

# PLANNING COMMITTEE AGENDA

**Tuesday, 15th August 2023 at 7.15pm**

**Council Chamber, Braintree District Council, Causeway House,  
Bocking End, Braintree, CM7 9HB**

**THIS MEETING IS OPEN TO THE PUBLIC**

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**Members of the Planning Committee are requested to attend this meeting to transact the business set out in the Agenda.**

Councillor J Abbott

Councillor J Beavis

Councillor L Bowers-Flint

Councillor T Diamond

Councillor M Fincken

Councillor J Hayes

Councillor D Holland (Vice-Chairman)

Councillor A Hooks

Councillor A Munday

Councillor I Parker (Chairman)

Councillor F Ricci

Councillor P Schwier

Councillor G Spray

Substitutes: Councillor M Ault, Councillor K Bowers, Councillor M Green, Councillor P Heath, Councillor L Jefferis, Councillor J Pell, Councillor G Prime, Councillor S Rajeev, Councillor W Taylor, Councillor M Thorogood, Councillor P Thorogood, Councillor J Wrench, Councillor B Wright

Apologies: Members unable to attend the meeting are requested to forward their apologies for absence to the Governance and Members Team on 01376 552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by 3pm on the day of the meeting.

Any Member who is unable to attend a meeting is able to appoint a Substitute. Written notice must be given to the Governance and Members Team no later than 24 hours before the start of the meeting.

D GASCOYNE  
Chief Executive

## **INFORMATION FOR MEMBERS - DECLARATIONS OF MEMBERS' INTERESTS**

### **Declarations of Disclosable Pecuniary Interests (DPI), Other Pecuniary Interests (OPI), or Non-Pecuniary Interests (NPI)**

Any Member with a DPI, OPI or NPI must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a DPI or OPI or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the Chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

### **Public Question Time - Registration and Speaking**

The Agenda allows for a period of up to 30 minutes for Public Question Time. Members of the public may ask questions or make a statement to the Committee on matters listed on the Agenda for this meeting.

All questions or statements should be concise and should be able to be heard within the 3 minutes allotted to each speaker.

Anyone wishing to ask a question or make a statement is requested to register their interest by completing the Public Question Time registration [online form](#) by **midday on the second working day** before the day of the meeting.

For example, if the meeting is on a Tuesday, the registration deadline is midday on Friday, (where there is a Bank Holiday Monday you will need to register by midday on the previous Thursday). The Council reserves the right to decline any requests to register to speak if they are received after this time.

When registering for Public Question Time please indicate whether you wish to attend the meeting 'in person', or to participate remotely. People who choose to join the meeting remotely will be provided with the relevant link and joining instructions for the meeting.

Please note that completion of the on-line form does not guarantee you a place to speak during Public Question Time. You will receive email notification from the Governance Service confirming whether your request is successful.

Confirmed registered speakers will be invited to speak immediately prior to the relevant application/item. All registered speakers will have three minutes each to ask their question or to make a statement. The order in which registered speakers will be invited to speak is: members of the public, Parish Councillors/County Councillors/District Councillors/Applicant/Agent.

The Chairman of the Committee has discretion to extend the time allocated to registered speakers and to amend the order in which they may speak.

In the event that a registered speaker is unable to connect to the meeting, or if there are any technical issues, their question/statement may be read by a Council Officer.

Further information on Public Question Time is available on the [Council's website](#).

## **Health and Safety**

Anyone attending a meeting of the Council is asked to make themselves aware of the nearest available fire exit. In the event of an alarm sounding, you must evacuate the building immediately and follow all instructions provided by staff. You will be directed to the nearest designated assembly point where you should stay until it is safe to return to the building.

## **Substitute Members**

Only the named Substitutes on this Agenda may be appointed by a Member of the Committee to attend in their absence. The appointed Substitute becomes a full Member of the Committee with participation and voting rights.

## **Documents**

Agendas, Reports and Minutes may be accessed via [www.braintree.gov.uk](http://www.braintree.gov.uk)

## **Data Processing**

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[https://www.braintree.gov.uk/info/200136/access\\_to\\_information/376/privacy\\_policy](https://www.braintree.gov.uk/info/200136/access_to_information/376/privacy_policy)

## **Mobile Phones**

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## **Webcast and Audio Recording**

Please note that this meeting will be webcast and audio recorded. You may view webcasts for up to 6 months after the meeting using this link: <http://braintree.public-tv/core/portal/home>. The meeting will also be broadcast via the Council's YouTube Channel.

## **Comments and Suggestions**

We welcome comments to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended you may send these to [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk)

**1 Apologies for Absence****2 Declarations of Interest**

To declare the existence and nature of any Disclosable Pecuniary Interest, other Pecuniary Interest, or Non-Pecuniary Interest relating to Items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.

**3 Minutes of the Previous Meeting**

To approve as a correct record the Minutes of the meeting of the Planning Committee held on 25th July 2023 (copy previously circulated).

**4 Public Question Time**

(See paragraph above)

**5 Planning Applications**

To consider the following planning applications.

**5a App. No. 21 01966 FUL - Ferriers Farm, Ferriers Lane, BURES HAMLET 6 - 49**

**5b App. No. 21 02719 FUL - The Castle Public House, 77 High Street, EARLS COLNE 50 - 86**

**5c App. No. 21 02720 LBC - The Castle Public House, 77 High Street, EARLS COLNE 87 - 106**

**5d App. No. 23 01248 FUL - Braintree Village, Charter Way, BRAINTREE 107 - 122**

**6 Urgent Business - Public Session**

To consider any matter which, in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.

**7 Exclusion of the Public and Press**

To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.

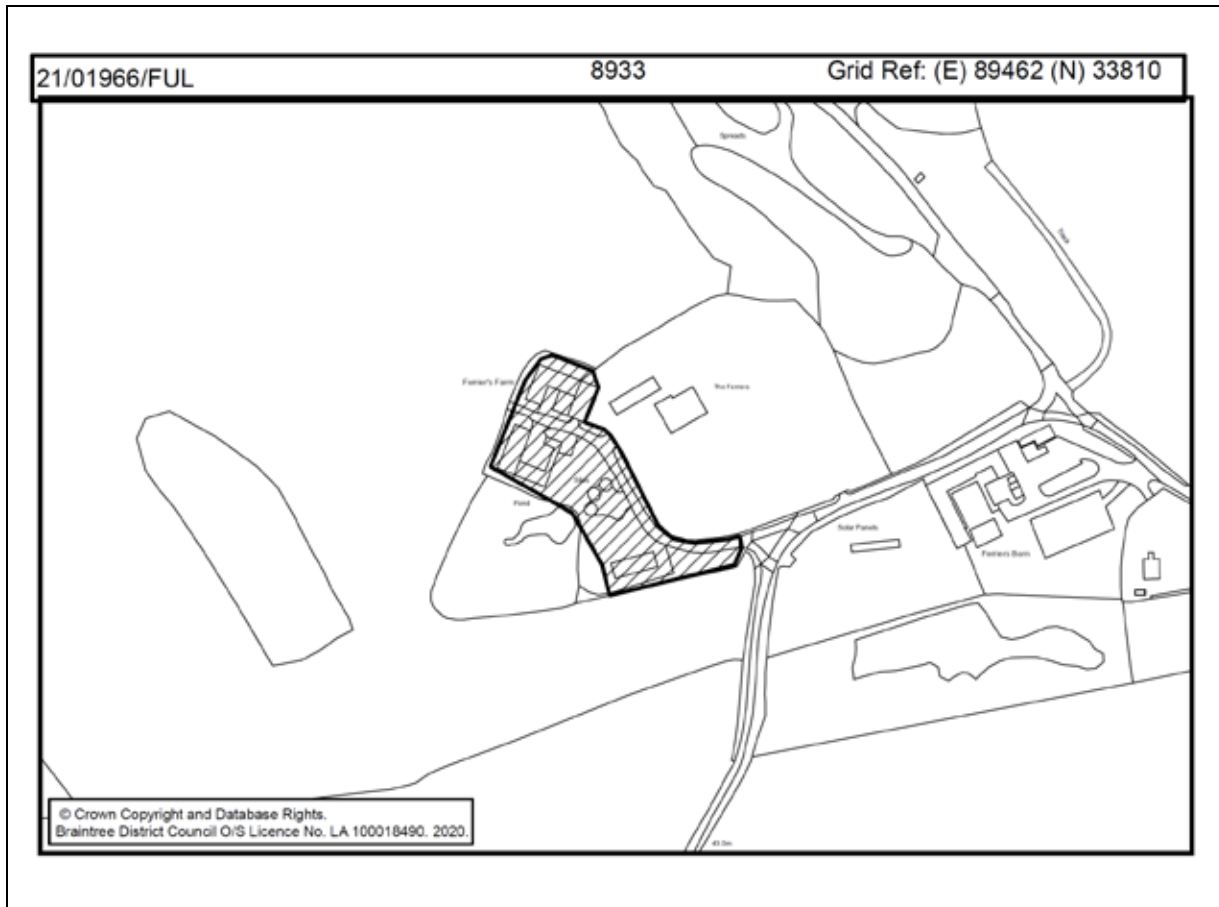
*At the time of compiling this Agenda there were none.*

**8 Urgent Business - Private Session**

To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

<b>Report to:</b> Planning Committee	
<b>Planning Committee Date:</b> 15th August 2023	
<b>For:</b> Decision	
<b>Key Decision:</b> No	<b>Decision Planner Ref No:</b> N/A
<b>Application No:</b>	21/01966/FUL
<b>Description:</b>	Conversion of 3 No. agricultural barns to 3 No. residential dwellings, with associated works.
<b>Location:</b>	Ferriers Farm, Ferriers Lane, Bures Hamlet
<b>Applicant:</b>	Mr & Mrs Welch, Clees Hall, Alphamstone, Bures, CO8 5DZ
<b>Agent:</b>	Mr Ryan Albone, BBR Design, 7 Paynes Park, Hitchin, SG51EH
<b>Date Valid:</b>	7th July 2021
<b>Recommendation:</b>	It is RECOMMENDED that the following decision be made: § Application REFUSED for the reasons outlined within Appendix 1 of this Committee Report.
<b>Options:</b>	The Planning Committee can: a) <b>Agree</b> the Recommendation b) <b>Vary</b> the Recommendation c) <b>Overtturn</b> the Recommendation d) <b>Defer</b> consideration of the Application for a specified reason(s)
<b>Appendices:</b>	<b>Appendix 1:</b> Reason(s) for Refusal Submitted Plan(s) / Document(s)
	<b>Appendix 2:</b> Policy Considerations
	<b>Appendix 3:</b> Site History
<b>Case Officer:</b>	Carol Wallis For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2534, or by e-mail: <a href="mailto:carol.wallis@braintree.gov.uk">carol.wallis@braintree.gov.uk</a>

**Application Site Location:**



<b>Purpose of the Report:</b>	The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.
<b>Financial Implications:</b>	<p>The application was subject to the statutory application fee paid by the Applicant for the determination of the application.</p> <p>There are no direct financial implications arising out of the decision, notwithstanding any costs that the Council may be required to pay from any legal proceedings. Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p>
<b>Legal Implications:</b>	<p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions &amp; Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
<b>Other Implications:</b>	The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.
<b>Equality and Diversity Implications</b>	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> <li>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</li> <li>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</li> <li>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting</li> </ul>



	<p>understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p><b>Background Papers:</b></p>	<p>The following background papers are relevant to this application include:</p> <ul style="list-style-type: none"> <li>§ Planning Application submission: <ul style="list-style-type: none"> <li>§ Application Form</li> <li>§ All Plans and Supporting Documentation</li> <li>§ All Consultation Responses and Representations</li> </ul> </li> </ul> <p>The application submission can be viewed online via the Council's Public Access website: <a href="http://www.braintree.gov.uk/pa">www.braintree.gov.uk/pa</a> by entering the Application Number: 21/01966/FUL.</p> <ul style="list-style-type: none"> <li>§ Policy Documents: <ul style="list-style-type: none"> <li>§ National Planning Policy Framework (NPPF)</li> <li>§ Braintree District Local Plan 2013-2033</li> <li>§ Neighbourhood Plan (if applicable)</li> <li>§ Supplementary Planning Documents (SPD's) (if applicable)</li> </ul> </li> </ul> <p>The National Planning Policy Framework can be viewed on the GOV.UK website: <a href="http://www.gov.uk/">www.gov.uk/</a>.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: <a href="http://www.braintree.gov.uk">www.braintree.gov.uk</a>.</p>

## 1. EXECUTIVE SUMMARY

- 1.1 The site is located to the west of Bures outside of the defined development boundary. There is a bridleway near to the site which provides access into Bures, however, it is narrow and unlit and considered undesirable for regular use. There would inevitably be a reliance on the use of private vehicles for future occupiers to access services/facilities and employment opportunities.
- 1.2 This is a full planning application for the conversion of 3 barns into residential dwellings (2 x 4-bed and 1 x 3-bed dwellings) with associated car parking and amenity space. A similar application was submitted in 2019 and withdrawn (Application Reference 19/00289/FUL).
- 1.3 Extensive repair and reconstruction works have been carried out to the barns since the 2019 application was withdrawn. The Structural Report accompanying the application concludes the barns are of 'permanent and substantial construction' a requirement of Policy LPP40 (Residential Conversion of Buildings in the Countryside) of the Adopted Local Plan. This contradicts the Structural Report submitted in 2019 which stated the barns required, 'structural works to ensure structural integrity of the barns'. The barns do not appear to have been in use for agricultural purposes since the application was withdrawn. Therefore, the repairs appear to have been undertaken by the Applicant to circumvent the criteria of Policy LPP40. No marketing appraisal has been provided in support of the proposed change of use.
- 1.4 The site is situated adjacent to the Grade II listed Ferriers Farmhouse and manorial barn. The subject barns are not considered to be curtilage listed but are within the setting of listed buildings. The proposal is not considered to be detrimental to the setting of listed buildings.
- 1.5 The site is situated within the Stour Valley Project Area (AONB designation). The proposed dwellings would have large windows and glazed elements, including roof lights, which would inevitably result in light spillage into the AONB Project Area and the wider rural area. These windows and glazing features also give the development an overly modern appearance which is not in keeping with the rural character of the countryside.
- 1.6 The site is situated within 250 metres of a minerals waste reprocessing facility (Ferrier Pit). A Noise Assessment has been submitted by the Applicant and an independent noise assessment with field surveying data was also commissioned by the Local Planning Authority to assess the noise issue. The Council's Senior Environmental Health Officer had reviewed the assessments and the background information, and no objection has been raised to the development. There is no evidence that the future residents of these proposed dwellings would be subject to an unacceptable noise impact or a higher degree than the existing residents of the adjoining Listed Buildings.

- 1.7 The proposed dwellings will be provided with gardens and amenity space, with a courtyard provided to Barns 1 and 2. Courtyard amenity spaces are typical for high density development where space is limited. In this case, it has been designed as such to retain the rural character and appearance of the barns, however, it gives rise to concerns regarding poor sunlight and privacy for future occupiers of the amenity space. The peripheral amenity space would have a public/private interface but are not securely protected by brick walls, therefore fails to provide adequate privacy and protection to the private amenity areas, giving rise to detrimental harm to the amenity of future residents.
- 1.8 The Applicants proposed to widen the existing access leading from Ferriers Lane to the site to 4.5m in width, however, no details have been provided. In view of the steep gradient change and the constraints imposed by the mature hedge along the northern edge of this access, it is unclear whether it would be practical and technically feasible to achieve the widening in order to meet the width requirement and to withhold the weight of the emergency and servicing vehicles. The widening works would further encroach onto the Root Protection Area of a Category B tree and the mature hedge of the nearby Listed buildings.
- 1.9 On balance, the benefits of the proposal are not outweighed by the significant harm identified and the recommendation is that planning permission is refused.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

2.1 This application is being reported to Planning Committee in accordance with Part B of the Council's Scheme of Delegation, at the request of the Chair and Vice Chair of the Planning Committee.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

5.1 The application site is located to the west of Bures outside of the defined development boundary. The site is situated off the main road (Colne Road) and is accessed via Ferriers Lane (Bridleway 70\_22) and then a gravelled farm track. The site is about 0.4hectares in size and comprises of 3 individual brick/wooden barns. The topography of the site is gently sloped with the site at an elevated position to Ferriers Lane.

5.2 To the east of the site, outside of the application boundary, are the Grade II listed Ferriers Farmhouse and ancillary building. The site and barns subject to this application are situated outside of the curtilage for the listed farmhouse although are considered to be within the setting of both Listed Buildings. The access to the site along a gravelled farm track is shared with Ferriers Farmhouse.

5.3 Apart from the Listed Buildings to the immediate east, the site is generally surrounded by open agricultural fields. Agricultural machinery access onto the fields is gained between two of the main barns (Barns 1 and 2). There is a Public Footpath (70\_5) to the south of the site travelling in a westerly direction towards Hornes Green Road (a Protected Lane). There is a Bridleway to the east of the site which leads into Bures with access onto Lamarsh Hill (about 0.6 mile, about 12 minutes walk). To the north of the site is Ferriers Pit, a minerals waste reprocessing facility. There is a pond between Barns 2 and 3 but this is outside of the site boundary.

5.4 A previous application (Application Reference 19/00289/FUL) for the change of use of redundant agricultural buildings to residential use was withdrawn after discussions with Officers.

6. PROPOSAL

6.1 The current application proposes the conversion of the 3 barns into 3 separate residential dwellings with associated amenity space, landscaping and parking provision.

- 6.2 The barns situated to the north of the site are referred to as Barns 1 and 2 on the submitted plans. It is proposed to convert these into 4-bed dwellings. They have a 'U' shape form creating a courtyard space in the centre. Barn 1 abuts the boundary, access driveway, and amenity space of Ferriers Farmhouse to the west. It is proposed to demolish 48sq.m of Barn 1 to facilitate a larger central courtyard. Barn 2 is situated to south of Barn 1 and to the northwest of the grain silos. The submitted plans propose an extension to Barn 2 of 22sq.m inward around the central courtyard.
- 6.3 Barn 3 is situated to the south of Barns 1 and 2 (separated by 3 existing grain silos and a new wildflower meadow garden) and is smaller. An extension of approximately 38.3sq. m is proposed to the northern elevation of the barn to create an 'L' shape form. It is proposed to be converted into a 3-bed dwelling.
- 6.4 The existing agricultural access track situated between Barn 1 and 2 is proposed to be retained. It is proposed to upgrade and resurface the track from Ferriers Lane to the barns.

## 7. SUMMARY OF CONSULTATION RESPONSES

### 7.1 CPRE Essex

- 7.1.1 Objection. The housing is on a site that is unsuitable for such development. This area is a possible extension to the Dedham Vale AONB, being a beautiful and tranquil countryside. The site itself is historic and the connection between the farmhouse and the barns affords the group of buildings integrity that would be destroyed by erecting 5 houses.
- 7.1.2 Access would be unsuitable for increase in traffic.
- 7.1.3 Proposals would cause light, traffic, and noise pollution as well as general disturbance.
- 7.1.4 Barns have not been in agricultural use in the past 20 years and the conversion should not qualify as permitted development.

### 7.2 Dedham Vale AONB and Stour Valley Project Team

- 7.2.1 Commented that a precautionary approach should be taken when considering the application. The proposal must not prejudice the long term aim to enlarge the area included within the AONB designation and should not significantly impact on the setting of The Ferriers or barn.

### 7.3 Dedham Vale Society

- 7.3.1 Objection. The Applicant is attempting to accomplish more houses than what applied for 2 years ago.

- 7.3.2 The site falls within a candidate area that has been assessed as having similar natural beauty and special qualities as the Dedham Vale AONB and is considered suitable for designation as AONB. Given the high-quality character of the area, the AONB team has recommended, and the Society agree that a precautionary approach is taken when considering changes to this property. The proposal must not prejudice the long-term aim to enlarge the area included within the AONB designation.
- 7.3.3 The buildings lie outside the village envelop. The site is historic farmlands, of which Ferriers Farm is a prime example. The Tudor era Ferriers Farm and its Manorial Barn, both Grade II Listed, lies within very close proximity of the site.
- 7.3.4 The 3 buildings have been substantially rebuilt by the Applicants in order to be structurally suitable for conversion. It is believed that a development of 5 dwellings is wholly out of character and will have a detrimental impact on the landscape which has been described as 'of outstanding natural beauty'.
- 7.3.5 The development will not retain the lowland character of the edges of the Stour Valley nor conserve the relative isolation of the farm. It will dominate the setting of the heritage assets.
- 7.3.6 It will not conserve the character of the buildings nor the ecological value of the site and its setting. It will not maintain the relative tranquillity of the site.
- 7.3.7 It does not take care to limit the visual impact from secondary effects of development given the limitations of the site, it will have even greater traffic implications. The single track is unsuitable and there will be significant impact on the access. The road must be clear at all times for ambulances and emergency vehicles as stated in the 2020 decision in relation to the proposal at Smallholding on Ferriers Lane.
- 7.3.8 They understood that this Class Q application is invalid as the barns have not been used for agricultural purposes for at least a decade and probably not since they were sold away from the listed buildings some 50 years ago. Article 4 should be invoked.
- 7.3.9 No community need has been demonstrated for five more large, expensive and unsustainable properties in the area.

#### 7.4 Essex Fire and Rescue

- 7.4.1 Initially commented that the proposed development does not appear to comply with requirements for fire service appliance access and the turning provision for fire service vehicles is not in accordance with the requirements.
- 7.4.2 The Applicants provided further detail regarding the access for fire service. The Essex Fire and Rescue service were subsequently re-consulted and

are satisfied based on additional information provided that the proposed development meets the required fire service access requirements.

7.5 BDC Ecology

7.5.1 No objection subject to conditions securing the financial contribution towards visitor management measures for the Blackwater Estuary SPA/Ramsar site, Dengie SPA/Ramsar and Essex Estuaries SAC; and ecological mitigation and enhancement measures.

7.6 BDC Environmental Health

7.6.1 Initially raised no objection, but stated that it would be prudent to require the Applicant to appoint a suitably experienced acoustic consultant to undertake an environmental noise assessment to quantify noise impact from the minerals waste processing facility prior to determination of application.

7.6.2 The Applicant's subsequently provided an Environmental Noise Assessment report (prepared by Acoustics Associates Peterborough) and the Environmental Health Officer was re-consulted. The Environmental Health Officer raised an objection to the proposal following review of the Environmental Noise Assessment report.

7.6.3 The Applicant's subsequently submitted a further Noise Technical Note and Supplementary Noise Technical Note prepared by Enzygo Ltd critiquing the report by Acoustics Associates Peterborough. The Environmental Health Officer reviewed the reports and findings and subsequently withdrew their previous objection to the proposal.

7.6.4 Officers had further discussions with the Environmental Health Officer regarding the noise assessments and the discrepancies between the Enzygo Ltd report and Acoustics Associates Peterborough reports. The Environmental Health Officer acknowledged that the assessments for both reports were based on software modelling as opposed to actual field data which would provide a more robust assessment.

7.6.5 Following the independent Noise Assessment (Pace, Feb 2023), the Environmental Health Officer has reviewed the report and concurs with the findings that there is not likely to be more than a marginal adverse impact to the proposed new dwellings and this can be adequately mitigated with the proposed construction specification.

7.7 ECC Highways

7.7.1 No objection. Whilst the site is located in the countryside, it is not considered the use of the buildings as dwellings would give rise to a significant increase in vehicle movements to and from the site or result in a material change in the character of the traffic in the vicinity of the site.

7.7.2 The submitted documents have been duly considered. Given the scale of the proposed development and the area to be available for parking within the site, which complies with Braintree District Council's adopted parking standards, the proposal is acceptable the Highways Authority.

## 7.8 ECC Historic Buildings Consultant

7.8.1 Initially raised concern that the barns were curtilage listed and therefore a Listed Building Consent application would be required. Following further legal advice from the Council Solicitor (who reviewed additional information provided by Applicant's Solicitor) it was concluded that barns were in fact not curtilage listed.

7.8.2 The Historic Buildings Consultant subsequently submitted a revised response acknowledging that the barns were outside of listed curtilage and raised no objection to the principle of conversion. However, the Historic Buildings Consultant raised concern regarding the design of the scheme and impact on character of setting and indicated that amendments were required to ensure a more sympathetic scheme.

7.8.3 The Applicant submitted revised plans to address the concerns raised. The Historic Buildings Consultant was re-consulted and raised no further objections subject to conditions relating to materials, details for windows, doors, facia and sills and details of all hard and soft landscaping.

## 7.9 ECC Minerals and Waste Planning Authority (MWPA)

7.9.1 Initially commented that, due to the proposed project passing through a Waste Consultation Area, a Waste Infrastructure Impact Assessment (WIIA) is required as part of the planning application.

7.9.2 The Applicant's subsequently submitted a WIIA. Essex Minerals and Waste were re-consulted and stated that, 'a precautionary approach should be taken given the conflicting noise evidence' and referred to the comments received from the Councils Environmental Health Officer.

## 8. PARISH COUNCIL

### 8.1 Bures Hamlet Parish Council

8.1.1 No objection in principle but raised concerns regarding parking and access.

## 9. REPRESENTATIONS

9.1 A total of 27 objecting representations have been received and are summarised below:



### Heritage Impact

- Ferriers Farmhouse and manorial barn are listed and are of historic and cultural significance;
- Ferriers Farmhouse and manorial barn are historically important having strong connections to founding fathers of America;
- Concern that development of barns will damage the near original rural setting that makes the Grade II listed Ferriers and its rare surviving Grade II listed manorial court house such important architectural and historical landmarks;
- Concern proposed development would dominate vista and not the historic farmhouse and manorial barn;
- Concern that Applicants have installed metal gates and fencing on the site within setting of Listed building;
- Concern about impact on setting of Ferriers Farmhouse and manorial barn.

### Environmental Impact

- Concern a spring/stream runs directly underneath Barn 1;
- Visible from Colne Road as it's on high ground;
- Concern about detrimental impact on Stour Valley AONB;
- Concern proposal conflicts with Dedham Vale AONB extension;
- Concern about impact on bats/owls;
- Concern regarding ecological degradation of the site;
- The landscape is of high sensitivity and is locally valued;
- The site is not on a bus route and requires a car for access;
- The bridleway is unlit;
- Concern about impact on 'dark skies'.

### Highway Impact

- Access point on Colne Road is dangerous;
- Site is outside of development boundary;
- Ferriers Lane is an unpaved narrow lane, unsatisfactory for increased levels of traffic;
- The site is situated in close proximity to a permitted waste facility which is accessed by HGVs;
- Concern that increased traffic would damage Ferriers Lane, causing our members (day centre for adults with disabilities) stress and unease as well as damage to minibus.

### Design / Layout Impact

- There have been extensive works to the barns over past year;
- The barns have almost entirely been rebuilt;
- Further substantial alterations are proposed, conflicts with policy;
- Concern inadequate amenity and parking provision;
- The noise levels currently experienced from concrete crusher at Ferriers Pit are unacceptable for a domestic dwelling;

- The dominate rebuilt roof would appear even more dominate in the landscape;
- A previous application on Ferriers Lane has been refused on grounds of access (20/00805/FUL);
- Concern about overlooking into garden for Ferriers Farmhouse.

