CIRCULATED PRIOR TO THE MEETING

REPORT of
DIRECTOR OF PLACE, PLANNING AND GROWTH

to
PLANNING COMMITTEE
25 NOVEMBER 2026

UPDATE REPORT

AGENDA ITEM NO. 4 Land North of West Street Tollesbury

Application Number	**25/00381/OUTM**
Location	Land North of West Street Tollesbury Essex
Proposal	Outline planning application, with all matters reserved except access for up to 159 residential dwellings (Use Class C3), a road link connecting West Street to North Road, ancillary infrastructure, public open space, play space, Suitable Alternative Natural Greenspace (SANG) and sustainable drainage.
Applicant	Welbeck Strategic Land IV LLP
Agent	DLP Planning Ltd
Target Decision Date	04/12/2026
Case Officer	Gareth Ball
Parish	**Tollesbury West**
National Scheme of Delegation:	**Reason for Referral to Committee:** **Schedule 2 application:** **Gateway Test Statutory criteria: Met** **Criterion A:** It involves issues of local economic, social, or environmental significance. **Criterion A: The scheme** raises significant planning matters relative to the development plan or other material considerations.

1. Introduction

1.1. Application ref 25/00381/OUTM was first considered at the 5 August District Planning Committee. A Member made a motion to refuse the application, but this was not seconded and a motion to defer the item was passed, to allow Officers to consider the robustness of the potential reasons for refusal and give an opportunity for the applicant to provide further information on several concerns raised by the planning committee. This Addendum Report will highlight these matters.

1.2. Following the deferral of this application (5 August 2026), an updated version of the National Planning Policy Framework (the NPPF) was published (17 August 2026). The core direction of the NPPF remains largely unchanged; however, the structure of the NPPF has been overhauled, in addition to the presumption in favour of sustainable development being changed. An updated report considered by the District Planning Committee on the 28 October 2026, provided an assessment in regard to the latest version of the NPPF.

1.3. The update report (above) following consideration was subsequently deferred for a second time in order for a legal opinion to be sought in relation to the Site's foul sewage connection and potential impacts on protected habitats, to ensure the

Council had undertaken its statutory duty under the Habitats Regulations, as the competent authority.

Matters Raised at the 28th October Committee

1.4. The following matters were raised by members at the 28 October Planning Committee, or within an email which officers subsequently received from a member requesting legal clarification of several matters.

Anglian Water Capacity

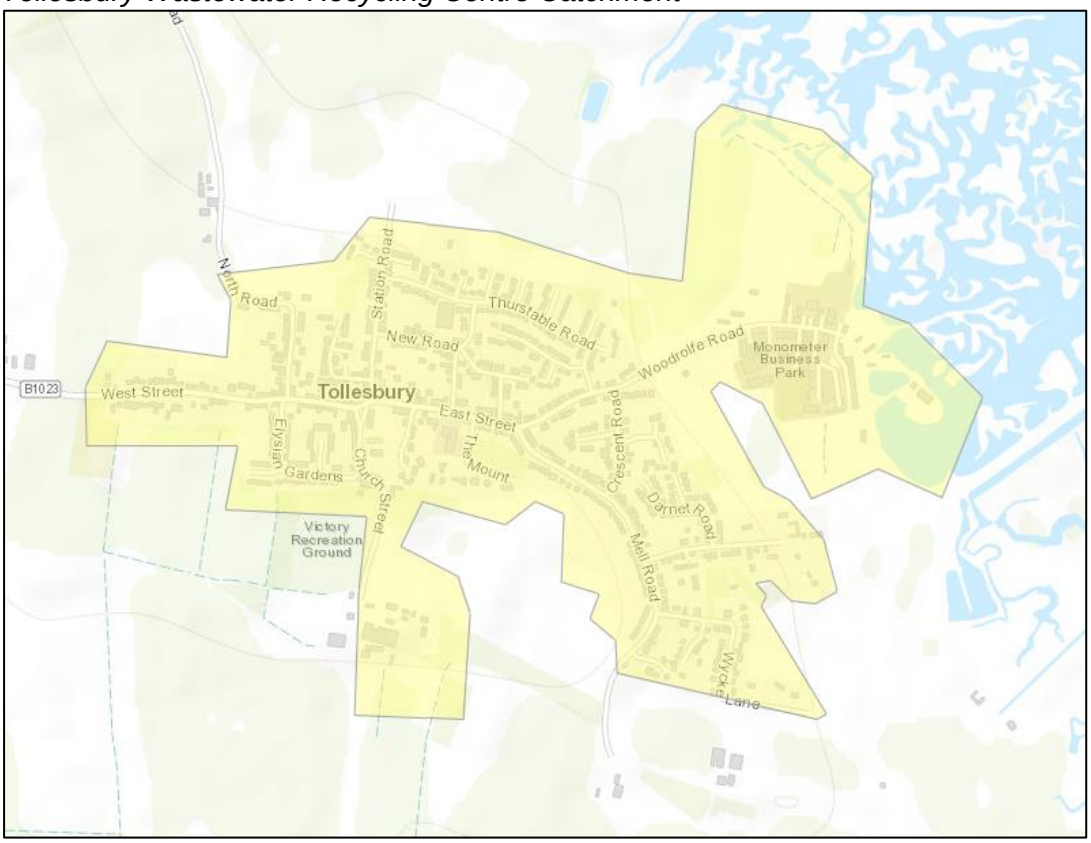
1.5. The Update Report to the 28 October Committee (hereafter referred to as the 'update report') provided the following update in relation to Anglian Water capacity:

