiry Date:</b> | 4th January 2024   |
| <b>Case Officer:</b> | Michael Pingram  | <b>EOT Date:</b>    | 22nd February 2024 |
| <b>Town/ Parish:</b> | Frinton & Walton Town Council  |                     |                    |
| <b>Applicant:</b>    | Mr Michael Cross - Tendring District Council   |                     |                    |
| <b>Address:</b>      | The Naze Peninsular Old Hall Lane Walton On The Naze, CO14 8LG                                 |                     |                    |
| <b>Development:</b>  | Proposed modification to access arrangement to allow access to foreshore as result of erosion. |                     |                    |

## 1. Executive Summary

- 1.1 The application is referred to Planning Committee as the applicant and owner of the site is Tendring District Council.
- 1.2 The application seeks a modification to the access arrangement following the planning permission previously granted on site under reference 21/01450/FUL in October 2021, due to ongoing erosion works impacting that previously approved. The works are in support of wider works fundamentally designed to improve coastal defences and stabilise the coast, and are supported in principle.
- 1.3 ECC Highways have raised no objections, and while the works will result in a small level of visual harm to a site within a Coastal Protection Belt, they are essential to ensure public safety. Furthermore, following the submission of additional ecological information, ECC Ecology raise no objections, and no harm to neighbouring amenities has been identified.

### **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,
- 1) 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 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  
SP7 Place Shaping Principles

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

SPL3 Sustainable Design  
PPL2 Coastal Protection Belt  
PPL1 Development and Flood Risk  
PPL3 The Rural Landscape  
PPL4 Biodiversity and Geodiversity  
PPL4 Biodiversity and Geodiversity  
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.

### **Neighbourhood Plans**

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

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

|              |  |          |            |
|--------------|--|----------|------------|
| 21/01450/FUL | Proposed installation of temporary measures such as sand filled bags as groynes, gabions to cliff face, and clay fill to earth embankment to slow down/prevent coastal erosion | Approved | 29.10.2021 |
|--------------|--|----------|------------|

### **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/>.

The information that was submitted in association with the application has been considered by the Highway Authority and conclusions have been drawn from a desktop study with the observations below based on the submitted material. No site visit was undertaken in conjunction with this planning application. The northern section of Old Hall Lane is not adopted and is classed as a private road. The proposals are similar to an earlier application (21/01450/FUL) that was approved in 2021. It is noted that the route involves crossing the public footpath which passes along the formal see wall, (footpath number 39), however, the crossing of the footpath will be very infrequent and will be undertaken in the company of a banks- man, with all crossings giving priority to the use of any members of the public. The PROW team have confirmed that this is likely to impact on the England Coast Path route while the works are taking place but appreciate it will be much more severely affected if the works are not carried out, for this reason the proposals are supported. The supporting information indicates that there will be up to 6 persons regularly working on site carrying out the works, a number of these persons will be local, with occasional visiting persons; while the vehicle movements will be scheduled to avoid travelling through Walton on the Naze at peak times, taking these factors into account:

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

1. No works shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
  - i. vehicle routing,
  - ii. the parking of vehicles of site operatives and visitors,
  - iii. loading and unloading of plant and materials,
  - iv. storage of plant and materials used in constructing the development,
  - v. wheel and underbody washing facilities.

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

2. The public's rights and ease of passage over public footpath no.39 (Frinton and Walton\_164) 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.

3. No works shall take place until temporary signage is put in place either side of public footpath no.39 at the proposed crossing point to warn walkers and drivers that plant and/or walkers will be crossing at this point.

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

4. Prior to the commencement of any work on the site a joint inspection of the highway/PROW to be used by construction vehicles should be carried out by the applicant and the Highway Authority, to include photographic evidence. The route should then be inspected again, after completion of the development, and any damage to the route resulting from traffic movements generated by the application site should be repaired to an acceptable standard and at no cost to the Highway Authority.

Reason: To preserve the integrity and fabric of 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.

**Natural England**

**15.12.2023**

Thank you for your consultation dated 20 November 2023. The following constitutes Natural England's formal statutory response.

The Conservation of Habitats and Species Regulations 2017 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended)

We can confirm that the proposed works are located within Hamford Water SAC, SPA and Ramsar sites.

Likely significant effect, appropriate assessment required

Natural England's advice is that this proposed development may contain (or require) measures intended to avoid or reduce the likely harmful effects on a European Site, which cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment (noting the recent People Over Wind Ruling by the Court of Justice of the European Union).