#### Other

- Proposal does not address need for affordable housing in the area;
- Barns have already been insensitively repaired for 'agricultural purposes';
- Proposal does not support countryside uses;
- Concern about impact of work on field margin a well-used Public Right of Way (PRoW) which has been widened and stripped of undergrowth;
- The Arboricultural Impact Assessment suggests the proposal is for 'holiday lets';
- Application is similar to that withdrawn in 2019, the developers have now made the barns 'structurally sound';
- Concern about impact on our business;
- Concern that the site would be situated within the 250 metres of policy 2 of Waste Local Plan;
- Development is not sustainable;
- Braintree can demonstrate a 5 year housing land supply;
- The site no longer forms part of a larger agricultural unit;
- There is already poor internet speed and concern that this will substantially impair our ability to work;
- Application incorrectly describes Ferriers Farmhouse as accessible from another entrance;
- The site is isolated;
- There are inaccuracies, inconsistencies, and discrepancies within the application.

## 10. PRINCIPLE OF DEVELOPMENT

### 10.1 National Planning Policy Framework (NPPF)

10.1.1 As set out in Paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives: economic; social; and environmental; which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

10.1.2 Paragraph 9 of the NPPF outlines that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area. In addition, paragraph 38 of the NPPF prescribes that local planning authorities should approach decisions on proposed development in a positive and creative way and that

decision makers at every level should seek to approve applications for sustainable development where possible.

- 10.1.3 Paragraph 12 of the NPPF sets out that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. In addition, paragraph 47 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 10.1.4 The NPPF underlines the Government's objective of significantly boosting the supply of homes. In this regard, Paragraph 60 of the NPPF highlights the importance of ensuring that there is a sufficient amount and variety of land that can come forward where it is needed, that specific housing requirements are met, and that land with permission is developed without unnecessary delay. Paragraph 74 of the NPPF outlines that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against (in the case of Braintree District) our 'local housing need' plus the relevant buffer.
- 10.1.5 In this regard, and in considering the overall planning balance as to whether the proposed development subject to this application constitutes sustainable development, an important material consideration in this case is whether the Council can robustly demonstrate a 5 Year Housing Land Supply. This will affect whether Paragraph 11 of the NPPF is engaged and consequently the weight that can be attributed to the Development Plan (see below).

## 10.2 5 Year Housing Land Supply

- 10.2.1 The Council has an up-to-date Local Plan which has an approved minimum housing target of 716 new homes per year in the District between 2013 and 2033.
- 10.2.2 To this annual supply the Council must add the backlog which it has not delivered at that level since the start of the Plan period. This figure is recalculated each year and as of April 2022 stands at 1,169 across the 5 Year Housing Land Supply.
- 10.2.3 The Council must also apply a buffer to the housing land supply based on the results of the Housing Delivery Test. In the latest results published on the 14th January 2022, the Council had delivered 125% of the homes required. This means that the Council is required to apply the lowest level of buffer at 5%.
- 10.2.4 Taking the above into account, the Council's latest 5 Year Housing Land Supply position for 2022-2027 shows a supply of 4.86 years. This position is marginal and with a number of strategic sites starting to deliver homes alongside other permissions, that situation is likely to change.

10.2.5 Nevertheless, as the Council cannot demonstrate the required 5 Year Housing Land Supply, the 'tilted balance' pursuant to Paragraph 11d) of the NPPF is engaged. It also means that the most important Development Plan policies relevant to the provision of housing are out-of-date. However, this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies.

### 10.3 The Development Plan

10.3.1 The Council's statutory Development Plan consists of the adopted Braintree District Local Plan (2013 - 2033).

10.3.2 The Essex Minerals Local Plan (2014) and Essex and Southend on Sea Waste Local Plan (2017) is also relevant for consideration given the proximity of site to Ferriers Pit (Minerals Waste reprocessing facility).

10.3.3 The application site is located outside of a defined development boundary and as such is located on land identified as countryside in the Adopted Local Plan. Policy LPP1 of the Adopted Local Plan states that 'Development outside development boundaries will be confined to uses appropriate to the countryside'.

10.3.4 Policy SP3 of the Adopted Local Plan seeks to ensure that "development locations are accessible by a choice of means of travel".

10.3.5 Policy SP7 of the Adopted Local Plan seeks to create, "well connected places that prioritise the needs of pedestrians, cyclists and public transport services above the use of the private car".

10.3.6 Policy LPP40 of the Adopted Local Plan permits the conversion and reuse of rural buildings to residential use providing that the site is no longer suitable and has been marketed for commercial use. The criterion states, that the buildings should be of a permanent and substantial construction and capable of conversion without complete rebuilding; no unacceptable impact on landscape, protected species or historic environment; site is served by a suitable access and there is no unacceptable impact on residential amenity. Applications for such proposals must be supported by a frame survey, structural survey and where listed a heritage statement setting out the implications of the development. Where considered appropriate surveys will be required for protected species.

10.3.7 The application is supported by Structural Inspection Report (prepared by RCA Structures March 2021). The report concludes in Paragraph 4.01, 'in our view these barns are of permanent and substantial construction and fully capable of conversion to residential accommodation without complete rebuilding or major repair work'. Officers note that the report refers throughout to evidence of 'repairs', 'newer timbers' and 'repointed brickwork'. The submitted Design and Access Statement refers to the

structural condition of the barns and states, 'roof coverings have recently been repaired with reclaimed tiles and recently repointed mortar to the brick walls.' These repairs to the barns have evidently taken place since the previous application in 2019 was withdrawn.

- 10.3.8 It is noted that the Structural Inspection Report (prepared by RCA in February 2019) submitted with the previous withdrawn application (Application Reference 19/00289/FUL) concluded in Paragraph 4.01, 'Following our inspection in our opinion the barns are capable of being converted into domestic accommodation. Structural works, however, are required to ensure the continuing structural integrity of the building'. It further stated, in Paragraph 4.02, 'areas will need some repair work and possible rebuilding to suit'.
- 10.3.9 As stated above, Policy LPP40 of the Adopted Local Plan is clear that, 'buildings should be of a permanent and substantial construction and capable of conversion without complete rebuilding'. It would appear that the Applicant withdrew the previous application in 2019 to undertake structural repairs to ensure the proposal would comply with the criteria 'permanent and substantial construction' as set out in Policy LPP40 of the Adopted Local Plan.
- 10.3.10 The site visit photos taken by Officers in 2019 compared with those recently taken at site clearly illustrate the extent of works that have been undertaken on the barns, particularly for Barn 1, which appears to have partially been rebuilt. This work has taken place without the benefit of planning permission and permission is not sought for these retrospective works within this application. The Applicants have not suggested in their submission that the extensive repair works were required to enable the barns to be used for agricultural purposes, although this has previously verbally been indicated to Officers. However, Officers understand that the wider agricultural land has been sold off which would suggest the intention was not for the barns to be used for agricultural purposes. In any event, if the intention was for the barns to be used for agricultural purposes Prior Approval under Part 6 (extension or alteration of an agricultural building) would have been required and this has not been sought.
- 10.3.11 Therefore, Officers can only conclude that the works undertaken with the intent to demonstrate the proposal complies with policy. This seems disingenuous and an attempt to circumnavigate Policy LPP40 of the Adopted Local Plan which the application would invariably have failed against if the barns were left in their original condition. There is currently no Lawful Development Certificate to demonstrate that the operational and building works are lawful.
- 10.3.12 Policy LPP40 of the Adopted Local Plan refers to marketing of buildings for commercial purposes prior to residential conversion being considered. Paragraph 4.126 refers to marketing for at least a year. The submitted Design and Access Statement states, 'alternative uses of the buildings whether it be employment through light industrial or community uses would

arguably have a demonstrable impact to the setting of the Ferriers Listed buildings through increased traffic volumes, noise levels, and incompatible uses within the wider countryside setting. Residential however is entirely appropriate use'. The submitted Planning Statement suggests that Policy RLP38 (now Policy LPP40) is out of date, stating that, 'The NPPF does not have the requirement for Applicants to have first made efforts to secure employment or community use of the buildings. Therefore, Policy RLP38 is out of date. Furthermore, as the Council does not have a 5 year supply of deliverable housing land its priority should be to secure permission for new homes'.

10.3.13 The NPPF refers in Paragraph 84 to 'supporting a prosperous local economy' through conversion of existing buildings and well-designed new buildings. Officers therefore consider that Policy LPP40 of the Adopted Local Plan is not out of date.

10.3.14 The Applicants have not submitted a marketing appraisal to demonstrate alternative commercial / community uses have been explored. Whilst the relatively remote location of the site may not be commercially attractive to larger business, the locational factor is not the sole consideration and should not be a reason to rule out any commercial or community possibilities of rural buildings. This is the reason why a marketing report would be essential to demonstrate any interests for small scale office or commercial uses. The Applicants have therefore failed to fulfil the marketing requirement of Policy LPP40 of the Adopted Local Plan.

## 11. SITE ASSESSMENT

### 11.1 Location and Access to Services and Facilities

11.1.1 The strategy set out in the Adopted Local Plan is to concentrate growth in the most sustainable locations – that is, by adopting a spatial strategy that promotes development in the most sustainable locations, where there are opportunities for walking, cycling and public transport links to nearby shops, services and employment opportunities. It states in the Adopted Local Plan, "That the broad spatial strategy for the District should concentrate development in Braintree, Witham and the A12 corridor, and Halstead".

11.1.2 The site is not in a very accessible location. There is a Bridleway which provides access along Ferriers Lane onto Lamarsh Hill. It is approximately 965m (about 12 minutes walk) from the site to Bures train station. It is a further 320m to the limited services and facilities in Bures St Mary (Babergh District) to the east. However, this Bridleway is very narrow and unlit, without dedicated footpath and cycle lane, it is undesirable for regular use to access to services and facilities.

11.1.3 Bures Hamlet is identified as a 'Second Tier' village in the Adopted Local Plan which provides some day-to-day facilities, although it lacks the full range of facilities of a Key Service Village. It is noted that Bures St Mary (Babergh District) does provide some limited services and facilities

(including village hall, hairdresser, post office, Church, Public House). It is noted that there is access to alternative sustainable modes of transport (train service) to Sudbury/Marks Tey and a regular bus service to Colchester and Sudbury.

11.1.4 The proposal conflicts with Policy SP3 of the Adopted Local Plan as the development is not considered to be accessible and as a consequence, there would be a strong reliance on the use of private vehicles to access services and facilities to meet day to day needs.

11.2 Design, Appearance and Impact upon the Character and Appearance of the Area

11.2.1 Policy LPP52 of the Adopted Local Plan seeks to secure high quality design in all developments. Policy LPP47 of the Adopted Local Plan seeks to secure a high standard of design and layout in all new development and the protection and enhancement of the historic environment. Policy SP7 of the Adopted Local Plan states that all new development must meet high standards of urban and architectural design and provides a number of place-making principles.

11.2.2 Paragraph 126 of the NPPF states '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'.

Barn 1

11.2.3 Barn 1 is located the closest to the neighbouring property, in particular the Grade II manorial barn which is situated approximately 7m to the east of the barn. The eastern elevation of proposed conversion abuts the boundary and access into Ferriers Farmhouse. The rear elevation is only 4m from the boundary of the site which is in close proximity to the private amenity space for Ferriers Farmhouse. The topography here inclines in a northerly direction.

11.2.4 It is proposed to demolish part of the barn facing within the courtyard to facilitate a larger area of amenity space. Barn 1 is situated in an elevated position within the site. Two parallel parking spaces are proposed to the northwest of the site in a discrete position from the frontage. A new native hedge is proposed to be planted along the boundary screening the parking from wider vista.

11.2.5 The floor plan proposes 4 bedrooms, with office and open place kitchen/dining room and living room. A bins/bike store is also proposed with access gained from within the courtyard.

- 11.2.6 There are no windows proposed for the bathroom, en-suite or WC. There are 3 roof lights proposed facing the internal courtyard on the northeast elevation.
- 11.2.7 The main amenity space is proposed within the courtyard area and exceeds 100sq.m. The Essex Design Guide refers to 100sq.m a minimum requirement, 'as this accommodates most household activities and is at the same time adequate to offer visual delight, receive some sunshine, and encourage plant growth'. Private courtyards tend to be more typical in high density situations, where space is limited. They invariably result in loss of sunlight by virtue of their design however, as stated in Essex Design Guide, 'this maybe an acceptable price to pay for a tighter urban format or closer proximity to central facilities'. In this case, the amenity space appears to have been designed as a courtyard to limit impact of domestication of barns on the wider countryside setting to retain the appearance of 'rural barns'. However, it does lead to concerns regarding acceptable amenity for prospective occupiers. There would be limited light within the courtyard space. Access to the front door is gained via the courtyard reducing privacy. Furthermore, Officers are concerned that prospective occupiers would desire more open amenity space to enjoy the wider countryside views and setting which may lead to garden paraphernalia in the surrounding areas of the barns, tables, chairs, barbeque, play equipment etc. The openable doors to bedroom 2 clearly indicates that it is the intention to utilise the strip of land to the rear. Any domestic paraphernalia including boundary treatment would then be highly visible and represent a harmful sprawl to the countryside setting.
- 11.2.8 On the southeast elevation of the proposed conversion facing onto the driveway for neighbouring property Ferriers Farmhouse, it is proposed to retain the existing openings with obscure glazing and with existing doors retained and fixed shut. This was an amendment sought by the Historic Buildings Consultant. It is noted that the occupiers of Ferriers Farmhouse have raised privacy concerns regarding this. As these are existing openings, and these windows are facing onto the driveway of the neighbours without directly overlooking into habitable rooms or private sitting out area of the neighbours, it is considered that the obscure glazing for the windows on the southeast elevation adequately avoid overlooking into and out of the new dwelling.
- 11.2.9 Black cladding is proposed to the gable ends on the south-western elevation and on the north-western elevation. A pantile roof is proposed to match existing. The materials proposed are considered acceptable for a countryside setting.

#### Barn 2

- 11.2.10 Barn 2 is situated to the southwest of Barn 1. It also has a 'U' shape form similar to Barn 1. A modest extension with a new roof is proposed to the barn inward facing the courtyard to facilitate a corridor to the bedroom accommodation. The fenestration proposed on the external elevations have



been limited. On the southwest elevation, a full height window is proposed with 2 windows proposed on the southeast elevation. Glimpses of these elevations would be visible from the PRow to the west. The northwest elevation proposes 4 windows. It is noted that no windows are proposed for the 3 en-suites.

- 11.2.11 The amenity space falls below that required at less than 100sq.m. Alike Barn 1, the amenity space is proposed as a courtyard. Officers raise the same concerns regarding poor amenity for prospective occupiers. The practicality of such spaces for 4-bed dwellings, likely to be occupied by families, is also a consideration. It is noted on the submitted floor plan that the courtyard space is proposed to be enclosed by boundary treatment with the proposed car parking spaces and gate enclosing the space. This would create an overly restrictive and confined space. The entrance into the barn would also not be visible from the outside. There is a particular concern regarding daylight within this space.

### Barn 3

- 11.2.12 Barn 3 is situated at the southern and lower part of the site and has an 'L' shape form. It is proposed to be converted into a 3-bed dwelling with office and open plan kitchen, dining and living room. The proposed amenity space is to the north of the barn enclosed by proposed planting along the access track. The barn is proposed to be clad with black stained feather edge boarding to match existing with a buff facing brick work plinth. The roof material is a pantile to match existing. The front northern elevation is predominately glazed with full height windows for the living space and entrance. There are no windows proposed on the east elevation and minimal fenestration proposed on west and southern elevation. Officers note that no window is proposed for the bathroom, WC or en-suite raising concerns regarding ventilation and light. This is not considered good design. The entrance to the barn is gained through the proposed amenity space raising concerns regarding privacy for future occupiers of the site. 3 car parking spaces are proposed to north of the site with planting proposed along western boundary to screen it from wider views.

### Overall design

- 11.2.13 Although utilising most of the existing openings, the development would involve the widening of various windows and provision of large amount of glazing, which results in the development having a more modern appearance. The proposed residential use will also increase and extend the amount of internal lighting, and the larger glazing would lead to further light spillage into the countryside, which is discussed in later sections of this report.
- 11.2.14 No boundary treatment has been proposed for each of the dwellings as an attempt to reduce the visual intrusion into the countryside setting. However, the lack of boundary treatment will lead to more domestic sprawl into the fringe areas and provides no defensible space for the bedrooms, which are

not acceptable from safety and amenity perspectives. Given that the surrounding land is not within the same ownership, the adjoining arable field is in active agricultural use, and there is a nearby public footpath, it is inevitable for other users to use the access through the site or walking/working in close proximity. Brick walls would normally be required for any public/private interface, however this would result in further adverse visual impact in this instance.

- 11.2.15 The introduction of a residential use, the conversion of the buildings and the division into separate curtilages would alter the character and appearance of the site and the setting of the listed buildings. It is apparent that the scheme has been designed to limit the impact of the development on the wider countryside setting and the setting of the listed building. However, there is concern that the proposal would create poor amenity for prospective occupiers by virtue of this design centred on proposed courtyard gardens which are typically found in more high density settings. The fenestration on the exterior elevations of the barns facing the wider site and countryside setting have been limited to retain the rural character and appearance however, it is noted that windows have not been proposed for most bathrooms/en-suites within the development which leads to ventilation and light concerns.
- 11.2.16 Policy LPP35 of the Adopted Local Plan requires development to provide a mix of house types and size that reflects the local need and housing mix should be in line with the identified local need as set out in the Strategic Housing Market Assessment (SHMA, 2015).
- 11.2.17 The SHMA identifies that the District would require 35.46% of market dwellings to be 1 to 2 bedrooms properties. The proposal only provides larger 3-bed (33%) and 4-bed properties (67%), with no 1-bed or 2-bed units proposed. The weight to be afforded in the planning balance would be significantly reduced as it would not contribute to meet the District's identified need for smaller properties.
- 11.2.18 The proposal conflicts with Policies LPP35 and LPP52 of the Adopted Local Plan.

### 11.3 Heritage

- 11.3.1 Ferriers Farmhouse and the manorial barn are Grade II listed and are situated adjacent to the site approximately 7m from the nearest barn (Barn 1). Whilst it has been concluded that the barns subject to the application are not curtilage listed, they are within the immediate setting of the Grade II listed buildings.
- 11.3.2 The NPPF states in Paragraph 206, 'Local Planning authorities should look for opportunities within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.'

- 11.3.3 The NPPF requires great weight to be given to the conservation of heritage assets. Policy LPP47 and LPP57 of the Adopted Local Plan seeks to protect and enhance the settings of listed buildings by appropriate control over the development, design, and use of adjoining land.
- 11.3.4 A Heritage Statement (prepared by Heritage Network April 2021) has been submitted with the planning application as supporting documentation.
- 11.3.5 The neighbouring property Ferriers Farmhouse and manorial barn are Grade II listed. The representations received during public consultation refer to the cultural and historic significance of the properties.
- 11.3.6 During the course of the application there has been discussion as to whether or not the barns are curtilage listed. The Historic Buildings Consultant initially commented (response in August 2021) that there was a case for Barn 1 and Barn 2 to be curtilage listed, less so for Barn 3 due to its physical separation. Indeed, the response referred to previous Historic Buildings Consultant advice in 2019 that also suggested the barns were curtilage listed and therefore Listed Building Consent would be required.
- 11.3.7 Following this representation, Officers received an e-mail from the Applicants' solicitors (GSC Solicitors LLP dated 30th August) suggesting the barns were not curtilage listed due to ownership (and a corollary any functional relationship) long been separated at the time of listing. The solicitor provided the Council with title documentation for Ferriers Farm and Ferriers Farmhouse. This confirmed that the 'split' (both ownership and corollary function) between the barns and the farmhouse took place on 7th November 1968. The listings for Ferriers Farmhouse and the manorial barn are dated 12th November 1984. Officers sought legal advice from the Council Solicitor who reviewed the documentation and also concluded barns were not curtilage listed. Following this, the Historic Buildings Consultant submitted a revised consultation response (November 2021) confirming that a Listed Building Consent Application would not be required.
- 11.3.8 The Historic Buildings Consultant stated that whilst outside the curtilage, the buildings are within the immediate setting of the Grade II Listed Ferriers Farmhouse and manorial barn. Although the Historic Buildings Consultant raised no objection to the proposal, the Historic Buildings Consultant did seek the following modifications to create a more sympathetic scheme that preserves and enhances the character of the setting and the significance of the buildings:
- Removal of three skylights on southeast elevation as they would be prominent within the listed buildings setting and would over domesticate the settings character;
  - Three skylights on north-western roof pitch should be reduced in size;
  - Blocking up of opening and all windows in southeast elevation of Barn 1 is not appropriate as it dilutes the character and lessens the legibility of the

buildings historic function. All existing window openings should be retained and reused; and

- Removal of bike and bin stores from the northern elevation of Barn 3.

11.3.9 Following this response, the Applicant's submitted revised plans to overcome the concerns raised by the Historic Buildings Consultant. Following the revisions, no further objections were raised from a heritage perspective subject to appropriate conditions relating to materials, window/door details and landscaping details. These conditions are considered reasonable given the works proposed to ensure that there is no detrimental harm to the setting of the listed building.

11.3.10 It is considered that the proposed works would not give rise to any material harm to the setting, character, or appearance of the listed buildings. The proposal complies with Policies LPP40, LPP47 and LPP57 of the Adopted Local Plan.

#### 11.4 Archaeology

11.4.1 Policy LPP59 of the Adopted Local Plan refers to conditions being imposed to ensure archaeological remains are properly excavated and recorded.

11.4.2 The submitted Heritage Statement acknowledges that the site forms part of an historic farmstead that was extensively remodelled in the mid to late 19th century. It sits in an archaeological landscape that may preserve evidence ranging from the prehistoric to the post medieval period. Therefore, if the application were to be approved, it would be appropriate to impose conditions to ensure any archaeological remains are properly excavated and recorded. A building recording condition to preserve and record would also be appropriate.

#### 11.5 Impact upon Residential Amenity

11.5.1 One of the core planning principles set out in the NPPF is to secure a good standard of amenity for all existing and future occupants of land and buildings.

11.5.2 Policy LPP52 of the Adopted Local Plan states there shall be no unacceptable impact on the amenity of any nearby properties including on privacy, overshadowing, loss of light and overbearing impact.

11.5.3 There is concern regarding the impact on neighbouring amenity for Ferriers Farmhouse due to proximity of Barn 1 and concerns regarding overlooking particularly from the proposed kitchen window on the rear elevation into private amenity space for Ferriers Farmhouse (as indicated on submitted site plan) and subsequent loss of privacy, more prevalent due to the elevation of the site.

11.5.4 It is noted that Ferriers Farmhouse has a rear garden to the south of the dwelling which is their main private garden. The adjoining piece of private

amenity space is currently laid to lawn and appears not to be in active domestic use. Subject to control on proposed floor level and provision of appropriate boundary treatment, Officers are of the view that a fencing or brick wall would be able to provide an above eye-level barrier to avoid overlooking into this piece of private amenity space.

- 11.5.5 As mentioned in earlier sections, the lack of boundary treatment would result in loss of privacy for future users of the proposed dwellings. The development therefore fails to provide an acceptable amenity level for future residents.
- 11.6 Noise Impact and Ferriers Pit Minerals and Waste Reprocessing Facility
- 11.6.1 The site is situated in close proximity to Ferriers Pit (a minerals waste reprocessing facility). Policy SP7 of the Adopted Local Plan seeks to protect the amenity of existing and future residents and users with regard to noise. Policy LPP70 of the Adopted Local Plan refers to new developments should prevent unacceptable risks from all emissions and other forms of pollution (including light and noise pollution. It states that, 'development will not be permitted where individually or cumulatively and after mitigation, there are likely to be unacceptable impacts arising from development on noise'.
- 11.6.2 The NPPF states in Paragraph 185, 'planning decisions should ensure that new development is appropriate for its location taking into account likely effects of pollution on health, living conditions and the natural environment and the potential sensitivity of the site'.
- 11.6.3 The National Planning Practice Guidance (Noise) advises on how planning can manage potential noise impacts in new development. It states that noise needs to be considered when development may create additional noise, or would be sensitive to the prevailing acoustic environment. It further states in Paragraph 9, 'development proposed in the vicinity of existing businesses may need to put suitable mitigation measures in place to avoid those activities having a significant adverse effect on residents or users of the proposed scheme'. The guidance requires that in circumstances such as this, the Applicant will need to clearly identify the effects of existing businesses that may cause a nuisance (including noise, but also dust, odours, vibration, and other sources of pollution) and the likelihood that they could have a significant adverse effect on new residents/users. The Applicant would also need to identify the mitigation being proposed to address potential significant adverse effects. It states that care should be taken when considering mitigation to ensure the envisaged measures do not make for an unsatisfactory development.
- 11.6.4 The application is subject to Policy 2 of the Essex and Southend on Sea Waste Local Plan (2017) which seeks to ensure that existing and allocated waste sites and infrastructure are protected from inappropriate neighbouring developments that may prejudice their continuing efficient operation or ability to carry out their allocated function in future. The site is

situated within 250 metres of an existing allocated waste infrastructure (Ferriers Pit). The preamble to Policy 2 states in Paragraph 6.7, 'sensitive uses should not be located adjacent to, or within, 250 metres of any part of a safeguarded site. However, the actual buffer needed around each site will depend upon the nature of the proposed 'sensitive' use and on the specific impacts of the current waste operation'.

- 11.6.5 The Environmental Health Officer initially suggested in their consultation response that the proximity of Ferriers Pit (a former gravel pit) that is currently in use as a minerals waste reprocessing facility involving crushing and grading of concrete demolition waste may cause a loss of amenity to future occupiers of the proposed barn conversions. The Environmental Health Officer requested that an Environmental Noise Assessment be submitted with the application to quantify the noise impact from the minerals waste reprocessing facility. Following this the Applicants submitted an Environmental Noise Assessment (prepared by Acoustic Associates Peterborough dated February 2020). In summary the report stated, 'the assessment predicted excessive levels at local residents according to British Standard BS 4142 but that the assessment must be taken into context as the site has operated for many years without complaint'.
- 11.6.6 The Environmental Health Officer considered the report and responded with a further response stating that, 'the noise levels produced by the existing crushing operation were clearly audible at Ferriers Farm and were in excess of 10dB above background noise levels, which is a trigger point for causing, 'significant adverse impact'. Noise at this level is likely to give rise to complaints as it would materially affect the use of adjacent residential property, particularly outside amenity space'. The response further raised concern regarding the practicality of installing noise mitigation measures at the proposed development as this would necessitate the introduction of new boundary wall structures and this would affect the openness of the site and potentially the setting of listed buildings. The Environmental Health Officer acknowledged that the noise from the waste reprocessing operation includes a number of different sources included HGV vehicle movements, use of loading shovels, concrete crusher and a trammel screen. The Officer raised concern that computer modelling suggests that noise levels at the proposed site would still be in excessive even after bunding (mitigation proposed with a 5m high earth bund around the equipment) has been installed. The Environmental Health Officer concluded that it would be, 'unwise to introduce any new sensitive noise receptor properties adjacent to existing industrial noise source'.
- 11.6.7 The Noise Impact Assessment refers to mitigation in the interests of local residents in Paragraph 7.4 and identifies the 3 main sources of noise dominating emissions, noise from rock crushing activities, noise from shovel loader, excavator, dumper and noise from passing delivery vehicles. Officers note that for the latter, it states, the only effective mitigation would be to create an alternative entry to the site and this is not considered feasible.