During the 5 August committee, Members questioned whether there is sufficient capacity in the local sewer system to accommodate the additional flows from the multiple live applications in Tollesbury. Officers re-consulted Anglian Water, who subsequently advised that the Tollesbury Water Recycling Centre (WRC) has sufficient capacity to accommodate c. 639 additional dwellings and that it therefore has more than enough capacity for the additional wastewater flows from the proposal, the other relevant Tollesbury developments (refs 25/00207/OUTM, 25/01057/OUTM, 26/00066/OUTM and 26/00161/OUTM). Officers are satisfied that there is sufficient drainage infrastructure to accommodate the proposal in a worst case scenario, if the live applications in Tollesbury were to be fully built out to utilise current infrastructure.

At the request of Anglian Water, the committee report included a condition requiring the submission of a Strategic Foul Water Strategy, prior to the commencement of development. This will ensure that a sustainable point of connection to the drainage network can be established.

1.6. The legal opinion notes that Anglian Water's headroom figure for wastewater treatment capacity (which equates to c. 639 dwellings) was stated excluding "sites with existing planning consent yet to connect to our network". The five developments which were considered within the cumulative assessment amount to 558 homes, meaning that Anglian Water are advising there is additional wastewater treatment capacity that can accommodate the foul drainage needs arising from this development. The catchment for the Tollesbury WRC is shown in the figure below.

Tollesbury Wastewater Recycling Centre Catchment



1.7. Officers conclude that Anglian Water's objection is concerned with the local foul network, hence the water provider's request to apply a condition requiring details of a Sustainable Point of Connection (SPoC) from the development to the foul sewer network.

Use of a Grampian Conditions

1.8. The legal opinion sets out that the authority can lawfully rely on a negative Grampian condition to comply with its Habitats Regulation obligation under Regulation 63, so long as it is certain that the imposition of conditions rules out adverse effects on the integrity of European sites. Officers' proposed condition does not defer its statutory duty – the Grampian condition has been identified as part of the Appropriate Assessment and would ensure that the development does not come forward until a Sustainable Point of Connection has been identified, and then implemented prior to occupation. This gives the Local Planning Authority (LPA) appropriate control of the matter.

1.9. The Grampian condition requiring the submission of a Strategic Foul Water Strategy is Condition 27 within the committee report. The legal opinion considers the condition sufficiently tight to secure the required details. The opinion goes on to advise that the Council will also need to consider the Habitat Regulation Assessment (HRA) tests at condition stage, to again consider whether in light of the submitted details there would be no adverse effect on the integrity of the designated nature conservation sites.

