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Item No: 7.1

Application: 223013

Applicant: Mr Modani

Agent: Mr Ben Willis

Proposal: Change of use of land to B8 Storage, retention of portable cabin for ancillary office, retention of earth bunds, proposed buildings for storage.

Location: Bypass Nurseries, Dobbies Lane, Marks Tey, Essex, CO6 1EP

Ward: Marks Tey & Layer

Officer: Mr Daniel Cooper

Recommendation: Approval subject to recommended conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because Cllr Ellis has called-in the application for the following reasons:

The development proposed together with building layout, siting and scale is too industrial in nature/appearance, and will therefore have a detrimental impact on the area.

The proposal does not accord with the adopted Marks Tey Neighbourhood Plan.

Notwithstanding ECC Highways comments/requested conditions, Dobbies Lane is patently unsuitable for the type and quantity of vehicles the proposed use requires/generates, significantly compromising Highway safety for both cyclists and pedestrians. Photographic evidence can easily be supplied by the Parish Council. I would ask for a committee site visit so that they can fully appreciate the issues with this application. I could continue, but this should be sufficient reasons for 'call in' and we will expand on this at Committee.

2.0 Synopsis

- 2.1 The proposed development is for the change the use of the land outlined in red to B8 storage (retrospective), retention of portable cabin for ancillary office (retrospective), retention of earth bunds (retrospective) and two proposed buildings for storage.
- 2.2 The key issues for consideration are principle of development, highway matters, flood risk and drainage, heritage, ecology, impact on the character of the area, and impact on amenity.
- 2.3 The report describes the site and its setting, the proposal itself, and the consultation responses received including those from statutory consultees. The material planning considerations which are relevant to the proposal are detailed in the report. The report considers this submission documentation alongside the key material planning matters and comments set out in representations received. It is acknowledged that a number of third party representations are in relation to highway safety. The Essex County Council Highway Authority has been consulted on the proposal and their comments, included recommended conditions, are considered in the report.
- 2.4 The planning merits of the case are assessed leading to the conclusion that the proposal is acceptable and that a conditional approval is recommended.
- 2.5 On 15th June 2023 this scheme was deferred by members of the planning committee for the following reasons:**
- 1 - The application is deferred to seek a site visit with the planning Committee and inviting the Essex County Council (ECC) Highways Officer to attend said site visit and the subsequent committee determination hearing**

and ask that ECC Highways investigate the use of Dobbies Lane and potential conflicts with pedestrians and cyclists on this key route (MTNP Policy MT08).

2.6 Following this deferral, officers have met with the applicants and new drawings have been submitted showing access direct onto Old London Road avoiding Dobbies Lane entirely. Neither National Highways nor Essex County Highways have any objection to the revised proposals. The application is subsequently recommended for approval subject to the recommended conditions. Updates to the original officer report are set out below in bold text for convenience.

3.0 Site Description and Context

3.1 The application site comprises of the existing Nustone site which is a well established paving stone distribution site within Marks Tey. The on-site business operations comprises of storage of a range of different paving stones and types. The Nustone site (i.e. the brownfield area of the site) has an urbanising effect on the otherwise predominantly rural landscape. The site also includes an undeveloped grassland area which is adjacent to Old London Road. This existing grass buffer helps to maintain separation between the existing Nustone site and the public highway, softening its influence on the character and appearance of the area and creating a softer edge to the wider settlement.

3.2 The surrounding land uses are residential to the north, commercial employment to the east, and open countryside to the south and west. The A12 is in close proximity to the site, this is to the south. Vehicular access is already existing, this is provided via Dobbies Lane, which joins Old London Road, which then links to the A120 and then the A12.

3.3 The application site is located outside of the settlement limits, designated as white land (i.e. "no allocation") in the Local Plan albeit close to an employment zone. The site is noted as business use within the adopted Marks Tey Neighbourhood Plan.

3.4 The approach to the site from Marks Tey along Old London Road is lined by dwellings, which give way to the employment uses closer to the application site. Adjacent to Old London Road is the A12 dual carriageway with agricultural land, a small number of isolated houses and a petrol station beyond. To the south-west, beyond the wider field boundary and another small collection of houses, is further agricultural land. Despite some elements of urbanising development and the site's position on the edge of the built-up area, the surrounding area is therefore predominantly rural in character.

4.0 Description of the Proposal

4.1 Change of use of land to B8 storage (retrospective), retention of portable cabin for ancillary office (retrospective), retention of earth bunds (retrospective) and two proposed buildings for storage.

5.0 Land Use Allocation

5.1 The site is previously developed commercial uses but is located in the defined countryside in planning policy terms.

6.0 Relevant Planning History

6.1 151898 - Previous planning permission granted for the change of use of polytunnel and area of hard standing to B8 storage. Approved

6.2 211747 - Change of use of land from Garden Nursery (sui generis) to B8 Storage. Refused and dismissed at appeal. It is important to note that this application related to the greenfield part of the site and introduced a new access point. The refused application is considered materially different to this scheme before Planning Committee.

