

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	TF	3/6/19
Planning Development Manager authorisation:	SCE	04.06.19
Admin checks / despatch completed	AP	5/6/19

Application: 18/00578/OUT **Town / Parish:** Weeley Parish Council

Applicant: Mr Bacon

Address: Land South of Colchester Road Weeley

Development: Erection of 228 dwellings, nursery and car park.

1. Town / Parish Council

Weeley Parish Council

Object to housing on this side of the B1441 which forms a clear settlement boundary to the village. The fact that the site may have been under consideration for inclusion in the new Local Plan is irrelevant, as is the money spent by the developer in this speculative application. The proposals are disproportionate to the size of the existing village and there is no demonstrable need for these houses. The access to the highway is unsafe for the expected volume of traffic and parts of the site are in a flood zone.

2. Consultation Responses

Essex County Council
Archaeology

The planning application has been identified as having the potential to harm non-designated heritage assets with archaeological interest. A condition requiring a programme of Archaeological and geo-archaeological evaluation is therefore requested.

Environment Agency

Initial comments: Raised a holding objection on flood risk grounds as a Flood Risk Assessment (FRA) had not been submitted and the application did not therefore comply with the National Planning Policy Framework (NPPF).

Following receipt of FRA: The EA has reviewed the application with the submitted FRA and can confirm that it has no objection to the application, as long as a number of recommended conditions are attached to any permission granted.

NHS East Essex CCG

The proposed development is likely to have an impact on the services of Thorpe Le Soken Surgery and Great Bentley operating within the vicinity of the application site. The Thorpe Le Soken and Great Bentley Practices do not have capacity for the additional growth resulting from this development.

The proposed development will be likely to have an impact on the

NHS funding programme for the delivery of primary healthcare provision within the area and specifically within the health catchment of the development. NHS NEE CCG would therefore expect these impacts to be fully assessed and mitigated.

A developer contribution will be required to mitigate the impacts of this proposal. NHS England calculates the level of contribution required, in this instance to be £75,500. Payment should be made before the development commences.

Anglian Water Services
Ltd

There are no assets owned by Anglian Water or those subject to an adoption agreement within the development site boundary.

The foul drainage from this development is in the catchment of Clacton Holland Haven Water Recycling Centre that will have available capacity for those flows.

Anglian Water recommends that a number of planning conditions are imposed if the Local Planning Authority is minded to grant planning approval.

Arch. Liaison Off, Essex
Police

The published documents do not provide sufficient detail to allow an informed decision to be made as to whether the appropriate consideration of Sections 58 & 69 of the National Planning Policy Framework has been achieved, however the proposed site plan does show the dwellings seem to be positioned well for good natural surveillance while protecting the vulnerable rear of the properties by having the gardens backing directly onto other gardens.

ECC Highways Dept

ECC Highways has assessed the highway and transportation impact of the proposal and would wish to raise an objection to the above application for the following reasons:

Paragraph 4.20 in the Design and Access Statement suggests that the HA has acted unreasonably during the planning process for the previous application. It states that NPPF advises Authorities to find solutions rather than problems.

The Highway Authority is trying to find just such a solution; however whilst the principle of the development may be acceptable in highway terms, without adequate supporting information it cannot be proven. The solution is for appropriate information to be provided whereby a full and meaningful assessment can be undertaken.

For application 16/02131/OUT, ECC Highways assessed the impact of the proposal and raised an objection due to the lack of robustness of the applicant's transport assessment information.

The Highway Authority therefore repeats the request that the following information be submitted;

1) Full junction assessments to include census data, and trip assignments of the following;

B1033 Thorpe Road/Homestead/site access staggered crossroads;

B1033 Thorpe Road/Crow Lane T-junction;

B1033 Thorpe Road/The Street T-junction;

B1441 Weeley Bypass/The Street T-junction;

B1033 Colchester Road/B1441 Weeley Bypass/Crematorium

roundabout;
A133/B1033 Colchester Road/Services roundabout; and
A120 link/A133 Frating roundabout.

2) Full Transport Assessment of the highway network including all committed development in the local area;
Halstead Road, Kirby Cross (240 dwellings);
Chapel Lane, Kirby Cross (110);
Turpins Farm, Elmtree Avenue, Kirby Cross/Frinton (210);
Martello site, Kirby Road, Walton (216);
Abbey Street, Thorpe-le-Soken (40);
Landermere Road, Thorpe (98);
Heckfords Road, Great Bentley (2x50); and Station Field, Plough Lane, Great Bentley (150).

3) Sensitivity Tests to include;
Traffic growth using TEMPRo figures assuming an opening year of 2023 as it is normal for developments of this size to have an assessment year 5 years from the date of the application.
Also include the following undecided development site;
' Land adjacent to Tendring District Council Office, South of Thorpe Road, Weeley

On receipt of this information further assessment can be made.

