

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	15/10/19
Planning Development Manager authorisation:	TF	16/10/19
Admin checks / despatch completed	CC	16/10/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	EX	16/10/19

Application: 19/01031/OUT **Town / Parish:** Elmstead Market Parish Council

Applicant: Mr S Williams

Address: Grange Farm Bungalow Clacton Road Elmstead

Development: Demolition of existing bungalow and erection of up to nine dwellings and associated garaging.

1. Town / Parish Council

Elmstead Parish Council See below.

2. Consultation Responses

Elmstead Parish Council Elmstead Parish Council wishes to object to this planning application for the following reasons:

Development History

An application for the same development was made in 2018 and refused by TDC. An appeal was made and dismissed. We have included our original and appeal objections below.

Development Boundary

The development is outside the existing village development parameters. It is also outside of the development boundary proposed in the new Local Plan. In view of the advanced nature of the new Local Plan we believe full weight should be given to the development boundary in that Plan.

Site Plan:

9 houses on this plot is overdevelopment and is out of keeping with the adjacent development of the area. With the parking areas not being immediately adjacent to the houses it is likely that vehicles will be parked on the access road.

Countryside:

Elmstead Parish Council wishes to reiterate and support Clive Dawson's statement (consultee comments for the appeal on the previous application reference: APP/P1560/W/18/3208427) that "the intensification of development on the application site would be out of keeping with the local settlement pattern and the development would be incongruous in its setting. The development would result in significant harm to both the character and appearance of the area." This particular proposal in an overdevelopment of the land in question.

Location:

Whilst almshouses would be a welcome addition to the village and we accept the greater need for 2 and 3 bedroom houses in the area than larger houses we do not agree that there is good access to the village and public transport for families with children and the elderly. It is at a distance from the village and there is no footway on this side of the road. In order to access a footway one would need to cross a busy A road on a bend with the national speed limit. For this reason we believe that such smaller houses should be located in the village itself. We disagree that is a sustainable development as it would increase the number of car journeys to access the village facilities.

Facilities and Sustainability:

The current village facilities are unable to sustain further development.

Currently 269 new houses have been agreed for the village with an additional 66 in application (including these 9). The 269 is equivalent to a 33% growth.

This highlights the issues Elmstead has with unsustainable growth and the strain on its services such as the primary school and GP surgery.

Elmstead Parish Council would like to record that if the planning application is permitted we would like to be consulted on the reserved matters.

In the event that this application is approved we request that for the purposes of determining whether the provision of affordable housing or a section 106 contribution is required that this development should be agglomerated with the two developments of 5 and 2 buildings already built/being built by the developer. This is effectively the latest phase in an ongoing development having the same access which was specifically built for the immediately adjacent developments of 5 and 2 large houses.

ECC Highways Dept

The information that was submitted in association with the application has been fully considered by the Highway Authority.

The proposal is situated off an existing service road that has been developed as part of planning applications 17/01617/OUT (for two dwellings) and ref: 16/00724/OUT for a further five dwellings the proposal retains adequate room and provision for off street parking and turning, for the proposed site therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. No unbound materials shall be used in the surface treatment of the proposed vehicular accesses within 6m of the highway boundary or throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety and in accordance with Policy DM 1.

2. Prior to the first occupation of each dwelling on the proposed development, the individual proposed vehicular access for that dwelling shall be constructed at right angles to the highway boundary and to a width of 3.7m and each shared vehicular access shall be constructed at right angles to the highway boundary and to a width of 5.5m and shall be provided with an appropriate dropped kerb

vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM 1.

3. No doors or windows shall open over the highway or proposed highway, maintainable at public expense.

Reason: To ensure the unimpeded passage of pedestrians and cyclists, in the interests of highway safety and in accordance with Policy DM 1.

4. All footways should be provided at no less than 2.0m in width.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety and in accordance with Policy DM 1 and 6.

5. All off street car parking shall be in precise accord with the details contained within the current Parking Standards being provided within the site which shall be maintained free from obstruction and retained thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8.

6. Any garage provided with its vehicular door facing the highway or proposed highway, shall be sited a minimum of 6m from that highway boundary.