- 11.6.8 Objections have been received from the owners of Ferriers Pit who confirm that, 'there is no mitigation available to reduce the impact of the movement of HGV vehicles on Ferriers Lane'. The neighbours at Ferriers Farmhouse have submitted an audio file to the Council of the current noise experienced from the crushing operations and HGV movements to and from Ferriers Pit.
- 11.6.9 Essex County Council Minerals and Waste Planning were consulted on the application. They stated in their response that, 'the site is located within land which is designated as a Mineral Safeguarding Area (MSA)... however, at 0.3ha, the area of land associated with the proposed development that lies within an MSA is below the 5ha threshold which local resource safeguarding provisions are applied for this mineral'. They also commented that the site is located within a Waste Consultation Area (up to 250 metres from boundary of existing or allocated water infrastructure) and refer to Policy 2 of the WLP which seeks to ensure that existing and allocated waste sites and infrastructure are protected from inappropriate neighbouring developments that may prejudice their continuing efficient operation or ability to carry out their allocation function in the future. The Minerals and Waste Officer sought a Waste Infrastructure Impact Assessment to be submitted as supporting documentation with the application.
- 11.6.10 The Applicants submitted a Waste Infrastructure Impact Assessment WIIA (prepared by Enzygo, dated November 2021). The report refers to the impact of noise stating, 'impacts from noise have been considered within a separate technical note provided to inform this WIIA referenced CRM.1948.001.NO.TL.001 Ferriers Farm Bures Noise Technical Note. The assessment was undertaken against the guidance contained in BS4142:2014+A1:2019 and shows that predicted sound levels from operations within Ferriers Farm Pit would be just 2dB above the prevailing background noise level at the façade of the closest residential property forming part of the proposed development. The predicted noise levels are significantly below the guideline values for external amenity spaces and internal living conditions outlined in BS8233:2014 Guidance on sound insulation and noise reduction for buildings. On this basis, it is considered that predicted noise levels at the proposed development represent a low impact.'
- 11.6.11 Officers note that the letter from 'Enzygo' reviewed the Acoustic Associates Peterborough Report and criticises the findings within it. It then proceeds to predict what it considers to be the predicted noise levels. It states, 'As noted above, we feel that the Acoustic Associates Peterborough noise assessment over-estimates the potential noise levels at Ferriers Farm, via the use of higher noise source data for the crusher, sources modelled as area sources rather than individual point sources and/or moving point sources and low vehicle speeds for on-site and off-site dumper and HGV movements. When considering a more appropriate source level for the crusher and realistic dumper and HGV speeds, the Enzygo noise assessment shows that noise should not provide a material constraint to

the proposed development and that residential amenity at the proposed development is achieved.'

- 11.6.12 The Minerals and Waste Officer was re-consulted following submission of the WIIA and acknowledged that the conclusion by the consultant 'Enzygo' regarding noise impact differ to that of the Environmental Health Officer. However, the Minerals and Waste Officer concluded that a precautionary approach should be taken giving the conflicting noise evidence currently at hand and as such defers to the Environmental Health Officer comments.
- 11.6.13 Officers sought further clarification from the Environmental Health Officer regarding comments from 'Enzygo' and the Noise Technical Note and Supplementary Noise Note. The Environmental Health Officer reviewed these additional reports and commented that, 'Enzygo Ltd have provided a thoughtful and robust critique of the Acoustics Peterborough Environmental Noise Assessment of mineral waste processing operations at Ferriers Farm Pit. They have identified a number of flaws in the methodology used to determine the Rating Noise from the waste reprocessing operation, the most significant of which are:
- i. The sound power level (118dB LWA) of the crusher plant is based incorrectly on reference values contained in BS:5228 for large (90Tonne) semi-track crushers typically used to break down large boulders in hard rock quarrying operations whereas the type of crusher typically used to crush concrete and masonry waste arising from demolition activity is much smaller and quieter (109dB LWA); and*
  - ii. The noise propagation modelling used by Acoustic Associates failed to adjust for the topography of the land between source and receiver properties. The concrete crushing operation takes place at the bottom of a disused quarry and the intervening landmass provides a significant attenuation effect.*
- 11.6.14 Because of these input errors, the conclusions reached by Acoustic Associates Peterborough are erroneous and should not be relied upon when determining this application.
- 11.6.15 The Environmental Health Officer further commented that the noise assessments undertaken by Acoustics Associates Peterborough and Enzygo Ltd are based on theoretical predictive modelling using software. As the mineral waste processing operation has been operating for a number of years it would have been expected more use of measured data derived from field surveys or manufacturer data regarding the actual sound power level of specific machinery in operation, rather than relying on reference values from the British Standard.
- 11.6.16 The Environmental Health Officer concluded that he broadly agreed with the findings of the Enzygo Ltd reports that the noise emissions from the waste operation would only have a marginal adverse impact on amenity space. He raised no concern regarding impact of noise inside the dwellings.



Officers had further discussions with the Environmental Health Officer regarding the noise impact and the reports submitted. The Environmental Health Officer explained that field based measurements of the existing waste reprocessing operation as it currently exists would be much more robust than any acoustic modelling exercise based on reference sound power levels for 'typical' types of plant used. Field measurement would accurately demonstrate the actual not theoretical noise environment in the immediate vicinity of the proposed development and would be representative of what future occupiers of such dwellings would be exposed to as a consequence of their proximity to this industrial process. Such measurements would enable the Council to more accurately predict whether or not the proposed new residential uses would be incompatible with the adjacent industrial use. The Environmental Health Officer also explained that regard should be had to the potential intensification of the industrial uses adjacent which could increase noise output i.e. increasing capacity in terms of quantity of aggregate waste processed, changing the nature of the processes undertaken, increase in numbers of HGV movements or extending the hours of operation.

11.6.17 The Council commissioned an independent noise assessment (Pace, February 2023). The assessment concludes, *'The impact of noise associated with the proposed developments at Ferriers Farm, Ferriers Lane has been assessed. Throughout, the assessment has been undertaken with reference to British Standards and national and international guidance on noise impacts. The noise risk assessment based on the measured noise levels is low during daytime, and negligible during nighttime. In order to assess the worst-case noise climate scenario, additional acoustic analysis have been provided in this report. The analysis show that the highest measured noise levels during daytime (MP1) is still considered as low risk. Building envelope construction has been recommended to ensure that the internal noise levels in the proposed residential dwellings are substantially below the levels recommended by the relevant acoustic guidelines. The specifications use the single worst case 15-minute sample obtained during the entire week and can only be described as the very worst-case scenario. Internal noise levels calculations have been provided to demonstrate that using a good acoustic design will provide the required internal acoustic comfort. By designing the development using the acoustic specifications set out by this report, the development need not be considered a potential agent of change. Occupation of the development is not expected to adversely affect the operation of the waste processing operations site (Weavers Demolition Ltd), as desirable internal acoustic amenity will be provided and sleep disturbance avoided'*.

11.6.18 The report was reviewed by the Environmental Health Officer who concurred with the findings of the report. The Environmental Health Officer proposed that a condition is imposed if the application is granted requiring the development to be constructed in accordance with Paragraph 7.2 (relating to sound insulation) of the report.

- 11.6.19 Further objections were received from the public raising concerns about the quality of the data gathered in the independent noise assessment, including the fact that such a survey did not coincide with the busiest or noisiest activities that could take place at the site. However, the Environmental Health Officer has considered the noise environment summarised by the report to be representative of likely potential noise. To this extent, and having taken into account all the matters raised, the Environmental Health Officer remains of the opinion that the development could be accommodated without enduring significant noise effects.
- 11.6.20 In summary, Officers are satisfied that subject to satisfactory sound insulation measures the proposed residential development would not adversely affect amenity of prospective occupiers. However, it is important to acknowledge that the waste reprocessing site is not currently operating at full capacity and therefore the noise assessments carried out only provide a summary of the current noise experienced as a 'snapshot in time'.
- 11.6.21 Nonetheless, it is also pertinent that any impacts of the proposed development are strictly controlled by the Environment Agency under its environmental permit for this site. Therefore, any escalation of activity in the future would only give rise to a level of noise deemed tolerable underneath such a permit or, if it exceeded the acceptable level, the Environment Agency could seek remedial action through their legislative powers. With the listed building of Ferriers Farmhouse in a similar relationship to the waste processing facility as the proposed dwellings, if not slightly closer to Ferriers Pit, it is considered that the noise environment would be the same for both residential uses. As reported above, no noise complaints have been raised from the farmhouse and it is not anticipated that prospective residents in the proposed dwellings would experience any greater effects than those at the farmhouse.
- 11.6.22 Officers recognise that HGV movements are generated from the waste processing facility, currently reported to be 15 movements per day. The permitted level of vehicle movements that could arise is stipulated at 250 movements a week. This would inevitably create some noise in the vicinity of the proposed dwellings. However, given the distance of approximately 40 metres between the closest barn and the edge of Ferriers Lane, it is considered such noise would not cause harmful levels of disturbance for occupiers of the proposed dwellings. This is also evident from the 7-day independent noise survey undertaken on behalf of the Council, which demonstrates that vehicular noise is not significant in the locality.

## 11.7 Highway Considerations

- 11.7.1 Paragraph 111 of the NPPF states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development on the road network would be severe.

- 11.7.2 Policy LPP40 of the Adopted Local Plan states, 'conversion to residential use will be permitted where c) the site is served by a suitable existing access d) there is no unacceptable impact on residential amenity'.
- 11.7.3 Policy LPP43 of the Adopted Local Plan states that development will be required to accord with the Councils Adopted Parking Standards.
- 11.7.4 Policy SP7 of the Adopted Local Plan seeks to, 'create well connected places that prioritise the needs of pedestrians, cyclists and public transport services above the use of the private car'.
- 11.7.5 The Essex Vehicle Parking Standards Design and Good Practise (2009) Supplementary Planning Guidance requires new residential dwelling houses of two or more bedrooms to benefit from a minimum of 2 car parking spaces. The standards specify that parking spaces shall measure at least 5.5 metres x 2.9 metres. Whilst the indicated parking bays are smaller than this size, there is sufficient land to provide for the larger specification. It is therefore considered that sufficient car parking provision could be provided to comply with the required standards, subject to approval condition to ensure that parking specifications are met and provided prior to occupation.
- 11.7.6 It also indicated that each barn would be fitted with two electric vehicle (EV) charging points for future occupants to use, which would be able to meet the relevant Building Regulations requirement.
- 11.7.7 There are no alterations proposed to the existing access from Ferriers Lane. The submitted Site Plan refers to upgrading the existing driveway/track with shingle. It is noted that the access track is currently shared with the neighbouring property Ferriers Farmhouse. A turning head is proposed to the south of the grain silos. The submitted Design and Access Statement suggests that the driveway would be widened to a minimum width of 4.5 metres, however this is not shown in the submitted drawings.
- 11.7.8 The existing access is very narrow and of steep gradient leading to the barns and the listed buildings. It is only about 3m wide at some points. Officers have reservations as to the practicality of the widening works, given that there is a mature hedge along the northern boundary for the listed buildings and the change of gradients to the immediate south of this shared access. The proposed width of 4.5m together with an additional 0.5m no build/structure/plant zone either sides would bring the access a lot closer to Barn 3 and likely to involve change of gradient and foundation/retaining wall may be required to accommodate 18 tonnes vehicles to meet the standards of serving and emergency vehicles. There is no information in the submission regarding the technical details for such widening works and whether it would be achievable and acceptable to the meet the required standards.

- 11.7.9 It is noted that Ferriers Lane is a narrow road and is used frequently by HGVs accessing Ferriers Pit (approximately 2 an hour) as the only vehicular route into /out of the waste reprocessing facility. The permission for Ferriers Pit (ESS/82/19/BTE) permits up to 250 HGV movements (i.e. 125 movements in 125 movements out) over a week between Monday to Friday 7am to 6pm with access to the site solely from Colne Road, therefore passing the application site.
- 11.7.10 Additional vehicular movements associated with the proposed development would exacerbate the congestion on the narrow road which could lead to concerns regarding conflict with vehicles and HGVs. It was noted during the Officers' site visits that there is a drop of a couple of metres adjacent to Ferriers Lane (adjacent to the access/egress into the site) into the meadow below which is not fenced or secure from the lane. There are also limited opportunities for passing places along the lane. Officers are concerned that conflict between the HGVs and vehicles could cause vehicles to dangerously manoeuvre along Ferriers Lane (also a designated Bridleway) which is also used by pedestrians accessing the PRow to southwest of the site.
- 11.7.11 Given Ferriers Lane is used by HGVs travelling to and from Ferriers Pit, Officers are concerned about the proposed introduction of three new residential properties in this location and the impact upon the amenity of future occupiers given the frequency and number of HGV movements which is not conducive to a normal residential environment. It is noted that the Highway Authority have raised no objection to the proposal, and therefore Officers do not consider that a reason for refusal could be substantiated on highway safety or highway capacity grounds.
- 11.8 Habitat Regulations Assessment (HRA / RAMS)
- 11.8.1 In terms of the wider ecological context, the application site is located within the Zone of Influence of one or more of the following:
- § Blackwater Estuary Special Protection Area and Ramsar site;
  - § Dengie Special Protection Area and Ramsar site;
  - § Essex Estuaries Special Area of Conservation.
- 11.8.2 It is therefore necessary for the Council to complete an Appropriate Assessment under the Habitat Regulations to establish whether mitigation measures can be secured to prevent the development causing a likely significant adverse effect upon the integrity of these sites.
- 11.8.3 An Appropriate Assessment (Habitat Regulation Assessment Record) has been completed in accordance with Natural England's standard guidance. Subject to the proposed mitigation measures set out in the Council's Habitat Regulations Assessment being secured these mitigation measures would rule out the proposed development causing an adverse effect on the integrity of the above European Designated Sites.

- 11.8.4 The proposed mitigation measures would consist of securing a financial contribution per dwelling towards offsite visitor management measures at the above protected sites.
- 11.8.5 This financial contribution has been secured and the Applicant has made the required payment under S111 of the Local Government Act 1972.
- 11.9 Trees, Ecology & Biodiversity
- 11.9.1 Policy LPP65 of the Adopted Local Plan states that trees which make a significant positive contribution to the character and appearance of their surrounding will be retained unless there is a good arboricultural reason for their removal for example, they are dangerous or in poor condition.
- 11.9.2 An Arboricultural Impact Assessment (AIA, prepared by Skilled Ecology, dated May 2021) has been submitted as supporting documentation with the application. The report concludes that no trees are to be removed as part of the proposed development. The trees to be retained can be protected during construction by installation of Tree Protective Fencing.
- 11.9.3 However, the AIA has not included any details of the proposed access widening works and how these would impact on the T2 Horse Chestnut (Category B1) tree and the mature hedge line of the Listed Buildings.
- 11.9.4 Any access widening works would further encroach into the Root Protection Area of T2 and it is unclear whether there would be any impact on the health of this Category B1 tree. Officers also considered that the mature hedge line currently provides important visual values and functional protection for the private garden of Ferriers Farmhouse and therefore no works should adversely affect the hedge line. The proposal therefore fails to protect existing tree and hedges within the site and in the immediate surrounding.
- 11.9.5 Policy LPP66 of the Adopted Local Plan states that development proposals shall provide for the protection of biodiversity and the mitigation or compensation of any adverse impacts. Additionally, enhancement of biodiversity should be included in all proposals, commensurate with the scale of development.
- 11.9.6 A Preliminary Ecological Appraisal (prepared by Skilled Ecology dated May 2021) and Updated Bat Survey Report (prepared by Skilled Ecology dated June 2021) were submitted with the application. In June 2023, the Applicant provided an updated Bar Survey Report and updated Preliminary Ecological Appraisal in view of the passage of time in processing the Applicant. The Council Ecology Officer has been re-consulted and reviewed the reports and is satisfied that sufficient ecological information is available for determination which provides certainty for the LPA of the likely impacts on designated sites, Protected and Priority Species and Habitats. Therefore, with appropriate mitigation measures the development can be acceptable. The Ecology Officer raised no objection subject to securing a

financial contribution for Blackwater Estuary SPA/Ramsar site/Dengie SPA/Ramsar site and Essex Estuaries SAC and securing the ecological mitigation and enhancement measures by conditions. The proposal accords with Policy LPP66 of the Adopted Local Plan.

#### 11.10 Landscape Impact

11.10.1 Policy LPP67 of the Adopted Local Plan seeks to ensure that development integrates into the local landscape.

11.10.2 A Landscape Appraisal (prepared by Lucy Batchelor-Wylam, dated May 2021) has been submitted as supporting information with the application which assesses the context of the proposed development on the landscape.

11.10.3 The site is situated within the 'Stour River Valley' character area as defined in the Landscape Character Assessment LCA (an evidence base report commissioned by the Council in 2006). The LCA identifies this area is dominated in the north and west by arable farmland. A suggested landscape planning guideline includes considering the visual impact of new residential development and farm buildings on valley slopes, maintaining cross valley views and characteristic views across and along the valley. The Landscape Appraisal includes a visual appraisal (page 16) which refers to publicly accessible viewpoints in the surrounding area towards the site. This includes views from the PRoW to the west of the site. The Landscape Appraisal concludes that, 'the only public receptors that will experience any degree of change are footpath users within the immediate environs of the site. They would be considered sensitive to visual change as they are engaged with the views and taking advantage of the amenity on offer on the footpath network. Although the character of the buildings are being broadly retained, footpath users will perceive that the barns are no longer under agricultural use. Glimpses of window openings, parked cars and other visual clues of human domestic activity will be sensed.'

11.10.4 A mitigation proposal is that a planted native hedgerow with trees will help screen visual effects of any human activity or vehicles and enhance biodiversity. The Landscape Appraisal concludes that, 'whilst the site has sensitivities, the proposal is sympathetic and sensitive to both the local character of the setting and that of the wider Stour Valley. The barns will continue life as residences ensuring dilapidation and loss is avoided'.

11.10.5 Whilst the proposal has sought to largely retain the rural character of the barns, there will be evidence of their domesticated use from the wider setting particularly from the Public Footpath. The landscaping proposed would screen the site to an extent. Officers therefore do not consider the harm to the landscape setting to be detrimental to warrant refusal of the application. The proposal would therefore accord with Policy LPP67 of the Adopted Local Plan.

- 11.10.6 The impact of the proposal on the Stour Valley Project Area is considered below.
- 11.11 Impact on Stour Valley AONB Project Area
- 11.11.1 The site is located within the Long Melford and Sudbury Stour section of the Stour Valley Project Area. This area has been assessed as having similar natural beauty and special qualities as the Dedham Vale AONB and which is considered suitable for designation as AONB.
- 11.11.2 Policy LPP67 of the Adopted Local Plan states, 'development proposals which result in harm to the setting of the AONB will not be permitted'. The preamble to the policy Paragraph 6.27 states, 'proposed development here should support the wider environmental, social and economic objectives as set out in the Dedham Vale AONB and Stour Valley Management Plan and should not prejudice the long term aim to enlarge the area included within the AONB designation'.
- 11.11.3 The AONB Officer has been consulted on the application and raises concern that the scheme may potentially conflict with Policy LPP1 of the Adopted Local Plan which seeks to strictly control development outside of settlement boundaries to uses appropriate to countryside to protect the intrinsic character and beauty of the countryside.
- 11.11.4 The AONB Officer states, 'the Local Planning Authority (LPA) should be satisfied that the conversion of the existing barns to residential dwellings is an appropriate and sustainable use of the barns given their sensitive rural location'. They also comment that the barns make a positive contribution to the setting of the listed Ferriers Farmhouse and manorial barn and that LPA should be satisfied the proposal will not significantly impact upon the setting. The AONB Officer considers the proposed materials appropriate and in keeping with the rural built character and acknowledges that the areas of larger fenestration open into the proposed courtyards reducing light spill into the project area.
- 11.11.5 The AONB Officer concludes to ensure minimal impacts on the Stour Valley Project Area, the landscaping, ecology and lighting mitigation measures recommended in the supporting documents should be secured by condition and implemented in full, if the Council are minded to approve the scheme. A condition is also suggested requiring details for all external lighting to be approved in writing before installation to help conserve tranquillity and preserve dark skies.
- 11.11.6 Officers however consider that the widening of windows, provision of roof lights as well as large, glazed panels on each of the dwellings would have a cumulative light spillage into the rural countryside. Whilst some of these may be required to meet with buildings and fire requirements, a significant portion of the glazing is excessive, in particular those facing outward to the perimeter. Given that the proposed buildings are on the slope, any light spillage would be highly visible. It is not considered that the design of the

dwellings have minimised all possible/unnecessary light spillage into the AONB Project Area.

#### 11.12 Contamination

11.12.1 Policy LPP70 of the Adopted Local Plan states all applications for development where the existence of, or potential for creation of, pollution is suspected must contain sufficient information to enable the LPA to make a full assessment of potential hazards.

11.12.2 A Phase 1 Desk Study and Phase II Site Investigation report (prepared by Brown 2 Green Associates Ltd has been submitted. The report concludes that no further work is required or remediation is necessary. The Environmental Health Officer has reviewed the report and concurs with the findings.

11.12.3 The proposal therefore accords with LPP70 of the Adopted Local Plan in this regard.

#### 11.13 Drainage and Flood Risk

11.13.1 The site is located within Flood Zone 1 (lowest risk of flooding). Paragraph 163 of the NPPF states that when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere. It states that priority should be given to the use of sustainable drainage systems. The proposal is below the threshold (10 dwellings) whereby local planning policies are required to ensure that sustainable drainage systems for the management of run-off are put in place through consultation with the relevant lead local flood authority. The developer will need to demonstrate suitable surface water drainage arrangements to be able to gain Building Regulations approval.

#### 11.14 Sustainability and Resource Efficiency

11.14.1 The Design and Access Statement has included the sustainability and resource efficiency measures in Chapter 9, including the use of air or ground source heat pump appliance, provision of EV charging points, energy performance to meet the Building Regulations restrictions on U-values, use of low voltage energy efficient light fittings, use of rainwater butts in each of the gardens and all dwellings designed to meet the 16 criteria of Lifetime Homes. It is therefore considered that the proposal accords with the requirements of Policies LPP71 and LPP72 of the Adopted Local Plan.

### 12. PLANNING BALANCE AND CONCLUSION

12.1 The presumption in favour of sustainable development sits at the heart of the NPPF. The Framework is clear in its instruction at Paragraph 11d, that for decision-taking this means where there are no relevant Development Plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the



provision of housing, situations where the LPA cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in Paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years), granting permission unless:

- i. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

12.2 As the Council cannot currently demonstrate a 5 Year Housing Land Supply, the 'titled balance' pursuant to Paragraph 11d) of the NPPF is engaged. As a consequence, the most important Development Plan policies relevant to the provision of housing are currently out-of-date due to a lack of 5 Year Housing Land Supply. However this does not mean that Development Plan policies should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies. In this regard it is considered that Policy LPP1 of the Adopted Local Plan, which seeks to restrict development outside defined development boundaries to uses appropriate to the countryside, can only be afforded moderate weight. Similarly, it is considered that Policy SP3, which sets out the spatial strategy for North Essex, can only be afforded less than significant, but more than moderate weight.

12.3 In this case, it is not considered that pursuant to Paragraph 11d) (i) that the application of policies in the Framework provide a clear reason for refusing the proposed development.

12.4 As such, pursuant to Paragraph 11d) (ii) it is necessary to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposed development, when assessed against the policies in this Framework taken as a whole. Such an assessment must take account of the economic, social and environmental impact of the proposed development and these matters must be considered in the overall planning balance.

12.5 As set out in Paragraph 8 of the NPPF, achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and needed to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- an economic objective (to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure);

- a social objective (to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being); and
- an environmental objective (to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy).

## 12.6 Summary of Adverse Impacts

12.6.1 The adverse impacts and the weight that should be given to these factors are set out below:

### **Conflict with the Development Plan**

- 12.6.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Paragraph 15 of the NPPF emphasises that the planning system should be “genuinely plan led”.
- 12.6.3 The proposed development would conflict with Policy LPP1 of the Adopted Local Plan as it proposes development outside of defined development boundaries and within the countryside. However, while the proposal is contrary to Policy LPP1 of the Adopted Local Plan, as the Council is currently unable to demonstrate a 5 Year Housing Land Supply, only moderate weight can be afforded to this conflict.
- 12.6.4 Policy LPP40 of the Adopted Local Plan permits conversion of rural buildings for residential reuse subject to compliance with criteria and where the site is no longer suitable and has been marketed for commercial use. The criteria of Policy LPP40 requires that buildings are of a permanent and substantial construction and capable of conversion without complete rebuilding. It also refers to the site being served by a suitable existing access. The proposal in this case is considered to conflict with Policy LPP40 on the grounds that the structural report submitted for the 2019 application (subsequently withdrawn) suggested that the barns required possible rebuilding and repair works. These extensive structural works have been carried without the benefit of planning permission. The Applicants did not suggest in their submission that the repair works were required to enable the barns to be used for agricultural purposes. Officers understand that the wider agricultural land has been sold off which would suggest that the intention was not for the barns to be used for agricultural purposes. This conflict is afforded significant weight.

## **Heritage**

- 12.6.5 Policy LPP57 of the Adopted Local Plan seeks to protect the settings of listed buildings. The proposal would alter the setting of the listed building but not to a detrimental extent. Therefore, there is limited conflict with Policy LPP57 of the Adopted Local Plan and limited weight is attributed to this.

## **Location and Access to Services and Facilities**

- 12.6.6 Future residents of the development would have limited access to local services and facilities by walking along an unlit and narrow bridleway which would be undesirable for regular use. There would be a strong reliance on travel by private vehicles to access employment, services and facilities which is contrary to Policy SP7 of the Adopted Local Plan given the undesirable walking/cycling route and lack of other sustainable transport modes available. This weighs against the proposal and is afforded significant weight.

## **Harm to the Character of the Rural Countryside**

- 12.6.7 Moderate harm is identified to the character and appearance of the countryside. The proposed dwellings would incorporate large windows and glazing which would have an overly modern appearance in the rural setting. This harm is afforded less than substantial weight.

## **Harm to Residential Amenity**

- 12.6.8 Significant harm is identified for the amenity of prospective occupiers. The proposed courtyard gardens create poor amenity space with little daylight and little privacy from passers-by and visitors (delivery drivers etc.) of the proposed dwellings. There is also a lack of appropriate boundary treatments to provide clear defensible space and to protect the privacy of around the perimeter of the proposed dwellings. This harm is afforded significant weight.
- 12.6.9 In addition, given that Ferriers Lane is used by HGVs travelling to and from Ferriers Pit, the proposed introduction of three new residential properties in this location would impact upon the amenity of future occupiers given the frequency and number of HGV movements which is not conducive to a normal residential environment. This harm is afforded moderate weight.