ECC Schools Service

Early Years and Childcare: The proposed development is located within the Little Clacton and Weeley Ward, According to Essex County Council's latest childcare sufficiency data, published in summer 2017, there are 7 providers (4 childminders, 1 day nursery, 1 pre-school and 1 primary school nursery) showing 10 vacancies across the Wards.

An additional 6.83 places would be provided at an estimated total cost of £118,992.26 at April 2018 prices.

Primary Education: This site sits within the priority admissions area of Weeley St Andrew's Church of England Primary School which has capacity for 206 pupils. The School is full and, according to forecasts set out in Essex County Council's document 'Commissioning School Places in Essex 2017-2022', a deficit in provision of 18 places can be expected by 2021/22 without action to add capacity. Looking at the wider (Tendring Group 1) area, other local schools are in a similar position with a 56 place deficit overall forecast. Our 'Ten Year Plan', to meet the demand for school places in Essex, alludes to potential expansion schemes at both Engaines Primary and Tendring Primary. Expanding St Andrew's is unlikely to be viable and Tendring's draft Local Plan thereby alludes to a potential new school to serve Weeley. A development of this size would not however, in isolation, generate sufficient demand to trigger construction of a new school.

An additional 56.10 places would be provided at an estimated total cost of £857,264 at April 2018 prices.

Secondary Education: With regards to secondary provision, the priority admissions area school would be Tendring Technology College. The College is forecast to have a deficit of 44 places, without additional capacity, by 2021/22 whereas the Clacton group of schools will require 490 places in total. Our Ten Year Plan refers to multiple school expansions being needed between 2019 and 2023.

An additional 37.4 places would be provided at an estimated total cost of £868,204 at April 2018 prices.

A secondary transport contribution is also required, based on 37.4

pupils this would be £129,684.50, index linked to April 2017.

ECC SuDS Consultee

No comments received.

Network Rail

Will need to be consulted on the drainage design in order to assess its impact on its infrastructure.

Essex Wildlife Trust

Essex Wildlife Trust currently objects to this application. Insufficient information has been provided to enable Tendring DC, as the relevant authority, to determine the application.

This application requires a Phase 1 habitat survey to establish whether the boundary hedgerows provide suitable habitat for hazel dormouse, bats and/or nesting birds. If the Phase 1 habitat survey identifies the requirement for protected species surveys these should be conducted and the results published prior to determination.

Hazel dormice and all species of bat are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of The Conservation of Habitats and Species Regulations 2010 making them European Protected Species.

Under Section 1 of the Wildlife and Countryside Act 1981 (as amended), wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. In addition, certain species such as the Barn Owl are included in Schedule 1 of the Act and are protected against disturbance while nesting and when they have dependent young.

Natural England

SUMMARY OF NATURAL ENGLAND'S ADVICE - European designated sites¹

Further information required.

It has been identified that this development site falls within the 'Zone of Influence' (Zoi) of one or more of the European designated sites scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).

The Essex Coast RAMS is a large-scale strategic project which involves a number of Essex authorities, including Tendring District Council, working together to mitigate the recreational impacts that may occur on the interest features of the coastal European designated sites in Essex as a result of new residential development within reach of them; the European designated sites scoped into the RAMS are notified for features which are considered sensitive to increased levels of recreation (e.g. walking, dog walking, water sports etc.) which can negatively impact on their condition (e.g. through disturbance birds, trampling of vegetation, erosion of habitats from boat wash etc.). For further information on these sites, please see the Conservation Objectives and Information Sheets on Ramsar Wetlands which explain how each site should be restored and/or maintained

In the context of the LPAs duty as competent authority under the provisions of the Habitats Regulations², it is therefore anticipated that, without mitigation, new residential development in this location is 'likely to have a significant effect' on one or more European designated sites, through increased recreational pressure, either

when considered 'alone' or 'in combination' with other plans and projects.

Natural England (NE) advise that this proposal falls within scope of the Essex Coast RAMS and the LPA must therefore undertake a Habitats Regulations Assessment (HRA) (Stage 2: Appropriate Assessment) to secure any necessary recreational disturbance mitigation and record this decision within your planning documentation.

NE have previously provided the Council with a suggested HRA Record template and associated advice to help with this process where recreational disturbance to European sites is the sole HRA issue as appears to be the case in this instance. The use of this template is not mandatory but is provided in an attempt to streamline the process and make it as straightforward and consistent as possible for the authorities involved in the RAMS.

Having reviewed the planning documents for this application, it appears that an HRA (Stage 2: Appropriate Assessment) has not been undertaken to consider this issue. NE therefore advise that the LPA should not grant permission until such time as the HRA has been carried out and the conclusions confirmed in line with the NE strategic advice. NE will only provide further comment on the LPA's HRA once completed and not a 'shadow' HRA provided by the applicant.