Reason: To ensure that the vehicle to be garaged may be left standing clear of the highway whilst the garage door is opened and closed, in the interests of highway safety and in accordance with Policy DM 1 and 8.

7. Prior to the occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants of that dwelling, of a design this shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.

Reason: To promote the use of sustainable means of transport in accordance with Policy DM 1 and 9.

8. No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and under body washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety and Policy DM 1.

9. Prior to the first occupation of any of the proposed dwellings the applicant / developer shall provide a new bus stop eastbound, opposite the proposed development site, including the provision of level entry kerbing, passenger waiting area (hard standing) new post and flag, timetables, any adjustments in levels, surfacing and any accommodation works to the footway and carriageway channel being provided entirely at the applicant/Developer's expense to the specifications of the Highway Authority.

Reason: To make adequate provision for the additional bus passenger traffic generated as a result of the proposed development in accord with Policy DM 9.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Design Informative:

1. There should be no vehicular access over any radius kerbs.
2. Any new carriageways should be provided with a centreline bend radius of 13.6m together with adequate forward visibility.
3. Any trees provided within the adoptable highway will attract a commuted sum of no less than £750 per tree.
4. Refuse freighters are unlikely to manoeuvre over Private Drives.

Informative1: All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to The Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate Notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway.

Informative 2: 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.

3. Planning History

18/00004/DETAIL	Erection of two detached dwellings and associated garaging.	Approved	27.02.2018
18/00644/OUT	Demolition of existing bungalow and erection of up to nine dwellings and associated garaging.	Refused	27.06.2018
18/01858/OUT	Proposed office development of up to 929sqm B1 office with associated car parking, infrastructure and landscaping.	Approved	15.01.2019
19/00432/DETAIL	Reserved Matters application for	Approved	09.05.2019

proposed office development
following Outline approval on
planning application
18/01858/OUT.

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

HG1 Housing Provision

HG9 Private Amenity Space

HG14 Side Isolation

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

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

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP3 Housing Density and Standards

LP4 Housing Layout

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

SPL1 Managing Growth

SPL3 Sustainable Design

Local Planning Guidance

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 (2019) 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

Site Description

The area of land subject to this planning application relates to land at Grange Farm Bungalow, Elmstead. The application site is situated on the south side of Clacton Road (A133) to the south-east of Elmstead Market. The village lies approximately 6km to the east of Colchester and 3 km northeast of Wivenhoe. The village comprises development mainly to the north of A133, a road which connects Colchester to Clacton and which runs east/west along the southern fringe of the village.

The application site lies predominantly within the curtilage of an existing bungalow, extending to include the access road and a strip of land proposed for parking.

The application site is located southeast of the centre of Elmstead Market. There is a footway provided to the north of the site into the centre of the village.

Description of Proposal

This planning application seeks outline planning permission for up to nine dwellings. The application is in outline form with all matters reserved.

The proposed development proposes up to nine dwellings in place of an existing bungalow that occupies a large plot. Illustrative plans have been provided that show two short terraces of 3 x one and half storey properties and 3 x detached dwellings. The indicative housing mix is 6 x 2 bed and 3 x 3 bed dwellings.

The parking layout is shown as two distinct areas; a courtyard area located centrally within the development and garaging to the south of the access road.

Site History

Under planning reference 18/00644/OUT, the same proposal was refused on the grounds that due to its siting outside of a settlement development boundary it was not sustainable. A second refusal reason focussed on the change to the character of the area as a result of nine dwellings, which would both be harmful and set an unwanted precedent, while the indicative drawings provided failed to show how nine dwellings could be accommodated on the site in a spacious manner that reflects the semi-rural character of the locality.

This decision was dismissed at appeal (reference APP/P1560/W/18/3208427, dated 7 July 2019), however it is important to note that the only reason for this refusal was the lack of a completed legal agreement to secure contributions towards RAMS.

Immediately to the south-east is land subject to a recent planning permission for two dwellings (ref: 17/01617/OUT) and further south-east lies land subject to a planning permission for five dwellings (ref: 16/00724/OUT & 16/02004/DETAIL). The application for five dwellings included amending the access road to the dwellings to the north side of the bungalow. Work has completed on the construction of the consented dwellings.

Assessment

1. Principle of Development

The application site lies outside of a 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.

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.

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. 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.

