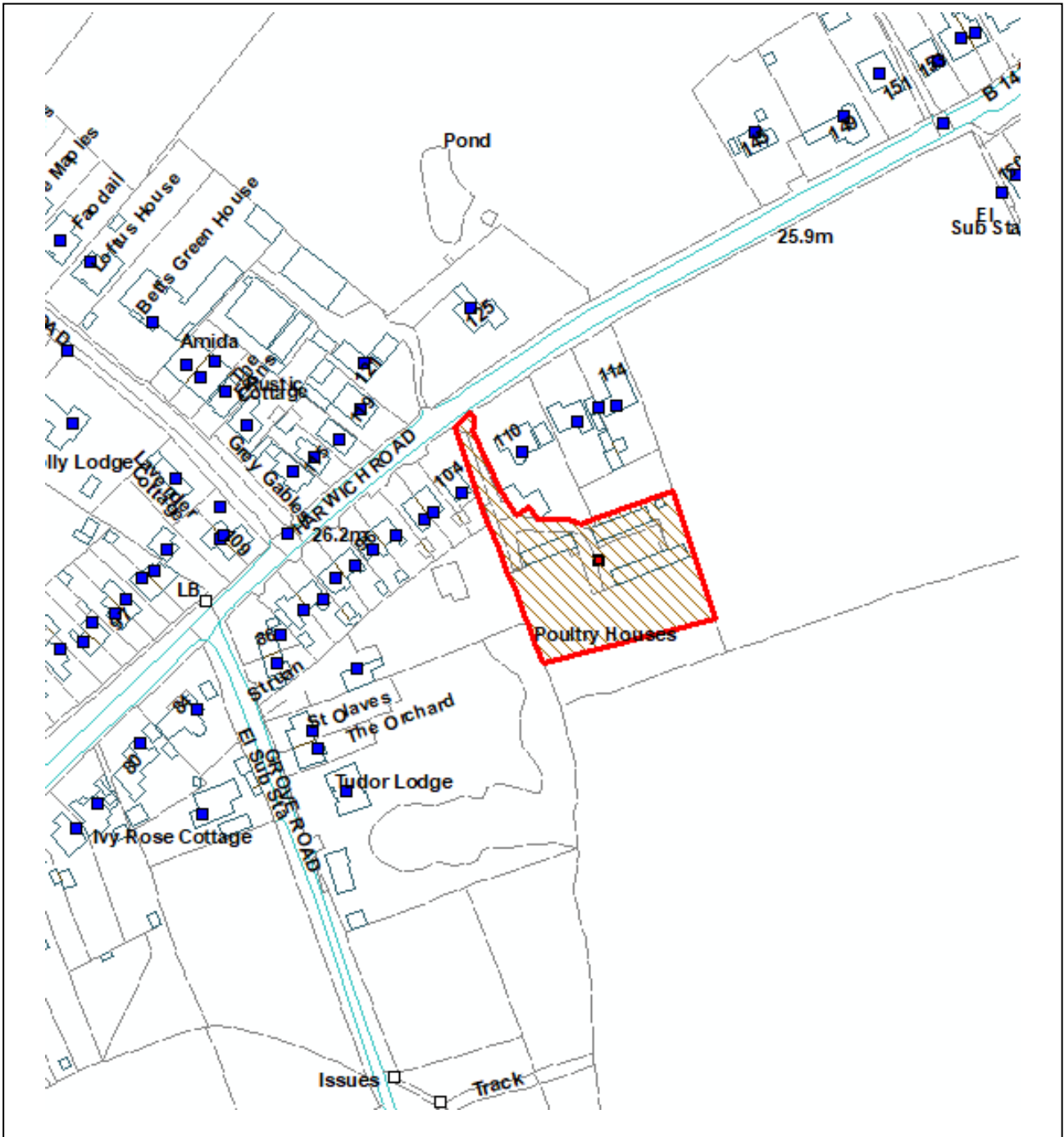


PLANNING COMMITTEE

9 July 2024

REPORT OF THE DIRECTOR OF PLANNING

**A.3 PLANNING APPLICATION – 24/00455/FUL – LAND TO THE REAR OF 110 HARWICH ROAD  
LITTLE CLACTON CO16 9NJ**



DO NOT SCALE

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<b>Application:</b>	24/00455/FUL	<b>Expiry Date:</b>	20th June 2024
<b>Case Officer:</b>	Oliver Ashford	<b>EOT Date:</b>	12th July 2024
<b>Town/ Parish:</b>	Little Clacton Parish Council		
<b>Applicant:</b>	Mr and Mrs Patrick		
<b>Address:</b>	Land to the rear of 110 Harwich Road Little Clacton CO16 9NJ		
<b>Development:</b>	Planning Application - three dwellings in lieu of 23/00931/COUNOT		