## **Widening Works and Harm to Tree and Hedges**

- 12.6.10 Access widening works would be required for emergency and servicing vehicles. However no technical details have been provided within the application. There is no clear indication as to the practicality of this and whether it is technically feasible for such widening works to the existing access road.

- 12.6.11 Furthermore, no assessment has been undertaken on the potential impacts of the access widening works on the Category B1 tree and the mature hedge surrounding the garden of the listed Ferriers Farmhouse. Insufficient information has been submitted in this regard. The harm arising from this is afforded significant weight.

### **Light Spillage to the AONB Project Area**

- 12.6.12 The proposed development would lead to light spillage into the AONB Project Area and the rural countryside. This harm is afforded significant weight.

### **12.7 Summary of Public Benefits**

- 12.7.1 The public benefits arising from the proposal and the weight that should be accorded to these factors are set out below:

#### **Delivery of Market Housing**

- 12.7.2 The proposal is for 3 new market dwellings. No affordable housing would be provided. This benefit is only afforded limited weight, given that the development would only focus on provision of larger properties which is not line with the SHMA identified local housing need, and given the scale of the development.

#### **Economic and Social Benefits**

- 12.7.3 The proposal would undoubtedly deliver economic benefits during the construction period, and economic and social benefits following occupation of the development in supporting local facilities. However, this is afforded limited weight, given the scale of the development.

#### **Biodiversity Net Gain**

- 12.7.4 Subject to condition to secure the proposed biodiversity enhancement measures, there would be a 10% biodiversity net gain as required by the NPPF. Given the scale of the development proposed, it would only be afforded limited weight.

### **12.8 Summary of Neutral Factors**

- 12.8.1 There is no identified harm in terms of ecological and landscaping impacts, flooding and drainage as well as impacts on the areas of Protected Essex coastline. These matters are considered to be neutral in the planning balance neither weighing in favour or against the proposed development.

### **12.9 Conclusion**

- 12.9.1 Taking into account the above, while the proposal complies with some Development Plan policies which weigh in favour of the proposal, it is

considered that the proposal conflicts with the Development Plan as a whole. As set out within Paragraph 47 of the NPPF, planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, as indicated above, an important material consideration in this case is that as the Council cannot currently demonstrate a 5 Year Housing Land Supply, the 'titled balance' pursuant to Paragraph 11d) of the NPPF is engaged. As a consequence, the most important Development Plan policies relevant to the provision of housing are currently out-of-date due to a lack of 5 Year Housing Land Supply. In this regard, Policy LPP1 of the Adopted Local Plan, which seeks to restrict development outside defined development boundaries to uses appropriate to the countryside, can only be afforded moderate weight. As referenced above, it is considered that the proposal is contrary to Policy LPP40 of the Adopted Local Plan. Officers consider that there are no material considerations, including the Council's 5 Year Housing Land Supply position, that indicate that a decision should be made other than in accordance with the Development Plan. The Planning Balance is concluded below.

#### 12.10 Planning Balance

12.10.1 When considering the planning balance and having regard to the adverse impacts and benefits outlined above, Officers have concluded that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Consequently, it is recommended that planning permission is refused for the proposed development.

#### 13. RECOMMENDATION

13.1 It is RECOMMENDED that the following decision be made:  
Application REFUSED for the reasons outlined within APPENDIX 1.

CHRISTOPHER PAGGI  
PLANNING DEVELOPMENT MANAGER

## APPENDIX 1:

### REASON(S) FOR REFUSAL / SUBMITTED PLAN(S) / DOCUMENT(S)

#### Submitted Plan(s) / Document(s)

<b>Plan Description</b>	<b>Plan Ref</b>	<b>Plan Version</b>
Traffic Management Plan	PL19	N/A
Proposed Site Plan	PL12	C
Proposed Elevations	PL15A	BARN 3
Proposed Floor Plan	PL17A	BARN 3
Proposed Floor Plan	PL13 A	BARN 1
Proposed Elevations	PL14 A	BARN 1
Existing Floor Plan	PL03	Barn 1
Location Plan	PL01	N/A
Existing Site Plan	PL02	N/A
Existing Floor Plan	PL07	Barn 3
Existing Elevations	PL04	Barn 1
Existing Floor Plan	PL05	Barn 2
Existing Elevations	PL06	Barn 2
Existing Elevations	PL08	Barn 3
Proposed Floor Plan	PL15	Barn 2
Proposed Elevations	PL16	Barn 2

#### Reason(s) for Refusal

##### Reason 1

The proposed residential development, by reason of failing to demonstrate whether the existing buildings are suitable for reuse or conversion to a commercial use in the first instance, is contrary to the aims and objectives of Policy LPP40 in the Adopted Local Plan. On this basis, the proposed development would result in the unjustified creation of new dwellings in the countryside.

Furthermore, the barns subject of this application have undergone significant repair, rebuilding and refurbishment works without the benefit of planning permission, as demonstrated by the Applicant's initial structural report submitted with an earlier application seeking conversion in 2019 where a number of defects were identified. These unauthorised building operations extend beyond simple repair and maintenance to include additional floorspace, resulting in an enlarged and rebuilt building purposefully designed for residential use. The proposed development, in this condition, would not qualify for consideration as a 'conversion' under Policy LPP40 of the Adopted Local Plan, especially since this policy requires buildings to be of a permanent and substantial construction capable of conversion without complete rebuilding.

In addition, and given the location of the site, future occupiers would be heavily reliant on private vehicles to access day to day services and facilities. This would be contrary to the spatial objectives of the plan-led system and the aims of both national and local policy to locate development in accessible and sustainable locations. The

proposal would therefore be contrary to Policies SP3, SP7, LPP38 and LPP40 of the Adopted Braintree District Local Plan (2013 -2033) and the National Planning Policy Framework.

#### Reason 2

The design of the proposed development incorporates a number of windows and features that are highly domestic in appearance that, together with the proposed subdivision of the land with necessary boundary treatment to provide and protect garden areas, as well as prospective residential paraphernalia, would represent an adverse urban intrusion and domestic sprawl into the rural area, to the detriment of the local countryside setting. The extensive windows would also give rise to adverse levels of light pollution emanating from the building, to the detriment of the rural agricultural landscape.

The design of the development also results in contrived access arrangements that allow for significant overlooking of the proposed amenity space for the proposed dwellings, resulting in a loss of privacy for each prospective occupier and thus a poor living environment. Given that Ferriers Lane is used by HGVs travelling to and from Ferriers Pit, the proposed introduction of three new residential properties in this location would impact upon the amenity of future occupiers given the frequency and number of HGV movements which is not conducive to a normal residential environment. The proposal with only larger market properties also does not accord with identified housing needs of the Strategic Housing Need Assessment (2015).

The proposal would be contrary to Policies SP1, SP7, LPP1, LPP35, LPP40, LPP47, LPP52, and LPP67 of the Adopted Braintree District Local Plan (2013 - 2033).

#### Reason 3

No technical details have been provided on the proposed access widening works to demonstrate that the works would be practically and technically feasible in order to provide the required access width and able to accommodate the weight of emergency and serving vehicles. There is insufficient information to confirm that there would not be a detrimental impact upon the Category B tree to the south of the shared access and hedge line surrounding the private garden of the listed Ferriers Farmhouse. The proposal is therefore contrary to Policies LPP52 and LPP65 of the Adopted Braintree District Local Plan (2013 - 2033).

#### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying the areas of conflict with adopted Policy and National Planning Guidance and discussing these with the applicant either at the pre-application stage or during the life of the application. However, as is clear from the reason(s) for refusal, the issues are so fundamental to the proposal that it would not be possible to negotiate a satisfactory way forward in this particular case.

## APPENDIX 2:

### POLICY CONSIDERATIONS

#### National Planning Guidance

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

#### Braintree District Local Plan 2013 - 2033

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
LPP1	Development Boundaries
LPP16	Housing Provision and Delivery
LPP40	Residential Conversion of Buildings in the Countryside
LPP43	Parking Provision
LPP47	Built and Historic Environment
LPP52	Layout and Design of Development
LPP57	Heritage Assets and their Settings
LPP63	Natural Environment and Green Infrastructure
LPP64	Protected Sites
LPP65	Tree Protection
LPP66	Protection, Enhancement, Management and Monitoring of Biodiversity
LPP67	Landscape Character and Features
LPP70	Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
LPP71	Climate Change
LPP72	Resource Efficiency, Energy Generation and Energy Efficiency
LPP74	Flooding Risk and Surface Water Drainage
LPP77	External Lighting



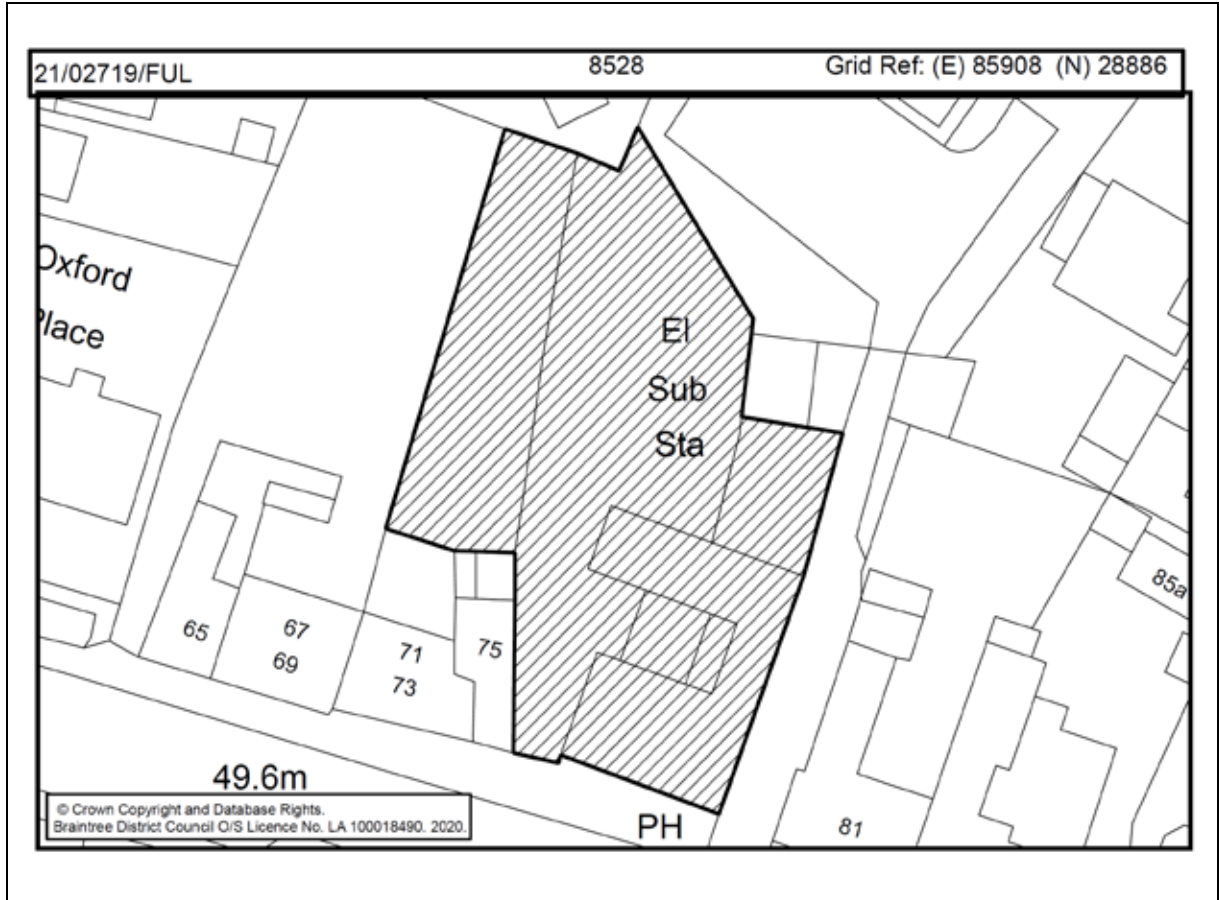
APPENDIX 3:

SITE HISTORY

<b>Application No:</b>	<b>Description:</b>	<b>Decision:</b>	<b>Date:</b>
00/00567/AGR	Proposed concrete pad	Permission not Required	28.04.00
19/00289/FUL	Change of use of redundant agricultural buildings to residential use including regeneration and conversion	Withdrawn	25.06.19
23/00834/COUPA	Prior approval for the change of use of agricultural building to a dwellinghouse (Class C3), and for associated operational development - Change of use to 5 No. residential dwellings.	Planning Permission Required	25.05.23

<b>Report to:</b> Planning Committee	
<b>Planning Committee Date:</b> 15th August 2023	
<b>For:</b> Decision	
<b>Key Decision:</b> No	<b>Decision Planner Ref No:</b> N/A
<b>Application No:</b>	21/02719/FUL
<b>Description:</b>	Change of use of Public House (Use class Sui Generis) to 1 x 1 bed, 1 x 3 bed and 1 x 4 bed residential units, and erection of 1 x 3 bed and 1 x 4 bed dwellinghouses in rear car park (total 5 Use Class C3 residential units) with the provision of parking, including undercroft parking, amenity spaces and hard landscaping.
<b>Location:</b>	The Castle PH, 77 High Street, Earls Colne
<b>Applicant:</b>	NAMMOS, Colchester, UK
<b>Agent:</b>	Malcolm Inkster, Trinity Planning, 33 West Street, Wivenhoe, CO7 9DA
<b>Date Valid:</b>	17th November 2021
<b>Recommendation:</b>	It is RECOMMENDED that the following decision be made:  § Application REFUSED for the reasons outlined within Appendix 1 of this Committee Report.
<b>Options:</b>	The Planning Committee can:  a) <b>Agree</b> the Recommendation b) <b>Vary</b> the Recommendation c) <b>Overtturn</b> the Recommendation d) <b>Defer</b> consideration of the Application for a specified reason(s)
<b>Appendices:</b>	<b>Appendix 1:</b> Reason(s) for Refusal Submitted Plan(s) / Document(s)
	<b>Appendix 2:</b> Policy Considerations
	<b>Appendix 3:</b> Site History
<b>Case Officer:</b>	Kathryn Oelman For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2524, or by e-mail: <a href="mailto:kathryn.oelman@braintree.gov.uk">kathryn.oelman@braintree.gov.uk</a>

**Application Site Location:**



<b>Purpose of the Report:</b>	The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.
<b>Financial Implications:</b>	<p>The application was subject to the statutory application fee paid by the Applicant for the determination of the application.</p> <p>There are no direct financial implications arising out of the decision, notwithstanding any costs that the Council may be required to pay from any legal proceedings. Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p>
<b>Legal Implications:</b>	<p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions &amp; Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
<b>Other Implications:</b>	The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.
<b>Equality and Diversity Implications</b>	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> <li>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</li> <li>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</li> <li>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting</li> </ul>

	<p>understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p><b>Background Papers:</b></p>	<p>The following background papers are relevant to this application include:</p> <p>§ Planning Application submission:</p> <ul style="list-style-type: none"> <li>§ Application Form</li> <li>§ All Plans and Supporting Documentation</li> <li>§ All Consultation Responses and Representations</li> </ul> <p>The application submission can be viewed online via the Council's Public Access website: <a href="http://www.braintree.gov.uk/pa">www.braintree.gov.uk/pa</a> by entering the Application Number: 21/02719/FUL.</p> <p>Policy Documents:</p> <ul style="list-style-type: none"> <li>§ National Planning Policy Framework (NPPF)</li> <li>§ Braintree District Local Plan 2013-33</li> <li>§ Neighbourhood Plan (if applicable)</li> <li>§ Supplementary Planning Documents (SPD's) (if applicable)</li> </ul> <p>The National Planning Policy Framework can be viewed on the GOV.UK website: <a href="http://www.gov.uk/">www.gov.uk/</a>.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: <a href="http://www.braintree.gov.uk">www.braintree.gov.uk</a>.</p>

## 1. EXECUTIVE SUMMARY

- 1.1 The Castle Public House is a large two storey building located in the High Street of Earls Colne. The property is Grade II listed and lies within the Earls Colne Conservation Area. The site includes the pub car park and beer garden behind. The site is located within the village 'Development Boundary', within a Local Centre and within the Habitat Regulations Zone of Influence.
- 1.2 Planning permission is sought to change the use of the pub, which is currently vacant, converting it to three dwellings (1 x 4 bed, 1 x 3-bed and 1 x 1-bed), and also providing two additional dwellings (1 x 3-bed and 1 x 4-bed) within its curtilage to the north, along with associated car parking (including undercroft parking) in the rear range of the pub; which would be partially demolished and rebuilt to facilitate this.
- 1.3 Officers do not consider there to be sufficient evidence to justify the loss of the pub use. The Council's Historic Buildings Consultant raises concerns with the application, including a lack of information in a number of areas. It is considered the proposal would cause less than substantial harm to the special interest of the Listed Building and the character and appearance of the Earls Colne Conservation Area.
- 1.4 The proposal would also represent poor design and, due to the number of dwellings proposed, its layout is poorly resolved in terms of its impact upon trees, car parking and refuse arrangements, quality and provision of amenity space, and effects upon residential amenity of the new and converted dwellings. Notwithstanding the two letters of support received, many of these concerns are shared by the Parish Council and those in the local community who have raised objection to the application.
- 1.5 The proposal is contrary to the Development Plan. Furthermore, the application of policies of the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The proposal is therefore recommended for refusal.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

2.1 This application is being reported to Planning Committee in accordance with Part B of the Council's Scheme of Delegation, at the request of the Chair and Vice Chair of the Planning Committee.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

5.1 The Castle Public House (77 High Street) is a large two storey building which fronts Earls Colne High Street to its south. The site area is 0.14 hectares. The pub is currently vacant and is located within the village 'Development Boundary', within a designated 'Local Centre'. It also lies within the Habitat Regulations Zone of Influence for the designated European protected sites.

5.2 The pub's access is located to its western side and it is understood to be shared with its neighbour/s to the west. The access leads to the pub car park and beer garden which lie behind. This rear yard is contained by a historic red brick wall with several mature sycamore trees to its boundaries.

5.3 To the other side of the pub, in the east, there is an access road which serves the Electricity Sub-Station, Telephone Exchange and residential properties. To the rear, the site backs onto dwellings contained within a modern residential estate (Oxford Close / Josselin Close) that has expanded the settlement north over recent decades.

5.4 The site lies within the Earls Colne Conservation Area and comprises a Grade II listed. There are numerous other Grade II listed properties on the High Street, including No.75 to the west, Nos.79-81 to the east and Nos.98-104 to the south.

5.5 The Castle PH was originally built as a dwelling and is constructed of a timber frame, plastered exterior and red plain tile roof. A Georgian façade in imitation ashlar fronts the High Street. The western cross-wing of the house dates from the late c.14<sup>th</sup> and the eastern cross-wing from the mid c.16<sup>th</sup>.

5.6 The property was originally a medieval hall house with its middle range rebuilt circa 1600. Prominent characteristics of the building are its chimney stacks with diagonal shafts situated on the front and side (east) elevations. There are also several c.19<sup>th</sup> sash windows. Internally an ornate biblical wall painting, restored in c.17<sup>th</sup>, sits above the fireplace on the ground floor.

## 6. PROPOSAL

- 6.1 Permission is sought to change the use of the pub from Sui Generis to C3 Residential, splitting the existing planning unit into five dwellings. Three of the dwellings (Unit 1: 4bed house; Unit 2: 3bed house; & Unit 3: 1bed studio flat) would be located within the existing pub. Two new detached two-storey dwellings are proposed on the land behind (Unit 4: 3bed house; & Unit 5: 4bed house).
- 6.2 Hardstanding areas would provide two parking spaces for each of the new dwellings along with a visitor parking space. Unit 1 and 2 would also have two parking spaces, with one space for Unit 3. Parking spaces for the converted dwellings would be within an undercroft parking area created partly from demolishing and rebuilding part of the conjoined range of outbuildings which lie to the rear of the main pub building.
- 6.3 Garden space is shown for the new units to the north, whereas gardens are shown provided for Units 1 and 2 in the internal courtyard formed by the existing buildings. Unit 3; the studio flat, would not have a garden. A new double gate is shown to the shared access road.
- 6.4 The submitted Tree Survey identifies several category B and C sycamore and ash trees which largely lie outside the site. Many of these are proposed to be crown lifted in order to reduce overshadowing of the gardens to the new dwellings, however, a group of three category C sycamore (G001) are shown to be removed which lie within the eastern portion of the site. The parking area also makes a limited incursion into the Root Protection Area (RPA) of existing trees to the west.
- 6.5 Externally, windows are proposed in both side elevations of the former pub building. The existing front entrance would be retained, and another entrance formed by converting an existing window to a door. Openings overlooking the internal courtyard would be altered and rooflights inserted into the roof slope of the rear range of outbuildings looking north. The existing modern porch and glazed lean-to would be removed from within the internal courtyard. Consent is also sought to demolish part of the rear range and build a longer and wider building in its place.
- 6.6 The application is accompanied by the following documents:
- Site Location Plan (001)
  - Existing Site Plan (6062\_P02)
  - Existing Ground and First Floor Plans- Listed Building (6062\_P03)
  - Existing Elevations (6062-P04)
  - Proposed Site Plan (6062\_SK19)
  - Proposed Site Block Plan (6062\_P05 Rev E)
  - Proposed Ground and First Floor Plans– Listed Building (6062\_P06 Rev E)
  - Proposed Elevations- Listed Building (6062\_P07 Rev C)



- Proposed Plans and Elevations- New Build Units (6062\_P08 Rev F)
- Tree Survey Drawing (8886-D-AIA)
- Design and Access Statement
- Heritage Statement
- Arboricultural Report (Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement and Tree Protection Plan – June 2021)
- Preliminary Ecological Appraisal Report (November 2021)
- Further Bat Survey Report (August 2022)
- Biodiversity Validation Checklist Questionnaire
- Marketing Statement (Fleurets – September 2019)

6.7 The application has been revised on two occasions (September 2022 and February 2023) in response to Officer concerns regarding the design of the scheme and heritage harm.

## 7. SUMMARY OF CONSULTATION RESPONSES

### 7.1 Anglian Water

7.1.1 No objections, confirm that the Applicant should check for Anglian Water assets which cross or are in close proximity to the site.

### 7.2 Essex Fire and Rescue

7.2.1 No objections. Their standard response provides commentary on access, building regulations and sprinkler systems.

### 7.3 National Grid

7.3.1 No comments received (deadline for comments expired).

### 7.4 BDC Building Control

7.4.1 Do not object. Suggest the Applicant undertakes their pre-application check in order to ensure that they have sufficiently accounted for building regulations requirements, such as provision for means of escape in the event of fire.

### 7.5 BDC Environmental Health

7.5.1 No objection. Confirm they are satisfied that there have not been any potentially contaminative historic uses on or adjacent to the site. Note that sound proofing works are not required to prevent significant noise from external or environmental noise sources. Request conditions controlling the hours of construction activities and preventing the burning of waste on the site.

7.6 BDC Landscape Services

7.6.1 Do not object based on the proposed tree removal and level of impact on the tree canopy cover, subject to a suitable Tree Protection Plan being approved in place before development commences.

7.7 BDC Waste Services

7.7.1 Do not object but confirm that the access will need to be built to highway standard and maintained as such if the waste collection vehicle is to come onto the site to collect the waste. If the refuse vehicle cannot enter the site then a waste presentation area will need to be provided for Units 4 and 5.

7.8 BDC Historic Buildings Consultant

**Consultation Response dated 9th December 2021:**

7.8.1 The Castle Pub is a Grade II listed building within the Earls Colne Conservation Area (list entry number: 1170187). Timber framed, the building is believed to date from the fourteenth century with later additions and modifications, including a nineteenth century brick range to the rear and twentieth century rear porch. Currently disused, the building is on the village's High Street and has a large garden/car park to the rear, accessible via gaps between the building and its immediate neighbours.

7.8.2 The change of use of the building to residential from a public house can be supported if the resultant changes will not affect the special interest of the building in such a way to be considered harmful to its significance. Originally built as a dwelling, 77 High Street has been in use as a public house for some time, however it is the local authority's responsibility to assess if the change of use is considered acceptable in principle, despite the impact this could have upon the High Street. In my opinion, the justification provided for the change of use is low, with very limited evidence provided regarding the viability of the building for business use.

7.8.3 Notwithstanding the above, I am unable to support the application in its current form. The removal of unsympathetic alterations such as the rear porch will be of benefit to the special interest of the building, however the proposed new dwellings, internal alterations and subdivision of the site will, I feel, result in a level of less than substantial harm to the listed building and the Conservation Area. It is the local authority's role to determine if this harm is outweighed by the public benefit of the scheme (adding five new homes to the village), as per section 202 of the NPPF. Consideration must also be given to sections 199 and 197(a) of the NPPF, which state that 'great weight should be given to the asset's conservation' and 'local planning authorities should take account of (a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation' respectively.

- 7.8.4 The key issues with the proposals are itemised below and should be addressed before I would be able to support the proposals to convert 77 High Street to residential use, or the construction of dwellings within its grounds.

*Internal alterations/subdivision of the core of the listed building*

- 7.8.5 The proposed internal subdivision between units one and two responds to the floorplan of the building positively, locating the staircases to the rear of the main range in an area of the building which has already been subject to change and intervention. This means the intervention to historic fabric for the creation of the staircases between ground and first floor has been kept to a minimum. However, no plans have been submitted regarding the attic space. The staircase to the attic space is described as seventeenth or eighteenth century within the supporting heritage statement, yet it is unclear from the 'proposed' floor plan if this attic staircase will, or could, be preserved, if the new staircases between ground and first floor are introduced as proposed. Similarly, the plans do not indicate how the loft space or cellars will be divided between houses one and two. Fire and noise breaks will be necessary, details of which should have been provided.
- 7.8.6 Furthermore, the existing plans indicate that much of the rear of the building, in the cross wing and the attached outbuildings, has not been surveyed. This is unacceptable, as there may be features within these areas which contribute to the significance of the building. Without provision of this information, I am unable to assess the acceptability of the proposed changes to this section of the listed building.
- 7.8.7 The opening of blocked windows and creation of new openings at first floor level has also been inadequately detailed. The reopening of a window on elevation B, in bedroom four of unit one, may be acceptable, if details of the estimated date of the infill and nature of material that will be removed is provided. It appears that the fenestration of the building was altered in the eighteenth/nineteenth century when sash windows were introduced. The blocking of the window may have been part of this phase, thus could contribute to the significance of the building, as an indicator of its development. Similarly, I have concerns regarding the proposed window to bedroom two, in unit two. It is unclear where the window will be located, what fabric will be taken out for the opening and how this will interfere with the architectural quality of the room. In my opinion the existing appearance of the blocked window is unlikely to be as easily appreciated if a new opening is added in next to it. The addition of the hallway means this window is needed in the bedroom however insufficient justification has been provided for this, and the intervention could perhaps be avoided by swapping the position of the proposed bathroom and bedroom two or the omission of a hallway.
- 7.8.8 The conversion of a door to a window at first floor level is acceptable, as is the dropping of the sill on the front elevation to create a front door to

dwelling two, subject to details regarding the proposed new windows and doors (material, glazing profile, framing etc).