7.0 Principal Policies

7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP5 Employment
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

- SG1 Colchester's Spatial Strategy
- SG3 Economic Growth
- SG8 Neighbourhood Plans
- ENV1 Environment
- ENV5 Pollution and Contaminated Land
- CC1 Climate Change
- PP1 Generic Infrastructure and Mitigation Requirements
- OV1 Development in Other Villages
- OV2 Countryside
- DM6 Economic Development in Rural Areas and the Countryside
- DM15 Design and Amenity
- DM16 Historic Environment
- DM21 Sustainable Access to development
- DM22 Parking

- DM23 Flood Risk and Water Management
- DM24 Sustainable Urban Drainage Systems
- DM25 Renewable Energy, Water Waste and Recycling

7.5 Some “allocated sites” also have specific policies applicable to them. The adopted local plan policies set out below are of direct relevance to the decision making process:

- SS11 Marks Tey

7.6 The Neighbourhood Plan for Marks Tey. This forms part of the Development Plan in this area of the City.

7.7 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

- The Essex Design Guide
- External Materials in New Developments
- EPOA Vehicle Parking Standards
- Sustainable Construction

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below:

Environmental Protection – No objection subject to conditions recommended at 17.1 of this report

Anglian Water – Unable to comment

Essex County Fire and Rescue Service – Recommends the scheme complies with Building Regulations

Essex County Council Highway Authority – No objections subject to conditions recommended at 17.1 of this report.

Historic England – No comments to make on this application

National Highways - This proposed application site is located north-western side of Old London Road, where there is existing vehicular access to the site via Dobbies Lane. The Old London Road runs parallel to the A12 and joins at the Marks Tey Road interchange, Junction25 between A12 and A120. Currently, National Highways have a major road within the wider area. We have reviewed the details and information provided. The proposed development is unlikely to have any adverse impact on the Strategic Road Network. Therefore, National Highways offers no objection.

Essex Country Council SuDs – Holding objection

The information provided does not allow us to assess the flood risk development. Please provide information as required within the new ECC SUDS design guide: <https://www.essexdesignguide.co.uk/suds/what-we-expect/>

We strongly recommend looking at the Essex Green Infrastructure Strategy to ensure that the proposals are implementing multifunctional green/blue features effectively. The link can be found below:

<https://www.essex.gov.uk/protecting-environment>

Landscape Advisor –

In support and addition to the policy/policies and guidance, the following point(s) should be taken into consideration. This to avoid potential harm to the existing and future character/amenity of the site and its environs that might occur through agreement of the currently proposed scheme, as it is considered it may not adequately conserve/enhance/restore the landscape of the site for the betterment of its wider setting:

In order to allow the development to better reflect, conserve and enhance the landscape character of the Easthorpe Farmland Plateau within which the site sits, the following amendments should be considered:

1. Propose using an architectural design and materials to the proposed buildings that are demonstrably in keeping with modern farm buildings within the Easthorpe Farmland Plateau, this to allow the development to conserve and complement the character of its wider landscape setting.

Following the deferral and amended drawings the Council's Landscape Officer has commented on the revised proposals with no objections subject to a landscape condition

Contaminated Land Officer – no comments

Archaeological Advisor –

While the proposed buildings are relatively large, under these proposals they will have small pad foundations, with low archaeological impact. There are no known archaeological sites nearby, with the course of a Roman road circa 240m away. Therefore there are no archaeological requirements.

Heritage Officer –

The application site is situated to the south-east of Palmer's Farmhouse which is listed at Grade II (List UID 1224575). The listed building has a well-defined domestic curtilage but its wider setting is much altered by modern development, including the A12 Interchange Park to the north-east and the former facilities of the Bypass Nurseries to the south-east. The present application proposes retention of existing portable cabin for ancillary office, retention of earth bunds and two new buildings for storage.

The proposed buildings would be large warehouses of utilitarian/ industrial appearance but they would be located at the north-east corner of the site. I appreciate that this is less desirable in terms of landscape impact but it reduces their potential to intrude into the views of the listed building and affect its immediate, domestic curtilage (in combination with an appropriate landscape strategy).

However, harm to the listed building can also occur from the introduction of an unsuitable use in its vicinity (due to increased noise, traffic, light spillage etc). I note that some objectors raise the matter of traffic etc, but these considerations are rather outside my remit. If there are wider concerns that the proposal would result in the intensification of the site's use and overdevelopment, then the harm to listed building could be added to those concerns. However, having in mind that the site was previously in use, I don't feel there are enough grounds for heritage objections unless there are wider planning issues for the proposal.

Built Heritage Response to revised proposals:

The impact of the current (revised) proposals is very limited and potentially positive. The stopping up of the existing vehicular access to Dobbies Lane will remove HGV's from the lane and create a greater sense of the formerly tranquil rural lane. This is a positive outcome that will return a degree of the historic isolation of the formerly rural farmhouse. Furthermore, the stopping up of the access and introduction of new planting belts of screening trees and shrubs as part of detailed landscape proposals, will serve to mitigate the continued use of the site as a distribution depot. The net resultant impact upon the setting of Palmers Farmhouse will thus be potentially positive and this will become more apparent as landscaping matures.