1.10. At the 28 October Planning Committee, members raised concerns that the recommended foul sewer strategy condition does not have a realistic prospect of being able to be discharged due to a lack of detailed engineering drawings to demonstrate deliverability. The members' email also queries whether the condition

securing a detailed Surface Water Drainage Scheme (Condition 23) fail deliverability in terms of the Lund High Court decision. It should be noted that detailed engineering drawings are not required with an outline planning application and Anglian Water, as the utility operator, are not requiring them to be provided, instead such information would be required, if necessary, through the submission of a future application to discharge condition 27, which is the usual practice for outline planning permissions.

1.11. There is no evidence that the requirements of the condition have no reasonable prospect of being discharged, in particular noting that the condition was requested by the statutory consultee to which the matter relates.

1.12. It should also be noted that foul drainage condition has been secured through other planning permissions and appeal decisions across the District. To depart from the condition approach and refuse planning permission would go against the consistent decision approach that has been taken elsewhere in the District and would expose the Council to potential risks in the event that the application was refused planning permission and then subject to a planning appeal process. An Inspector would look at the approach taken with those recent applications and other appeal decisions in the District in their decision making and they would be highly likely to use a planning condition to require a foul drainage strategy to be approved.

1.13. The legal opinion notes the question in relation to surface water drainage and advises that approving a surface water strategy at outline stage, with the outfall consents to be secured later, would not be unlawful nor contrary to national policy on sustainable drainage. The requirement in this regard is that there is adequate evidence that the site can, in principle, be drained at an acceptable rate without increasing flood risk elsewhere. This has been addressed by the submission and supported by the Lead Local Flood Authority who require through a planning condition (Condition 23) to secure a surface water drainage strategy.

1.14. The concern raised is therefore addressed by the condition. The matters raised in relation to Land Drainage Consents and downstream riparian common law relate to a separate regulatory regime and, as previously stated, planning decisions should generally assume that such regimes will operate effectively unless there is clear evidence to the contrary.

<u>Foul Sewer Connection and Habitats Regulations Assessment</u>

1.15. Members raised concerns at the 28 October committee that the Council had not undertaken its statutory duty as the competent authority because the HRA did not consider the foul sewer matter.

1.16. The member's email queried whether the Council can legally conclude its Appropriate Assessment, with no evidence of the cumulative in-combination effects of multiple routing sewer connections from the various developments on the constrained local sewer system.

1.17. It should be noted that the application site seeking outline permission for 149 dwellings at the land to the rear of Mell Road has identified a SPoC in discussion with Anglian Water.

1.18. Following the deferral, the LPA have undertaken a new HRA, including an Appropriate Assessment. The HRA re-considers the previously considered standalone and in-combination likely significant effects of the development in addition to the newly raised issue and, Place Services Ecology have advised that there is

suitable mitigation measures to which the Council can conclude that it has complied with its obligation under the Habitats Regulations. The legal opinion sets out the initial position as follows:

"As set out already, it is a scientific question for the competent authority based on the evidence, applying the Wyatt principles and taking into account the possibility of management by (for example) Grampian condition. If there is a risk of adverse effect that the Council cannot rule out, even taking into account there is a Grampian condition, then the development cannot pass an appropriate assessment. If, however, the Council concludes any risk can be ruled out through an appropriate Grampian then the appropriate assessment can be passed.

In circumstances where Essex County Council (ECC) and other bodies consider a Grampian can rule out harm, if the Council is taking a different view it will need to explain very clearly where the potential problem arises, what the pathway is to harm of the protected site, and why that cannot be managed by (for example) condition.

Similarly, if the Council considers that it is missing information again it will need to explain very clearly why it needs that information to make its decision, in light of other management measures. So, for example, it would not be enough to simply say that no SPOC has been identified where a suitably worded Grampian would delay development until one is identified. If the concern is impact on the sewerage system itself, the Council will need to consider (a) whether and why a Grampian is not sufficient to solve this and (b) the Sewerage Undertaker's statutory duties in light of both the legal position (a rebuttable presumption assuming they will operate effectively) and the policy position in DM7 of the new NPPF."