3. Planning History

16/02131/OUT	Outline planning application with some matters reserved for a residential development of 228 dwellings, primary school, nursery and car park.	Refused	21.04.2017
18/00578/OUT	Erection of 228 dwellings, nursery and car park.	Current	

4. Relevant Policies / Government Guidance

National Planning Policy Framework

National Planning Policy Guidance

Tendring District Local Plan 2007

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3A Mixed Communities

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

COM2 Community Safety

COM4 New Community Facilities (Including Built Sports and Recreation Facilities)

COM6 Provision of Recreational Open Space for New Residential Development

COM21 Light Pollution

COM23 General Pollution

COM26 Contributions to Education Provision

COM29 Utilities

COM31A Sewerage and Sewage Disposal

EN1 Landscape Character

EN6 Biodiversity

EN6A Protected Species

EN6B Habitat Creation

EN11a Protection of International Sites: European Sites and RAMSAR Sites

EN12 Design and Access Statements

EN13 Sustainable Drainage Systems

EN29 Archaeology

TR1A Development Affecting Highways

TR3A Provision for Walking

TR4 Safeguarding and Improving Public Rights of Way

TR5 Provision for Cycling

TR6 Provision for Public Transport Use

TR7 Vehicle Parking at New Development

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

SP1 Presumption in Favour of Sustainable Development

SP5 Infrastructure & Connectivity

SP6 Place Shaping Principles

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP1 Improving Health and Wellbeing

HP2 Community Facilities

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP4 Housing Layout

LP5 Affordable and Council Housing

PP3 Village and Neighbourhood Centres

PP12 Improving Education and Skills

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL7 Archaeology

CP1 Sustainable Transport and Accessibility

CP3 Improving the Telecommunications Network

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

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 supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

5. Officer Appraisal (including Site Description and Proposal)

The main planning considerations are:

The Principle of Development

The principle of residential development outside of the development boundary and including the loss of agricultural land was considered with the previous application (Ref:16/02131/OUT) for this site. Whilst the site had previously formed part of a larger one which had been identified as a potential allocation in the early stages of the Publication Draft Local Plan, it was not carried forward into the Publication Draft Local Plan. The previous application was refused because the site extended beyond the defined settlement development boundaries of Weeley as contained in the adopted Development Plan, even though at that time, the Council was unable to demonstrate a five year supply of housing land.

The only change in circumstances since the refusal of the last application is that the Publication Draft Local Plan has been submitted for Examination. Whilst Part 1 was found to be unsound and additional work is being undertaken by the North Essex Authorities (NEAs), resulting in delay to the final adoption of the Plan, this work relates to the garden communities rather than the detailed allocations in Part 2 which is yet to be examined. In all other matters, the current application site is

the same as the previous application site and the same principles apply. Based on the standard method, the Council is, once again, unable to demonstrate a 5 year supply of housing land. The site is located outside the defined settlement limits of the village and Bypass Road provides a clear, defensible and logical boundary to the western side of Weeley village and marks a clear separation between the built up area and the open countryside. The site is not proposed as an allocation for development and the proposals would result in piecemeal development of land beyond the bypass, extending development into the open countryside beyond a logical and defensible boundary to the village, contrary to Policy QL1 of the adopted Local Plan and SPL1 in the Publication Draft Local Plan.

The applicants have provided no further information to justify the development of this land that was not considered previously. It is considered that circumstances have not materially changed and that the current proposals remain unacceptable and contrary to the Development Plan.

Highways, Transport and Accessibility

The previous application was also refused planning permission on the grounds that the proposals failed to demonstrate that the development would be acceptable in highway terms. The 2016 application was not accompanied by an adequate Transport Assessment and the Highway Authority considers that applicants have failed to submit adequate information to support the current application.

The Highway Authority has therefore objected to the proposals and has referred to Paragraph 4.20 in the Design and Access Statement which suggests that the HA has acted unreasonably during the planning process for the previous application. It refers to the advice in the NPPF that Authorities should find solutions rather than problems.

The Highway Authority considers that it has tried to find just such a solution; however whilst the principle of the development may be acceptable in highway terms, without adequate supporting information it cannot be proven. The solution is for appropriate information to be provided whereby a full and meaningful assessment can be undertaken. The Highway Authority has repeated its previous request for the list of information contained in its consultation response to be submitted in support of the application but the information has not been forthcoming from the applicants.

The proposals for 228 dwellings together with a nursery school and car park is likely to generate a significant amount of travel, by car, in and out of the village – particular given the site's proximity to the A133 and A120, the main routes in and out of the district. The impact of development on the capacity and safety of the A133 therefore requires special consideration and as with the previous proposals, both this Council and Essex County Council already recognise that the stretch of the A133 between Weeley and Frating is a problem in terms of capacity, particularly in peak times.