For this reason, we advise that on the basis of the information supplied that the application may have a likely significant effect on these sites. These measures therefore need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment, in accordance with the Conservation of Habitats & Species Regulations 2017 (as amended).

These measures and any further mitigation measures can be considered during an appropriate assessment, to determine whether a plan or project will have an adverse effect on the integrity of the European site.

Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of the People Over Wind ruling. In accordance with the Conservation of Habitats & Species Regulations 2017 (as amended), Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Marine and Coastal Access Act 2009

The works, as set out in the information supplied by the applicant, are not sited within or near to a Marine Conservation Zone. Natural England have not identified a pathway by which impacts from the development would affect the interest features of the site(s). We are therefore confident that the works will not hinder the conservation objectives of such a site.

Wildlife and Countryside Act 1981 (as amended)

We can confirm that the proposed works are located adjacent to The Naze SSSI and within Hamford Water SSSI. Natural England advises that an updated ecological assessment is provided in order to assess the impacts of accessing the foreshore on the SSSI sites, the Habitat Regulations Assessment (HRA) referred to in document number TDC012/03/19 not available to view.

**Environment Agency**

**08.12.2023**

We have reviewed the documents as submitted and have no objection to this proposal. However, we recommend that a planning condition is included within this application. Without this condition included, we would object to the proposal. Further details on Flood Risk, and the condition we wish to be included, can be found below.

Flood Risk

Planning Condition

Condition

Prior to commencement and at the cessation of the works, an inspection will be carried out at the flood defence to examine the condition of the assets before and after the works. Any damage that occurs during construction must be put right at the cost of the applicant to the satisfaction of the Environment Agency.

Reason for Condition

To ensure that the structural integrity of the already existing sea defence is retained throughout the duration of the works and will therefore continue to function effectively.

Any disturbed areas need to be appropriately reinstated, and therefore require this proposed condition as part of the planning response.

Advice to applicant: Environmental Permitting for Flood Risk Activities

A Flood Risk Activity Permit (FRAP) will not be required for these works. This is because the Tendring District Council (TDC) is a Protected Undertaker carrying out a flood risk management function under the Flood and Water Management Act 2010. Under the Environmental Permitting Regulations 2016 Schedule 25 Part 1, Paragraph 3, Sub-paragraph (3) Protected Undertakers do not require a Flood Risk Activity Permit for flood risk activities (d) to (k). As these works fall into flood risk activities (d) to (k), a FRAP is not required.

**Environmental Protection**

**27.11.2023**

I have reviewed the above application and the construction method statement states that the work will use minimal plant and will take place in daylight hours. With consideration to the urgency of the works I can confirm that EP have no comments to make.

Please note however that if the works are likely to use more heavy machinery and/or is going to operate outside the core construction hours (outside of 08.00 to 18.00 Monday to Friday or 18.00 - 12.00 on Saturday and any time on a Sunday) and likely to cause a noise disturbance then the applicant may want to consider applying for a section 61 consent under the control of pollution act 1974.

**Essex County Council Ecology**

**13.12.2023**

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

No objection subject to securing biodiversity mitigation and enhancement measures.

Summary

Further to our comments on the 11th December 2023, we have reviewed the Ecological Report Updates 2023 (Ecology Link, October 2023) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures.

We note that the site lies within the Hamford Water SPA, Ramsar and SSSI, as shown on Magic Maps (<https://magic.defra.gov.uk/>) so therefore the LPA must consult Natural England regarding the potential impacts and likely risks to this statutory designated site.

We note that the Ecological Report Updates 2023 (Ecology Link, October 2023) highlights that a number of site visits have taken place and that habitats across the site have remained stable and no significant change in plant communities or management have occurred.

Therefore, 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 Ecological Report Updates 2023 (Ecology Link, October 2023), which contains an ecological method statement, and the Outline Construction Environmental Management Plan (Hestur Ltd., 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 Fisher's Estuarine Moth (in relation to Hog's Fennel), reptiles, and nesting birds.

We also support reasonable biodiversity enhancements, which are recommended 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.

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 Ecological Report Updates 2023 (Ecology Link, October 2023) and Outline Construction Environmental Management Plan (Hestur Ltd., 2023) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details."

