

## DELEGATED DECISION OFFICER REPORT

| AUTHORISATION                               | INITIALS    | DATE       |
|---|-------------|------------|
| File completed and officer recommendation:  | AL          | 17/12/2018 |
| Planning Development Manager authorisation: | AN          | 18/12/18   |
| Admin checks / despatch completed           | [Signature] | 19/12/18   |

**Application:** 18/01567/FUL **Town / Parish:** Thorpe Le Soken Parish Council

**Applicant:** Clare Richmond

**Address:** Land R/o The Hawthorns High Street Thorpe Le Soken

**Development:** Variation of condition 2 (approved Plans) of 15/01437/FUL allowed on appeal.

### 1. Town / Parish Council

Thorpe Le Soken Parish Council No objection.

### 2. Consultation Responses

Tree & Landscape Officer  
**ORIGINAL COMMENTS** The main body of the application site has been cleared and contains no trees or other significant vegetation.

Within the curtilage of Hawthorns and exerting an influence over the development potential of the land is a relatively young Oak. The tree makes a significant positive contribution to the local environs and to the character and appearance of the Thorpe le Soken Conservation Area. The tree is afforded protection because of its position within the conservation area.

It is clear from a comparison between the approved plans and those forming part of this application that the applicant is seeking to set the dwelling back from the highway; consequently moving it closer to the Oak.

In order to show the extent of the constraint that the tree is on the development potential of the land and to show, if possible, that the development of the land could take place without causing harm to the tree the applicant should provide a tree survey and report. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations.

At this stage and without the benefit of a tree report it appears that the construction of the dwelling in the proposed location would result in a significant incursion into the Root Protection Area of the tree.

In the absence of a tree report the planning application should be refused as it has not been demonstrated that development could be implemented without causing harm to, and compromising the long term viability of, the Oak

Tree & Landscape Officer  
**AMENDED COMMENTS** The proposed variation of condition 2 of 15/01437/FUL to substitute approved plans with new showing a change in the position of the proposed dwelling will result in a reduction in the separation distance between the dwelling and the Oak situated to the south west of the

proposed dwelling. This will result in deterioration in the juxtaposition of the dwelling and the tree and may result in future applications for works to control the growth of the tree.

Nevertheless if the method of construction for the foundations of the dwelling were to be designed so as to minimise the impact of the development on the tree, by way of specialist construction techniques such as 'raft' or 'pile and beam' foundations then the development could take place without causing physical harm to the tree.

Any information relating to the protection of, or works close to the Oak, should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations

In terms of the overall appearance of the development it will be important to secure details of the indicative soft landscaping of the site frontage as shown on the amended site layout plan. In this respect the setting back of the property provides an opportunity to secure new planting including trees to the front of the dwelling.

A top quality soft landscaping scheme is required to ensure that the new dwelling sits comfortably in its position within the Thorpe le Soken Conservation Area and to ensure that it does not have an adverse impact on the setting of the adjacent listed building

The requirement to provide details of soft landscaping is still outstanding from planning permission 15/01434/FUL, allowed on appeal.

This condition should be discharged as a matter of some urgency. The soft landscaping scheme needs to make provision for at least three new trees to be planted to the front of the property.

ECC Highways Dept

The Highway Authority observes that New Town Road is classified as a Private Road and therefore does not object to the proposals as submitted.

Informative1: Public Footpath No 7 (Thorpe Le Soken) also runs along the length of New Town Road and a reasonable degree of intervisibility should be provided at the vehicular access, in this instance, the proposed 1.5m x 1.5m splays at the access would be appropriate.

Informative2: The public's rights and ease of passage over Public Footpath No.7 (Thorpe Le Soken) shall be maintained free and unobstructed at all times.