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.

Therefore, at this present time, it is correct to assess the housing development on its merits against the sustainable development objectives set out within Paragraph 8 of the NPPF. The economic objective, a social objective and an environmental objective are therefore assessed below.

Economic:

It is considered that the proposal for nine dwellings would contribute economically to the area, for example by providing employment during the construction of the development and from future occupants using the nearby facilities, and so meets the economic arm of sustainable development.

Social:

The NPPF seeks to support a prosperous rural economy. It promotes sustainable transport and seeks a balance in favour of sustainable transport modes to give people a real choice about how they travel recognising that opportunities to maximise solutions will vary between urban and rural areas. With regard to the social dimension, this means supporting strong, vibrant and healthy communities by supplying the housing required to meet the needs of present and future generations and creating a high quality environment with accessible local services.

Under appeal reference APP/P1560/W/18/3208427 on this same site, the Inspector stated the following:

"In this instance, the appeal site lies some 1km south of Elmstead Market which has a variety of facilities and services such as a primary school, a doctor's surgery, petrol filling station, shops, including a food store, and café/restaurants.

The A133 Clacton Road has a footpath on its northern side which connects the site to Elmstead Market. The site is also within 400m of bus stops that provide regular services to Wivenhoe, Clacton and Colchester. It is therefore reasonable to assume that the occupiers of the dwellings need not be wholly reliant on the private car to access services and facilities to meet their day to day needs as alternative transport options are available. Moreover, as the site is also within walking distance of Elmstead Market, I am of the view that the proposal would not lead to significant harm in this regard."

The site has therefore previously been accepted as a location that meets the social strand of sustainability.

Environmental:

Within the previous refusal for the same scheme on this site, Officers raised concerns that the erection of nine dwellings in this location would bring about a significant change to the character of the area simply by the intensification of the development, resulting in the creation of an incongruous 'enclave' that does not maintain the existing settlement pattern of hamlets, farmsteads and distinct villages. Officers further stated that even though the properties will not be linear in terms of the way that they address Clacton Road, they would increase the amount of development along and adjacent to the highway that would amount to an intensification of 'Ribbon Development'. The change to the character of the area was therefore considered to be both harmful and set an undesirable precedent.

Concerns were further raised with regards to the indicative layout provided, which failed to demonstrate nine dwellings could be accommodated on the site in a spacious manner that reflects the semi-rural character of the locality. The layout instead showed a high density development with properties located on small plots with limited space situated between them. Further the indicative parking layout showed courtyard parking and a long row of garages with little room for landscaping. The absence of private amenity spaces of a size commensurate with saved policy HG9 for several of the dwellings also reinforced the view that it had not been adequately demonstrated that the site could accommodate a development of nine dwellings.

However, within the recent appeal decision on this site, the Inspector stated "*Directly southeast of the site is a development of dwellings that have recently been constructed. These dwellings are all detached and display a degree of openness and spaciousness about them. Immediately to the northwest of the site permission has also been granted for an office development which is currently under construction. Thus, I do not consider that a development of additional dwellings between these two sites would fail to respect the character of the area, which has been the subject of change in the recent past.*

Furthermore, the appellant has sought to overcome the matter relating to spaciousness by decreasing the number of dwellings from nine to seven and has provided a further indicative drawing as part of his written submission. Nevertheless, as an outline application with all matters reserved, the precise layout and scale of the dwellings would be determined at a later date and it would be for the Council to decide at reserved matters stage whether it considers a development of up to nine dwellings to be an incongruous development, having regard to the character and appearance of the area.

Therefore, taking into account the immediate context of the appeal site in relation to recent developments, the proposal would not be in conflict with Policy QL9, HG9 and EN1 of the Local Plan and the Framework which seek, amongst other things, to ensure that developments make a positive contribution to the quality of the local character and relates well to its surroundings and provides adequate private amenity space."

The concerns raised by Officers during the determination of 18/00644/OUT have therefore been overcome, and it would not be reasonable to object on these grounds.

2. Residential Amenity

Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The application is in outline form only so the design and layout can only be dealt with as part of a reserved matters application. The impact on neighbouring amenity will obviously depend on the detailed design and layout; however, it is considered that the site is situated a sufficient distance from neighbouring properties to be capable of accommodating nine dwellings without resulting in any adverse impact on neighbour's amenities.