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

## 2. 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).

## 5. Representations

- 5.1 Frinton and Walton Town 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 is land located to the north of Walton-on-the-Naze at the Naze Peninsula, at the point where the land and sea meet. The site is an open parcel of land located outside of a recognised Settlement Development Boundary within the adopted Local Plan 2013-2033. Ownership of the site belongs to Tendring District Council, and the existing nearby flood wall is the responsibility of the Environment Agency. The area around the planning application site comprises of public open space adjacent to the coastline.
- 6.2 The site is within a designated Coastal Protection Belt, and also within Flood Zones 2 and 3. There are no residential dwellings in the immediate locality, with the nearest being approximately 650 metres to the south. Furthermore, the area is protected by a national designation as a Site of Special Scientific Interest (SSSI) 'The Naze' to the south and John Weston Nature Reserves and The Naze Nature Reserve. A footpath (number 39) runs adjacent to the coastline in the local area.
- 6.3 The area to the southwest of the formal flood wall also consists of Local and National Nature Reserves including John Weston Nature Reserve. The area provides important habitat to migratory birds, and rare flora and fauna. This is recognised with the foreshore, mudflats, saltmarsh, tidal ponds and area to the immediate southwest of the host site as an internationally designation, known as the Hamford Water (SPA) Special Protection Area, Hamford Water Special Area of Conservation (SAC) and the site is also known as a RAMSAR location again internationally designated.

### Site History

- 6.4 In October 2021, a planning application was recommended for approval by the Planning Committee (reference 21/01450/FUL) for the installation of temporary measures such as sand



filled bags as groynes, gabions to cliff face, and clay fill to earth embankment to slow down/prevent coastal erosion. The specific works were as follows:

- Location 1: This is the Short Wall, some 250m north of the storage compound and 400m west of the other coastal work locations. It was proposed to reinstate the profile of the wall by infilling the erosion that had occurred to its core and to reinstate the external slopes. It was not proposed to extend the wall, simply restore its integrity.
- Location 2: It was proposed to install five new groynes using Soiltain (sand filled) bags. The sand would be transported into the area via road, stored at the compound area and moved to the beach via low pressure dump trucks. The three groynes closest to the sea wall would be 15m long and the two furthest out would be 20m long. The typical bag measured some 1.5m wide and 0.5m in height. The overall site area given was 25m in width and 125m in length.
- Location 3: This extends along the base of the cliff for 75m. The proposed works involved the installation of gabion baskets at the toe of the cliff, which were filled with rock brought into the area by road. Additionally, concrete from the loss of the sea wall and collapsed path was to be broken up and placed behind the gabion baskets, to provide additional robustness to the gabions whilst also clearing up the foreshore. The gabions measured 2 metres in height and consisted of three sections forming a stepped nature opposite the cliff toe.
- Location 4: This is the storage compound and access route to the work areas. The storage compound area measured some 40 metres by 30 metres. Within this area was to be a temporary staff compound 4.9m (l) x 2.74m (w) x 2.5m (h), in blue, known as the 'Ecologic 250'. This was to house a toilet and small canteen, and lockers. The site compound was to be enclosed with Herras fencing.

#### Description of Proposal

- 6.5 This application seeks planning permission for the modification to the access arrangement previously approved within 21/01450/FUL to allow access to the foreshore, as a result of erosion.
- 6.6 Following the granting of planning permission in October 2021, ongoing erosion has resulted in the loss of part of the length of the route the access arrangement was granted consent to make (referred to as Location 4 above). Previously, the access route connected via the end of Old Hall Lane to the foreshore before turning through 90 degrees east to a historic ramp. However, erosion has now meant that the access effectively stops at the foreshore point, and therefore this proposal is for the re-instatement of a ramp to allow access to the foreshore, so that works at Locations 1 and 2 can be undertaken, whilst also ensuring the continued maintenance of the works already carried out at Location 3. The ramp will also provide access to the foreshore by others carrying out their duties in connection with the various nearby designated areas of special importance, and allow for emergency access.
- 6.7 The compound and access route from the end of Old Hall Lane to the foreshore will remain exactly as per the consent granted in October 2021.

#### Principle of Development

- 6.8 The National Policy Planning Framework (2023) sets out within paragraphs 176 to 179 the policies for the protection of areas at risk from coastal change. As the proposed works are in support of wider works fundamentally designed to improve coastal defences and stabilise the coast, the works fall within the remit of what is permitted to take place in such places.

- 6.9 The area is located within a sensitive landscape for ecological, geological and recreational reasons. However, the works are proposed by Tendring District Council in relation to their responsibility for coastal protection. By protecting the sea wall from further damage, the proposals will protect the surrounding farmland, Anglian Water sewage treatment works that serves the surrounding population and other assets, namely Hamford Saltmarshes, which includes part of the SPA and Ramsar site. The justification is accepted, although Officers accept there will be a modest level of deterioration to the visual amenity of the area. Given this, Officers consider that the principle of development is acceptable.