Policy TRA1a in the adopted Local Plan requires that development affecting highways be considered in relation to reducing and preventing hazards and inconvenience to traffic including the capacity of the road network. Policy CP1 in the Publication Draft Local Plan states that developments will only be acceptable if the additional vehicular movements likely to result from the development can be accommodated within the capacity of the existing or improved highway network or would not lead to an unacceptable increase in congestion.

Those impacts have not been addressed and therefore the impacts of the development on highways has not been able to be assessed. The applicants have not sought to address Reason for refusal No 2 of the previous application and the current proposals are also unacceptable on highway grounds.

Education Provision

Policy QL12 in the adopted Local Plan and Policy PP12 in the Publication Draft Local Plan require that new development is supported by the necessary infrastructure which includes education provision.

The applicant's propose that a part of the site would be provided for a nursery school. This is shown on the submitted Masterplan to be located adjacent to the Weeley Bypass, some midpoint along the eastern boundary of the site. No details are provided on the area to be provided or on the numbers of children it is anticipated it could accommodate. Essex County Council, in its role as the local education authority, has commented that whilst a development of 228 homes will not generate sufficient places to make a new nursery viable, the offer of land for education use is welcomed to provide an option in the long term. It advises that a Site Suitability Checklist will need to be submitted and assessed by the ECC infrastructure delivery team. This would need to be agreed and appended to any s106 agreement with a clause requiring the developer to pay for any additional works necessary as a result of incorrect information being provided. This has not been pursued in view of the objection in principle to the development of the application site.

The County Council has advised that there are insufficient places to accommodate children from this development in Early Years, Childcare and primary school provision serving Weeley. In terms of early year and childcare (EY&C), there is some capacity in the area, but the Education Authority's the data shows insufficient places to meet demand from this proposal and therefore additional provision will be needed and a project to expand/create a provision is proposed. A contribution is sought towards this provision to mitigate the impact of the proposals.

With regard to Primary School provision, Weeley St Andrew's Church of England Primary School which has capacity for 206 pupils is full and, according to ECC's forecasts in 'Commissioning School Places in Essex 2017-2022', a deficit in provision of 18 places can be expected by 2021/22 without action to add capacity. Looking at the wider (Tendring Group 1) area, other local schools are in a similar position with a 56 place deficit overall forecast. The County's 'Ten Year Plan', to meet the demand for school places in Essex, alludes to potential expansion schemes at both Engaines Primary and Tendring Primary. The County considers that expanding St Andrew's is unlikely to be viable and Tendring's draft Local Plan thereby alludes to a potential new school to serve Weeley. A development of the size proposed in this application would not, in isolation, generate sufficient demand to trigger construction of a new school. As a consequence, the County requires a contribution towards mitigation of the impact of the development on local primary provision.

Secondary provision is provided by Tendring Technology College which is forecast to have a deficit of 44 places, without additional capacity, by 2021/22. The County Council calculate that an additional 37.4 places would need to be provided and require a contribution to provide the necessary secondary school places.

The appropriate provision would need to be secured through a Section 106 Agreement. The previous application was refused because it did not make provision to adequately mitigate the impacts of the development on infrastructure including education. The current proposals also do not make any provision to mitigate the impacts of the development on education and the proposals remain unacceptable as a result.

Health Provision

The previous application also made no provision to mitigate the impacts of the proposed development on healthcare provision in the area. The current proposals also impact upon healthcare provision and the NHS England has confirmed that a financial contribution would be required to mitigate those impacts. This would also need to be secured by a Section 106 Agreement. At the present time no Section 106 Agreement is in place or is proposed and the proposals remain unacceptable on these matters.

Landscape, Visual Impact and Trees

The site is in a prominent location, is large and exposed and contains very limited landscape features, except for the trees and hedges along its boundary with the bypass. A major development in this location would be visible from a number of long-distance views over the site, particularly from the north, east and west and would bring about a significant change in the character of the locality.

It is considered that the siting of some 228 dwellings on this site which rises gently from the south would be prominent and would be out of character with the landscape within which they would sit. Although there are some views towards the services at the junction of the A133 and the B1033, those buildings are relatively isolated and are seen within a predominantly agricultural landscape. The northern and western site boundary follows no logical feature and appears arbitrary. A public footpath positioned to the north of the site offers clear views across the site towards the Weeley Bridge Holiday Park to the south and the site is clearly viewed from the A133 where it is elevated. The Weeley Bridge Holiday Park is largely screened by the vegetation along its northern boundary and the application site has no housing development nearby to which it would relate. Instead it would appear as an isolated housing estate within the open countryside. It is accepted that some screening could be introduced which could reduce some of the visual impact of the proposals but no assessment of its impact has been submitted and no proposals for screening are proposed other than the proposed surrounding open space shown on the Masterplan.