## 1. Executive Summary

- 1.1 This application is before the Planning Committee as the proposed development conflicts with the Development Plan's requirements. This conflict arises from the development's location beyond any defined settlement development boundary. This situation persists, although it's noteworthy that the concept residential units, in the form of a converted agricultural building, has been established under prior approval reference number 23/00931/COUNOT.
- 1.2 The application seeks permission for the erection of three dwellings on Land to the Rear of 110 Harwich Road, Little Clacton
- 1.3 The proposed dwellings are in lieu of the previously approved scheme above. Their design and scale is considered consistent with the semi-rural character of the site. Safe and suitable access is proposed to all dwellings and the proposals will not result in any significant impact to neighbouring amenities. Accordingly, the application is recommended for approval subject to conditions

### Approval

<p><b>Recommendation:</b> Approval</p> <ol style="list-style-type: none"> <li>1) That the Head of Planning and Building Control be authorised to grant planning permission subject to conditions as stated at paragraph 10.1 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,</li> <li>2) The informative notes as may be deemed necessary.</li> </ol>
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## 2. 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 Local Plan 2013-33 and Beyond (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 made and the Minerals and Waste Local Plans adopted by Essex County Council.

### 3. **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>

There are no neighbourhood plans in place for this area.

### 4. **Planning Policy**

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

#### **National:**

National Planning Policy Framework December 2023 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

#### **Local:**

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

SP1 Presumption in Favour of Sustainable Development  
SP2 Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)  
SP3 Spatial Strategy for North Essex  
SP4 Meeting Housing Needs  
SP7 Place Shaping Principles

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

SPL1 Managing Growth  
SPL2 Settlement Development Boundaries  
SPL3 Sustainable Design  
LP1 Housing Supply  
LP2 Housing Layout  
HP5 Open Space, Sports and Recreation Facilities  
PPL1 Development and Flood Risk  
PPL3 The Rural Landscape  
PPL4 Biodiversity and Geodiversity  
PPL5 Biodiversity and Geodiversity  
CP1 Sustainable Transport and Accessibility

#### Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

Tendring Provision of Recreational Open Space for New Development SPD 2008

Essex Design Guide

Technical housing standards: nationally described space standard Published 27 March 2015

Biodiversity Net Gain Supplementary Planning Document June 2023 (DRAFT)

#### Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

## 5. Relevant Planning History

14/00988/OUT	Outline planning application with all matters reserved for the residential development of 0.44 ha of land to create 4 detached dwellings with associated garaging and parking.	Refused	08.09.2014
23/00931/COUNOT	Prior Approval Application under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for proposed conversion of 3 no. existing barns in to 4no. two-bedroom dwellings.	Determination	15.08.2023
24/00455/FUL	Planning Application - three dwellings in lieu of 23/00931/COUNOT	Current	

## 6. 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/>.

### Environmental Protection

**01.05.24**

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

Contaminated Land: Given the sites historic use, the proximity to historical and current agricultural land, its location to a piece of historical, registered contaminated land, and having consideration for the scale of the development, the EP Team are requesting a minimum of a Phase One Contaminated Land Survey be performed, to ensure the land is suitable for the proposed end use - The following works shall be conducted by competent persons and in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and Environment Agencies "Land Contamination Risk Management (LCRM) " and other current guidance deemed authoritative for the purposes. The development hereby permitted shall not commence until the measures set out in the approved report have been implemented.

#### A. Site Characterisation

Notwithstanding the details submitted with this application, no development shall commence other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk

assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:

- (i) a survey of extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - Human health,
  - Properly (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - Adjoining land,
  - Groundwaters and surface waters,
  - Ecological systems
  - Archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

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.

Construction Method Statement: We are satisfied with the submitted CMS and have no adverse comments to make.