In conclusion, having regard to the statutory duty (s.66(1) 1990 PI (Lb & CA) Act 1990) and relevant local plan policies (DM16, ENV1) the proposals would serve to preserve the setting of the listed former farmhouse and in the medium and longer term potentially deliver an enhancement for the reasons set out above.

9.0 Parish Council Response

- 9.1 The Parish Council feel compromised by the redevelopment, change of use, extended use, and operation of this site by Nustone without them undertaking any of the statutory preparation that is required for such use, and without any consultation. Nustone, without any statutory permissions are operationally using almost twice the area of the former use that could be considered 'brown land' and almost 5.5 times more area than the legitimate existing B8 permission. The erected and proposed buildings are out of character with the former use and the size of vehicles servicing the site overwhelm narrow Dobbies Lane and the adjacent reduced width part of Old London Road and the junction. This vehicular use is a threat to pedestrians and cyclists from the Marks Tey estate using the rail bridge and attractive rural unlit and shared pedestrian/vehicle Dobbies Lane to access the rest of the village.
- 9.2 The planning application is simplistic, internal facing only, lacks any specifics or projected use data, and does not address nor meet the adopted Marks Tey Neighbourhood Plan which is now a statutory planning document (it only refers to a supporting document). The situation also creates a significant precedent for similar approaches to development across Colchester City.

- 9.3 For these reasons the Parish Council would prefer the Application to be refused and enforcement action to be taken against Nustone. However, the Parish Council recognise the difficulty the situation creates, that part of the area is 'brown land' formerly used for employment, with a small area with existing B8 permission. Thus if the Planning Authority feel that the current use is acceptable including the effect on Dobbies Lane and Old London Road then we would ask that the following restrictions be imposed:
- The site use is reduced to the original Bypass Nurseries 'blown field area, the earth bund repositioned, and the green field area made good.
 - That no industrial/storage use is made of the green field part of the site.
 - That the proposed buildings be required to be more small scale and less industrial in nature.
 - That the site be considered a sensitive boundary site bordering an urban area and turning to a rural one.
 - Thus any new building be located away from the rural boundary i.e. closer to Dobbies Lane and suitably landscape screened.
 - Suitable tree and hedge landscaping be effected and reinforced to all boundaries around the development.
 - Any transport statement and operation ensures that there will be only one business vehicle use of Dobbies Lane at any one time and that there be no vehicular waiting allowed in Dobbies Lane nor Old London Road.
 - That no articulated vehicles be allowed in Dobbies Lane.
 - Vehicle movement warning signage be applied to the Dobbies Lane/Old London Road junction with warning markings on the junction road surface.
 - Direct vehicular access to the detrunked A12 be created (and Dobbies Lane disused) should detrunking result from the proposed A12 development.
- 9.4 A more detailed analysis of the Application and the Planning Statement has been prepared for the Parish Council and is being sent to the Planning Officer and our City Councillors as background information. Two photographs are included below to indicate the effect of Nustone vehicle movements on Dobbies Lane.
- 9.5 *Officer comment:* Please note the two photographs provided by Marks Tey Parish Council could not be reproduced for this Committee Report, however they are available to view on the Council's website.
- 9.6 **Further Officer Comment – Following the deferral and amended drawings, Marks Tey Parish Council have indicated they would like to comment. This will be published on the Committee update sheet or verbally updated.**

10.0 Representations from Notified Parties

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. Following the consultation exercise, ten letters of objection have been submitted and eighteen letters of support have been received. The letters of support can be viewed in full on file via the Council's website. The received objections are summarised below:

- Unauthorised development has already taken place on site, further development should not be allowed
- Dobbies Lane is not suitable for larger vehicles including HGV's and therefore causes highway safety implications
- Dobbies Lane is not wide enough to accommodate the traffic access/existing the Nustone site
- The proposal will increase congestion within the locality
- The site has remained in operation despite enforcement complaints
- The proposal will be a noisy intrusion to neighbouring amenity, causing harm to neighbouring amenity
- Concerns that letters of support are not from neighbouring residents

10.2 Following the deferral and amended drawings, the following comments were received and summarised below:

10.3 One further objection has been received raising concerns about dust levels on the site and the wider impact of such levels on neighbours. An air quality assessment is requested. (Officer comment – Given these concerns, it is considered necessary that a dust mitigation method condition is included in the decision notice. This has been included in the conditions below. This should provide adequate control over dust arising).

11.0 Parking Provision

11.1 There is no change to the existing vehicle car parking provision on site. There are an existing 12 car parking spaces and 6 HGV parking spaces on site. The scheme is considered to provide adequate parking on site and complies with the adopted Vehicle Parking Standards SPD.

12.0 Open Space Provisions

12.1 Not applicable

13.0 Air Quality

13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Planning Obligations

14.1 As a "Major" application in size, there was a requirement for this proposal to be considered by the Development Team. It was considered that Planning Obligations should not be sought in this instance since residential development is not proposed.

15.0 Report

Principle

15.1 The Local Plan supports rural communities and sets out a flexible approach that maintains a balance between environmental considerations and appropriate business growth. Economic development proposals in the countryside, within a designated Local Economic Area or on a rural site serving a similar function,

must contribute to the local rural economy and help sustain rural communities. The proposed use is likely to be small scale and not harm the rural character of the local area either by the nature and level of activity (including the amount of additional traffic generation on rural roads) or any other detrimental effects such as noise, fumes and pollution.