Informative3: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to:

SMO1 - Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

### 3. Planning History

|              |  |           |            |
|--------------|--|-----------|------------|
| 01/00049/OUT | Single dwelling house  | Refused   | 30.05.2001 |
| 01/01439/OUT | Single dwelling house  | Approved  | 04.10.2001 |
| 92/00040/LBC | Retention and completion of refurbishment works and external alterations   | Refused   | 10.03.1992 |
| 93/00936/LBC | (Hawthorns, High Street, Thorpe le Soken) Demolition and rebuild front boundary wall   | Approved  | 23.09.1993 |
| 07/00544/OUT | Planning permission for two building plots.  | Withdrawn | 30.05.2007 |
| 07/01744/FUL | Erection of 2 no. detached dwellings and construction of new vehicular access.   | Withdrawn | 18.12.2007 |
| 08/00316/FUL | Erection of detached two storey dwelling and construction of vehicular access.   | Approved  | 02.05.2008 |
| 08/00964/LBC | Formation of 2 new sash windows to the (rear) north east elevation and replacement of 4 sash windows to the (front) south west elevation, incorporating different glazing bar arrangement. replacement garage doors. | Approved  | 08.09.2008 |
| 10/00901/FUL | Erection of detached two storey dwelling and construction of vehicular access (amendment to design approved under Planning Permission 08/00316/FUL).   | Approved  | 04.10.2010 |
| 12/00004/TCA | 3 No. Hawthorns - fell   | Approved  | 31.01.2012 |
| 12/00991/TCA | 1 No. Yew - by garage - fell.  | Approved  | 02.10.2012 |
| 13/00419/TCA | Sycamore - prune to clear telephone cables.  | Approved  | 16.05.2013 |
| 15/00023/FUL | Proposed detached house.   | Refused   | 03.03.2015 |
| 15/01437/FUL | Erection of 1 no. detached dwelling.   | Refused   | 09.02.2016 |

### 4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework July 2018

## National Planning Practice Guidance

### Tendring District Local Plan 2007

HG3 Residential Development Within Defined Settlements

HG1 Housing Provision

HG6 Dwelling Size and Type

HG9 Private Amenity Space

EN17 Conservation Areas

EN23 Development Within the Proximity of a Listed Building

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

HG14 Side Isolation

### Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

LP1 Housing Supply

LP4 Housing Layout

PPL8 Conservation Areas

PPL9 Listed Buildings

CP1 Sustainable Transport and Accessibility

### Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

### **Status of the Local Plan**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to

address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the Council is able to demonstrate a robust five year supply of deliverable housing sites (as confirmed in recent appeal decisions) and housing delivered over the previous three years has been comfortably above 75% of the requirement. There is consequently no need for the Council to consider an exceptional departure from the Local Plan on housing supply grounds and applications for housing development are to be determined in line with the plan-led approach.

## **5. Officer Appraisal (including Site Description and Proposal)**

### Site Description

The application site is situated to the south of New Town Road, within the Settlement Development Boundary and Conservation Area for Thorpe Le Soken. The site is to the rear of the property known as Hawthorns fronting the High Street, which is a Grade II listed building.

Historically the site formed part of the garden area for Hawthorns, but has been fenced off and cleared following the approval of application 15/01437/FUL allowed on appeal. Along the boundary with the Hawthorns is an established Oak Tree.

The plot to the east of the site has recently been developed for one dwelling under application 15/01569/FUL.

The site is situated in a residential area where there is a mixture of sizes and designs. Opposite the site is a one and a half storey dwelling and to the east are two storey properties. To the north of the site is St Michael's Road which is characterised by predominately detached bungalows.

### Description of Proposal

This application seeks a variation to application 15/01437/FUL allowed on appeal.

Application 15/01437/FUL was allowed for the erection of 1 no. detached dwelling with a fully weatherboarded finish and a single storey rear projection.

This application seeks to vary the finish to all red brick with a 2 storey projection at the rear together with some minor enlargements to the overall footprint.

There has been some confusion over the siting of the dwelling in relation to the previous approval and the protected Oak tree on the boundary. Amended plans have now been received showing a new siting and some detailed design improvements in respect of the conservation area and listed building setting.

## Assessment

The main considerations are;

- Principle of Development;
- Appeal Decision;
- Design and Impact on Heritage Assets;
- Impact on Residential Amenities;
- Trees and Landscaping;
- Highways and Parking, and;
- Representations.