\*INFORMATIVE - The submitted Planning Statement and other associated documents confirm the use of a Sewerage Treatment Plant, we would request the standard informative in respect of the "binding rules" is included with any subsequent approval:

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](http://www.gov.uk)). It is strongly recommended these rules are complied with, as they will minimise any potential nuisance to nearby residential dwellings, assist in preventing a potential Public Health nuisance, and minimise the potential for adverse incidents, of which may result in formal enforcement action.

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

**ECC Highways Dept**

**17.06.2024**

The information submitted with the application has been assessed by the Highway Authority and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image and in conjunction with a site visit. It is noted that this application is similar to a previous residential redevelopment (Application: 14/00988/OUT) for four dwellings that was previously acceptable to the Highway Authority. In addition, an application for the change of use of two of the buildings on the site to be used for B8 (storage and distribution) use was approved in 2000 (Application: 00/00224/FUL). The proposal will utilise an existing access serving the site, while no new or altered means of access is proposed as part of this application. When compared with the former agricultural use of the site, it is not considered that the proposed change of use would give rise to an increase in vehicle movements or result in a material change in the character of the traffic in the vicinity of the site, considering these factors:

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

1. Prior to occupation of the development, the road junction / access at its centre line shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 53 metres to the north-east and 2.4 metres by 43 metres to the south-west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

2. As indicated on drawing no. TPSL-05 and prior to occupation of the development a size 3 vehicular turning facility, shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

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

3. Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary and provided with an appropriate dropped kerb crossing of the footway/verge.

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. At no point shall gates be retained at the vehicular access. The access shall remain open and free for use thereafter.

Reason: To give vehicles using the access free and unhindered access to and from the highway in the interest of highway safety and in accordance with policy DM1.

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

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

7. Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

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

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

9. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council, (to include six one day travel vouchers for use with the relevant local public transport operator)

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

10. Prior to occupation of the proposed development, a (communal) bin/refuse collection point shall be provided within 25m of the highway boundary and additionally clear of all visibility splays at the access.

Reason: To minimise the length of time a refuse vehicle is required to wait within and cause obstruction of the highway, in the interests of highway safety and in accordance with Policy DM1.

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

## 7. **Representations**

No representations have been received following a public consultation which included a site notice posted at the site and neighbouring consultation letters sent out to the adjacent properties.

## 8. **Assessment**

### Site Description

8.1 The site is located to the south of 110 Harwich Road, Little Clacton with access to the highway alongside the boundary. The site is located partially within and partially outside the defined settlement development boundary of Little Clacton. In terms of the blue line a small parcel of land is retained to the south of the site.

8.2 To the east and south of the site lies open agricultural fields. To the west of the site is situated No. 104 Harwich Road and a row of residential dwellings onwards.

### Planning History

8.3 In August 2023 it was deemed that Prior Approval (namely in regard to access, flooding, design, noise, natural light, space standards and contamination) for the conversion of three agricultural into 4 no. 2 bedroom dwellings was not required (Ref. 23/00931/COUNOT). This scheme is referred to in the submitted Planning Statement as the 'fall back' scheme and is discussed in more detail in the appraisal of the application below.

### Proposal

8.4 The application seeks planning permission for the demolition of the existing three barns on site and for the erection of three new dwellings in lieu of the prior approval granted for the conversion of three agricultural buildings into 4 dwellings which the subject of application 23/00931/COUNOT. The footprint of the proposed dwellings varies from that approved with amended associated amenity space and parking/turning area.

8.5 The proposed new dwellings are bungalows with a uniform rectangular footprint measuring 14.5m x 10m with a dual pitched roof. The Gross Internal Area will be approximately 128m<sup>2</sup>. The dwellings compromise 3 bedrooms, a bathroom, en-suite, open plan kitchen/dining/living area and a utility

room. The proposed external materials are cladding and roof tiling.

### Assessment

8.6 The Main Considerations for this application are:

- Principle of Development
- 'Fallback Position' Assessment
- Design and Appearance
- Trees and Landscaping
- Impact upon Residential Amenities
- Highways Impacts
- Water Conservation, Drainage and Sewerage
- Habitats, Protected Species and Biodiversity

### Principle of Development

8.7 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.

8.8 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 site is located partially in and partially outside of the Settlement Development Boundary of Little Clacton as defined within the adopted 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.