- 15.2 Employment in the countryside is supported in the NPPF, in particular paragraphs 83 and 84. Paragraph 84 states:

Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

- 15.3 In this instance, the application site comprises part of the wider grounds of the former ByPass Nurseries Ltd. This previously took the form of a substantial collection of buildings all of permanent structures. The majority were demolished.

- 15.4 Policy DM6 of the Local Plan Section 2 seeks to maintain a balance between environmental considerations and appropriate business growth. In the cases of expansion of an existing business however, any new development will be expected to have adequate landscape mitigation to compensate for any additional impact upon the surrounding countryside.

- 15.5 In response to DM6, there are no further appropriate buildings on site which would be suitable for conversion to storage purposes. While there is further land in the wider City, this application site is already a long established commercial site and thus would be inappropriate to request the applicant to seek a brand new commercial site and there is no such guarantee that an alternative site would be suitable for the required operations of Nustone. The applicant has confirmed that if it is not possible to secure planning permission, operations would need to be moved to another site which is outside of the City, in Warwick. This would therefore result in a loss of employment opportunities for locals. A specific business need has been addressed and two new buildings are proposed to provide covered storage for particular products. It will also provide refuge for operational works during adverse weather.

- 15.6 Marks Tey Neighbourhood Plan is also of direct relevance. Policy MT15 states; *“the adjacent former By-Pass Nurseries site shown on Map 6.10 is safeguarded for employment use subject to those uses being consistent with the existing edge of settlement rural location. All schemes must maintain or enhance residential amenity and landscape character.”* In addition Policy MT08 seeks to avoid adverse impacts on Dobbies Lane to return the lane to a primarily cycling and walking route.

- 15.7 Drawing the above together, the site is not considered to be physically isolated and is related to the existing settlement and nearby commercial sites. The site relates to a well-established business in Marks Tey which provides for local employment opportunities and is considered to be previously developed land. It is acknowledged the scheme proposes two new buildings, however DM6 provides support for new buildings in the exceptional circumstances. It is considered the criteria is met in these instances. **Overall, the revised proposal is now considered to be in compliance with the requirements of local plan policy, including the Marks Tey Neighbourhood Plan, and the NPPF.**
- 15.8 It is acknowledged the application site has seen an intensification of an employment use in a rural area over the years. However, given the existing long historic use of the site for B8 (storage) and garden nursery (now Class E) at the site, on balance it is considered that this intensification is not significant enough to warrant recommending a reason for refusal, subject to the detailed planning consideration below. **Adverse traffic impacts upon Dobbies Lane have now been addressed by the revised access arrangements and the stopping up of the vehicular access between the site and the Lane with direct access from the extreme western end of Old London Road..**

Character, Appearance and Design

- 15.9 Policy ENV1 of the Local Plan Section 2 states that development will only be permitted where it would not adversely affect the intrinsic character and beauty of the countryside. This policy seeks to control development outside of settlements to protect open stretches of countryside around and between exiting settlements to prevent coalescence and retain settlement identity. Any development outside of settlement boundaries must be compatible with local landscape character and setting. Policies SP7 and DM15 are also relevant. These policies seek to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings. Policy SP7 states in particular that all new development must meet high standards of urban and architectural design. The aspiration for high quality design and well-designed places is also reflected in the Framework and Marks Tey Neighbourhood Plan.
- 15.10 The existing Nustone site features numerous stacked pallets stored externally and several parked trailers, amongst other structures and chattels. These have an urbanising effect on the otherwise predominantly rural landscape. The proposal seeks planning permission to change the use of the land outlined in red to B8 storage (retrospective), retention of portable cabin for ancillary office (retrospective), retention of earth bunds (retrospective) and two proposed buildings for storage. **Following the deferral and amended plans, there is only now one new building for storage proposed. A new access is proposed directly on to Old London Road.**
- 15.11 The development proposal remains fully contained within previously developed land. It is contained by an earth bund to the east and west, already constructed.. It is considered that the current proposal has lesser of a visual impact upon the

wider setting than that of the existing. Around the entire site exists soft landscaping.