## Principle of Development

Application 15/01437/FUL was allowed on appeal on 4th November 2016 subject to the standard 3 year time limit condition therefore expiring on 4th November 2019. The permission remains extant and the principle of a dwelling on this site is therefore accepted. The main considerations in this instance are the particulars of the appeal decision and the impact of the proposed amendments sought under this variation application.

## Appeal Decision

The Inspector considered that the main issue in the determination of the appeal was 'the effect of the proposal on the setting of The Hawthorns'. He concluded that 'the proposal is of a modest size and scale and its materials would reflect those of neighbouring properties', ' accordingly, it would not visually compete with the heritage asset or distract from it being unduly close or overly dominant.'

The Inspector noted that The Hawthorns is a substantial two storey red brick dwelling with a rear wing, constructed in Flemish bond, rough render and weatherboarding with a handmade red clay tiled roof.

The Inspector also noted the use of weatherboarding on the finish of the new dwelling in that it 'would respect and complement the existing weatherboarding on the flank of The Hawthorns'.

## Design and Impact on the Heritage Assets

The submitted plans show the extent of the approved dwelling in comparison to the revised proposal. The increase in footprint is minor and the rear projection is increasing from single storey to two storeys. The dwelling is to be finished in red brick and clay plain tile roofing with concrete lintels and sills and exposed rafters.

The enlargements to the dwelling are not excessive and do not amount to more than what could be described as a modestly sized and scaled dwelling overall. The increase in height to the rear projection again is not excessive and sits comfortably with the scale and proportions of the main part of the dwelling and within its plot. Some glimpses of the enlarged rear projection may be possible from the public domain. However, any views will be limited and will not be harmful within the street scene.

Although the Inspector commented on the use of weatherboarding within the appeal decision, The Hawthorns in the main part is finished with red brick and clay roof tiles. The proposed finish is therefore considered in line with the appeal decision as the overall appearance of the dwelling would respect and complement The Hawthorns. Nor would it visually compete with the heritage asset or distract from it by being unduly close or overly dominant. The brick plinth, sill/lintel detailing and exposed rafters are positive and sympathetic features of the new design. The amended plans include timbers windows, barge boards and fascias also being in line with the approval given under the appeal decision.

For these reasons, the revised proposal is considered acceptable having regard to Thorpe-le-Soken Conservation Area and the adjacent grade II listed building. A supporting statement addressing the impact of the amended development upon the heritage assets has been submitted in line with the requirements of the NPPF.

The appeal decision was subject of a condition relating to the submission and approval of materials. An email detailing the proposed brick to be used was received from the Agent on 15th October 2018. The brick to be used is Vandersanden Malting Antique red facing brick and the roof will be handmade clay plain tiles. A condition requiring details of materials is no longer considered necessary.

#### Impact on Neighbouring Amenity

The increase in footprint is fairly minor and the position within the site has now been amended to be as close to the original permission as possible. These amendments to the original development do not amount to any material impact upon residential amenities. Therefore, the main consideration in this instance is therefore the enlargement of the rear projection from single storey to two storeys.

This enlargement sees an increase in height from approximately 2.5 metres to the eaves and 4 metres to the ridge to 4.9m to the eaves and 7 metres to the ridge. This element of the dwelling is set in from the shared boundary by at least 1 metre. The rear projection does not extend beyond the rear elevation of the neighbouring dwelling and therefore any loss of sunlight and daylight would be to the side facing windows only.

The rear gardens of the new and neighbouring dwellings are orientated in a south easterly direction. The only ground floor window within the facing flank of the neighbouring property serves the kitchen. However, the kitchen is an open plan kitchen/diner layout opening out into the garden. This window is mostly blocked by the existing boundary fence and sufficient light is allowed into the rear. The first floor windows within this facing side flank serve a stairwell and ensuite which are not main living areas and any loss of light as a result of the increased height cannot be considered materially harmful and a refusal on this basis alone could not be justified.

The enlarged rear element results in an additional first floor window serving a bedroom. As this is a secondary room where time spent is limited, any views towards to the rear garden of the neighbouring property would not amount to any significant overlooking or material loss of privacy to that already approved. This projection screens the other first floor rear facing window.