8.9 Policy SPL2 supports new development within defined SDBs 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. Under Policy SPL1 Little Clacton is defined as a Rural Service Centre, which is under pressure to grow and some small-scale development which is sympathetic to the rural and often historic character of the settlement might help younger people to continue to live in the area, keep local shops and services viable and help bring balance to an ageing population.

8.10 With regard to development outside of the defined SDB, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies in this plan (covered below).

### 'Fallback Position' Assessment

8.11 In this case, Prior Approval has been granted for the conversion of the existing agricultural barns to 4 new dwellings within the settlement boundary. The existing buildings are sited within the footprint of the proposed dwellings for the most part and inside the red edge application site. This is considered by the applicant to provide a 'fall-back' position.

8.12 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. This is taken to be the area of land edged in red which denotes the application site.

8.13 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:

- 8.14 *“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”.*
- 8.15 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.
- 8.16 The existing location of the agricultural buildings which were the subject of the Prior Approval application are located to the rear of an existing dwelling. The proposed new dwellings are within the footprint of the agricultural buildings (subject of the prior approval), with the front elevation facing north.
- 8.17 The existing agricultural buildings have a GIA of 119sqm (Barn A) 163sqm (Barn B) & 119sqm (Barn C). Barn B is larger than the new dwelling proposed however, Barn A & Barn C are smaller than the dwellings proposed in their place.
- 8.18 Prior Approval 23/00931/COUNOT continues to be in existence, and it is therefore considered that the Prior Approval granted for the conversion of the existing agricultural buildings would amount to a viable ‘fall back’ position. This planning application now seeks to demolish all three barns and construct new dwellings in a similar location, within the existing built-up area of the wider site.
- 8.19 In conclusion, having regard to the above, the application, on balance, is considered to meet all 3 tests set out for a viable fall-back position in terms of the legal provisions 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, in terms of its siting, size, scale and external appearance.
- 8.20 There is an increase in floor space of one of the proposed new dwellings, however this is considered to be reasonable in this rural location, for a three-bed dwelling and is not out of character in terms of external appearance. Given the location of the proposed dwellings it is considered that there is a realistic prospect of the prior approval scheme being implemented, as the site is the same. Therefore, the fall-back position is given significant weight in the assessment of this application.
- 8.21 Therefore given the circumstances of this case, along with the legal position and the Prior Approval fall-back position, the principle of development for new dwellings on this site is considered to be acceptable subject to the detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.

### Design and Appearance

- 8.22 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. (Para 131 NPPF).
- 8.23 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.

- 8.24 The existing agricultural buildings within the wider site is of a modest concrete block construction with a profile metal sheet roof and has an agricultural appearance. The buildings were used for keeping chickens. The proposed dwellings are not considered to be out of place in this rural location. The design is simple and unassuming using cladding and tile roofing to reflect a simple barn like structure, which is rural in character along with suitable soft landscaping on the boundary. This helps to maintain the open and agricultural character of the area and is considered to be visually superior to the design of the agricultural buildings.

#### Trees and Landscaping

- 8.25 Policy SPL3 seeks new development that respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. The design and layout of the proposed development should maintain or enhance important existing site features of landscape, ecological, heritage or amenity value.
- 8.26 The application site is bordered to the east and south by open agricultural fields, therefore despite the modest size and scale and agricultural barn like appearance, the new dwellings have the potential to be fairly visible particularly when viewed from the east, within the built up area of the wider site. Details of soft landscaping can be secured by condition to ensure appropriate screening and protect the wider rural landscape.

#### Impact on Residential Amenity

- 8.27 In March 2015, the government launched a new approach to housing standards and published a new set of streamlined national technical standards. This included publication of Technical housing standards – nationally described space standards (2015) which sets out minimum gross internal floor space, bedroom sizes and storage requirements for new dwellings.
- 8.28 All new dwellings must therefore accord with the technical housing standards. A three-bedroom, one storey dwelling requires a minimum of 74-95sqm of Gross Internal Floorspace (GIA). From the plans submitted the proposed dwelling exceeds the requirements of the space standards. It is also considered that the internal layout is appropriate, with all habitable rooms having adequate natural light. The private amenity areas proposed are considered to meet the needs and expectations of future residents and is commensurate to the size of the dwelling.
- 8.29 Overall the proposals are considered to secure a good standard of amenity and accommodation for future occupants of the proposed dwellings.
- 8.30 The NPPF Paragraph 135 maintains that policies and decisions should result in new development that creates 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.
- 8.31 Policy SPL3 seeks new development that is designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents, provision is made for adequate private amenity space, waste storage and recycling facilities and the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.
- 8.32 The application site is located is a semi-rural location with residential dwellings to the west along Harwich Road. There would be no side elevation windows facing the neighbouring dwelling to the west and with the proposed dwellings being single storey in nature it is not considered that there would be any concerns in relation to overlooking or loss of privacy.