- 7.8.9 It is unclear if the addition of new services for the creation of bathrooms at first floor level is appropriate; no structural survey has been included to suggest the building's frame is capable of taking this additional load, nor has information been provided regarding new pipe runs.

*Demolition of the rear outbuilding and conversion of the rear range*

- 7.8.10 As per above, it is unacceptable that areas of the building that have not been surveyed or assessed by the heritage specialist are proposed for conversion/demolition. This survey and assessment must occur before I am able to comment on the suitability of the proposals. As a general comment, however, I am concerned regarding the appearance of door D, the sidelights, proposed carriage archways and re-orientation of this section of the building which lack authenticity. The two brick outbuildings (perpendicular to the main range and attached to the cross wing) are described as nineteenth century in date, with the two-storey section thought to pre-date the single storey element suggesting there is value in retention of their fabric and appearance.

*Construction of new dwellings to the rear*

- 7.8.11 The design and scale of the proposed dwellings is concerning and lacks adequate reference to the listed building or the Conservation Area, failing to preserve or enhance the special interest of these designated assets. The glazed gables to the rear lack reference to local character, whilst the massing and footprint of the buildings will occupy a significant portion of the pub's rear garden, creating a cramped layout to the site. The proposed side elevation shows the design of the dwellings is very convoluted and squat, with building two in particular appearing too wide at ground level to create an appropriately pitched dwelling which is not excessively tall. Site sections would be beneficial to understand the relationship between the new dwellings and the listed building.

*Landscaping*

- 7.8.12 Limited details regarding the landscaping have been provided, however the proposed subdivision of the listed building's courtyard into gardens, including the necessary partitions, will have an impact upon the building's setting. I am concerned that the introduction of a high fence in this area would not be appropriate, and further information must be given regarding all new boundary walls and surfacing. Retention of the courtyard (formed between the rear of the pub and its outbuildings) as shared space would best preserve the building's setting and limit the visual impact of the building's subdivision.
- 7.8.13 To conclude, the proposal cannot be supported at this stage. From the descriptions above, it is apparent that the application for listed building

consent lacks the required information to fully understand the impact of the proposals upon the building's significance. Section 194 of the NPPF and section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990 should thus also be a consideration for the local authority when determining this application, in addition to the sections outlined on the first page of this letter.

### **Consultation Response dated 3rd October 2022**

- 7.8.14 The revised plans have not overcome my previous concerns, instead proposing to add additional features to the building which are not considered appropriate. The proposed balcony on elevation C, for example, is incongruous and lacks reference to the building's history and function, adding an overtly domestic element to a functional, ancillary outbuilding/stable block. Additional information has not been provided regarding the proposed new openings on the listed building, nor has detail been provided regarding the attic spaces, as previously requested.
- 7.8.15 The omission of the dormer windows on the rear range, comparative to the previously submitted plans, is positive, however this change is minor and does not resolve concerns raised previously. Similarly, I remain concerned regarding the proposed addition of two new dwellings to the rear of the site, due to the scale, design and massing of the proposed dwellings. The subdivision of the listed building's courtyard also remains a cause for concern.
- 7.8.16 Therefore, it is my professional opinion that the proposed alterations and new dwellings will result in less than substantial harm to the listed building. Section 202 of the NPPF and section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 should be considered by the local authority when determining the applications.

### **Consultation Response dated 13th April 2023**

- 7.8.17 I remain unable to support these applications. Additional information has not been provided regarding the proposed new openings on the listed building, nor has detail been provided regarding the attic spaces and rear range, as previously requested. The subdivision of the listed building's courtyard also remains a cause for concern.
- 7.8.18 The revision to the height of the proposed new dwellings is welcomed, as is the redesign of elevation C on the main building, comparative to the designs submitted in September 2022. However, the footprint of the new dwellings and the space they will occupy, remains incredibly similar and as such the crowding effect, and harm to the building's setting remains.
- 7.8.19 Therefore, it is my professional opinion that the proposed alterations and new dwellings will result in less than substantial harm to the listed building. Section 202 of the NPPF and section 16(2) of the Planning (Listed

Buildings and Conservation Areas) Act 1990 should be considered by the local authority when determining the applications.

7.9 ECC Archaeology

7.9.1 No objection, subject to conditions securing a programme of archaeological investigations (trial trenching), recording and post-excavation assessment.

7.10 ECC Ecology

7.10.1 Initially objected, but following submission of further bat surveys, confirmed they raise no objection provided the following are secured: 1) an appropriate financial contribution towards visitor management measures for European protected sites; and 2) the ecological enhancement measures proposed.

7.11 ECC Highway Authority

7.11.1 Raise no objections subject to conditions which would result in the inward opening access gates being relocated so they are set back a minimum of 6m from the footway and for the provision of Residential Travel Information Packs per dwelling.

8. PARISH / TOWN COUNCIL

8.1 Earls Colne Parish Council

*The Parish Council commented on 16<sup>th</sup> December 2021 and 3<sup>rd</sup> October 2022 as follows:*

8.1.1 “Earls Colne Parish Council have examined the documents included within the above application and comment as follows.

The plans as submitted would indicate the following issues:

**Overlooking:** there would be an adverse impact on neighbouring properties creating issues with privacy due to the additional dwellinghouses suggested for the car parking area.

**Overdevelopment:** there would be an adverse impact on neighbouring properties due to the number of properties being suggested for what is, already, a full residential area.

**Gating the access:** The access from the High Street should not be gated as this would cause problems with vehicles backing up along the High Street for access as well as causing a potential accident black spot along what is a very busy road.

**Parking:** there would be an issue with the number of parking spaces allowed within the plans for the number of dwellings, and this would have

an adverse affect on neighbouring properties and the Village as a whole when the parking overflows onto what is already a busy High Street. There should be parking provision for visitors as well as residents due to the lack of on street provision.

The Parish Council also feel that the change of use of the property to residential would mean the loss of another business opportunity for what has always been a vibrant High Street, in a Village that is growing with current development plans, not contracting. The Parish Council question the claim that the property was properly marketed at the time of the Applicant's purchase. There is evidence, in he submitted paperwork, that other parties were interested in buying the Pub and the Applicant admits that the building he purchased did not fit his required business profile, thus proving that there was never an intention to re-open it as a Pub or Restaurant.

For these reasons we would have to object to these applications.

*The Parish Council commented on 16<sup>th</sup> March 2023 as follows:*

- 8.1.2 At the Parish Council Meeting last night it was decided unanimously that we would reiterate that the issues raised in our original letter dated 16<sup>th</sup> December 2021 (copy attached) still stand.

## 9. REPRESENTATIONS

- 9.1 A total of 21 letters of objection and two letters of support have been received. The points made have been summarised below and for the avoidance of doubt no objections were withdrawn in response to the three consultations undertaken:

- § Loss of a viable business use which was successful until it was closed upon acquisition by the Applicant.
- § Lack of interest in purchasing pub has not been demonstrated.
- § Village is large enough to sustain three pubs.
- § Potential for restaurant use not fully explored.
- § Loss of village facility capable of contributing to the vitality of the High Street.
- § Need to retain employment use to balance new residential development consented in recent years.
- § Village does not need any more housing.
- § Loss of trees which contribute to amenity of Conservation Area and provide natural screening between properties.
- § Loss of habitat/biodiversity caused by loss of trees.
- § Challenge to accuracy of Ecological Survey which did not find evidence of bat activity.
- § Loss of bat foraging habitat caused by new dwellings.
- § Concern that existing services crossing the site have not been properly identified.
- § Concern regarding interaction of tree roots with services.

- § Heritage harm caused by proposals externally and internally.
- § Visual harm caused by incongruous new dwellings.
- § Harm to character and appearance of Conservation Area.
- § Unsustainable housing.
- § Pressure on local roads, services and facilities.
- § Cramped, cluttered, overdevelopment.
- § Loss of privacy and overbearing impact upon 92-94 High Street.
- § Loss of privacy to 67-69, 79-81 and 92-94 High Street.
- § Loss of light to 67-69 High Street.
- § 67-69 High Street, listed with little insulation, will be subject to excessive noise and fumes as a result of car parking relocation.
- § Insufficient parking provision, including visitor parking.
- § Disruption and loss of amenity caused by construction activities.
- § Additional traffic exacerbating existing issues on High Street.
- § Driveway too narrow and will disrupt neighbours right of way.
- § Lack of visibility from the access.
- § Query the environmental credentials of the development and how the removal and recycling of waste will operate.
- § Impact of landscaping layout upon waste arrangements for neighbouring properties who share the side access road.

9.2 A number of concerns have been raised which are not material to the consideration of a planning application, for example querying the credentials/motives of the Applicant. Other concerns, such private ownership/access rights and effects on structural stability of neighbouring properties are covered by existing alternative legislation and do not fall within the consideration of the planning regime.

## 10. PRINCIPLE OF DEVELOPMENT

### 10.1 National Planning Policy Framework (NPPF)

10.1.1 As set out in Paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives: economic; social; and environmental; which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

10.1.2 Paragraph 9 of the NPPF outlines that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area. In addition, paragraph 38 of the NPPF prescribes that local planning authorities should approach decisions on proposed development in a positive and creative way and that decision makers at every level should seek to approve applications for sustainable development where possible.



- 10.1.3 Paragraph 12 of the NPPF sets out that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. In addition, paragraph 47 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 10.1.4 The NPPF underlines the Government's objective of significantly boosting the supply of homes. In this regard, Paragraph 60 of the NPPF highlights the importance of ensuring that there is a sufficient amount and variety of land that can come forward where it is needed, that specific housing requirements are met, and that land with permission is developed without unnecessary delay. Paragraph 120 c) requires that planning decisions give substantial weight to the value of using suitable brownfield land within settlements for homes. Paragraph 74 of the NPPF outlines that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against (in the case of Braintree District) our 'local housing need' plus the relevant buffer.
- 10.1.5 In this regard, and in considering the overall planning balance as to whether the proposed development subject to this application constitutes sustainable development, an important material consideration in this case is whether the Council can robustly demonstrate a Five Year Housing Land Supply. This will affect whether Paragraph 11 of the NPPF is engaged and consequently the weight that can be attributed to the Development Plan (see below).
- 10.2 Five Year Housing Land Supply
- 10.2.1 The Council has an up-to-date Local Plan which has an approved minimum housing target of 716 new homes per year in the District between 2013 and 2033.
- 10.2.2 To this annual supply the Council must add the backlog which it has not delivered at that level since the start of the Plan period. This figure is recalculated each year and as of April 2022 stands at 1,169 across the Five Year Housing Land Supply.
- 10.2.3 The Council must also apply a buffer to the housing land supply based on the results of the Housing Delivery Test. In the latest results published on the 14th January 2022, the Council had delivered 125% of the homes required. This means that the Council is required to apply the lowest level of buffer at 5%.
- 10.2.4 Taking the above into account, the Council's latest Five Year Housing Land Supply position for 2022-2027 shows a supply of 4.86 years. This position is marginal and with a number of strategic sites starting to deliver homes alongside other permissions, that situation is likely to change.

- 10.2.5 As the Council cannot demonstrate the required Five Year Housing Land Supply, the ‘tilted balance’ pursuant to Paragraph 11d) of the NPPF is engaged unless the application of policies in the Framework which protect assets of particular importance (such designated heritage assets; i.e. listed buildings and conservation areas) provides a clear reason for refusing the development proposed.
- 10.2.6 Furthermore, whilst the lack of a Five Year Housing Land Supply means that the most important Development Plan policies relevant to the provision of housing are out-of-date, this does not mean that those Development Plan policies, or indeed others which are most important for determining the application, should be completely disregarded. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies.
- 10.3 The Development Plan
- 10.3.1 Currently the Council’s statutory Development Plan consists of the Braintree District Local Plan 2013-2033 (Adopted July 2022).
- 10.3.2 Policy SP1 of the Adopted Local Plan states that when considering development proposals, the Local Planning Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.
- 10.3.3 Policy SP3 of the Adopted Local Plan sets out the special strategy for North Essex and explains that existing settlements will be the focus for additional growth and that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. Section 2 of the document classifies Earls Colne as a Key Service Village; by definition, Key Service Villages have the ability to meet the day to day needs of the communities they serve.
- 10.3.4 Policy LPP1 of the Adopted Local Plan sets an overarchingly permissive approach towards development proposals for sites which lie within development boundaries, subject to a proposal satisfying amenity, design, environmental and highway criteria and where development can take place without adverse detriment to the existing character and historic interest of the settlement.

## 11. SITE ASSESSMENT

### 11.1 Change of Use

- 11.1.1 Paragraph 84 of the NPPF requires planning decisions to enable the retention and development of accessible local services and community facilities including public houses. Paragraph 93 of the NPPF states that planning decisions should guard against the unnecessary loss of valued facilities and services.

- 11.1.2 Policy LPP61 of the Adopted Local Plan identifies Public Houses as 'community facilities' and seeks to afford them protection by requiring a marketing and viability appraisal for applications for the change of use or loss of community facilities. The policy requires the property to be marketed for at least 12 months and for the documentation submitted to be verified (at the Applicant's cost) by an independent viability advisor. Only if it has been demonstrated that the facility is unviable and there is little or no prospect of it being viable in the future, and all other reasonable options for retaining the facility have been considered, should permission be granted.
- 11.1.3 Policy LPP9 of the Adopted Local Plan does not rule out new residential development in Local Centres but states that they will be protected from inappropriate development and enhanced to provide small-scale shops, services, and community facilities for local residents.
- 11.1.4 Paragraph 202 of the NPPF states that, where a development proposal leads to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 11.1.5 The single page letter submitted from Fleurets explains that they were instructed as an Estate Agent to market the property in 2017. It is not expressly clear how long the property was on the market, but it appears to be under a year and within that time a great deal of interest in purchase of the property was recorded; there were 16 viewings with six offers received. Eventually the Applicant was successful, following all potential buyers being invited by the Agent to compete by making their 'best and final offer'.
- 11.1.6 Since purchasing the property the pub was closed and the Applicant has not attempted to run it as a going concern. Consequently, the Applicant is unable to provide any financial information which demonstrates it is unviable. The Applicant argues that the property is too small to support an 'industrial' scale pub/restaurant use, but the marketing proves there was plenty of interest in the property, which is not likely to have been the case if it were so obviously unviable. Outside of this, the Applicant has not explored any other options for keeping the facility open.
- 11.1.7 It is fair to say that Earls Colne has other pubs, bars, restaurants, and hotels within the village, which one would expect for a thriving settlement of this size. The loss of the pub would not therefore significantly reduce the community's ability to meet its day-to-day needs, but the level of objection on file does suggest the facility is valued by the local community. Its loss is fundamentally unnecessary and, in line with both national and local policy, should therefore be guarded against. Harm arises from conflict with the aforementioned policies in this regard, most notably from Policy LPP61 of the Adopted Local Plan whose requirements go beyond those of the NPPF.
- 11.1.8 As the pub is a listed building, the NPPF requires LPAs to consider whether additional public benefits might arise because the change of use proposed is the optimum solution for conservation of the heritage asset. In this case,

the existing pub use would be the optimum use because it would result in the least amount of intervention into the existing fabric and setting of the listed building. It cannot therefore be argued that, despite the pub having historically been in residential use in its past, that this use is 'optimum' for its conservation, or that it represents the only 'viable' use available (the pub use still appearing to be viable). The proposal does not therefore benefit from any additional 'boost' when this issue is considered.

## 11.2 Heritage Impact

- 11.2.1 Policy SP7 of the Adopted Local Plan requires that new development protects and enhances assets of historical value. Policy LPP47 of the Adopted Local Plan requires that, to protect and enhance the historic environment, all development must respect and respond to local context. Policy LPP52 of the Adopted Local Plan requires that designs shall be sensitive to the need to conserve and enhance local features of architectural, historic and landscape importance, particularly within Conservation Areas and in proximity to heritage assets.
- 11.2.2 Policy LPP53 of the Adopted Local Plan states that the Council will encourage the preservation and enhancement of the character and appearance of Conservation Areas and requires building materials to be of a high quality and appropriate to the local context. Policy LPP57 of the Adopted Local Plan states that the Council will seek to preserve and enhance the settings of heritage assets by appropriate control over the development, design, and use of adjoining land.
- 11.2.3 Policy LPP58 of the Adopted Local Plan states that consent for the partial demolition of a listed building will only be granted in the most exceptional circumstances subject to five criteria, however the policy does not make the critical distinction between the presence of historic elements which contribute to a listed building's significance and more modern elements which may detract from it.
- 11.2.4 Paragraph 194 of the NPPF states that, in determining applications, LPA's should require the Applicant to describe the significance of any heritage asset affected and that the level of detail should be proportionate to the asset's and no more than is sufficient to understand the potential impact of the proposal upon their significance.
- 11.2.5 Paragraph 195 of the NPPF describes how, once in possession of this information, LPAs can take account of the available evidence and expertise to consider the impact of the proposal upon a heritage asset and ensure that any conflict between the heritage asset's conservation and any aspect of the proposal has been minimised. Paragraph 196 advises LPA's not to allow evidence of neglect or damage of a heritage asset to influence their decision.
- 11.2.6 Paragraph 199 of the NPPF advises that, when considering the impact of a proposed development upon the significance of a designated heritage

asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be), irrespective of the level of harm to its significance. Paragraph 202 of the NPPF states that, where a proposal will lead to 'less than substantial' harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.'

- 11.2.7 The Local Planning Authority has a duty under Section 66 (1) and Section 72 (1) of the Planning (Listed Buildings & Conservation Areas) Act 1990. When considering whether to grant planning permission for development which affects a Conservation Area, listed building or its setting, it must pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area and have special regard to the desirability of preserving the listed building or its setting, or any features of special architectural or historic interest which it possesses.
- 11.2.8 The Castle Public House is a Grade II listed building originally built in the 14th century as a Hall House. The western cross wing dates from this period, but the eastern cross wing was rebuilt and extended to the rear in the mid-16th century. The middle range dates from circa 1600.
- 11.2.9 The Heritage Statement submitted contains map regression which demonstrates the property is shown on the 1598 Survey Map of Israel Amyce. By 1835 the Tithe map shows a rear range to be present and a curtilage similar to the present day, with the property likely separated into two dwellings at that point: a dwelling in the front and another in the eastern cross wing and outbuildings behind. The building became a pub in the late 19th century until 2019 when it was closed upon purchase by the Applicant.
- 11.2.10 The building analysis provided is incomplete; critical areas of the eastern cross wing and outbuildings to the rear remain 'unsurveyed'. Whilst it is accepted that much of the rear range dates from the late 19th century and the part to be demolished could be newer, there is evidence of older brickwork in some of the unsurveyed areas which could be inconsistent with this analysis.
- 11.2.11 Information is also absent to allow a full understanding of the significance of fabric proposed to be removed in order to reopen the window in the eastern elevation and the precise positioning and justification for the new window in the western elevation remains unclear. Without the above information it is not possible to understand whether features of interest exist in these areas and assess any potential harm caused by their removal or alteration.
- 11.2.12 The Historic Buildings Consultant considers the removal of the modern, glazed corridor and rear porch to be of benefit to the special interest of the building. The alterations to the fenestration on the front elevation of the building are also generally acceptable, subject to detail.
- 11.2.13 The reorientation of the outbuilding to face north and design of the openings, including under-croft parking in the existing two storey section

(‘Elevation D’ on the plans) are particularly damaging to the authenticity of the range. The detailing to the carriage arches is poor and ill-fitting to the style of the existing buildings. Despite the lack of information, it is clear that the demolition of part of the historic rear range has not been adequately justified and would give rise to some level of harm, given it currently makes some positive contribution to the significance of the heritage asset. The siting and design of proposed rooflights, which are a new feature following revisions, has not been adequately detailed as this area has not been surveyed.

- 11.2.14 At present, superficially, the rear yard to the pub has a rather unkempt and neglected appearance, however if a business had bought the property to run it as a going concern, then investment might have been forthcoming to improve these elements. The dilapidated condition of the grounds is not therefore a given. More fundamentally, in spite of this, when viewed from the High Street, the yard retains its non-built-up character and the trees provide a verdant backdrop beyond. Despite outbuildings having historically featured transiently in the map regression, the sense of undeveloped space provided by this land is generally consistent with the history of heritage asset and contributes positively to the character and appearance of the Conservation Area.
- 11.2.15 Externally the sub-division of the curtilage within the internal courtyard and the inevitable addition of boundary walls/fences and domestic paraphernalia would be harmful to the setting of the listed building, as is the severance of the curtilage to form the two new dwellings. For reasons articulated elsewhere in this report, the design, massing and scale of the new buildings give rise to a cramped layout that is also harmful to the setting of the building and the character and appearance of the Conservation Area.
- 11.2.16 The loss of the pub use would not give rise to heritage harm in principle, but equally residential use is not the only option that could be consistent with the heritage assets conservation. Conversion to residential use would inevitably require alterations which cause harm to the heritage asset, but a clear or convincing justification for this particular level of harm is absent, particularly given it could have obviously been mitigated further through good design. Without sufficient information in other areas, it is also not possible to know whether other conflicts could have been minimised or avoided.
- 11.2.17 The revisions to the submission, which include removal of dormer windows in favour of rooflights and reduction in height of the new dwellings, their redesign and re-siting, has still not produced a design which relates well to its surroundings (see Section 12 below for further detail of this). In short whilst the submitted proposals are marginally improved in a few respects, in other areas the revisions give rise to new features which are equally problematic.

11.2.18 In conclusion, the proposal would give rise to 'less than substantial harm' to the setting of the listed building and the character and appearance of the Earls Colne Conservation Area. It is arguable whether the 'public benefits' arising from the provision of five dwellings are in fact such when the loss of the pub is considered and the associated negative impact this would have upon the community. As such, having given this harm considerable importance and weight, it is not considered that that the public benefits would outweigh this harm and therefore the heritage balance has not been satisfied, contrary to the aforementioned local and national policies.

11.3 Design, Appearance and Impact upon the Character and Appearance of the Area

11.3.1 Paragraph 130 of the NPPF requires among other things that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting. Paragraph 134 of the NPPF advises that development which is not well designed should be refused.

11.3.2 Policy SP7 of the Adopted Local Plan requires that new development responds positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy LPP35 requires the density and massing of residential development to relate to the character of the site and its immediate surroundings, including the trees on the site.

11.3.3 Policy LPP52 of the Adopted Local Plan establishes that the Council will seek a high standard of layout and design in all developments and that the scale, layout, height and massing of buildings and overall elevation design should reflect or enhance the area's local distinctiveness and shall be in harmony with the character and appearance of the surrounding area.

11.3.4 The housing mix proposed does not align exactly with the 2015 SHMAA but taking account of the low number of dwellings proposed, together with the sensitivity and constraints of the site, Officers would be prepared to accept that 'material considerations indicate otherwise' in this instance. The net density of the site is 35dph; which could generally be appropriate in a location such as this, were it not for the special characteristics of this site, notably its heritage interest.

11.3.5 The property is Listed, in proximity to several other Listed Buildings, and is located within the Conservation Area; these designations are indicative of the consistent quality of its surroundings and their prevailingly traditional character. The historic development on the High Street has a strong linear pattern, which remains dominant because development behind has largely either observed sufficient set-back or remained harmonious in design and subordinate in scale.

11.3.6 The Earls Colne Village Design Statement (2017) is an 'other material consideration' and this defines The Castle as lying within the 'Historic Core' Character Area which includes the High Street and The Green. It provides

a commentary on all development in the High Street, including newer development such as Squires Court behind, but it does not consistently offer value judgements through specific analysis of the positive or negative features of every property it lists.

- 11.3.7 Instead, the Village Design Statement makes specific recommendations in relation to the area generally and in this it notes that off-street infill might in future risk detracting from the overall appearance of the area, advising that new properties conform to the existing consistent architectural themes that have been identified in the Statement; these include the use of render, slate, red peg-tiles, brick, windows of small square-pane design and chimneys. The Statement suggests the use of part timber weatherboarding is an anomaly rather than the norm.
- 11.3.8 Revisions to the application now propose two detached properties, rather than conjoining them to create a 'terrace' effect. The orientation of the detached dwellings east-west does not follow the lead of projections to properties either side such as Nos. 75, 79-81 or even Tapestry Court further afield which tend to extend north-south. Overall, the detached layout it is not particularly sympathetic to the existing pattern of development in the area.
- 11.3.9 The footprint of the dwellings is considered excessive, pushing the car parking to the front where the hard landscaping dominates the setting of the new dwellings and the listed building. The waste collection arrangements for both the new and existing properties remain unclear. In the north, the trees are removed or squeezed to provide a garden space which remains compromised in spite of this. The new dwellings would have a crowding effect upon the listed building, and their density and massing would not relate well to the character of the site or its immediate surroundings.
- 11.3.10 The new dwellings are proposed to be constructed of traditional materials: red brick with timber boarding above, clay plain tile roofs, painted timber doors and windows. However, the form of the dwellings is overwhelmingly suburban, and their generic appearance fails to speak to their historic surroundings or reflect and enhance local distinctiveness. Their chalet style is contrived and over-complicated. The timber half boarding, busy roof form, scale of the side wings, large openings, modern fenestration pattern and lack of chimneys are all examples of their incongruity and lack of harmony with their surroundings. The proposed dwellings are generally bland, lacking in aesthetic detail and have not sought to replicate or interpret the more positive aspects of the local area.
- 11.3.11 As set out in the Heritage section above, the conversion of the existing building is equally unacceptable on account of its unsympathetic treatment of the existing rear range. In short, the proposals represent a poor standard of layout and design, they would not respond positively to local character and context or preserve and enhance the quality of their surroundings. The mass, bulk, scale, form, materials, detailing, and layout of the new dwellings would cause material adverse detriment to the existing character



and historic interest of the settlement and therefore would be contrary to the aforementioned policies.

11.4. Trees

11.4.1 Paragraph 131 of the NPPF states that trees make an important contribution to the character and quality of urban environments and advises that existing trees should be retained wherever possible. Paragraph 174(b) of the NPPF requires that decisions recognise the wider benefits of trees and woodland. Policy LPP65 of the Adopted Local Plan states that the quality of trees is a material consideration and that, where trees are to be retained, suitable distances should be provided to ensure their continued wellbeing.