The site is edged by trees along its boundary with the B1441 which mirror those on the opposite side of the road creating an avenue effect along the bypass. The trees and vegetation on the eastern boundary of the application site adjacent to the Weeley By-pass are also well established and provide a reasonable level of screening. It is considered that from the information provided it appears that the development of the land could take place without causing harm to the trees and established hedgerows on the southern and eastern boundaries of the application site. The exception to this being the creation of the new access points from the highway but it is considered that these could be positioned to avoid established trees. It is not considered expedient therefore to protect any of the trees by way of a Tree Preservation Order at the present time. Officers are satisfied therefore that the impacts on individual trees could be mitigated to an acceptable level.

However, it is considered that the applicant should provide a Landscape and Visual Impact Assessment (LVIA) which would show the impact of the development on both the character and visual qualities of the local landscape character and could include details of any mitigation measures that would be put in place to address any harm to the landscape that may be identified in the LVIA. It is considered that without any LVIA to identify the impacts and also without any measures which show that the development could be satisfactorily mitigated in landscape terms, the application fails to demonstrate that the proposed development would not have a detrimental impact on the landscape, contrary to Policy EN1 of the adopted Local Plan and Policy PPL3 of the Publication Draft Local Plan.

Flood Risk and Drainage

The previous application was also refused on the grounds of flooding (reason for refusal No 3) due largely because the Council had not received comments from the Environment Agency on the acceptability or otherwise of the earlier submitted Flood Risk Assessment.

According to the Environment Agency's (EA) Flood Map for Planning Purposes, the Site is partially located within fluvial Flood Zone 3 (high risk), although the majority of development which includes the area identified for housing and the nursery school, is located within Flood Zone 1 (low risk). The car park shown on the Masterplan is located within Flood Zone 3 and is therefore at risk of flooding. The Applicants have submitted a Flood Risk Assessment which recommends that the level of the ground for the car park is raised to 12.59 AOD and therefore above the 1 in 100 year plus 65% climate change event or it should be moved outside the Flood Zone 3 and into Flood Zone 1 although this would move it further away from the railway station it was intended to serve. The FRA also recommends that a Sustainable Drainage Strategy (SuDS) should be developed for the site, for effective management of surface water runoff from the proposed development.

The EA initially raised a holding objection on the current application due to the fact that no Flood Risk Assessment (FRA) had been submitted. The EA was re-consulted on receipt of the FRA and has now confirmed that it has no objections to the application subject to conditions being imposed.

It is considered therefore that the previous reason for refusal on flooding grounds has now been overcome and that subject to the imposition of appropriate conditions, the proposals would accord with Policy QL3 of the adopted Local Plan and Policy PPL1 in the Publication Draft Local Plan.

Ecology

Paragraph 175 of the NPPF requires Councils, when determining planning applications, to apply the principles in that paragraph and that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated or as a last resort, compensated for, then planning permission should be refused. Policy EN6 of the adopted Local Plan and Policy PPL4 of the Publication Draft Local Plan give special protection to designated sites of international, national or local importance to nature conservation but for non-designated sites still require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.

Under Regulations 61 and 62 of the Habitats Regulations, local planning authorities as the 'competent authority' must have regard for any potential impact that a plan or project might have on European designated sites. The application site is not, itself, designated as a site of international, national or local importance to nature conservation. However, the site does fall within the 'Zone of Influence' of the Hamford Water Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar, and Colne Estuary SPA and Ramsar (both within 5km of the site); and the Stour Estuary SPA and Ramsar (approximately 10km to the north-east of the site).

Sites falling within the 'Zone of Influence' of European designated sites are to be considered against the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) whereby a two stage testing process to consider 'likely significant effects' (Test 1) and potential avoidance and/or mitigation measures (Test 2) should be employed.

In terms of Test 1, the site falls within the 'Zone of Influence' and will create a net gain in new dwellings, so it is anticipated that such development is 'likely to have a significant effect' upon the interest features of the aforementioned designated sites. Under Test 2, as the scheme is for more than 100 dwellings there is a Natural England requirement for evidence to be provided that shows that development can provide an appropriate level of on-site/localised measures to help contain the majority of recreation within and around the development site boundary and away from the European sites. However, the unique draw of the above European sites means that, even when well-designed site provisions have been confirmed there will still be a need to reduce pressures on the European sites by such measures as provision of information and awareness raising; habitat based measures; zoning and prohibited areas and enforcement (i.e. employing rangers). With respect to this latter element mitigation will be dealt with by means of a developer tariff per dwelling.

In this case, the applicant has not confirmed the form and means of on-site mitigation or agreement to the payment of the RAMS tariff. As such the proposal is unacceptable with respect to the RAMS Strategy.

More generally in terms of ecology, the applicants have submitted an Extended Phase 1 Habitat Survey report which confirms that the main part of the site, which is in arable use, is not identified as being a suitable habitat for any protected species but that the peripheral hedgerows, trees and a stream/ditch provides potential suitable habitat for various legally protected species. A Great Crested Newt Survey has been carried out and found that four out of six ponds within the vicinity for the application site were suitable for Great Crested Newts and recommended further testing for their presence.