- 8.33 In the event that planning permission is forthcoming it is considered necessary and reasonable to include a planning condition seeking details of a Construction Management Plan to be provided which will outline measures to minimise potential nuisance to nearby existing residents caused by the construction works, having regard to vehicle movements, working hours, storage of materials, on-site parking, site security, wheel washing facilities, noise control, use of machinery and mobile plant, piling works and both emission and dust control. Moreover, due to the location of the site and its previous agricultural use, a condition is recommended in relation to land contamination in the form of a Watching Brief.
- 8.34 Therefore, subject to conditions, it is not considered that this development would impact on the residential amenities of the neighbouring occupiers in any regard.

#### Highways and Parking Considerations

- 8.35 Paragraph 114 of the Framework seeks to ensure that safe and suitable access to a development site can be achieved for all users. Policy SP7 seeks new development to include parking facilities that are well integrated as part of the overall design. The sentiments of this policy are carried forward within Policies SPL3 and CP1. Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new development.
- 8.36 The Essex County Council Parking Standards 2009 require that dwellings with 3 bedrooms be served by a minimum of 2 parking spaces. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied upon to provide a parking space, should measure 7 metres by 3 metres internally.
- 8.37 ECC Highways have been consulted on the application and raise no objection. When compared with the former agricultural use of the site, it is not considered that the proposed change of use would give rise to an increase in vehicle movements or result in a material change in the character of the traffic in the vicinity of the site. As such, subject to conditions, the proposal would accord with policies SPL3 and CP1 and the Highways and Parking SPDs. The proposal is not therefore considered to result in any unacceptable harm to highway safety.

#### Water Conservation, Drainage and Sewerage

- 8.38 Paragraph 180 of the NPPF 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 180 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.
- 8.39 Policy PPL5 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, which in this case there is not. 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. The proposed dwellings will use a new package treatment plant in order to comply with the above.

#### Habitats, Protected Species and Biodiversity Enhancement

- 8.40 General duty on all authorities

The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes

of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.” Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.

This development is subject to the general duty outlined above. In the event that planning permission is forthcoming an informative can be imposed on the decision notice strongly encouraging the applicant to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Therefore the development on balance, with consideration of the impact of the development and baseline situation on site, is considered likely to conserve and enhance biodiversity interests.

#### 8.41 Biodiversity net gain

Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. This excludes applications for Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Development Certificates, householders, self builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow). This proposal was submitted prior to 2<sup>nd</sup> April 2024 and is not therefore applicable for Biodiversity Net Gain.

In accordance with the overarching duty outlined above, this development is committed to actively contributing to the conservation and enhancement of biodiversity as set out above and within the planning conditions. In conclusion, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

### 9. Conclusion

- 9.1 It is considered that the proposed development is consistent with the National and Local Plan Policies identified above. In the absence of material harm resulting from the proposal the application is recommended for approval.

### 10. Recommendation

- 10.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a Unilateral Agreement for a financial contribution towards RAMS.

### 11. Conditions and Reasons

#### 1 COMPLIANCE REQUIRED: COMMENCEMENT TIME LIMIT

CONDITION: The extension to the existing changing facilities and new 1.8m high screen fencing 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 APPROVED PLANS & DOCUMENTS

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.

Site Plan – Received 27.03.2024

Drawing No. TPSL-04

Drawing No. TPSL-05

Drawing No. 03.24.001-00#

Arboricultural Impact Assessment & Appendix 1-6 – Received 27.03.2024

Broadband Details – Received 27.03.2024

Construction Method Statement – Received 27.03.2024

Contamination Statement – Received 27.03.2024

EV Charging Details – Received 27.03.2024

EV Charging Specifications – Received 27.03.2024

Foul Drainage Assessment – Received 27.03.2024

Sewage Treatment Details – Received 27.03.2024

Visibility Splays – Received 27.03.2024

EV, Cycle & Bin Storage – Received 27.03.2024

Cycle Storage Details – Received 27.03.2024

Planning Statement – Received 27.03.2024

Ecological Survey & Assessment – Received 27.03.2024

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. FURTHER APPROVAL: MITIGATION TO BE AGREED, RAMS

**CONDITION:** The hereby approved development shall not be first commenced until detailed proposals addressing the mitigation of the development's impact on protected Essex Habitats Sites have been submitted to and received written approval from the Local Planning Authority. Such proposals must provide for mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), or demonstrate mitigation measures of an equivalent effectiveness.