- 15.12 Further to the above, the scheme has been amended to enhance the planting and landscape setting as required by Section 2 policy DM6 and the Marks Tey Neighbourhood Plan. The existing brownfield area of the site has clearly been defined and the proposed new development is entirely contained within the brownfield site. The undeveloped areas of the site are proposed to be enhanced with additional planting features, these are considered to mitigate the proposal.
- 15.13 The mitigation includes a new 10m planting belt located adjacent to Old London Road, creating additional screening to the access road and the wider A12. The existing undeveloped grassland area is to be retained and enhanced with a new native wildflower meadow mixture sown on top of the existing bund (both of which are to be reduced to 1m), this will help to screen the bund and the Nustone storage site within the wider landscape setting. A new 5-8m deep woodland belt is to be planted along the south west of the site, spanning the entirety of this site boundary. The proposed native woodland tree planting belt is considered to mitigate views from the wider countryside to the west.
- 15.14 The details submitted include the construction of two storage buildings located centrally in the plot, and closer to Dobbies Lane. Regarding the scale in terms of the previous nursery use and associated buildings on site, the proposed storage building would be smaller in scale when compared to the previous structures on site. The proposed layout of the site is considered to enhance the appearance of the area by ensuring adequate storage is provided on site, allowing external paving stones to be stored away from view. Overall, in terms of the layout of the new buildings, these would be appropriately positioned within the site and yard area, positioned away from any neighbouring properties and would be well accommodated within the large site. **Following the deferral and new drawings the proposal is now for one new building on site and in a different location to the previously proposed two new buildings.**
- 15.15 It is noted the Landscape Advisor has suggested the buildings appear as modern farm buildings. However it is important to note the existing site is not a farm and therefore a farmstead appearance would be somewhat out of context with the commercial storage use, that is existing on site. The proposed buildings are fairly simple and utilitarian in appearance, however they are an honest design expression of their functionality. The design is not considered to be harmful, despite their fairly simplistic appearance. Subject to conditions to secure the materials, the functional appearance of the storage buildings is not considered to be harmful in this location. It is not considered that a design refusal could be sustained given the buildings are located on the urbanised area of the site and would comfortably fit with this context. **Following the deferral and revised drawings and as noted above, the proposal now provides for one new building only within a different location in the site from the previously proposed two buildings. The Council's Landscape Officer has no objections to the revisions subject to the inclusion of a landscape condition (see above consultation responses).**

Heritage

- 15.16 The Planning (Listed Building and Conservation Areas) Act 1990 requires that special regard is paid to the desirability of preserving listed buildings and their setting. The NPPF sets out the desirability of sustaining and enhancing the significance of heritage assets (paragraph 192). It establishes that great weight should be given to an asset's conservation and the more important that asset, the greater that weight should be (paragraph 193). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification, (paragraph 194). Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal, including securing its optimum viable use (paragraph 196). The NPPF also promotes good design advising that permission should be refused for development of poor design. These requirements are echoed within Section 2 Local Plan Policy DM16.
- 15.17 The application site is situated to the south-east of Palmer's Farm house which is listed at Grade II (List UID 1224575). The listed building has a well-defined domestic curtilage but its wider setting is much altered by modern development, including the A12 Interchange Park to the north-east and the former facilities of the Bypass Nurseries to the south-east
- 15.18 It is considered that the proposed new development will affect (change) the setting of the nearby listed building to a small extent. The proposal is considered to be sufficiently distanced from the nearby listed building to ensure any impact is neutral on the significance of the asset. As can be seen from the Heritage Officer comments, the scheme is not considered to be harmful enough to sustain a refusal on heritage grounds. The proposal also represents an enhancement to the area, by providing additional soft landscaping to screen the application site from wider environs. The proposal would also ensure the retention of employment on site. These public benefits are considered to weigh positively in favour of approval. **Following the deferral and new drawings, the proposed storage building has been moved away from the heritage asset. It is also noted that the old Dobbies Land access will be blocked up and re-planted further reducing the visibility between the Listed Building and the proposed development site.**
- 15.19 In this instance, the public benefits weigh in favour of the scheme. These public benefits constitute the social, economic and environmental benefits that stem from creating employment in the area. Given this, the proposed development is considered to be consistent with the aforementioned relevant adopted local plan policies and national planning policy guidance in relation to the historic environment.

Residential Amenity

- 15.20 Paragraph 130 of the National Planning Policy Framework (2021) requires planning decisions to ensure development creates places with a high standard

of amenity for existing and future users, while Paragraph 185 further requires planning policies and decisions to ensure that new development is appropriate for its location taking into account likely effects and potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

15.21 Section 2 Policy DM15 states that all development must be designed to a high standard and protect and promote public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance. Section 1 Policy SP7 echoes these sentiments, requiring all development to protect the amenity of existing and future residents, including with regard to noise and vibration.

15.22 There are residential properties adjacent to the site to the east and south, with a wider residential estate located further to the north. It is acknowledged the application site is situated between Marks Tey Railway Station and the A12. Both of these are considered to be noise generating uses in the vicinity. It is considered that the site is adequately screened, subject to recommended conditions, to ensure that the proposal would not adversely impact on the residential amenity of the neighbouring properties. Further to this, the scheme is recommended to be open during the following periods:

Weekdays: 07:00-19:00

Saturdays: 08:00-13:00

Sundays and Public Holidays: No operation

15.23 Given the restricted hours of opening, landscaping and existing noise causing uses in the locality, it is not considered that the proposal would have an unacceptable impact on the residential amenity of neighbours.

Highway safety

15.24 Section 2 Policy DM21 requires all new developments to seek to enhance accessibility for sustainable modes of transport. Policy DM22 states that parking standards for non-residential development should be agreed through joint discussions with the local Highway Authority and the Local Planning Authority in accordance with the most recent local Parking Standards, with a more flexible approach to the parking standards only considered if supported by a parking survey and accumulation data.