With regard to the remainder of the application site, the Habitat Survey found no presence of any other protected species but recommended that reptile surveys be conducted on all suitable habitat within the site red line boundary unless it can be confirmed that the areas of suitable habitat (scrub, grassland, ditch banks and ruderal vegetation) will definitely not be impacted and thus do not require survey. Surveys for bats will also be required in any trees identified as having bat potential (Appendix 3 of the Report) if they are to experience high disturbance due to adjacent construction activities, lighting or removal. Surveys for hazel dormice are also recommended if significant lengths of hedgerows are to be impacted by the development proposals.

The report considers it likely that potential impacts upon any protected species present could be easily avoided or mitigated against and that there is potential for ecological enhancement as part of the development.

Officers consider that there is a reasonable prospect of the development being accommodated on the site, with appropriate mitigation, without causing significant harm to protected species on and around the site but under Natural England guidelines, all of the necessary survey work ought to be undertaken to allow the decision making body (whether that to be the Council or the Planning Inspectorate) to make a properly informed decision.

In addition, Essex Wildlife Trust has maintained its objection to the application on the grounds of insufficient survey work in terms of protected species. It has also challenged the Report in respect of its findings regarding its location in relation to designated sites and the Trust has confirmed that the site lies within the Impact Risk Zone of Weeleyhall Wood SSSI for residential development of 100 or more houses. It recommends that the current proposals should be subject to the same condition that Natural England sought for the application on the land to the south of Thorpe Road Weeley.

It is considered that insufficient species-specific survey information has been submitted and that the proposals do not satisfactorily demonstrate that there would not be significant harm to biodiversity arising from the development or that any harm could be adequately mitigated. It is considered therefore that the application has not overcome the previous reason for refusal on this matter and that the proposals are contrary to Policy EN6 in the adopted Local Plan and Policy PPL4 in Publication Draft Local Plan.

Council Housing/Affordable Housing

Policy HG4 in the adopted Local Plan requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. Policy LP5 in the Publication Draft Local Plan, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or Council Housing. The policy does allow flexibility to accept as low as 10% of dwellings on site, with a financial contribution toward the construction or acquisition of property for use as Council Housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement. If minded to approve this application, up to 68 of the proposed properties would need to be secured for affordable housing purposes through a Section 106 Legal Agreement. The lack of such an agreement is included as a recommended reason for refusal.

Open Space

Policy COM6 in the adopted Local Plan and Policy HP5 of the Publication Draft Local Plan require large residential developments to provide at least 10% of land as public open space or otherwise make financial contributions toward off-site provision. A deficit in equipped play areas and formal open spaces has been identified in Weeley that would be exacerbated by additional residential development. Due to the size of the site it is recommended that at least 10% of the site is laid out as open space and the site include play provision to a LEAP standard.

If the on-site open space is to be transferred to Tendring District Council for future maintenance, an additional financial contribution towards maintenance will also need to be secured through a Section 106 Legal Agreement. If the Council wanted to approve this application, Officers would engage in negotiations with the applicant to agree the necessary requirements in line with the guidance contained within the Council's Supplementary Planning Document on Open Space. The applicants have indicated, as part of their indicative drawings, how open space could be incorporated as part of their development.

However, the lack of a Section 106 agreement to secure the necessary level of open space and play equipment should continue to be included as a reason for refusal, to ensure that this matter is properly addressed if the applicant decides to appeal.

Potential Layout and Density

As an outline planning application, detailed design and layout is a reserved matter for future consideration but if minded to approve, the Council would need to be satisfied that an appropriate

scheme of up to 228 dwellings, a nursery school and car park with associated infrastructure and open space could be accommodated on the site in an appropriate manner.

The applicant has submitted an overall masterplan showing the potential disposition of the uses on the site. These show the nursery site on the eastern boundary adjacent to the Weeley Bypass and 50-place car park on the southern part of the site with residential and open space on the remainder. The indicative residential layout shows a traditional 'perimeter block' form of development with the main areas of open space around the periphery of the site, including a buffer along the eastern edge and a more extensive area along the southern boundary.

The site comprises some 11.29ha and the masterplan shows extensive open space to the south. It is considered that the site could be laid out at a reasonable overall density with some flexibility to allow for lower densities around the edges of the site. Officers consider that all of the development proposed could be accommodated on the site in a reasonable manner.

Overall Planning Balance

The National Planning Policy Framework (NPPF) places a presumption in favour of sustainable development and at Paragraph 11 requires that development to be approved where it accords with an up-to-date development plan. Where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.