1.19. The Appropriate Assessment acknowledges the potential significant effects which may result from the increased foul flows from the development. The previous section of this update report establishes that the Grampian condition is sound and meets the legal tests to be used as a suitably worded planning condition that would mitigate the harm from the impact of the development. As such, officers conclude that this form of mitigation is appropriate in principle.

1.20. The legal opinion also sets out a position on whether existing failings from Anglian Water in causing pollution can be considered, stating:

"Second, we are asked whether existing failings from Anglian Water in causing pollution can be considered, given that a planning application cannot be expected to address existing issues and noting NPPF Policy DM7.

The legal position is as we set out above: i.e. one can assume other regimes will operate effectively; but it is not necessary to do so if the evidence clearly establishes that they do not (Crest Nicholson at [55]). As a matter of policy DM7(1) indicates that decision-makers should have "clear evidence to the contrary" before deciding another regime is not operating effectively.

So yes the failings can be considered and taken into account in reaching the Council's decision if there is "clear evidence" the other regimes are not operating effectively. That will require more than just the fact there has been pollution, but a more detailed analysis of what the regimes require, what Anglian has been doing, where it has been falling short, for how long, whether there is any prospect of it "upping its game", etc.

That said it is not for the developer to have to fix pre-existing issues. So again that might indicate a Grampian might be the appropriate solution rather than (for example) requiring the developer to go further."

1.21. The LPA is not in receipt or knowledge of any clear evidence that Anglian Water are directly failing in their duty to protect the adjacent designated nature conservation sites in any way which relates to the current application. Officers do not consider this to be a reason for refusal and the recommended foul water strategy Grampian condition can effectively mitigate the proposed development's impacts.

Primary School Education Contribution

1.22. ECC Education have supported the application subject to a financial contribution towards a primary school transport. While the NPPF does not consider the use of private motor vehicles to be sustainable, the school transport method is not a private motor vehicle trip.

1.23. The updated legal opinion goes on to consider the implications of this mitigation on the sustainability of the Site, as was raised by a member in email following the 28 October committee. The opinion sets out that NPPF Policy TR3 test is whether development limits the need to travel "particularly by private car" and whether it offers a "genuine choice of transport modes for residents and users". This is not a requirement that every journey, or all primary school journeys has to be made on foot or by bus. While a safe and connected pedestrian route is the preferred approach, the development would be acceptable in light of the proposed mitigation through the school bus service and appropriate weight should be given to this consideration, as part of the wider application. It, as stated, remains the choice of the individuals to walk to the primary school or use the bus service. Officers maintain that the Site is well-related to Tollesbury and is a sustainable location within the context of the NPPF.

Impact on Colchester Lane

1.24. The member's email following the 28 October committee suggested that vehicles navigating the Protected Lane would erode grass verges, damaging the designation score of the lane and potentially result in it losing its Protected Lane status, stating that officers cannot then lawfully conclude that the harm is limited. The lane is not a designated heritage asset; however, officers considered it as a non-designated heritage asset within their recommendation to members given that it does have local heritage value.

1.25. The legal opinion reminds that the designation of a level of heritage harm is a matter of planning judgement, not a legal test, and it would not be legally wrong to approve a scheme notwithstanding resulting harm to a non-designated heritage asset.

1.26. As per the Council's Conservation and Heritage Officer's advice, officers concluded that the level of harm would be limited within the scope of the NPPF tests under Policy HE7. This was accordingly included within the planning balance of the application's assessment. Officers maintain the level of heritage harm previously identified.

2. Conclusion

2.1. Taking the above updated matters into account, officers conclude that the presumption in favour of sustainable development is engaged, in accordance with the requirements of NPPF Policies S3 and S5. NPPF

2.2. The legal opinion responds to a query in the member's email regarding the defensibility of a refusal on grounds of NPPF Policies N6(1)(a) (protected habitats sites), TR3 (sustainability and access) and HE7 (conservation and heritage), concluding that when considering the new information and questions, the previous opinion's assertion that a low likelihood of depending an appeal is likely unless the Council is able to identify an issue with the Appropriate Assessment that cannot be dealt with or managed by condition or other matter. This report and the completed HRA provide the basis on which the Appropriate Assessment concludes that there would not be any significant effects on any designated habitat conservation sites, with reviews also required at reserved matters stage and in discharge of the proposed foul water strategy condition.