15.25 It is noted that many of the objections that have been received in relation to the proposed development have identified the perceived inadequacy of the local highway network and the problems experienced by pedestrians and cyclists at present, especially when met with a HGV along Dobbies Lane. A number of objections have highlighted concerns in relation to the width of Dobbies Lane and the in lack of space for two HGV's to pass each other. These concerns contribute to the perceived inadequacy of the local highway network. The concern is that the proposed development would exacerbate current problems and also create highway safety issues. These views are fully acknowledged and appreciated.

- 15.26 Essex County Council Highways have been consulted on the acceptability of the use and proposed development in this location on highway safety. Notwithstanding these concerns, the Highway Authority has advised in its consultation response (available to view on file) that the existing highway infrastructure provision would be sufficient to cater for both the existing traffic and that likely to be generated by the development. The Authority's recommendation includes a condition that would, inter alia, limit HGV and LGV traffic attending the site to two vehicles only being on site together. The recommendation also includes measures to prevent HGV and LGV traffic from waiting, parking or lay overs on Dobbies Lane which shall be kept clear of all vehicles associated with the sites activities.
- 15.27 **Following the deferral and resubmitted drawings, the scheme has undergone fundamental changes in terms of the access strategy. Dobbies Lane will no longer be used and a new access will be created onto Old London Road. The existing Dobbies Lane access to the site will be permanently blocked and will be filled by new planting. This is held to comply with the objectives of Marks Tey Neighbourhood Plan Policy MT08 Rural Lanes.**
- 15.28 **Policy MT08 further provides that rural lanes shall be protected or enhanced. In terms of this proposal, the new access and blocking up of the old access removes the use of Dobbies Lane by users of this site and subsequently any previous parking on Dobbies Lane by site users will also likely cease as there will be no opportunity to access the site from this side. In addition, a landscape condition shall be included (see Landscape Officer's comments above) for the submission of an appropriate landscape scheme that will also result in a positive impact to Dobbies Lane through further landscaping and greening of the locality.**
- 15.29 **Further to the above and following the deferral and subsequent revisions to the proposal, it is worth taking a closer look at the relevant Mark Tey Neighbourhood Plan policies.**
- 15.30 **Policy MT05 Local Character and Design states that all development proposals should contribute in a positive way to the quality of the built environment and settings in the Parish. Due to the above mentioned removal of use of Dobbies Lane and the on-site landscape enhancement, it is considered that the revised proposal contributes positively to the area. Dobbies Lane will return to a lightly trafficked rural lane to the significant benefit of all road users including pedestrians and cyclists.**
- 15.31 **Policy MT15 provides that employment uses will be safeguarded subject to being consistent with the existing edge of settlement rural location. It goes on to state that development must maintain or enhance residential amenity and landscape character. As noted above, pedestrian users of Dobbies Lane will find a safer walking environment as the use of the Lane will be greatly reduced in particular by heavy goods vehicles. This also contributes positively to the character of the locality. The conditioned landscaping scheme yet to be submitted is again intended to enhance the**

site and setting of the area and in particular will improve the setting of the Listed Building known as Palmer's Farm located close to the access that is proposed to be closed on Dobbies Lane.

Flood Risk

- 15.28 Section 2 Policies CC1 and DM23 state that development will be directed to locations with the least impact on flooding or water resources. Policy DM23 includes the provision that, where proposals include driveways, hard standing or paving, the use of permeable materials and landscaping will be sought to minimise the cumulative impacts of flooding from such developments
- 15.29 The site is located within Flood Zone 1 which means that there is low probability of flooding (less than 0.1%), with no recording of flooding on site. The development itself is, therefore, unlikely to be susceptible to flooding. In terms of the development leading to flooding elsewhere, the proposal consolidates the previous hard standing and structures on site. The extended area of hard standing will be formed of crushed gravel, thus retaining permeability and so surface water run-off would be limited. The previous drainage on site went into soakaways to the front field. This will remain the case with the development proposal.
- 15.30 While a holding objection has been issued from the Lead Local Flood Authority (LLFA), **To be amended Monday 30th OCT after full comments received.** holding objections of this nature for major development are not uncommon. Further clarification is being sought with the LLFA given the circumstances of the case and the submission of further information. Given the nature of the proposal, it is reasonable to consider that this matter can be resolved. As such, it is requested that delegated authority be given to pursue the matter further to a satisfactory conclusion, subject to any conditions that the LLFA may advise.

Ecology

- 15.31 Section 40 of the Natural Environment and rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity and a core principle of the NPPF is that planning should contribute to conserving and enhancing the natural environment.
- 15.32 Various Section 2 Local Plan Policies seek opportunities to safeguard and enhance biodiversity throughout the Borough. In particular, policy ENV1 requires development proposals to be supported by appropriate ecological surveys where necessary; conserve or enhance the biodiversity value of greenfield and brownfield sites (minimising fragmentation of habitats); maximise opportunities for preservation, restoration, enhancement, and connection of natural habitats; and incorporate biodiversity net gain (BNG) of at least 10% in line with principles outlined in the Natural England Biodiversity Metric.
- 15.33 The site has been assessed in line with Natural England's Standing Advice, which provides guidance on when an ecological survey should be submitted. In

this instance, the urbanised area of the site (and where the proposed development is located) is made up of various structures, areas of storage, unmade ground, containers and hard standing and parking areas. This part of the site is also the parking and turning area for cars, HGV's and LGV's. Given these characteristics of the site, it is not considered the site would be a suitable area for protected species. Development is not proposed within the grassed area to the south of the site, adjacent to the A12, and therefore it is not considered the scheme would impact upon protected species. A condition is recommended for a scheme of ecological enhancement measures, which secure a 10% BNG, are provided prior to the construction of the storage buildings. On balance, the development area of the site is not suitable habitat for protected species, however an enhancement of the ecological value of the site can be secured via a planning condition.