These proposals may require on site or off site mitigation, but in either case must include evidence of the completion of a necessary legal agreement to secure the proposed mitigation and/or contribution towards mitigation. Please note a legal agreement will include legal fees and may require obligations to secure monitoring and associated fees. For any on site mitigation proposals approved, it shall be carried out in full and thereafter shall be maintained as approved.

**REASON:** In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations. Failure to achieve satisfactory mitigation or contribution towards would result in harm by new residents due to the development's impact on protected sites.

#### NOTE/S FOR CONDITION:

This condition establishes the necessity to ensure the implementation of appropriate mitigation measures due to the impact of the approved development. Such mitigation may be required on-site, off-site, or a combination of both. Typically, a contribution towards visitor management measures at the protected Habitats Site(s) is the preferred and simplest approach to fulfil the requirements of this condition. To fulfil this requirement, you can contribute funds towards a range of mitigation projects in the protected areas. It is essential to secure this provision through a legal agreement between the Council, Developer/Applicant, and site owners before commencement. If this is the approach to fulfilling this condition you wish to take, you are strongly advised to finalise the legal agreement with the Council before submitting any request to discharge this condition. Failure to conclude the agreement within the discharge of condition application timeframe may lead to the refusal to discharge the condition.

Please note if there are other obligations needed for this development, for example to secure monitoring and maintenance of a Biodiversity Net Gain Plan you may wish to combine these together as one legal agreement.

#### LEGAL AGREEMENT REQUIRED TO DISCHARGE CONDITION

As per the relevant condition above, this application requires mitigation against recreational impact in accordance with The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) and Regulation 63 of the Conservation of Habitat and Species Regulations 2017. To satisfy a RAMS condition and allow a condition to be formally

discharged, a completed UU must be submitted with a Discharge of Condition application.

Prior to the submission of the Discharge of Condition application, we can prepare the UU for you (to be reviewed by your solicitor) or we can review a draft UU you have provided (drafted by your solicitor). Both services will incur a charge.

Please see the 'Preparation of a UU' guidance on our website at:  
<https://www.tendringdc.gov.uk/content/the-s-106-process>

#### 4. DEMOLITION OF EXISTING BUILDINGS

CONDITION: Prior to the first occupation of the dwellinghouse, hereby approved, the existing agricultural building (subject of 21/00704/COUNOT) and the two barns, shown as being demolished on drawing no: GRL-05) on the site must be completely demolished and all materials resulting therefrom shall be cleared from the site.

REASON: The development hereby permitted has only been supported on the basis that the existing agricultural buildings be removed from the site to justify their replacement with three dwellings which ordinarily would be contrary to the development plan which directs new development to sites within settlement development boundaries

#### 5. LANDSCAPING

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, particularly in regards to the eastern boundary. The scheme shall also include any proposed changes in ground levels. The landscaping works must include a detailed plan, showing species to be used, planting positions, numbers of trees and shrubs and the sizes of the plants at time of planting and include wildlife friendly, native planting and locations for habitat boxes for roosting bats and nesting birds.

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

#### NOTE/S FOR CONDITION:

Slab level is normally referring 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.

#### 6. LANDSCAPING

CONDITION: All changes in ground levels, soft/hard landscaping shown on the approved landscaping details as submitted and agreed with the Local Planning Authority, 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.

#### 7. VISIBILITY SPLAYS

CONDITION: Prior to occupation of the development, the road junction / access at its centre line shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 53 metres to the north-east and 2.4 metres by 43 metres to the south-west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

REASON: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety.

#### 8. VEHICLE TURNING FACILITY

CONDITION: Prior to the first occupation of the development hereby approved, the vehicular turning facility as indicated on drawing no. TPSL-05 must be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

REASON: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety.