2.3. The assessment of this planning balance is set out below, taking into account all material considerations.

2.4. Taking the above assessment and previous committee reports into account, Officers conclude that the presumption in favour of sustainable development is engaged, in accordance with the requirements of NPPF Policies S3 and S5. NPPF

2.5. Policy S5(1) directs that application "should be approved, unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in this Framework".

2.6. Taking account of the revised HRA Appropriate Assessment and the legal advice the assessment of this planning balance is provided below, taking into account all material considerations.

Benefits

Social Benefits

- The provision of 159 homes within the District, with a pressing need for new homes, as evidenced by the lack of a Five-Year Housing Land Supply (5YHLS). This includes 40 per cent of units as affordable homes. Officers give this benefit substantial weight. Officers have amended this benefit from significant to substantial weight following the Spratts Farm appeal decision based on the new NPPF.
- New communal open space (including the Suitable Alternative Natural Greenspace (SANG) in the west of the Site) and children's play space which would benefit future occupiers of the development but also residents outside the Site boundary. Officers give this benefit moderate weight.

Economic Benefits

- There would be some benefits in terms of job creation during the construction phase; however, this is a relatively short-term benefit. Officers give this benefit moderate weight.
- Future occupiers would utilise local facilities, improving the viability of these businesses. Officers give this benefit moderate weight.

Environmental Benefits

- Creation of c. 3.6ha of green infrastructure, including a large amount of SANG which would be available to surrounding residents, and a Biodiversity Net Gain of 20.9 per cent habitat units and 47.33 per cent hedgerow units, which is above the 10 per cent mandatory national requirement. This makes a large improvement to open space offer in the surrounding area and

contributes to mitigation of impacts on nearby protected sites and protected species habitats. Officers give this benefit moderate weight.

- Improvements to pedestrian links on Footpaths 4 and 17 within the site. Officers give limited weight to this benefit.
- The proposed dwellings will optimise the use of sustainable fabrics and latent thermal control and will use Air Source Heat Pumps and solar photovoltaic panels to utilise sustainable energy generation within the development. This approach aligns with national sustainability aims and Officers give this benefit moderate weight.

Harms

- Development located outside of the settlement boundary, failing to accord with the spatial strategy of the Local Plan; however, given the lack of a 5YHLS resulting in the relevant policies being considered out of date, Officers give limited weight to this harm.
- The proposal would establish built form on an open greenfield site, which Officers consider this to result in 'major/moderate' adverse landscape effects to the immediate context/local landscape setting and up to 'major/moderate adverse' visual effect. Noting the magnitude of the adverse impacts identified, Officers give this harm significant weight.
- Loss of 9.24ha of agricultural land. Noting the large amount of grade 3 agricultural land within the District, Officers give limited weight to this harm.
- A low level of less than substantial harm to the Tollesbury Conservation Area and the grade II listed 76 West Street and a limited harm to the Non-Designated Heritage Asset (NDHA) Protected Lane Colchester Road.

2.7. Weighing the above benefits and harms of the development, Officers conclude that the substantial benefits would not be substantially outweighed by any of the identified adverse effects.

2.8. Taking into account all of this new material and following the receipt of further legal counsel, officers are satisfied that the application should be supported as per the planning balance set out in the previous committee report.

3. Recommendation

APPROVE and delegate authority to the Director of Place, Planning and Growth to grant planning permission subject to the applicant entering into a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) to secure the planning obligations and subject to conditions and heads of terms for the s106 legal agreement as detailed in Section 6 of the Update Report to the 28 October District Planning Committee Meeting **APPENDED** and the updated Heads of Terms as set out in section 6 of that report.

If the Section 106 legal agreement is not completed within three months of the date of this District Planning Committee, or an extended time period as agreed between the applicant and the Council, then delegate authority to the Director of Place, Planning and Growth to **REFUSE** the planning application , subject to the referral of the case to the Secretary of State for a period of at least 21 days, who may opt to call-in the decision as per the Town and Country Planning (Consultation) (England) Direction 2026.