Trees

- 15.34 Section 2 Local Plan seeks to conserve and enhance Colchester's natural and historic environment, countryside and coastline. Policy CC1 seeks, where appropriate, to increase the level of canopy cover on site by a minimum of 10%.
- 15.35 A row of willow trees, subject to a Tree Preservation Order (TPO), lie on the north west and south west boundaries of the site. While a detailed tree survey (including canopy assessment) has not been provided, this is due to the circumstances of the proposal. The previous nursery site contained a number of structures and hardstanding against the boundary with the trees. Given the hardstanding has been in place for a number of years, it is not considered the scheme would result in additional impacts upon the existing trees. The scheme actually reinforces the trees and proposes to plant a significant woodland buffer along the site boundaries. The scheme also seeks to place buildings further away from the tree lined boundaries. The distance is considered to be significant enough to ensure the proposed storage buildings would not be in close proximity of the trees (and associated root protection areas). As described in this report, a significant amount of tree planting is proposed, the amount is considered to be in excess of the 10% required by policy CC1. On balance, the scheme demonstrates that the proposed development of land could take place without causing harm to the retained trees or without having a negative impact on the local tree population.

16.0 Planning Balance and Conclusion

16.1 Following the deferral and revised drawings, the applicants have worked with officers to amend the scheme to attempt to overcome member's concerns raised at the committee meeting of 15th June 2023. It is considered that the amendments have resulted in a scheme that will enable a local business that employs 38 members of staff to remain located in the Colchester City Council Area whilst satisfactorily mitigating the harm to the environment including the access concerns raised.

16.2 In terms of the **social role**, the proposal would comply with the policies in terms of principle of the employment uses within the countryside and it is considered the scheme results in general conformity with the spatial strategy. The proposal provides

very convincing benefits in terms of providing employment opportunities within the City.

16.3 In terms of the **economic** role, in construction employment, albeit this is temporary and there is no guarantee that these jobs would be provided for residents of Colchester. Although the proposal would result in longer term employment opportunities on site and as a business, this can provide wider contracting opportunities.

16.4 In terms of the planning balance and the **environmental** role of sustainability, the scheme is considered to improve the landscape setting of the site. The proposal is considered to be mitigated with landscaping with the addition of suitable soft and hard landscaping (controlled via planning condition). **Following the deferral, as set out above, the scheme has been amended to ensure that the site and its operation has an acceptable level of impact on the environment in terms of highway safety. The closing up of the existing access on Dobbies Lane is held to have significant environmental benefit to both the setting of the Listed Building noted above and the users of Dobbies Lane.**

16.5 Summarising the above, it is officers' opinion that the planning balance tips in favour of an approval given the positive weight attracted to the wider public benefits of the employment generating use.

17.0 Recommendation to the Committee

17.1 The Officer recommendation to the Committee is for:

To grant Delegated Authority to address the Lead Local Flood Authority holding objection (in relation to Sustainable Urban Drainage) and apply or modify any conditions as necessary. Subject to drainage matters being resolved, APPROVAL of planning permission subject to the following conditions:

1. Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers:

22-032-PL-03A (PROPOSED UNIT LAYOUTS)

22-032-PL-02H (PROPOSED SITE PLAN & SITE SECTION)

P2530-SLS01 V5 (Soft Landscaping Plan)

22-032-PL-01A (EXISTING SITE PLAN, SITE SECTION & LOCATION PLAN)

22-032-PL-04A (PROPOSED ELEVATIONS UNIT A)

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

3. Materials To Be Agreed

No external facing or roofing materials shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and colours of these have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

(Environmental Protection recommended conditions)

4. Limits to Hours of Work

No demolition or construction work shall take outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

5. Restriction of Hours of Operation

The outside yard activity hereby permitted shall not OPERATE and the premises be open to customers outside of the following times:

Weekdays: 07:00-19:00

Saturdays: 08:00-13:00

Sundays and Public Holidays: No operation.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from people entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

6. Restricted Hours of Delivery

No deliveries shall be received at, or despatched from, the site outside of the following times:

Weekdays: 07:00-19:00

Saturdays: 08:00-13:00

Sundays and Public Holidays: No deliveries.

Reason: To ensure that the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise including from delivery vehicles entering or leaving the site, as there is insufficient information within the submitted application, and for the avoidance of doubt as to the scope of this permission.

7. Light Pollution for Minor Development

Any lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) shall fully comply with the figures and advice specified in the current ILP Guidance Note For The Reduction of

Obtrusive Light for zone E2 RURAL (low district brightness – sparsely inhabited rural areas, village or relatively dark outer suburban locations).