In this case, Policy QL1 of the adopted Local Plan is time expired setting the spatial strategy only up to 2011. Furthermore, the Council is now unable to demonstrate a 5 year supply of housing land. As a consequence, the tilted balance is engaged and the presumption lies in favour of granting planning permission.

The application proposal would generate a number of benefits including market and affordable housing, the provision of open space, a nursery school and car parking to serve the station. All of these count in favour of the development, particularly as the Council is unable to demonstrate a 5 year supply of housing land. However the Council is well advanced in its preparation of its Local Plan to ensure a continuing supply of housing land. In addition, officers consider that reduced weight should be given to the lack of 5 year supply which is calculated using demonstrably flawed 2014 household projections in Tendring's case. As a consequence, only moderate weight is given to the provision of additional housing in this instance although it is accepted that it could help to alleviate the current deficit.

In the case of affordable housing, it is considered that provision should be given greater weight in view of the current need for such housing in the district.

With regard to the other benefits that would be generated, many are required to offset the impacts of the development but it is acknowledged that the new housing will also bring about economic and social benefits through more choice and spending in the District whilst the new nursery school could address a current shortfall in the area. The new car park could also provide additional parking for the station.

Whilst it remains the case that the NPPF presumption in favour of sustainable development is still engaged, and applications must be considered on their individual merits, the adverse impact of this development are significant.

The development is clearly contrary to the Development Plan and the Publication Draft Local Plan. It is located beyond the identified settlement limits and would sit on western side of the Weeley Bypass. The bypass marks a strong defensible boundary that maintains clear separation between the built up area of the village and the open countryside. This development would breach that boundary in an unnecessary and piecemeal manner and blur the lines between urban form and countryside.

The impact on the landscape and the visual character of the area would be significant. Although the site is relatively featureless in landscape terms, it is fairly exposed and has a prominent location such that new development would be very visible. New housing and a school would bring about a significant change to the character of this prominent location.

Although the ecological impacts are expected to be low, further survey work would be required, in line with Natural England guidance, before this could be confirmed for sure. That work has not been done despite the previous reason for refusal. There is however potential for the scheme to deliver significant ecological enhancements through tree planting and habitat creation.

The applicant has not confirmed the form and means of on-site mitigation to recreational impacts on European habitat designations or agreement to the payment of a RAMS tariff, given the site falls within the 'Zone of Influence' of three such sites. As such the proposal is unacceptable with respect to the RAMS Strategy.

Notwithstanding the previous reason for refusal relating to highways, the necessary work addressing the potential impacts of this development on the highway network has also not been properly assessed and there remain questions over the potential impact on traffic and congestion on the A133.

The impact on flood risk and drainage has now been satisfactorily addressed and the proposals are acceptable on drainage and flooding grounds.

In the overall planning balance, Officers consider that this development continues to go against the plan-led approach advocated in the NPPF and which the Council is actively securing through its Publication Draft Local Plan. There remain considerable objections to the development which have not been addressed by the current application. It is therefore considered that the application should be refused for the same reasons as previously apart from drainage/flooding grounds which have been overcome.

6. Recommendation

This application represents a resubmission of an earlier application (ref: 16/02131/OUT) that was refused planning permission in April 2016 on 6 grounds: that it was located in open countryside divorced from the village of Weeley, on highway impact grounds, flooding, potential impact on biodiversity, lack of provision of affordable housing and impact upon local infrastructure.

The site is located on the western side of the Weeley Bypass and therefore outside the defined Settlement Development Boundary of Weeley as defined by the adopted Local Plan and amended by the as defined by the Publication Draft Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

It is considered that circumstances have not changed significantly since the refusal of planning permission to justify the grant of planning permission and the applicants have failed to submit any substantial further information that would overcome the earlier reasons for refusal other than in relation to flooding.

The application remains unacceptable and is recommended for refusal.

7. Reasons for Refusal

1. The application site lies outside of the Weeley Settlement Development Boundary as defined within the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

The National Planning Policy Framework 2019 (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 report, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public of the Local Plan. There are therefore significant doubts about the validity or extent of any housing supply 'deficit', albeit the tilted balance applies. This minimises the reduction in weight to conflict with Policy QL1, as per the *Hallam Land* judgement, especially in view of the fact that the Council has considerably increased its housing delivery figures in recent years.

Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.

Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft. Emerging Policy SPL1 of the Publication Draft of the Local Plan 2017 includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations. This is the emerging policy equivalent to Saved Policy QL1 of the adopted Tendring District Local Plan 2007 which states that development should be focussed towards the larger urban areas. Weeley is identified as a 'Village' within saved Policy QL1 of the adopted Tendring District Local Plan 2007 and is defined as a 'Rural Service Centre' in the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft June 2017. The Publication Draft Local Plan seeks to promote housing development in the District's rural service centres at a level that is fair, achievable and sustainable and that will make a meaningful contribution towards addressing local housing growth proposed for the District. This development when considered in combination with others proposed for development in the Publication Draft Local Plan would bring about an unnecessary and disproportionate level of growth for Weeley that does not reflect its proposed status as a rural service centre within the settlement hierarchy.