#### Highway Safety

- 6.10 Paragraph 114 of the National Planning Policy Framework (2023) 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.
- 6.11 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.
- 6.12 Essex Highways Authority have been consulted, and have noted the route involves crossing the public footpath which passes along the formal sea wall, (footpath number 39), however, the crossing of the footpath will be very infrequent and will be undertaken in the company of a banksman, with all crossings giving priority to the use of any members of the public. Given this, that the number of workers on site will be limited to six, some of which will be local, and vehicle movements will be scheduled to avoid travelling through Walton on the Naze at peak times, they consider that from a highway and transportation perspective the impact of the proposal is acceptable, however do recommend conditions relating to a Construction Management Plan, the public footpath and temporary signage.
- 6.13 The Public Right of Way (PROW) team have confirmed that this is likely to impact on the England Coast Path route while the works are taking place but appreciate it will be much more severely affected if the works are not carried out, and therefore support the proposal.

#### Impact to Coastal Protection Belt

- 6.14 Adopted Policy PPL2 states that for development within the Coastal Protection Belt the Council will protect the open character of the undeveloped coastline and refuse planning permission for development which does not have a compelling functional or operational requirement to be located there.
- 6.15 The proposal is in support of the works approved within 21/01450/FUL, which are essential for ensuring the continued effectiveness of the sea defence infrastructure. Also, the works would ensure protection of the sewage works and nature reserves nearby. In this case, the use of 'soft engineering' is not considered an appropriate measure due to the imminent threat of tidal flooding, and therefore the 'hard' revetments features are deemed essential to ensure public safety. As such, no objection to this policy is being raised.

#### Impact to Protected Species

- 6.16 Paragraph 180 of the Framework (2023) 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.

- 6.17 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.
- 6.18 ECC Place Services (Ecology) have been consulted on the application, and initially raised a holding objection on the grounds that previous ecological information was out of date. In response, the agent for the application has provided an updated report, and upon re-consultation ECC Ecology are now satisfied that there is sufficient ecological information available for determination of this application, and raise no objections subject to conditions relating to mitigation measures and a Biodiversity Enhancement Strategy.

#### Impact to Neighbouring Amenities

- 6.19 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.
- 6.20 The nearest residential properties are located some 650 metres to the south, with the works themselves being of a limited nature. Given this, there will be a neutral impact to the existing amenities of neighbouring occupiers.

### **7. Conclusion**

- 7.1 The application seeks a modification to the access arrangement following the planning permission previously granted on site under reference 21/01450/FUL in October 2021, due to ongoing erosion works impacting that previously approved.
- 7.2 The proposed works are in support of wider works fundamentally designed to improve coastal defences and stabilise the coast, and are supported in principle. ECC Highways have raised no objections, and while the works will result in a small level of visual harm to a site within a Coastal Protection Belt, it is essential to ensure public safety. Furthermore, following the submission of additional ecological information, ECC Ecology raise no objections.
- 7.2 The application is considered to comply with local and national planning policies and is therefore 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 **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 TDC01/03/19/100 Rev B, TDC01/03/19/110, TDC/01/03/19 – 200, the documents titled 'Outline Construction Environmental Management Plan' and 'Ecological Report Updates 2023', 'Transport Statement', and the untitled Site Location Plan received dated 13<sup>th</sup> November 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:** 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 Ecological Report Updates 2023 (Ecology Link, October 2023) and Outline Construction Environmental Management Plan (Hestur Ltd., 2023).

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

- 4 **CONDITION:** 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;
  - 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 and habitats.

### 8.3 Informatives

Positive and Proactive Statement:

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

Highways Informatives:

1: Note: It is unlikely that a temporary closure of the public footpath will be required, however, should the applicant need to apply to the TTRO Team (details on Essex Highways website) for a temporary diversion of the PROW during works in good time (currently a 12-week lead-in time).

2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

3: Prior to the commencement of any work on the site a joint inspection of the route to be used by construction vehicles should be carried out by the applicant and the Highway Authority, to include photographic evidence. The route should then be inspected again, after completion of the development, and any damage to the highway resulting from traffic movements generated by the application site should be repaired to an acceptable standard and at no cost to the Highway Authority.

The Highway Authority may also wish to secure a commuted sum for special maintenance to cover the damage caused to the existing roads used as access by vehicles servicing the application site.

Given the location of the site, a haul route for the delivery of large-scale plant and materials may also be required. Should this prove to be necessary, any route or routes should be agreed in advance with the Local Planning Authority in consultation with the Highway Authority.

## **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/>.