11.4.2 The submitted Tree Survey and Arboricultural Report identifies a number of trees in the vicinity; a handful of which lie on the Applicant's land. Works are proposed to all the trees which lie on, or overhang, the site and a summary of these is provided below:

ID No.	Species	Location	Intervention
G001	Cat.C2 3no.Sycamore 1no. Spruce & understory trees below	Site	Fell 3no. trees, hand removal of existing hard standing, and crown lift remaining to 2.5m to enable garden
G002	Cat B2 Deodar Cedar, Purple Norway Maple, English Yew	67-69 High St	Crown lift to 3m to provide car parking and no dig construction within RPA
T001	Cat. C1 Ash	67-69 High St	Crown lift to 2.5m to enable garden
T002	Cat. B1 Sycamore	67-69 High St	Crown lift to 2.5m to enable garden
T003	Cat. C3 Ash	67-69 High St	Crown reduction to provide new dwelling
T004	Cat. C1 Sycamore	Site	Linear route pruning to provide car parking

11.4.3 As all of the above trees lie within the Conservation Area prior consent is required for their felling or work to them and the effect of granting planning permission is to also grant consent for these works. The Council's Arboricultural and Landscape Officer raises no objections to the proposals, accepting that the loss of the sycamores would be unavoidable to facilitate the development as shown, and that the long-term vitality and viability of the remaining trees will be sufficiently safeguarded if protected during the works.

11.4.4 It is not considered that the removal of trees would provide sufficient justification for refusal of the application in its own right, however, the pressure on the trees is necessary as a function of the mix and density

proposed and is symptomatic of overdevelopment of the site. The loss of the sycamores, which presently contribute to the verdant backdrop of trees appreciated from the High Street and the side road to the east, would cause a low level of harm to the character and appearance of the Conservation Area. This harm forms part of the cumulative impact of the new dwellings and has been accounted for in the heritage and wider planning balance undertaken for this application.

## 11.5 Highway Considerations

- 11.5.1 NPPF Paragraph 105 states that the planning system should actively manage patterns of growth; and that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health.
- 11.5.2 Paragraph 110 of the NPPF requires that safe and suitable access to the site can be achieved for all users. Paragraph 111 advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact upon highway safety, or the residual cumulative impacts on the road network would be severe.
- 11.5.3 Policy LPP42 of the Adopted Local Plan requires provision of secure cycle parking where appropriate. Policy LPP45 of the Adopted Local Plan requires parking provision to accord with Essex Vehicle Parking Standards.
- 11.5.4 Currently the Public House benefits from 18 car parking spaces for its patrons. However, it appeared at the time of the Officer's site visit that the car park continues to be used by members of the public despite the pub being closed. In total 10no. car spaces are proposed which would be less than the existing and therefore it can be assumed that the change would represent a reduction in vehicle movements in the vicinity, particularly when the likely frequency of comings and goings to an active pub are considered.
- 11.5.5 Unit 1 would sit above its car parking space and that of Unit 2. A further space for Unit 2 is proposed in the newly constructed rear range which would also house two spaces for Unit 3. New builds Unit 4 would have two spaces provided in a tandem arrangement, whilst Unit 5 would have two parallel spaces. One visitor space is provided in the hard standing area to the east.
- 11.5.6 The table below demonstrates that car parking provision accords with the Essex Parking Standards with the exception of visitor spaces:

Unit	Size	ECC Requirement	Provision
1	4 bed	2 spaces	2 spaces
2	3 bed	2 spaces	2 spaces
3	1 bed	1 space	1 space
4	3 bed	2 spaces	2 spaces
5	4 bed	2 spaces	2 spaces
Visitor		2 spaces	1 space

- 11.5.7 The Parking Standards advise that there are 0.25 visitor spaces per dwelling and that the resultant total is then *rounded up* to the nearest number; in this case  $5 \times 0.25 = 1.25$ , which rounds up to 2 spaces. The LPA would need to demonstrate there would be tangible adverse impacts of diverging from this guidance if it were to refuse the proposal on highway grounds.
- 11.5.8 The Highway Authority raises no objections to the proposal considering both the resident/visitor vehicle and cycle parking to be adequate for the location given the site is within a local centre and there are also unallocated parking bays and on-street parking available immediately adjacent on the High Street. Given the reduction in intensity of use, it is not considered that there is justification to conclude that the proposal would significantly affect the road network or that the parking is objectionable from the point of view of highway safety. It is however symptomatic again of the overdevelopment of the site that the required number of parking spaces cannot be provided.
- 11.5.9 The Highway Authority have requested a condition that the access gates open inwards and are set back at least 6m from the carriageway. The current layout does not show sufficient set back, but Officers consider this could be accommodated in the layout. The neighbouring properties have raised concerns they have a right to use the access and that the gates may impede this. If their access were prevented, they would have the right to take legal action; this would be a civil matter between the two parties that is covered by other legislation therefore is not a material consideration in this case.
- 11.6 Ecology
- 11.6.1 Paragraph 174(d) of the NPPF requires that proposals minimise their impacts on, and providing net gains for, biodiversity. Paragraph 180 requires that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused.
- 11.6.2 Policy LPP66 of the Adopted Local Plan states that, if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.

- 11.6.3 Policy LPP64 of the Adopted Local Plan requires that where there is a reasonable likelihood of protected or priority species being present on or immediately adjacent to the development site, the developer undertakes an ecological survey to demonstrate that an adequate mitigation plan is in place to ensure no harm or loss to such species.
- 11.6.4 The Applicant originally submitted a Preliminary Ecological Appraisal which confirmed that the presence of bats in the listed building. The Council's Ecologist initially objected, but their objection was withdrawn when additional emergence/re-entry surveys were undertaken to a suitable standard.
- 11.6.5 The submitted Bat Survey recorded two common pipistrelles and one brown long eared bat emerging from the building and supported the hypothesis that it provides a day roost for bats. No evidence of a maternity roost or other high value roost was found.
- 11.6.6 The Applicant will require a licence from Natural England to undertake the conversion and will only be able to do so under the supervision of a licensed ecologist. Mitigation such as provision of alternative roost sites for bats would be dealt with under the licence. It is not considered that the current layout would prevent a licence being granted or that the licence is likely to require changes to the layout. As such, the proposal is compliant with the above policies and the Council has fulfilled its statutory duties under the relevant legislation.
- 11.7 Habitat Regulations Assessment (HRA / RAMS)
- 11.7.1 In terms of the wider ecological context, the application site sits within the Zone of Influence of one or more of the following:
- § Blackwater Estuary Special Protection Area and Ramsar site;
  - § Dengie Special Protection Area and Ramsar site;
  - § Essex Estuaries Special Area of Conservation.
- 11.7.2 It is therefore necessary for the Council to complete an Appropriate Assessment under the Habitat Regulations to establish whether mitigation measures can be secured to prevent the development causing a likely significant adverse effect upon the integrity of these sites.
- 11.7.3 An Appropriate Assessment (Habitat Regulation Assessment Record) has been completed in accordance with Natural England's standard guidance. Subject to the proposed mitigation measures set out in the Council's Habitat Regulations Assessment being secured these mitigation measures would rule out the proposed development causing an adverse effect on the integrity of the above European Designated Sites.
- 11.7.4 The proposed mitigation measures would consist of the securing of a financial contribution per dwelling erected towards offsite visitor management measures at the above protected sites.

- 11.7.5 This financial contribution has been secured and the Applicant has made the required payment under S111 of the Local Government Act 1972.
- 11.8 Impact upon Neighbouring Residential Amenity
- 11.8.1 Paragraph 130 of the NPPF seeks to ensure good standards of amenity for existing and future users whilst Paragraph 185 seeks to ensure that new development is appropriate for its location taking into account the likely effects on living conditions including noise and light pollution.
- 11.8.2 Policy LPP35 of the Adopted Local Plan requires on-site amenity space to be provided in accordance with the adopted guidance, and for an appropriate standard of residential amenity to be provided for the occupants of residential development. It also requires all new development to be in accordance with the national technical housing standards, which Paragraph 4.012 explains includes the Described Internal Space Standards (NDSS).
- 11.8.3 Policy LPP52 of the Adopted Local Plan requires that nearby properties are not subjected to unacceptable impacts upon their privacy, overshadowing, loss of light or overbearing impact. Furthermore, it requires residential developments to provide a high standard of accommodation and amenity for all prospective occupants. It also requires the provision of outdoor amenity space be accessible, useable, and well-related to the development, having regard to the standards set out in the Essex Design Guide.
- 11.8.4 The Essex Design Guide requires that houses containing three bedrooms or above have at least 100sq.m of amenity space and suggests that 50sq.m is reasonable for one or two bedroom dwellings. Alternatively communal garden provision of 50sq.m minimum in this case is recommended for the converted houses.
- 11.8.5 New first floor windows are proposed in the outward facing flanks of the listed building on both sides. However, windows are already present in these flanks which look towards the neighbours. In the case of 75 High Street in the west, their neighbouring elevation already faces a public space. In the case of 79-81 High Street in the east, there are no first-floor windows in this elevation, which also faces the street. 92-94 High Street is on the opposite side of the street and no new windows are proposed in the front elevation of the converted building looking towards this property. The back-to-back distances between the new dwellings and neighbouring properties in the north is compliant with the separation required in the Essex Design Guide to protect the amenities of adjacent properties. In summary, there is no unacceptable level of overlooking or overshadowing of neighbouring properties.
- 11.8.6 In terms of the converted units, the bathroom window to Unit 3 (the studio flat above the rear range) would need to be obscure glazed and non-opening to protect the privacy of their neighbour's whose gardens are

situated below. The pattern of the window is currently not conducive to it being part-opened, but it serves a bathroom and five other windows/rooftlights would be available elsewhere in the flat to provide ventilation if needed.

- 11.8.7 Units 1 and 2 presently have amenity areas which are well below the stated provision in the Essex Design Guide and are not shared. Unit 2's garden is heavily enclosed on all sides so would receive little sun. Unit 1's garden is overlooked by the bedroom windows of Unit 2, one of which is full-length. The height of the dividing wall between the gardens is not given. There is in principle concern regarding the subdivision of the courtyard by a wall/fence and, due to constrained space, there would be no option for a hedge instead.
- 11.8.8 Further compromised living conditions are imposed upon Units 3 and 4; Unit 3 having to endure the noise and fumes of their neighbours' cars below and Unit 4 being sited close to and opposite the headlights and vehicle manoeuvrings of its neighbours in the converted dwellings. Both new dwellings main aspect is onto the shared parking area. All gardens are north facing with Unit 4's garden further compromised by the retained trees in the neighbours' garden which would render the space highly compromised in practice. The substandard provision for amenity space is contrary to policy and is symptomatic of a layout which is overly cramped and overdeveloped.
- 11.8.9 It is considered that the temporary construction activities associated with the proposal could be adequately controlled to prevent significant impact upon their neighbours. Whilst concerns have been raised regarding the structural stability of neighbouring listed property there is nothing to suggest these properties would be particularly vulnerable to structural harm, and it would be in the Applicant's interest to avoid any issues or legal action which could be taken by those affected. This is a civil matter covered by common law, including the Party Wall Act, therefore is not a material planning consideration in this case.

## 11.9 Archaeology

- 11.9.1 The site is located north of the High Street, which is thought to run along the course of a Roman Road. Nearby excavations have uncovered evidence from prehistoric and Roman periods. The c.12<sup>th</sup> Benedictine Priory lies to the east of the High Street and the application's heritage assessment includes map evidence which shows there have been buildings or structures to the rear of the building.
- 11.9.2 The Council's Archaeological Advisor considers there to be a high possibility of encountering below ground remains associated with domestic settlement since c.14<sup>th</sup> and possibly earlier. However, subject to trial trenching, investigation and recording it is considered that the proposal would comply with the requirements of Paragraph 205 of the NPPF and Policy LPP59 of the Adopted Local Plan.

## 12. PLANNING OBLIGATIONS

12.1 There are no planning obligations relevant to this application.

## 13. PLANNING BALANCE AND CONCLUSION

13.1.1 As set out within Paragraph 47 of the NPPF, planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In this case the site lies within the development boundary of Earls Colne but conflicts with LPP1 of the Adopted Local Plan on the basis that it would cause material adverse detriment to the existing character and historic interest of the settlement.

13.1.2 Whilst the Council is not able to demonstrate a five-year housing supply, the tilted balance is not engaged on account of the fact that the application of policies within the Framework that protect assets of particular importance provide a clear reason for refusing the development proposed.

13.1.3 The presumption in favour of sustainable development sits at the heart of the NPPF. As set out in Paragraph 8 of the NPPF, achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and needed to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- an economic objective (to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure);
- a social objective (to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being); and
- an environmental objective (to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy).

13.1.4 In this case, it is considered that pursuant to Paragraph 11d) (i) that the application of policies in the Framework provide a clear reason for refusing the proposed development. This is because there are adverse impacts in regard to designated heritage assets.

13.1.5 As set out above, Officers consider that the proposed development would result in less than substantial harm to designated heritage assets. In accordance with Paragraph 11d) (i) of the NPPF, where there are no relevant Development Plan policies, or the policies which are most important for determining the application are 'out of date', permission should be granted unless, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. In this case the identified heritage harm provides clear reason for refusing the application.

13.1.6 The 'tilted balance' pursuant to Paragraph 11d) (ii) of the NPPF is not therefore engaged in this instance, however for completeness the adverse impacts and benefits of the proposal are set out below.

## 13.2 Summary of Adverse Impacts

The adverse impacts and the weight that should be given to these factors are set out below:

### **Conflict with the Development Plan**

13.2.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Paragraph 15 of the NPPF emphasises that the planning system should be "genuinely plan led".

13.2.2 Conflict has been identified with Development Plan, specifically Policy LPP1. In this case the policy does not have the effect of applying an 'in principle' restriction to development of its kind but it does require development proposed within its development boundaries to pass the test of material adverse detriment. Conflict is also identified with Policy SP1 of the Adopted Local Plan as the development is not 'sustainable development'. Full weight is attributed to these conflicts, and the conflict with the relevant policies below which are also important for determining the application. These individual policy conflicts amount to a clear conflict with the Development Plan as whole and Officers consider that this harm carries significant weight.

### **Change of Use**

13.2.3 There is insufficient information to demonstrate that the facility is unviable and there is little, or no, prospect of it being viable in the future, and that all other reasonable options for retaining the facility have been considered. The change of use to residential is therefore contrary to LPP61 of the Adopted Local Plan. This conflict would not significantly reduce the community's ability to meet its day-to-day needs, but the level of objection on file does suggest the facility is valued by the local community, as such this harm is attributed moderate weight.



## **Heritage Assets**

- 13.2.4 Notwithstanding the removal of the modern porch and glazed lean-to, the net cumulative impact of the proposed new dwellings, demolition of rear range, external and internal alterations, and subdivision of the curtilage amount to less than substantial harm to the special interest of the listed building and the character and appearance of the Earls Colne Conservation Area. Having given this harm great weight, it is not outweighed by the public benefit derived from the provision of housing (noting in this case that the gain would be derived from losing the pub use which currently contributes its own public benefits). The heritage balance is not satisfied, and the proposal would not protect and enhance assets of historical value, contrary to Policies SP7, LPP1, LPP47, LPP52, LPP53, LPP57 and LPP58 of the Adopted Local Plan and Paragraph 202 of the NPPF.
- 13.2.5 Furthermore, there is a lack of survey information describing the significance of the heritage asset and the impact of the works upon it, and as a consequence the Local Planning Authority is unable to determine the full impact of the creation of openings in the flanks of the building and works to the outbuildings. This lack of evidence is contrary to Policy LPP57 of the Adopted Local Plan and Paragraphs 194 and 195 of the NPPF.
- 13.2.6 The above conflict with Policies of the Adopted Local Plan relevant to Heritage Assets would give rise to harm of significant weight.

## **Design and Layout**

- 13.2.7 The design and layout of the proposed development would not respond positively to local character and context or preserve and enhance the quality of its surroundings. The mass, bulk, scale, form, materials, detailing and layout of the new dwellings would cause material adverse detriment to the existing character and historic interest of the settlement. Due to the number of dwellings proposed, the layout is also poorly resolved in terms of its impact upon trees, car parking, and refuse arrangements, quality and provision of amenity space and effects upon residential amenity of those inhabiting the new and converted dwellings. For these reasons the proposal is contrary to Policies LPP35 and LPP52 of the Adopted Local Plan. This conflict would give rise to harm of significant weight.

## **Conflict with NPPF**

- 13.2.8 For the same reasons as noted above, the proposal would not be 'sustainable development' and the application of policies in the Framework that protect heritage assets provide a clear reason for refusing the development proposed. Further conflicts have also been identified with Paragraphs 84, 93, 130, 134, 185, 194, 195, 202 of the NPPF. These conflicts amount to conflict with the NPPF as a whole and this harm carries significant weight.

### 13.3 Summary of Benefits

The benefits arising from the proposal and the weight that should be given to these factors are set out below:

#### **Provision of Housing**

- 13.3.1 The proposal would give rise to the provision of housing which would make a limited contribution towards the District's Five Year Housing Supply. This benefit is accorded limited weight.

### 13.4 Conclusion

- 13.4.1 As set out above, Officers consider that the proposed development would result in 'less than substantial harm' to the significance of designated heritage assets. In accordance with Paragraph 11d) (i) of the NPPF, where there are no relevant Development Plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. In this case the identified heritage harm provides a clear reason for refusing the development proposed.
- 13.4.2 The proposal is contrary to the Development Plan and therefore permission should not usually be granted. In this case, material considerations do not indicate the plan should not be followed and, in fact, the wider planning balance indicates the development is not sustainable, it is conflict with NPPF as whole and does not comply with the Village Design Statement. It is therefore recommended that planning permission is refused for the proposed development.
- 13.4.3 Notwithstanding the above, if the 'tilted balance' was engaged, it is considered that the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Against this context, it would be recommended that planning permission be refused for the proposed development.

## 14. RECOMMENDATION

- 14.1 It is RECOMMENDED that the following decision be made:  
Application REFUSED for the reasons outlined within APPENDIX 1.

CHRISTOPHER PAGGI  
PLANNING DEVELOPMENT MANAGER

## APPENDIX 1:

### REASON(S) FOR REFUSAL / SUBMITTED PLAN(S) / DOCUMENT(S)

#### Submitted Plan(s) / Document(s)

<b>Plan Description</b>	<b>Plan Ref</b>	<b>Plan Version</b>
Location Plan	001	N/A
Existing Site Plan	6062_P02	N/A
Existing Floor Plan	6062_P03	N/A
Existing Elevations	6062_P04	N/A
Proposed Site Plan	6062_P05	E
Proposed Floor Plan	6062_P06	E
Proposed Elevations	6062_P07	C
Proposed Elevations	6062_P08	F
Tree Plan	8886-D-AIA	N/A

#### Reason(s) for Refusal

##### Reason 1

There is insufficient information to demonstrate that the facility is unviable and there is little, or no prospect of it being viable in the future, and that all other reasonable options for retaining the facility have been considered. The change of use to residential is therefore contrary to Policy LPP61 of the Braintree District Local Plan 2013-2033 and Paragraphs 84 and 93 of the National Planning Policy Framework (NPPF).

##### Reason 2

Notwithstanding the removal of the modern porch and glazed lean-to, the net cumulative impact of the proposed new dwellings, demolition of rear range, external and internal alterations, and subdivision of the curtilage amount to less than substantial harm to the special interest of the listed building and the character and appearance of the Earls Colne Conservation Area. Having given this harm great weight, it is not outweighed by the public benefit derived from the provision of housing (noting in this case that the gain would be derived from losing the pub use which currently contributes its own public benefits). The heritage balance is not satisfied, and the proposal would not protect and enhance assets of historical value, contrary to Policies SP1, SP7, LPP1, LPP47, LPP52, LPP53, LPP57 and LPP58 of the Braintree District Local Plan 2013-2033 and Paragraph 202 of the NPPF. The application of policies of the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.

##### Reason 3

There is a lack of survey information describing the significance of the heritage asset and the impact of the works upon it, and consequently, the Local Planning Authority is unable to determine the full impact of the creation of openings in the flanks of the building and works to the outbuildings. This lack of evidence is contrary to Policy LPP57 of Braintree District Local Plan 2013-2033 and Paragraphs 194 and 195 of the NPPF.

#### Reason 4

The design and layout of the proposed development would not respond positively to local character and context or preserve and enhance the quality of its surroundings. The mass, bulk, scale, form, materials, detailing, and layout of the new dwellings would cause material adverse detriment to the existing character and historic interest of the settlement. Due to the number of dwellings proposed, the layout is also poorly resolved in terms of its impact upon trees, car parking and refuse arrangements, quality and provision of amenity space, and effects upon residential amenity of those inhabiting the new and converted dwellings. For these reasons the proposal is contrary to Policies LPP35 and LPP52 of the Braintree District Local Plan 2013-2033, Paragraphs 130, 134 and 185 of the NPPF and the Earls Colne Village Design Statement (2017).

#### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying the areas of conflict with adopted Policy and National Planning Guidance and discussing these with the applicant either at the pre-application stage or during the life of the application. However, as is clear from the reason(s) for refusal, the issues are so fundamental to the proposal that it would not be possible to negotiate a satisfactory way forward in this particular case.

## APPENDIX 2:

### POLICY CONSIDERATIONS

#### National Planning Guidance

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

#### Braintree District Local Plan 2013 - 2033

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
SP6	Infrastructure & Connectivity
SP7	Place Shaping Principles
LPP1	Development Boundaries
LPP35	Housing Mix, Density and Accessibility
LPP42	Sustainable Transport
LPP43	Parking Provision
LPP46	Broadband
LPP47	Built and Historic Environment
LPP48	An Inclusive Environment
LPP52	Layout and Design of Development
LPP53	Conservation Areas
LPP57	Heritage Assets and their Settings
LPP58	Demolition of Listed Buildings or Structures
LPP59	Archaeological Evaluation, Excavation and Recording
LPP61	Local Community Services and Facilities
LPP63	Natural Environment and Green Infrastructure
LPP64	Protected Sites
LPP65	Tree Protection
LPP66	Protection, Enhancement, Management and Monitoring of Biodiversity
LPP67	Landscape Character and Features
LPP70	Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
LPP71	Climate Change
LPP72	Resource Efficiency, Energy Generation and Energy Efficiency
LPP74	Flooding Risk and Surface Water Drainage
LPP75	Surface Water Management Plan
LPP76	Sustainable Urban Drainage Systems
LPP77	External Lighting
LPP78	Infrastructure Delivery and Impact Mitigation

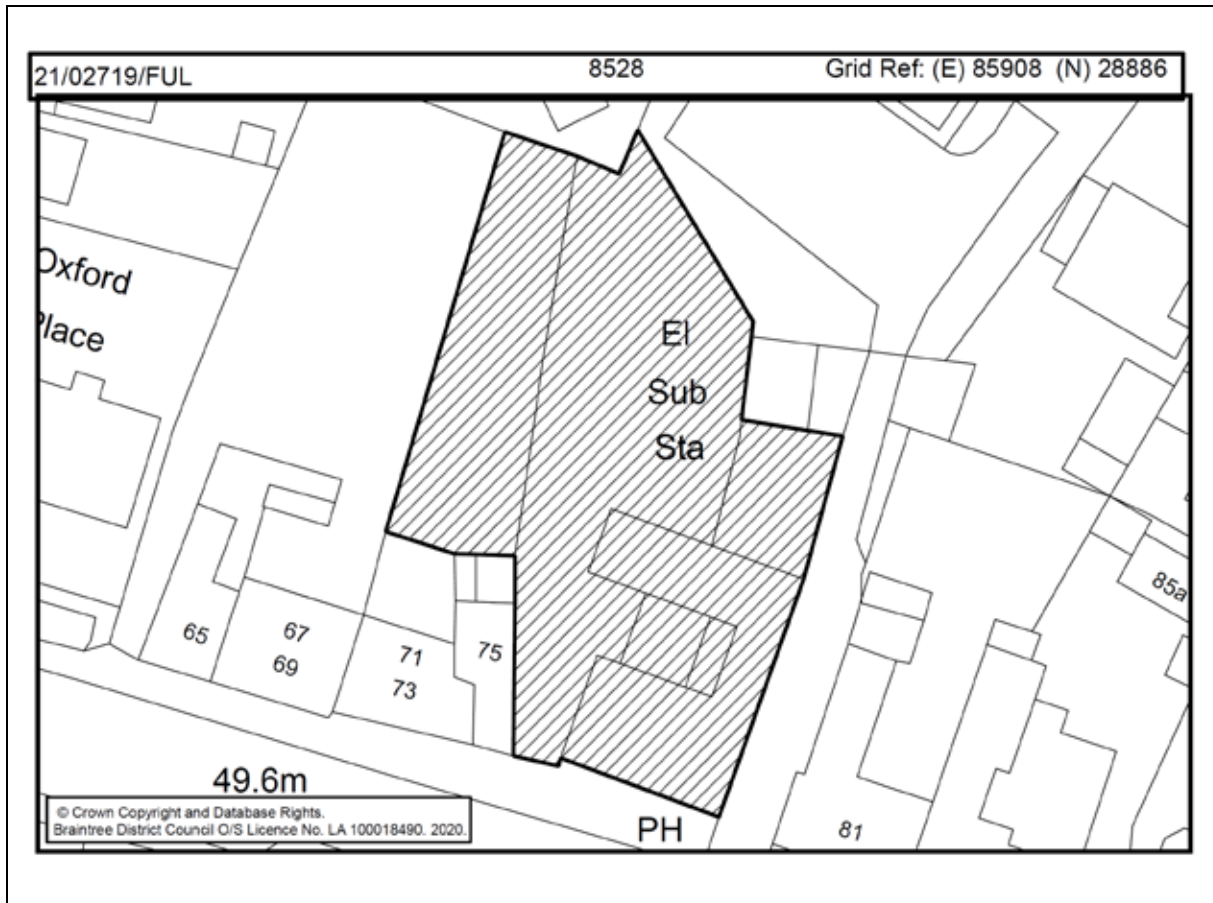
APPENDIX 3:

SITE HISTORY

<b>Application No:</b>	<b>Description:</b>	<b>Decision:</b>	<b>Date:</b>
01/01227/FUL	Erection of extension to form toilets and internal alterations - ground floor	Refused	05.09.01
01/01228/LBC	Erection of extension to form toilets and internal alterations - ground floor	Refused	05.09.01
02/00659/FUL	Erection of new rear corridor	Granted	15.08.02
02/00660/LBC	Erection of new rear corridor and internal alterations	Granted	15.08.02
05/01579/LBC	Removal of 2 no. partition walls and making good	Granted	16.09.05
15/00958/FUL	Internal refurbishment, replacement bar servery and new internal lobby	Permission not Required	29.09.15
15/00960/LBC	Internal refurbishment, replacement bar servery and new internal lobby	Granted	29.09.15
21/02720/LBC	Change of use of Public House (Use class Sui Generis) to 1 x 1 bed, 1 x 3 bed and 1 x 4 bed residential units, and erection of 1 x 3 bed and 1 x 4 bed dwellinghouses in rear car park (total 5 Use Class C3 residential units) with the provision of parking, including undercroft parking, amenity spaces and hard landscaping.	Pending Decision	

<b>Report to:</b> Planning Committee	
<b>Planning Committee Date:</b> 15th August 2023	
<b>For:</b> Decision	
<b>Key Decision:</b> No	<b>Decision Planner Ref No:</b> N/A
<b>Application No:</b>	21/02720/LBC
<b>Description:</b>	Change of use of Public House (Use class Sui Generis) to 1 x 1 bed, 1 x 3 bed and 1 x 4 bed residential units, and erection of 1 x 3 bed and 1 x 4 bed dwellinghouses in rear car park (total 5 Use Class C3 residential units) with the provision of parking, including undercroft parking, amenity spaces and hard landscaping.
<b>Location:</b>	The Castle PH, 77 High Street, Earls Colne
<b>Applicant:</b>	NAMMOS, Colchester, UK
<b>Agent:</b>	Malcolm Inkster, Trinity Planning, 33 West Street, Wivenhoe, CO7 9DA
<b>Date Valid:</b>	17th November 2021
<b>Recommendation:</b>	It is RECOMMENDED that the following decision be made:  § Application REFUSED for the reasons outlined within Appendix 1 of this Committee Report.
<b>Options:</b>	The Planning Committee can:  a) <b>Agree</b> the Recommendation b) <b>Vary</b> the Recommendation c) <b>Overtturn</b> the Recommendation d) <b>Defer</b> consideration of the Application for a specified reason(s)
<b>Appendices:</b>	<b>Appendix 1:</b> Reason(s) for Refusal Submitted Plan(s) / Document(s)
	<b>Appendix 2:</b> Policy Considerations
	<b>Appendix 3:</b> Site History
<b>Case Officer:</b>	Kathryn Oelman For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2524, or by e-mail: <a href="mailto:kathryn.oelman@braintree.gov.uk">kathryn.oelman@braintree.gov.uk</a>

**Application Site Location:**





<b>Purpose of the Report:</b>	The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.
<b>Financial Implications:</b>	<p>The application was subject to the statutory application fee paid by the Applicant for the determination of the application.</p> <p>There are no direct financial implications arising out of the decision, notwithstanding any costs that the Council may be required to pay from any legal proceedings. Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p>
<b>Legal Implications:</b>	<p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions &amp; Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
<b>Other Implications:</b>	The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.
<b>Equality and Diversity Implications</b>	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> <li>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</li> <li>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</li> <li>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting</li> </ul>

	<p>understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p><b>Background Papers:</b></p>	<p>The following background papers are relevant to this application include:</p> <p>§ Planning Application submission:</p> <ul style="list-style-type: none"> <li>§ Application Form</li> <li>§ All Plans and Supporting Documentation</li> <li>§ All Consultation Responses and Representations</li> </ul> <p>The application submission can be viewed online via the Council's Public Access website: <a href="http://www.braintree.gov.uk/pa">www.braintree.gov.uk/pa</a> by entering the Application Number: 21/02720/LBC.</p> <p>Policy Documents:</p> <ul style="list-style-type: none"> <li>§ National Planning Policy Framework (NPPF)</li> <li>§ Braintree District Local Plan 2013-33</li> <li>§ Neighbourhood Plan (if applicable)</li> <li>§ Supplementary Planning Documents (SPD's) (if applicable)</li> </ul> <p>The National Planning Policy Framework can be viewed on the GOV.UK website: <a href="http://www.gov.uk/">www.gov.uk/</a>.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: <a href="http://www.braintree.gov.uk">www.braintree.gov.uk</a>.</p>

1. EXECUTIVE SUMMARY

- 1.1 The Castle Public House is a large two storey building located in the High Street of Earls Colne. The property is Grade II listed and is located within the Earls Colne Conservation Area. The curtilage includes the pub car park and beer garden behind.
- 1.2 Listed building consent is sought for internal and external alterations to facilitate the creation of three dwellings within the property, including partial demolition of the rear range of outbuildings and creation of new boundary walls/fences which would be joined to the listed building and subdivide its curtilage.
- 1.3 The Council's Historic Buildings Consultant raises concerns with the application, including a lack of information in a number of areas. It is considered the proposal would cause less than substantial harm to the special interest of the listed building. The public benefits would not outweigh this harm and therefore the application is recommended for refusal.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

2.1 This application is being reported to Planning Committee in accordance with Part B of the Council's Scheme of Delegation, at the request of the Chair and Vice Chair of the Planning Committee.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

5.1 The Castle Public House (77 High Street) is a large two storey building which fronts Earls Colne High Street to the south. The site area is 0.14 hectares, with the curtilage extending to include the side access road, pub car park, and beer garden which lie behind.