The proposal is contrary to the adopted Local Plan and would conflict with the policies of the National Planning Policy Framework. The development would represent an unnecessary and piecemeal intrusion into the countryside that would have an adverse impact on the character of the area. The development would prejudice the effective and coordinated delivery of infrastructure through the plan-led process and would be disproportionate in scale for its location. The economic and social benefits of the proposed housing, new nursery school and new car park have been given due consideration in the overall planning balance, but the adverse effects of the development are considered to significantly and demonstrably outweigh the benefits. The proposal therefore does not constitute sustainable development.

2. Paragraph 111 of the National Planning Policy Framework (2019) states that all developments that generate significant amounts of movement should be supported by a transport statement or transport assessment. Policy TR1 in the adopted Tendring District

Local Plan requires Transport Assessments to be submitted for all major development. Policy CP1 in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft similarly requires a Transport Assessment to accompany major development proposals.

This major mixed-use development proposal would generate significant amounts of movement. However, no Transport Assessment has been submitted to allow the local planning authority and the highway authority to properly assess the likely impacts of the proposals on the highway network or to be able to consider what mitigation may be appropriate or necessary. The development is therefore contrary to Policy TR1 of the adopted Local Plan and Policy CP1 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft as well as Paragraph 111 of the NPPF.

3. Paragraph 175 of the National Planning Policy Framework requires local planning authorities, when determining planning applications, to aim to consider if significant harm would result to biodiversity from a development and to assess if that harm can be avoided, mitigated or, as a last resort, compensated for. Councils should refuse planning permission. Policy EN6 in the Tendring District Local Plan 2007 (the 'adopted local plan') and Policy PPL4 in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.

The applicant has submitted an ecological assessment for the site and the wider area. The assessment recommends further surveys be undertaken to assess potential impacts on protected species including, reptiles, nesting birds, bats and dormice. These recommended surveys had not, at the time of the decision, been undertaken or provided.

Under Natural England's standing advice, the local planning authority should be provided with all of the information required to make an informed decision about the impacts of development on ecology before planning permission is granted. In the absence of the recommended additional assessments the Council is unable to make informed assessment of impacts on biodiversity and whether or not the development meets with paragraph 175 of the Framework, Policy EN6 of the adopted Local Plan and Policy PPL4 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

4. The application does not provide sufficient information to satisfy the Council, as competent authority, that the proposed development would not have a detrimental impact on the Hamford Water Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar; Colne Estuary SPA and Ramsar; and Stour Estuary SPA and Ramsar for which it falls within the 'Zone of Influence'. The cumulative impact of the development in combination with other new development in proximity to these European habitat protection areas is likely to be significant and therefore unacceptable and contrary to Paragraph 175 of the National Planning Policy Framework, Policy EN11a in the adopted Local Plan and Policy PPL4 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
5. The National Planning Policy Framework (2019) states that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

Policy HG4 of the Tendring District Local Plan (2007) requires up to 40% of new dwellings on residential schemes of 5 or more units (in rural areas) to be provided in the form of affordable housing to meet the needs of people on the open market. Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft which is based on more up-to-date evidence of housing need and viability, requires for developments of 10 or more dwellings to be made available to Tendring District Council or alternative provider to acquire at a discounted value for use as affordable housing, or as an alternative, the Council will accept a minimum of 10% if new dwellings are to be made available alongside a financial contribution toward the construction or acquisition of property for use as

affordable housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement. A completed Section 106 has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

6. Policy COM26 of the Tendring District Local Plan states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Policy PP12 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft states planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements. A completed Section 106 obligation to secure such requirements has not been provided prior to the application determination date and the application is therefore contrary to the above policies.

Policy HP1 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft states that the Council will seek contributions towards new or enhanced health facilities from developers where new housing development would result in a shortfall or worsening of health provision. NHS England has identified the need for financial contributions towards local health services. A completed Section 106 obligation to secure these contributions has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

Policy COM6 of the Tendring District Local Plan and Policy HP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft seek appropriate levels of both play and formal open space where a local deficit of provision is identified and/or to meet the needs of the development to include arrangements for securing commuted payments toward provision and future maintenance through planning obligations. Whilst the application incorporates both open space and play space, should the developer wish to transfer the ownership of the open space and play facilities to the Council upon completion a commuted sum will be required. A completed Section 106 obligation to secure such requirements has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

8. Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

<p>Are there any letters to be sent to applicant / agent with the decision? If so please specify:</p>	<p>YES</p>	<p>NO</p>
<p>Are there any third parties to be informed of the decision? If so, please specify:</p>	<p>YES</p>	<p>NO</p>

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