The spacing between the application dwelling and adjacent listed Hawthorns ensures that no material harm to the occupiers of the property will result from the amended development.

#### Trees and Landscaping

The revised application has resulted in some confusion over the siting of the dwelling and its impact on the Oak tree.

The revised plans have satisfied the Council's Tree Officer subject to a no-dig construction condition and re-imposition of the landscaping condition from the appeal decision.

#### Highways and Parking

The revised development remains mostly in line with the previous approval in terms of the access, turning and parking providing sufficient parking and turning for the dwelling in line with the current adopted parking standards.

The Highway Authority raise no objections subject to conditions.

#### Representations

Thorpe Le Soken Parish Council raise no objections.

3 letters of objection have been received from neighbouring properties and 1 letter from The JTS Partnership on behalf of the occupiers of Whitethorn Lodge (disputing that the application can be dealt with as a Section 73 variation). The objections raised can be summarised and addressed as follows;

- Incorrect plans showing a new siting being harmful to the Oak tree.

*The plans have been amended overcoming these concerns. Through the imposition of appropriate conditions the protected tree will not be harmed from the development.*

- Ownership of fence line.

*Land ownership/boundary responsibilities are not planning matters. These are contained within the property deeds or via Land Registry.*

- Increase in size and ridgeline are unacceptable.

- Loss of light.

- Unacceptable scale and materials.

- Out of keeping within conservation area and adjacent listed building.

- Not in accordance with appeal decision.

*The design and impact of the revised proposal are addressed in the main report above.*

- Goes beyond what can be considered under S73 variation of condition application.

For the reasons set out above, the proposed variations are not considered substantially different in terms of the scale, nature or impact. The Council are satisfied that the proposal can be considered as a variation to the previous approval allowed on appeal.

### Conclusion

For the reasons set out above, the revised proposal does not amount to any material harm that would warrant the refusal of planning permission. The application is therefore recommended for approval subject to conditions.

## **6. Recommendation**

Approval - Full

## **7. Conditions**

- 1 The development hereby permitted shall be begun before the expiration of 4th November 2019.

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 The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Ref. PA-15C and Drawing Ref. PA-10B.

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

- 3 As detailed with the email from the agent dated 15 October 2018, the development hereby approved shall be finished in Vandersanden Malting Antique red facing brick and handmade clay plain roof tiles unless otherwise agreed in writing by the Local Planning Authority.

Reason - In the interests of visual amenity and to preserve the setting of the adjacent listed building and Thorpe Le Soken Conservation Area.

- 4 No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the site, which shall include all boundary treatments and any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 - Trees in Relation to Design, Demolition and Construction."

Reason - This is a publicly visible building adjacent to a listed building and in a conservation area where an appropriate landscaping scheme is a visually essential requirement.



- 5 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - To ensure the adequate maintenance of the approved landscaping scheme for a period of five years in the interests of the character of the surrounding conservation area and the setting of the adjacent listed building.

- 6 All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling.

Reason - In the interests of sustainable development and to ensure that run-off water is avoided to minimise the risk of surface water flooding.

- 7 All surfaces within the Root Protection Areas of the protected Oak tree shall be constructed using no dig technology.

Reason - To ensure the protection and longevity of the protected trees in the interests of visual amenity.

- 8 No development shall take place until the existing Oak tree located on the boundary with The Hawthorns has been protected by the erection of temporary protective fences in accordance with the Arboricultural Impact Assessment Project Ref: 147 submitted with application 15/01437/FUL. The protective fences shall be retained throughout the duration of building and engineering works in the vicinity of the tree to be protected. Should this tree die or become severely damaged as a result of any failure to comply with these requirements it should be replaced with a tree of appropriate size and species during the first planting season, or in accordance with such other arrangement as may be agreed in writing with the Local Planning Authority, following the death of, or severe damage to the tree.

Reason - To minimise disturbance to and help to ensure the satisfactory retention of the existing oak tree in the interests of visual amenity and the character and appearance of the conservation area.

## **8. Informatives**

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