5.2 The site is located within the Earls Colne Conservation Area and is Grade II listed. The Castle PH was originally built as a dwelling and is constructed of a timber frame, plastered exterior and red plain tile roof. A Georgian façade in imitation ashlar fronts the High Street. The western cross-wing of the house dates from the late c.14th and the eastern cross-wing from the mid c.16th.

5.3 The property was originally a medieval hall house with its middle range rebuilt circa 1600. Prominent characteristics of the building are its chimney stacks with diagonal shafts situated on the front and side (east) elevations. There are also several c.19th sash windows. Internally an ornate biblical wall painting, restored in c.17th, sits above the fireplace on the ground floor.

6. PROPOSAL

6.1 Listed building consent is sought for internal and external alterations to facilitate the creation of three dwellings within the property, including partial demolition of the range of outbuildings to the rear and creation of new boundary walls/fences which would be joined to the listed building and subdivide its curtilage.

6.2 External works include demolition of the modern, existing porch and glazed lean-to which lie within the internal courtyard formed between the existing buildings. To facilitate the conversion, doors within the internal courtyard would be altered to form windows. The layout shows that the courtyard would be divided to form gardens for the dwellings, albeit the precise nature and design of the boundary treatments is unclear.

- 6.3 Other changes would include the creation of a first floor window in the western flank of the building, where there is an existing opening, and insertion of a new window at first floor level in the eastern side. In the front elevation, a window opening would be altered, and a front door inserted.
- 6.4 Consent is also sought to demolish part of the rear range and build a longer and wider building in its place to contain the parking. In the retained section, carriage arches are shown to be formed with brick soldier courses above. Three new rooflights are shown in the roof slope facing north.
- 6.5 Other alterations include removal of the toilet blocks and bar serving the pub, removal and insertion of partitions to create bathrooms, bedrooms and hallways at first floor. New stairwells are also proposed to be inserted to provide access to the new dwelling's respective upper floors and the old staircases removed (where applicable).
- 6.6 The application is accompanied by the following documents:
- Site Location Plan (001)
  - Existing Site Plan (6062\_P02)
  - Existing Ground and First Floor Plans- Listed Building (6062\_P03)
  - Existing Elevations (6062-P04)
  - Proposed Site Block Plan (6062\_P05 Rev E)
  - Proposed Ground and First Floor Plans– Listed Building (6062\_P06 Rev E)
  - Proposed Elevations- Listed Building (6062\_P07 Rev C)
  - Design and Access Statement
  - Heritage Statement
  - Preliminary Ecological Appraisal Report (November 2021)
  - Further Bat Survey Report (August 2022)
  - Biodiversity Validation Checklist Questionnaire
- 6.7 The application has been revised on two occasions (September 2022 and February 2023) in response to Officer concerns regarding the design of the scheme and heritage harm.

## 7. SUMMARY OF CONSULTATION RESPONSES

### 7.1 BDC Building Control

- 7.1.1 Do not object. Suggest the Applicant undertakes their pre-application check in order to ensure that they have sufficiently accounted for building regulations requirements, such as provision for means of escape in the event of fire.

## 7.2 ECC Historic Buildings Consultant

### **Consultation Response dated 9th December 2021:**

- 7.2.1 The Castle Pub is a Grade II listed building within the Earls Colne Conservation Area (list entry number: 1170187). Timber framed, the building is believed to date from the fourteenth century with later additions and modifications, including a nineteenth century brick range to the rear and twentieth century rear porch. Currently disused, the building is on the village's High Street and has a large garden/car park to the rear, accessible via gaps between the building and its immediate neighbours.
- 7.2.2 The change of use of the building to residential from a public house can be supported if the resultant changes will not affect the special interest of the building in such a way to be considered harmful to its significance. Originally built as a dwelling, 77 High Street has been in use as a public house for some time, however it is the local authority's responsibility to assess if the change of use is considered acceptable in principle, despite the impact this could have upon the High Street. In my opinion, the justification provided for the change of use is low, with very limited evidence provided regarding the viability of the building for business use.
- 7.2.3 Notwithstanding the above, I am unable to support the application in its current form. The removal of unsympathetic alterations such as the rear porch will be of benefit to the special interest of the building, however the proposed new dwellings, internal alterations and subdivision of the site will, I feel, result in a level of less than substantial harm to the listed building and the Conservation Area. It is the local authority's role to determine if this harm is outweighed by the public benefit of the scheme (adding five new homes to the village), as per section 202 of the NPPF. Consideration must also be given to sections 199 and 197(a) of the NPPF, which state that 'great weight should be given to the asset's conservation' and 'local planning authorities should take account of (a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation' respectively.
- 7.2.4 The key issues with the proposals are itemised below and should be addressed before I would be able to support the proposals to convert 77 High Street to residential use, or the construction of dwellings within its grounds.

#### *Internal alterations/subdivision of the core of the listed building*

- 7.2.5 The proposed internal subdivision between units one and two responds to the floorplan of the building positively, locating the staircases to the rear of the main range in an area of the building which has already been subject to change and intervention. This means the intervention to historic fabric for the creation of the staircases between ground and first floor has been kept to a minimum. However, no plans have been submitted regarding the attic space. The staircase to the attic space is described as seventeenth or

eighteenth century within the supporting heritage statement, yet it is unclear from the 'proposed' floor plan if this attic staircase will, or could, be preserved, if the new staircases between ground and first floor are introduced as proposed. Similarly, the plans do not indicate how the loft space or cellars will be divided between houses one and two. Fire and noise breaks will be necessary, details of which should have been provided.

- 7.2.6 Furthermore, the existing plans indicate that much of the rear of the building, in the cross wing and the attached outbuildings, has not been surveyed. This is unacceptable, as there may be features within these areas which contribute to the significance of the building. Without provision of this information, I am unable to assess the acceptability of the proposed changes to this section of the listed building.
- 7.2.7 The opening of blocked windows and creation of new openings at first floor level has also been inadequately detailed. The reopening of a window on elevation B, in bedroom four of unit one, may be acceptable, if details of the estimated date of the infill and nature of material that will be removed is provided. It appears that the fenestration of the building was altered in the eighteenth/nineteenth century when sash windows were introduced. The blocking of the window may have been part of this phase, thus could contribute to the significance of the building, as an indicator of its development. Similarly, I have concerns regarding the proposed window to bedroom two, in unit two. It is unclear where the window will be located, what fabric will be taken out for the opening and how this will interfere with the architectural quality of the room. In my opinion the existing appearance of the blocked window is unlikely to be as easily appreciated if a new opening is added in next to it. The addition of the hallway means this window is needed in the bedroom however insufficient justification has been provided for this, and the intervention could perhaps be avoided by swapping the position of the proposed bathroom and bedroom two or the omission of a hallway.
- 7.2.8 The conversion of a door to a window at first floor level is acceptable, as is the dropping of the sill on the front elevation to create a front door to dwelling two, subject to details regarding the proposed new windows and doors (material, glazing profile, framing etc).
- 7.2.9 It is unclear if the addition of new services for the creation of bathrooms at first floor level is appropriate; no structural survey has been included to suggest the building's frame is capable of taking this additional load, nor has information been provided regarding new pipe runs.
- 7.2.10 Demolition of the rear outbuilding and conversion of the rear range  
As per above, it is unacceptable that areas of the building that have not been surveyed or assessed by the heritage specialist are proposed for conversion/demolition. This survey and assessment must occur before I am able to comment on the suitability of the proposals. As a general comment, however, I am concerned regarding the appearance of door D, the sidelights, proposed carriage archways and re-orientation of this section of

the building which lack authenticity. The two brick outbuildings (perpendicular to the main range and attached to the cross wing) are described as nineteenth century in date, with the two-storey section thought to pre-date the single storey element suggesting there is value in retention of their fabric and appearance.

*Construction of new dwellings to the rear*

- 7.2.11 The design and scale of the proposed dwellings is concerning and lacks adequate reference to the listed building or the Conservation Area, failing to preserve or enhance the special interest of these designated assets. The glazed gables to the rear lack reference to local character, whilst the massing and footprint of the buildings will occupy a significant portion of the pub's rear garden, creating a cramped layout to the site. The proposed side elevation shows the design of the dwellings is very convoluted and squat, with building two in particular appearing too wide at ground level to create an appropriately pitched dwelling which is not excessively tall. Site sections would be beneficial to understand the relationship between the new dwellings and the listed building.

*Landscaping*

- 7.2.12 Limited details regarding the landscaping have been provided, however the proposed subdivision of the listed building's courtyard into gardens, including the necessary partitions, will have an impact upon the building's setting. I am concerned that the introduction of a high fence in this area would not be appropriate, and further information must be given regarding all new boundary walls and surfacing. Retention of the courtyard (formed between the rear of the pub and its outbuildings) as shared space would best preserve the building's setting and limit the visual impact of the building's subdivision.
- 7.2.13 To conclude, the proposal cannot be supported at this stage. From the descriptions above, it is apparent that the application for listed building consent lacks the required information to fully understand the impact of the proposals upon the building's significance. Section 194 of the NPPF and section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990 should thus also be a consideration for the local authority when determining this application, in addition to the sections outlined on the first page of this letter.

**Consultation Response dated 3rd October 2022**

- 7.2.14 The revised plans have not overcome my previous concerns, instead proposing to add additional features to the building which are not considered appropriate. The proposed balcony on elevation C, for example, is incongruous and lacks reference to the building's history and function, adding an overtly domestic element to a functional, ancillary outbuilding/stable block. Additional information has not been provided



regarding the proposed new openings on the listed building, nor has detail been provided regarding the attic spaces, as previously requested.

7.2.15 The omission of the dormer windows on the rear range, comparative to the previously submitted plans, is positive, however this change is minor and does not resolve concerns raised previously. Similarly, I remain concerned regarding the proposed addition of two new dwellings to the rear of the site, due to the scale, design and massing of the proposed dwellings. The subdivision of the listed building's courtyard also remains a cause for concern.

7.2.16 Therefore, it is my professional opinion that the proposed alterations and new dwellings will result in less than substantial harm to the listed building. Section 202 of the NPPF and section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 should be considered by the local authority when determining the applications.

### **Consultation Response dated 13th April 2023**

7.2.17 I remain unable to support these applications. Additional information has not been provided regarding the proposed new openings on the listed building, nor has detail been provided regarding the attic spaces and rear range, as previously requested. The subdivision of the listed building's courtyard also remains a cause for concern.

7.2.18 The revision to the height of the proposed new dwellings is welcomed, as is the redesign of elevation C on the main building, comparative to the designs submitted in September 2022. However, the footprint of the new dwellings and the space they will occupy, remains incredibly similar and as such the crowding effect, and harm to the building's setting remains.

7.2.19 Therefore, it is my professional opinion that the proposed alterations and new dwellings will result in less than substantial harm to the listed building. Section 202 of the NPPF and section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 should be considered by the local authority when determining the applications.

### 7.3 ECC Ecology

7.3.1 Do not object (considering the Council has fulfilled its statutory duties under the Wildlife and Countryside Act 1981).

## 8. PARISH / TOWN COUNCIL

### 8.1 Earls Colne Parish Council

*The Parish Council commented on 16<sup>th</sup> December 2021 and 3<sup>rd</sup> October 2022 as follows:*

- 8.1.1 “Earls Colne Parish Council have examined the documents included within the above application and comment as follows.

The plans as submitted would indicate the following issues:

**Overlooking:** there would be an adverse impact on neighbouring properties creating issues with privacy due to the additional dwellinghouses suggested for the car parking area.

**Overdevelopment:** there would be an adverse impact on neighbouring properties due to the number of properties being suggested for what is, already, a full residential area.

**Gating the access:** The access from the High Street should not be gated as this would cause problems with vehicles backing up along the High Street for access as well as causing a potential accident black spot along what is a very busy road.

**Parking:** there would be an issue with the number of parking spaces allowed within the plans for the number of dwellings, and this would have an adverse affect on neighbouring properties and the Village as a whole when the parking overflows onto what is already a busy High Street. There should be parking provision for visitors as well as residents due to the lack of on street provision.

The Parish Council also feel that the change of use of the property to residential would mean the loss of another business opportunity for what has always been a vibrant High Street, in a Village that is growing with current development plans, not contracting. The Parish Council question the claim that the property was properly marketed at the time of the Applicants purchase. There is evidence, in the submitted paperwork, that other parties were interested in buying the Pub and the Applicant admits that the building he purchased did not fit his required business profile, thus proving that there was never an intention to re-open it as a Pub or Restaurant.

For these reasons we would have to object to these applications.

*The Parish Council commented on 16<sup>th</sup> March 2023 as follows:*

- 8.1.2 At the Parish Council Meeting last night it was decided unanimously that we would reiterate that the issues raised in our original letter dated 16<sup>th</sup> December 2021 (copy attached) still stand.

## 9. REPRESENTATIONS

- 9.1 A total of 15 letters of objection have been received. The points made are summarised below and, for the avoidance of doubt, no objections were withdrawn in response to the three consultations undertaken:

- § Risk of damage to boundary wall containing the car park/beer garden and panel above fireplace from residential use.
  - § 1970s mural in pub is a non-designated heritage asset.
  - § Every effort should be taken to preserve the buildings historic features and rich past.
- 9.2 A number of concerns were raised which were not material to the consideration of a listed building application.
10. PRINCIPLE OF DEVELOPMENT
- 10.1 National Planning Policy Framework (NPPF)
- 10.1.1 Paragraph 194 of the NPPF states that, in determining applications, LPAs should require an Applicant to describe the significance of any heritage assets affected, including any contribution made to their setting.
- 10.1.2 Paragraph 195 of the NPPF states that LPAs should take account of the significance of a heritage asset when considering the impact of a proposal upon a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 10.1.3 Paragraph 199 of the NPPF states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether this harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 10.1.4 Paragraph 202 of the NPPF states that, where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use.
- 10.2 The Development Plan
- 10.2.1 Currently the Council's statutory Development Plan consists of the Braintree District Local Plan 2013-2033 (Adopted July 2022).
- 10.2.2 Policy SP1 of the Adopted Local Plan states that when considering development proposals, the Local Planning Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. Policy LPP1 of the Adopted Local Plan states that, within development boundaries, development will be permitted where it satisfies amenity, design, environmental and highway criteria and where it can take place without material detriment to the existing character and historic interest of the settlement.

## 11. SITE ASSESSMENT

### 11.1 Heritage Impact

- 11.1.1 Policy SP7 of the Adopted Local Plan requires that new development protect and enhance assets of historical value. Policy LPP47 of the Adopted Local Plan requires that, to protect and enhance the historic environment, all development must respect and respond to local context. LPP52 of the Adopted Local Plan requires that designs shall be sensitive to the need to conserve and enhance local features of architectural, historic and landscape importance, particularly within Conservation Areas and in proximity to heritage assets.
- 11.1.2 Policy LPP57 of the Adopted Local Plan states that the Council will seek to preserve and enhance the settings of heritage assets by appropriate control over the development, design, and use of adjoining land. Policy LPP58 of the Adopted Local Plan states that consent for the partial demolition of a listed building will only be granted in the most exceptional circumstances subject to five criteria, however the policy does not make the critical distinction between the presence of historic elements which contribute to a listed building's significance and more modern elements which may detract from it.
- 11.1.3 Paragraph 194 of the NPPF states that, in determining applications, LPA's should require the Applicant to describe the significance of any heritage asset affected and that the level of detail should be proportionate to the asset's and no more than is sufficient to understand the potential impact of the proposal upon their significance.
- 11.1.4 Paragraph 195 of the NPPF describes how, once in possession of this information, LPAs can take account of the available evidence and expertise to consider the impact of the proposal upon a heritage asset and ensure that any conflict between the heritage asset's conservation and any aspect of the proposal has been minimised. Paragraph 196 of the NPPF advises LPA's not to allow evidence of neglect or damage of a heritage asset to influence their decision.
- 11.1.5 Paragraph 199 of the NPPF advises that, when considering the impact of a proposed development upon the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be), irrespective of the level of harm to its significance. Paragraph 202 of the NPPF states that, where a proposal will lead to 'less than substantial' harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 11.1.6 The Local Planning Authority has a duty under Section 16 (2) of the Planning (Listed Buildings & Conservation Areas) Act 1990 to, when considering whether to grant listed building consent for works to a listed building, have special regard to the desirability of preserving the building or

its setting or any features of special architectural or historic interest which it possesses.

- 11.1.7 The Castle Public House is a Grade II listed building originally built in the 14th century as a Hall House. The western cross wing dates from this period, but the eastern cross wing was rebuilt and extended to the rear in the mid-16th century. The middle range dates from circa 1600.
- 11.1.8 The Heritage Statement submitted contains map regression which demonstrates the property is shown on the 1598 Survey Map of Israel Amyce. By 1835 the Tithe map shows a rear range to be present and a curtilage similar to the present day, with the property likely separated into two dwellings at that point: a dwelling in the front and another in the eastern cross wing and outbuildings behind. The building became a pub in the late 19th century until 2019 when it was closed upon purchase by the Applicant.
- 11.1.9 The building analysis provided is incomplete; critical areas of the eastern cross wing and outbuildings to the rear remain 'unsurveyed'. Whilst it is accepted that much of the rear range dates from the late 19th century and the part to be demolished could be newer, there is evidence of older brickwork in some of the unsurveyed areas which could be inconsistent with this analysis. Changes are shown at first floor in the unsurveyed area around the eastern chimney stack and it is not clear how this feature, which contributes heavily to the significance of the building, would be affected by the works.
- 11.1.10 Information is also absent to allow a full understanding of the significance of fabric proposed to be removed in order to reopen the window in the eastern elevation, and the precise positioning and justification for the new window in the western elevation remains unclear. Without the above information it is not possible to understand whether features of interest exist in these areas and assess any potential harm caused by their removal or alteration.
- 11.1.11 Further information is absent on how, as a consequence of siting the bathrooms in the locations chosen, their service pipe runs will affect the character of the building. No structural analysis is present which demonstrates that the timber frame is suitable for supporting the new bathrooms in those locations either. Little information is provided on whether the proposal can comply with Building Regulations, notably how provision of means of escape might affect the design of the windows applied for. Furthermore, details of whether noise and fire breaks are required, and their nature has not been provided. Information is absent regarding the attic staircase and how the loft space and cellars will be divided up, together with any alterations that might be necessary to facilitate this.
- 11.1.12 The Historic Buildings Consultant considers the removal of the modern, glazed lean-to corridor and rear porch to be a benefit to the special interest of the building. Furthermore, there are no objections in principle to much of the minor internal alterations and the siting of the staircases at the rear of

the main range. The alterations to the fenestration on the front elevation of the building are also generally acceptable, subject to detail.

- 11.1.13 The reorientation of the rear outbuilding to face north and design of the openings, including under-croft parking in the existing two storey section ('Elevation D' on the plans) are particularly damaging to the authenticity of the range. The detailing to the carriage arches is poor and ill-fitting to the style of the existing buildings. Despite the lack of information, it is clear that the demolition of part of the historic rear range has not been adequately justified and would give rise to some level of harm given it currently makes some positive contribution to the significance of the heritage asset. The siting and design of proposed rooflights, which are a new feature following revisions, has not been adequately detailed as this area has not been surveyed.
- 11.1.14 Externally the sub-division of the curtilage within the internal courtyard and the inevitable addition of boundary walls/fencing and domestic paraphernalia is harmful to the setting of the listed building. No details are provided of the walls/fences and their specific materials and design.
- 11.1.15 In conclusion, the proposal would give rise to 'less than substantial harm' to the setting of the listed building. It is arguable whether the 'public benefits' arising from the conversion of the pub to three dwellings are such when the loss of an equally valuable use to the local community is considered. Giving this harm considerable importance and weight, it is not considered that the public benefits would outweigh this harm and therefore the heritage balance has not been satisfied contrary to the aforementioned local and national policies.

## 12. PLANNING BALANCE AND CONCLUSION

- 12.1 Notwithstanding the removal of the modern porch and glazed lean-to, the net cumulative impact of the partial demolition of the rear range, external and internal alterations, and subdivision of the curtilage amount to less than substantial harm to the special interest of the listed building. Having given this harm great weight, it is not outweighed by the public benefit derived from the provision of housing (noting in this case that the gain would be derived from losing the pub use which currently contributes its own public benefits). The heritage balance is not satisfied, and the proposal would not protect and enhance assets of historical value, contrary to Policies SP1, SP7, LPP1, LPP47, LPP52, LPP57 and LPP58 of the Adopted Local Plan and Paragraph 202 of the NPPF.
- 12.2 Furthermore, there is a lack of survey information describing the significance of the heritage asset and the impact of the works upon it, and as a consequence the Local Planning Authority is unable to determine the full impact of works proposed, including the openings in the flanks of the listed building, works to the outbuildings and works to the eastern wing of the listed building particularly in the vicinity of the chimney stack, are acceptable. Other areas, including how the attic spaces and basements will

be divided, how the attic stair will be dealt with and how the implications of building regulations (means of escape, fire breaks and noise insulation) will affect the proposed works, whether the timber frame can support the new bathrooms and how their services will be resolved, also remain unclear. This lack of evidence describing the significance of the heritage asset and the impact of the works upon it is contrary to Policy LPP57 of the Adopted Local Plan and Paragraphs 194 and 195 of the NPPF.

13. Conclusion

- 13.1 The proposal does not comply with the Development Plan or the NPPF as a whole and there are no other material considerations which indicate otherwise. Consequently, it is recommended that listed building consent is refused for the proposed works.

14. RECOMMENDATION

- 14.1 It is RECOMMENDED that the following decision be made:  
Application REFUSED for the reasons outlined within APPENDIX 1.

CHRISTOPHER PAGGI  
PLANNING DEVELOPMENT MANAGER

## APPENDIX 1:

### REASON(S) FOR REFUSAL / SUBMITTED PLAN(S) / DOCUMENT(S)

#### Submitted Plan(s) / Document(s)

<b>Plan Description</b>	<b>Plan Ref</b>	<b>Plan Version</b>
Location Plan	001	N/A
Existing Site Plan	6062_P02	N/A
Existing Floor Plan	6062_P03	N/A
Existing Elevations	6062_P04	N/A
Proposed Floor Plan	6062_P06	E
Proposed Elevations	6062_P07	C
Boundary Treatment	6062_P05	E

#### Reason(s) for Refusal

##### Reason 1

Notwithstanding the removal of the modern porch and glazed lean-to, the net cumulative impact of the partial demolition of the rear range, external and internal alterations, and subdivision of the curtilage amount to less than substantial harm to the special interest of the listed building. Having given this harm great weight, it is not outweighed by the public benefit derived from the provision of housing (noting in this case that the gain would be derived from losing the pub use which currently contributes its own public benefits). The heritage balance is not satisfied, and the proposal would not protect and enhance assets of historical value, contrary to Policies SP1, SP7, LPP1, LPP47, LPP52, LPP57 and LPP58 of the Braintree District Local Plan 2013-2033 and Paragraph 202 of the NPPF.