Reason: In order to safeguard the amenity of the surrounding area by preventing the undesirable, disruptive and disturbing effects of light pollution.

8. Dust Mitigation

Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme devised by a competent person for the control of dust that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. The control measures shall thereafter be retained and maintained to the agreed specification and working order.

Reason: To ensure that there is a scheme for the control of dust in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.

(End of Environmental Protection recommended conditions)

(Highway Authority recommended conditions)

9. Highways

Prior to the first beneficial use of the proposed development the existing historic access in the south-eastern corner of the site shall be suitably and permanently closed to the satisfaction of the Local Planning Authority, incorporating a suitable boundary treatment, the re-instatement to full height of the highway verge/footway/kerbing to the specifications of the Highway Authority.

Reason: To ensure the removal of and to preclude the creation of un-necessary points of traffic conflict in the highway and to prevent indiscriminate access and parking on the highway, in the interests of highway safety

10. Traffic and highway management

Within 2 months from the date of this decision, the applicant shall provide a written scheme of traffic and highway management which includes the following:

- i) An appointment system which limits the HGV and LGV traffic attending the site to two vehicles only being on site together,
- ii) Measures to prevent HGV and LGV traffic from waiting, parking or lay overs on Dobbies Lane which shall be kept clear of all vehicles associated with the sites activities, and
- iii) Measures to prevent mud and deposit from the site being brought onto Dobbie Lane

The proposed management scheme shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented immediately and adhered to thereafter.

Reason: To ensure that the adjoining highway is not obstructed by servicing activity, in the interests of highway safety. In addition, to preserve and protect the integrity and fabric of the highway, in the interests of highway safety.

11. Highways – vehicular turning

Prior to construction of the storage buildings, a vehicular turning facility for delivery vehicles with dimensions commensurate with the largest vehicle attracted to or generated by the site's activities and of a design which shall be approved in writing by the Local Planning Authority, shall be provided within the site which shall be retained and maintained free from obstruction thereafter.

Reason: To ensure that vehicles using the site access may enter and leave the highway in a forward gear, in the interests of highway safety

(End of recommended Highway Authority conditions)

12. Landscape Management Plan

Prior to the construction of the storage buildings, a landscape management plan detailing long term design objectives and management responsibilities for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

13. Landscape Works

No works shall take place above ground floor slab level until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall be in full compliance with the Councils Landscape Guidance Note LIS/C and include:

- Finished levels or contours.
- Means of enclosure.
- Car parking layouts and other vehicle and pedestrian access and circulation areas.
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).
- Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.).
- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform) – this including reprofiling the bund that subdivides the site to have a very low (max 1m high) broad profile.
- Planting plans (drainage and building foundation detailing shall take account of the position of the trees as so indicated).
- Written specifications.

- **Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.**
- **Implementation timetables and monitoring programs.**
- **Biodiversity enhancement proposals including a minimum of 10% uplift in tree canopy cover**

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

14. External Storage Limited in Height

No goods, materials or equipment shall be stored, stacked or deposited externally on the site to a height exceeding 3 meters as measured from any immediately adjacent ground level.

Reason: The external storage of goods in excess of this height would be visible and would have a harmful visual impact on the surrounding areas.

15. External storage

Prior to the construction of the storage buildings, a plan scaled shall be provided which indicates any land which will require external storage post construction of the storage buildings. Any areas of external storage shall be within the previously developed area of the site and shall not exceed more than 3m.

Reason: To protect the visual amenity of the site, wider countryside area, residential amenity and landscape setting.

16. No external storage on greenfield areas

No goods, materials or equipment's shall be stored, stacked or deposited on land described as the following:

New 5-8m deep woodland belt

Native wildflower meadow... sown atop bund,

Existing grassland

New 10m deep woodland belt

As shown on the approved Drawing Number P2530-SLS01 V2 (soft landscaping scheme).

Reason: This is the basis indicated within the submitted application and upon which the proposal has been considered and any further external storage would need further consideration at such a time as it were to be proposed as it could cause visual harm to the surrounding areas.

17. Removal of PD Industrial/Warehouse Extensions

Notwithstanding the provisions of Classes A and B of Part 8 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no building shall be extended or altered and no further plant or machinery shall be installed outside any building on the site unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and the amenities of the surrounding area.

18. No Floodlighting

No floodlighting shall be constructed, installed or illuminated at any time.

Reason: To ensure that there are no undesirable effects of light pollution

19. Tree and Hedgerow Protection: General

All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

18.0 Informatives

18.1 The following informatives are also recommended:

Advisory Note on Construction & Demolition

The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

Highways

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

Landscape

'Detailed landscape proposals, if/when submitted in order to discharge landscape conditions should first be cross-checked against the Council's Landscape Guidance Note LIS/C (this available on this CBC landscape webpage: <https://www.colchester.gov.uk/info/cbc-article/?catid=which-application-form&id=KA-01169> under Landscape Consultancy by clicking the 'read our guidance' link').

Informative on Any Application With a Site Notice

PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester City Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.

a. Positivity Statement

- b. 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 for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.