#### 9. VEHICULAR ACCESS

CONDITION: Prior to the first occupation of the development hereby approved dwellings, the vehicular access at Harwich Road, must be reconstructed at right angles to the highway boundary the proposed private drive shall not be less than 4.5 metres in width for at least the first 6 metres from the back of Carriageway/Highway Boundary in accordance with drawing no. TPSL-05 including the provision a dropped kerb crossing of the verge.

REASON: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety.

#### 10. SURFACE TREATMENT OF VEHICULAR ACCESS

CONDITION: No unbound material shall be used in the surface treatment of the vehicular access within 5 metres of the highway boundary.

REASON: To avoid displacement of loose material onto the highway in the interests of highway safety.

#### 11. ACCESS GATES



CONDITION: Any gates retained or installed at the vehicular access with Harwich Road must be inward opening only and shall be set back a minimum of 5 metres from the back edge of the footway/or where no provision of footway is present, the carriageway.

REASON: To enable vehicles using the access to stand clear of the carriageway whilst the gates are being opened and closed and to allow parking off street and clear from obstructing the adjacent footway/cycleway/carriageway in the interest of highway safety.

## 12. RENEWABLE ENERGY AND SUSTAINABILITY

CONDITION: No development shall commence above slab level until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme such include as a minimum to achieve:

- An electric car charging point for the dwelling
- Agreement of a scheme to achieve as far as possible a water consumption rate of not more than 110 litres, per person, per day for the new dwelling.
- Agreement of heating of the dwelling
- Agreement of scheme for waste reduction
- Provision of a fibre optic broadband connection to the best possible speed installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing. (If the applicant is unable to achieve this standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 30mbps) wireless service will be considered.)

The scheme shall be fully implemented prior to the first occupancy of the development unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed, and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

REASON: To enhance the sustainability of the development through better use of water, energy and resources reduce harm to the environment and result in wider public benefit in accordance with the NPPF.

### NOTE/S FOR CONDITION:

Slab level is normally referring 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.

## 13. SURFACE AND FOUL WATER DRAINAGE

No development shall commence above slab level until full details of surface and foul water drainage have been submitted to and approved, in writing, by the Local Planning Authority. No part of the building/s shall be first occupied or brought into use until the agreed method of surface and foul water drainage has been fully installed and is functionally available for use for that building/s. The surface and foul water drainage scheme shall thereafter be maintained as approved.

REASON: To safeguard the ground water environment from harm and minimise the risk of flooding.

NOTE/S FOR CONDITION:

This condition is imposed to ensure the potential impact on a sensitive area is considered and harm avoided that may be detrimental to amenity and the environment.

Slab level is normally referring 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.

14. PERMITTED DEVELOPMENT RIGHTS

CONDITION: Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of Schedule 2 Part 1 Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extensions, additions, outbuildings, porches or other alterations to the dwellings shall be carried out except in complete accordance with details which shall previously have been approved, in writing, by the Local Planning Authority following the submission of a planning application for such development.

REASON: To minimise and retain control over the amount of development in this rural location, outside of any defined settlement development boundary and to maintain sustainable development principles.

15. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL

All mitigation and enhancement measures and/or works shall be carried out in full accordance with the details contained in the Ecological Survey and Assessment (Essex Mammal Surveys, March 2024) as submitted with the hereby approved planning application.

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).

16. PRIOR TO DEMOLITION: BIODIVERSITY ENHANCEMENT STRATEGY

Prior to demolition of the existing building on site, 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 to achieve stated objectives;
- c) locations 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 approved works shall be implemented in accordance with the approved details prior to first occupation of the hereby approved dwelling, 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 s40 of the NERC Act 2006 (Priority habitats & species). This condition is required to be agreed prior to the commencement of any demolition or development as any construction process, including site preparation, has the potential to disturb protected and priority species and their habitat.

## **12. 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.

In accordance with the Council's general duty to conserve and enhance biodiversity, you are strongly encouraged to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Suggested enhancements could include: <https://www.rhs.org.uk/wildlife/in-the-garden/encourage-wildlife-to-your-garden>  
Highways

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) or by post to:

SMO1 – Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT

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

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

## **13. Additional Considerations**

### Public Sector Equality Duty (PSED)

- a. 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:
  - b. A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - c. 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
  - d. C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- e. 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.
- f. 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.
- g. 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

- h. 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.
- i. 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).
- j. 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

- k. 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.
- l. 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.

### Background Papers

- m. 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/>.