##### Reason 2

Furthermore, there is a lack of survey information describing the significance of the heritage asset and the impact of the works upon it, and as a consequence the Local Planning Authority is unable to determine the full impact of works proposed, including the openings in the flanks of the listed building, works to the outbuildings and works to eastern wing of the listed building particularly in the vicinity of the chimney stack are acceptable. Other areas, including how the attic spaces and basements will be divided, how the attic stair will be dealt with and how the implications of building regulations (means of escape, fire breaks and noise insulation) will affect the proposed works, whether the timber frame can support the new bathrooms and how their services will be resolved, also remain unclear. This lack of evidence describing the significance of the heritage asset and the impact of the works upon it is contrary to Policy LPP57 of Braintree District Local Plan 2013-2033 and paragraphs 194 and 195 of the NPPF.



APPENDIX 2:

POLICY CONSIDERATIONS

National Planning Guidance

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

Braintree District Local Plan 2013 - 2033

SP1	Presumption in Favour of Sustainable Development
SP7	Place Shaping Principles
LPP1	Development Boundaries
LPP47	Built and Historic Environment
LPP52	Layout and Design of Development
LPP57	Heritage Assets and their Settings
LPP58	Demolition of Listed Buildings or Structures

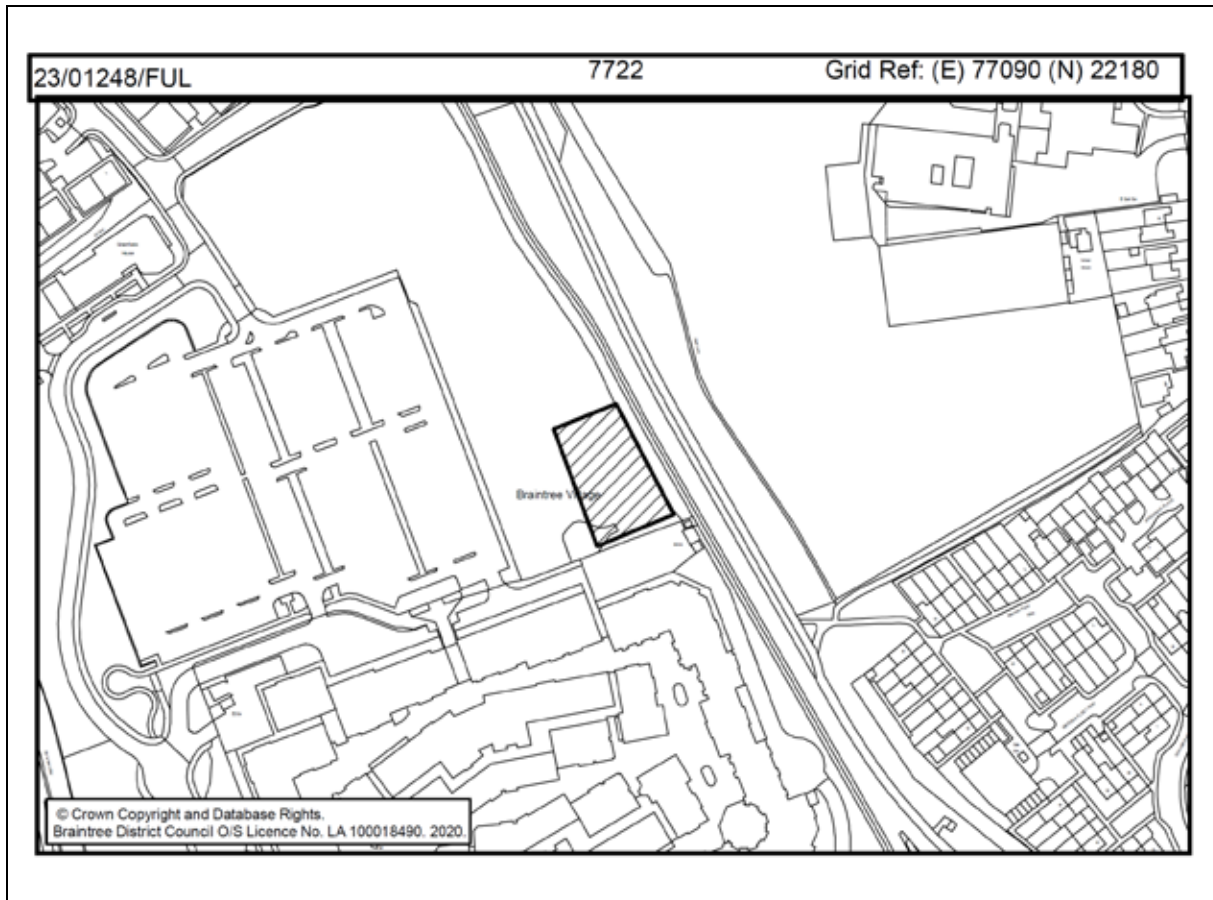
APPENDIX 3:

SITE HISTORY

<b>Application No:</b>	<b>Description:</b>	<b>Decision:</b>	<b>Date:</b>
01/01227/FUL	Erection of extension to form toilets and internal alterations - ground floor	Refused	05.09.01
01/01228/LBC	Erection of extension to form toilets and internal alterations - ground floor	Refused	05.09.01
02/00659/FUL	Erection of new rear corridor	Granted	15.08.02
02/00660/LBC	Erection of new rear corridor and internal alterations	Granted	15.08.02
05/01579/LBC	Removal of 2 no. partition walls and making good	Granted	16.09.05
15/00958/FUL	Internal refurbishment, replacement bar servery and new internal lobby	Permission not Required	29.09.15
15/00960/LBC	Internal refurbishment, replacement bar servery and new internal lobby	Granted	29.09.15
21/02719/FUL	Change of use of Public House (Use class Sui Generis) to 1 x 1 bed, 1 x 3 bed and 1 x 4 bed residential units, and erection of 1 x 3 bed and 1 x 4 bed dwellinghouses in rear car park (total 5 Use Class C3 residential units) with the provision of parking, including undercroft parking, amenity spaces and hard landscaping.	Pending Decision	

<b>Report to:</b> Planning Committee	
<b>Planning Committee Date:</b> 15th August 2023	
<b>For:</b> Decision	
<b>Key Decision:</b> No	<b>Decision Planner Ref No:</b> N/A
<b>Application No:</b>	23/01248/FUL
<b>Description:</b>	Temporary change of use of vacant land (at Braintree Village) to provide an Ice Rink and associated facilities situated within a Marquee including a box office, skate collection/return point, first aid room, internal viewing platform, staff room, catering facility and plant equipment for a period of 12 weeks per year (from 2023) until 2028.
<b>Location:</b>	Braintree Village, Charter Way, Braintree
<b>Applicant:</b>	Mr Pat Fermin, Landsec, 100 Victoria Street, London, SW1E 5JL
<b>Agent:</b>	Mr Kieron Gregson, Carter Jonas, One Chapel Place, London, W1G 1BG
<b>Date Valid:</b>	12th May 2023
<b>Recommendation:</b>	It is RECOMMENDED that the following decision be made: § Application GRANTED subject to the Condition(s) & Reason(s) and Informative(s) outlined within Appendix 1 of this Committee Report.
<b>Options:</b>	The Planning Committee can: a) <b>Agree</b> the Recommendation b) <b>Vary</b> the Recommendation c) <b>Overtturn</b> the Recommendation d) <b>Defer</b> consideration of the Application for a specified reason(s)
<b>Appendices:</b>	<b>Appendix 1:</b> Approved Plan(s) & Document(s) Condition(s) & Reason(s) and Informative(s)
	<b>Appendix 2:</b> Policy Considerations
	<b>Appendix 3:</b> Site History
<b>Case Officer:</b>	Lisa Page For more information about this Application please contact the above Officer on: 01376 551414 Extension: 2516, or by e-mail: <a href="mailto:lisa.page@braintree.gov.uk">lisa.page@braintree.gov.uk</a>

**Application Site Location:**



<b>Purpose of the Report:</b>	The Committee Report sets out the assessment and recommendation of the abovementioned application to the Council's Planning Committee. The report sets out all of the material planning considerations and the relevant national and local planning policies.
<b>Financial Implications:</b>	<p>The application was subject to the statutory application fee paid by the Applicant for the determination of the application.</p> <p>There are no direct financial implications arising out of the decision, notwithstanding any costs that the Council may be required to pay from any legal proceedings. Financial implications may arise should the decision be subject to a planning appeal or challenged via the High Court.</p>
<b>Legal Implications:</b>	<p>Any legal implications arising out of a Section 106 Agreement will be set out in more detail within the body of this Committee Report.</p> <p>If Members are minded to overturn the recommendation, the Planning Committee must give reasons for the decision.</p> <p>Following the decision of the Planning Committee, a formal decision notice will be issued which will either set out the relevant Conditions &amp; Reasons and any Informatives, or the Reasons for Refusal if applicable.</p> <p>All relevant policies are set out within the report, within Appendix 2.</p>
<b>Other Implications:</b>	The application has been subject to public consultation and consultation with relevant statutory and non-statutory consultees. All responses received in response to this consultation are set out within the body of this Committee Report.
<b>Equality and Diversity Implications</b>	<p>Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:</p> <ul style="list-style-type: none"> <li>a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act;</li> <li>b) Advance equality of opportunity between people who share a protected characteristic and those who do not;</li> </ul>

	<p>c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.</p> <p>The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).</p> <p>The consideration of this application has not raised any equality issues.</p>
<p><b>Background Papers:</b></p>	<p>The following background papers are relevant to this application include:</p> <ul style="list-style-type: none"> <li>§ Planning Application submission: <ul style="list-style-type: none"> <li>§ Application Form</li> <li>§ All Plans and Supporting Documentation</li> <li>§ All Consultation Responses and Representations</li> </ul> </li> </ul> <p>The application submission can be viewed online via the Council's Public Access website: <a href="http://www.braintree.gov.uk/pa">www.braintree.gov.uk/pa</a> by entering the Application Number: 23/01248/FUL.</p> <ul style="list-style-type: none"> <li>§ Policy Documents: <ul style="list-style-type: none"> <li>§ National Planning Policy Framework (NPPF)</li> <li>§ Braintree District Local Plan 2013-2033</li> <li>§ Neighbourhood Plan (if applicable)</li> <li>§ Supplementary Planning Documents (SPD's) (if applicable)</li> </ul> </li> </ul> <p>The National Planning Policy Framework can be viewed on the GOV.UK website: <a href="http://www.gov.uk/">www.gov.uk/</a>.</p> <p>The other abovementioned policy documents can be viewed on the Council's website: <a href="http://www.braintree.gov.uk">www.braintree.gov.uk</a>.</p>

## 1. EXECUTIVE SUMMARY

- 1.1 The site is located within the defined town boundary of Braintree, wherein the principle for this 'main town centre use' is acceptable. The development is considered to be a complimentary associated use to those currently available at the site and would add to the vitality of the site and be a wider benefit to the District in terms of the local economy.
- 1.2 The development would be of an acceptable layout and design and the built form relates appropriately to the adjacent Braintree Village with no harm to wider character and appearance of the locality. The proposed lighting would be acceptable and seen in the context of existing lighting at Braintree Village, within the car park and on the B1038.
- 1.3 Although the marquee structures are of a temporary nature, the associated hardstanding would remain on site for the 5 year period. Whilst this would result in some visual impact, there are very limited views of this which reduces the level of harm, and as the impact would be of a temporary nature, with a scheme for enhanced landscaping after its removal, this is on balance considered acceptable.
- 1.4 The application proposes compensation for the removal of hedgerow required to facilitate the pedestrian access. In addition, the adjacent land would be planted with a wildflower a grassland mix to offset the loss of existing grassland. The development is considered to result in biodiversity net gain.
- 1.5 The development would not result in any adverse impact in terms of highway capacity of highway safety. The existing car park provision at Braintree Village is considered to be acceptable to serve the development and many of the trips to the ice rink would be a linked visit with the wider Braintree Village.
- 1.6 Pedestrian access would be via the car park and from the northern access at the Village itself. The application has been submitted with a Pedestrian Safety Plan which sets out how pedestrian movements to and from the site would be managed.
- 1.7 Given the siting of the development to the nearest neighbours, and due to the scale and nature of the use, there would be no harm to neighbouring amenity in terms of overshadowing, overbearing, overlooking or general noise and disturbance.
- 1.8 Flood risk and drainage matters are considered acceptable.
- 1.9 It is recommended that planning permission be granted subject to conditions.

2. INTRODUCTION / REASON FOR APPLICATION BEING CONSIDERED AT COMMITTEE

2.1 This application is being reported to Planning Committee in accordance with Part A of the Council's Scheme of Delegation as the application is categorised as a Major planning application.

3. POLICY CONSIDERATIONS

§ See Appendix 2

4. SITE HISTORY

§ See Appendix 3

5. DESCRIPTION OF THE SITE AND SITE CONTEXT

5.1 The site is located on an area of vacant grassland within the wider Braintree Village site. To the north is further vacant grassland; to the east is Millennium Way / the B1018; to the south lies the service yard and wider commercial units; whilst to the west is the Braintree Village 'North' car park.

5.2 The site itself is void of any landscaping, but there is existing hedgerow between the site and the car park. Along the B1038 roadside there are low shrubs and linear tree planting.

5.3 The site is located outside of a Conservation Area and there are no nearby listed buildings.

5.4 The site lies within Flood Zone 1 (a low probability of Flood Risk).

6. PROPOSAL

6.1 The application seeks planning permission for the erection of an ice rink facility situated within a marquee measuring 55 x 30 metres (with a maximum height of 7.68 metres to the ridge), and 2 smaller attached marquees measuring 5 x 5 metres (with a ridge height of 5.37 metres).

6.2 In addition to the ice rink itself, the marquees would include skate collection/return point, first aid room, internal viewing platform, staff room, catering facility and plant equipment. Externally a box office is proposed to the south-west front elevation, with condenser / chiller units to the north-west rear elevation.

6.3 The marquees would be constructed from aluminium and clad with white uPVC with glazed/uPVC doors. They would be sited on Type 1 permeable material.



- 6.4 The marquee structures are sought for a period of 12 weeks per year from 2023 until 2028. Whilst the marquees would be removed from site each year, the permeable surfacing would remain in situ.
- 6.5 The development would be lit by 12no. 100 watt floodlights attached to the western (front) elevation of the marquee.
- 6.6 There is no vehicular access to the site itself. Pedestrian access to the ice rink marquee from the existing 'north' car park. A pedestrian safety plan accompanies the application which details parking spaces to be cordoned off, crowd barriers to be installed, and 'crowd management' measures implemented.
- 6.7 It is proposed that hours of operation would vary, but it is proposed that the use would not be operational before 10am or after 10pm daily.

## 7. SUMMARY OF CONSULTATION RESPONSES

### 7.1 BDC Ecology

- 7.1.1 No objection subject to securing ecological mitigation and enhancement measures.

### 7.2 ECC Highways

- 7.2.1 No objections or comments.

### 7.3 ECC Local Lead Flood Authority (LLFA) – SuDS

- 7.3.1 No objections subject to the imposition of a condition.

## 8. PARISH / TOWN COUNCIL

- 8.1 N/A.

## 9. REPRESENTATIONS

- 9.1 The application was advertised by way of site notice, newspaper advert and neighbour notification letters. No letters of representation have been received in connection with this application.

## 10. PRINCIPLE OF DEVELOPMENT

- 10.1 The site is located within the defined town boundary of Braintree where in accordance with Policy LPP1 of the Adopted Local Plan, development is to be confined. The location of this 'main town centre use' at the site is therefore acceptable in principle.
- 10.2 There would be no conflict with Policy LPP12 of the Adopted Local Plan, which details that the Braintree Village Designer Outlet Centre shall be

maintained for the purpose of a discount shopping outlet centre and current associated uses. The development would not result in loss of any retail use, but rather is considered to be a complimentary associated use to those currently available at the site, and would add to the vitality of the site and be a wider benefit to the District in terms of the local economy.

## 11. SITE ASSESSMENT

### 11.1 Layout, design, Appearance and Impact upon the Character and Appearance of the Area

11.1.1 The proposed marquee structures would be sited to the west of Braintree Village to an area of undeveloped land. In terms of size and scale, the main marquee would measure 55 x 30 metres, and extend to a height of 7.68 metres to the ridge. Although of a different form and materials to the adjacent development, it is considered to be sympathetic to the wider site.

11.1.2 Due to its size and siting, the marquee structure would not appear cramped and congested within the development parcel, nor would it appear unduly prominent or harmful to the street scene and wider locality.

11.1.3 The proposed marquee would be sited on an area of hardstanding (a permeable sub-base), and this would not be removed annually with the marquee, rather it would remain in situ for the 5 year period. Some harm is associated with this in terms of visual amenity of the area. However, views of this hardstanding would be limited to views from the car park through the opening in the hedgerow. In addition, given that the hardstanding would be of a temporary nature and as after its removal the site would be planted with a wildflower grassland mix, the impact upon the wider character and appearance of the locality would be acceptable.

### 11.2 Landscaping and Ecology

11.2.1 The site is situated within an area of managed grass (managed in terms of mowing only), and there are no established landscape features on the site where the proposed marquee is proposed to be sited. The application does propose the removal of a 2 metre stretch of hedgerow to allow pedestrian access from the car park to the marquee itself. The stretch of hedgerow to be removed adjoins an area of failed hedgerow (also of around 2 metres), such that there would be a gap of 4 metres within the otherwise well-established hedgerow that defines the car park boundary.

11.2.2 The removal of hedgerow is regrettable as it would be an obvious break in the hedgerow that forms a pleasant and softening feature to the car park, and it would also open up views and access to this area of land. However, any views would be limited, from within the car park, and this would not be so harmful as to warrant the refusal of the application on this ground. As part of the application, 10 metres of replacement hedgerow is proposed to the eastern boundary to mitigate the loss of the hedgerow.

- 11.2.3 In terms of wider landscape impacts, the development would be read as part of the Braintree Village site and there would be no wider impacts. Proposed lighting is in the form of 12no.100 watt floodlights sited to the western, frontage entrance. These would be modest in the context of existing lighting within the Braintree Village car park and street lighting to the adjacent B1038.
- 11.2.4 In terms of ecology, the application has been submitted with an Ecology Report Letter (Greengage Environmental Ltd, dated 13th July 2023), relating to the likely impacts of development on designated sites, protected and Priority Species & Habitats. Officers are satisfied that sufficient ecological information is available for determination. Additionally, 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.
- 11.2.5 The mitigation measures as detailed in Ecology Report Letter (Greengage Environmental Ltd, dated 13th July 2023), are required to conserve Protected and Priority species and habitats, particularly Reptiles and nesting birds. The mitigation relates to compensation for loss of grassland and hedgerows. The compensation and enhancement measures for the removal of the 2 metres of hedgerow, is in the form of 10 metres of replacement hedgerow proposed to the eastern boundary. Compensation for the loss of the grassland is provided by way of the area of grassland next to the application site being enhanced with a wildflower grassland mix to be suitably managed. Additionally, once associated surfacing is removed in 2028, the land would also be restored with the same wildflower grassland mix. This is to be secured via the Ecological Design Strategy (August 2023). This would also ensure that measurable biodiversity net gains is secured for this application, as outlined within Paragraph 174 of the NPPF, and this would enable the LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.
- 11.3 Highway Considerations
- 11.3.1 The Highway Authority have reviewed the application and are content that the development would not result in any adverse impact in terms of highway capacity or highway safety.
- 11.3.2 The existing car park provision at Braintree Village would serve the development, and no additional parking is proposed. Given the provision of existing parking at the site, and as many of the trips to the ice rink would be a linked visit with the wider Braintree Village, it is considered that the provision is acceptable.
- 11.3.3 Pedestrian access would be via the car park and from the northern access at the Village itself. The application has been submitted with a Pedestrian Safety Plan which sets out how pedestrian movements to and from the site would be managed. It is proposed that 12 of the existing car parking spaces along the hedge line would be cordoned off with crowd barriers. The

barriers would then also extend in front of the service yard delivery gate, to allow pedestrians to have a defined access around the car park to the ice rink facility. In addition, it is proposed that during the hours of use of the ice rink, two security/car park trained staff would manage the access to the service yard with one person moving the barriers and one managing the pedestrians crossing (of note is that during the hours of use of the ice rink, the number of movements associated with the service yard would be low as the majority of deliveries take place before the Village opens).

- 11.3.4 A condition is imposed to ensure that the Pedestrian Safety Plan is fully implemented prior to the first use of the facility, and carried out at all times that the site is open to the public. On this basis, it is considered that pedestrian movements and safety would be acceptable.

#### 11.4 Impact upon Neighbouring Residential Amenity

- 11.4.1 Given the scale and nature of the proposed use, and the siting and relationship with the nearest residential dwellings which are sited beyond the B1038 and cycle/footway, there would be no harm to their amenity in terms of overshadowing, overbearing, overlooking or in terms of noise and disturbance or similar.

- 11.4.2 Additional, the proposed hours of operation broadly align with the units at Braintree Village and thus the activity associated with the proposed development would not be out of keeping.

- 11.4.3 Furthermore, the development would have no adverse impact to the adjacent commercial units, nor the operating of the service yard area.

#### 11.5 Flooding and Drainage Strategy

- 11.5.1 Policy LPP74 of the Adopted Local Plan states that new development shall be located on Flood Zone 1 or areas with the lowest probability of flooding, taking climate change into account and would not increase flood risk elsewhere.

- 11.5.2 The site is situated within Flood Zone 1, but as the development falls to be a 'major' application, the Local Lead Flood Authority (LLFA) have been formally consulted. The LLFA have no objections to the proposals noting that the marquee would be sited on a permeable Type 1 surface. They have however requested details of construction of the Type 1 permeable surface to ensure that this has been designed accordingly. They also request that a condition be imposed requiring a detailed surface water drainage scheme for the site (based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development), be submitted and implemented prior to first use.

- 11.5.3 Subject to the imposition of such conditions, matters of flood risk and drainage considerations are therefore not a constraint to development.

12. CONCLUSION

- 12.1 The site is located within the defined town boundary of Braintree, wherein the principle of development is acceptable. The development would be complimentary to those uses currently available at the site and would add to the vitality of the site and be a wider benefit to the District in terms of the local economy.
- 12.2 The development would be of an acceptable layout and design and the built form relates appropriately to the adjacent Braintree Village with no harm to wider character and appearance of the locality.
- 12.3 Matters in relation to landscape and ecology are acceptable, and there would be no harm in terms of flood risk and drainage.
- 12.4 Highway matters are also considered acceptable, and regard has been had to ensuring safety of pedestrians accessing the site.
- 12.5 There would be no adverse impact upon neighbouring residential amenity.
- 12.6 Taking into account the above, it is considered that the proposal complies with the Development Plan when taken as a whole. Officers consider that there are no material considerations, that indicate that a decision should be made other than in accordance with the Development Plan.

13. RECOMMENDATION

- 13.1 It is RECOMMENDED that the following decision be made:  
Application GRANTED in accordance with the Approved Plans and Documents, and subject to the Conditions and Reasons, and Informative(s) outlined within APPENDIX 1.

CHRISTOPHER PAGGI  
PLANNING DEVELOPMENT MANAGER

APPENDIX 1:

APPROVED PLAN(S) & DOCUMENT(S) / CONDITION(S) & REASON(S) AND INFORMATIVE(S)

Approved Plan(s) & Document(s)

<b>Plan Description</b>	<b>Plan Ref</b>	<b>Plan Version</b>
Location Plan	2616-IDL-NA-GF-DR-A-00001	N/A
Planning Layout	2616-IDL-NA-GF-DR-A-10001	N/A
Proposed Elevations	-2616-IDL-NA-ZZ-DR-A-16001	(3-01)
Proposed Block Plan	2616-IDL-NA-GF-DR-A-10000	[3-04]
Proposed Elevations	2616-IDL-NA-ZZ-DR-A-16000	[3-02]
Other	2616-IDL-NA-GF-DR-A-10002	[3-02]
Landscaping	2616-IDL-NA-GF-DR-A-10003	(3-03)

Condition(s) & Reason(s)

**Condition 1**

The permission hereby approved shall expire on 16th January 2028, and on or by that date the use of the site for the purposes hereby permitted shall be permanently discontinued, and all structures and associated hardstanding shall be removed from the site.

Reason: This permission for a limited period is granted only in the light of circumstances appertaining in this case.

**Condition 2**

The development hereby approved shall only be implemented in accordance with the approved plans listed above.

Reason: For the avoidance of doubt and in the interests of proper planning.

**Condition 3**

Prior to the commencement of development each year, hedge protection shall be carried out in accordance with the details as shown on plan 2616-IDL-NA-GF-DR-A-10003 3-03. The means of protection shall be retained until the completion of the development each year. No materials, goods or articles of any description shall be stacked, stored, or placed at any time within the limits of the spread of the existing hedges. Prior to the removal of any of the facility each year, the hedge protection as shown on the plan shall be re-instated and retained until the removal of all buildings, plant, machinery and any other associated equipment from the site.

Reason: To ensure the protection and retention of the hedgerow, and to ensure that the development does not prejudice the appearance of the locality.

#### Condition 4

All mitigation measures and/or works shall be carried out in accordance with the details contained in the Ecology Report Letter (Greengage Environmental Ltd, dated 13th July 2023). 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).

#### Condition 5

The development hereby permitted, shall be carried out in full accordance with the Ecological Design Statement (Greenage Environmental Ltd, August 2023).

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

#### Condition 6

The operation of the development and management of pedestrians shall be carried out in accordance with plan 2616-IDL-NA-GF-DR-A-10003 3-03. These details shall be implemented in full at all times when the facility is open to members of the public.

Reason: In the interests of pedestrian movements at the site and safety.

#### Condition 7

The development hereby approved shall not be operational to visiting members of the public before 10am or after 10pm daily.

Reason: In the interest of amenity.

#### Condition 8

The development hereby approved shall only be carried out in accordance with the lighting details as shown on plan 2616-IDL-NA-GF-DR-A-10002 (3-02). Under no circumstances should any other external lighting be installed on the site.

Reason: In order to protect the visual amenity of the locality and to avoid unnecessary light pollution.

#### Condition 9

No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and

hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented in full, prior to the first use of the development.

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

#### Condition 10

Prior to the construction of the associated hardstanding, full details of the type and materials of construction, together with details of permeability shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details.

Reason: To prevent flooding by ensuring satisfactory drainage is achieved.

#### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission, in accordance with the presumption in favour of sustainable development, as set out in the National Planning Policy Framework.



## APPENDIX 2:

### POLICY CONSIDERATIONS

#### National Planning Guidance

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

#### Braintree District Local Plan 2013 - 2033

SP1	Presumption in Favour of Sustainable Development
SP5	Employment
SP6	Infrastructure & Connectivity
SP7	Place Shaping Principles
LPP1	Development Boundaries
LPP12	Braintree Village Designer Outlet Centre
LPP43	Parking Provision
LPP47	Built and Historic Environment
LPP48	An Inclusive Environment
LPP52	Layout and Design of Development
LPP63	Natural Environment and Green Infrastructure
LPP64	Protected Sites
LPP65	Tree Protection
LPP66	Protection, Enhancement, Management and Monitoring of Biodiversity
LPP67	Landscape Character and Features
LPP70	Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
LPP74	Flooding Risk and Surface Water Drainage
LPP77	External Lighting

APPENDIX 3:

SITE HISTORY

No relevant application history.