3. Highway Considerations

Essex County Council Highways have been consulted. They raise no objections subject to conditions relating to the use of no unbound materials, the width of the vehicular access, no doors/windows to open out over the highway, footways to be 2m in width, the submission of a construction method statement, and the provision of new bus stop (eastbound). These details could have been secured by condition had the application been recommended for approval.

Furthermore, the Council's Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces are required. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied on to provide a parking space, should measure 7 metres by 3 metres internally. The indicative plan shows provision of two spaces per property plus two visitor spaces, and therefore is in accordance with the above requirements.

4. Tree Impacts

The tree survey and report submitted with the application is inaccurate inasmuch as it refers to trees that are no longer in situ and makes provision for the retention and physical protection of some of those trees. The only important remaining trees on the land are 3 Alder to the north west of the existing access road. The Monterey Pine has been felled.

Although the application is in outline form a site layout shows the retention of the Alder and the removal of the Pine and Cherries. The removal of these trees has not and will not have a significant detrimental impact on the local landscape character.

It is accepted that the soft landscaping associated with the development proposal could improve the current level of screening for both the existing (under construction) and proposed development. A comprehensive and detailed soft landscaping scheme should however be provided at any future reserved matters stage.

5. Affordable Housing

Paragraph 63 of the NPPF (2019) states provision of affordable housing should be sought for residential developments that are major developments. Within the glossary of the NPPF (2019), major development is defined as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.

The application subject of this application is for a total of nine dwellings on a site measuring approximately 0.45 hectares. As such, if the site was to be considered on an individual basis, it would not be classed as a major development as per the NPPF (2019) description.

However under previous planning permission 17/01617/OUT, land to the immediate south-east has been developed for two dwellings, while under planning references 16/00724/OUT and 16/02004/DETAIL) a further five dwellings have been developed. The applicant for 17/01617/OUT was the same as the current application, while the application for the additional applications was Hills Residential Ltd, who have been served notice under Certificate B within the current application. Further, within the Site Plan for 17/01617/OUT, the site subject of the current application is shown as within the ownership of the applicant, while all of the applications have taken place across the past three years, which is not considered to be a significant amount of time. It is therefore considered that there is a clear and direct link between the three sites, and the three proposals represent a sub-division of a larger site for 15 dwellings (which includes the demolition of the existing dwelling known as Grange Farm Bungalow). The above policies are therefore applicable and if minded to approve this application, up to five of the proposed properties would need to be secured for affordable housing purposes through a Section 106 legal agreement.

A completed Section 106 obligation to secure the affordable housing contribution has not been provided prior to the application determination date and the application is therefore contrary to the above policies.

6. Open Space

Paragraph 54 of the National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of 4.51 hectares of equipped play in Elmstead, with the nearest play area located on Old School Lane. The play area is classified as a Local Equipped Area for Play and provides facilities for various age groups. As this is the only play area in Elmstead it is already well used and further development in the village will put added pressure on the facility.

A contribution towards the improvements at the only play area in Elmstead Market is both relevant and justified to this planning application, with improvements to be made at the play area in Old School Lane. This play area has recently been refurbished but to cope with any additional development this will still be in need of continued improvements, and therefore a contribution is both relevant and justified.

No such contribution has been included within this application nor has any justification for the lack of a contribution and therefore this scheme does not comply with Policy COM6.

7. Habitats Regulation Assessment

Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Colne Estuary Ramsar and SPA site, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Other Considerations

Elmstead Parish Council objects to this planning application for the following reasons:

1. An application for the same development was refused previously and lost at appeal;
2. Site is outside of a settlement boundary;
3. Overdevelopment and not in-keeping with adjacent development;
4. Harm to countryside;
5. Not a sustainable location; and

6. Impacts to local infrastructure.

In answer to this, all of these points have been addressed within the main body of the report above.

No other letters of representation have been received.

6. Recommendation

Refusal.

7. Reasons for Refusal

- 1 Paragraph 63 of the NPPF (2019) states provision of affordable housing should be sought for residential developments that are major developments. Within the glossary of the NPPF (2019), major development is defined as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.

It is considered that this application, and those previously approved under planning references 16/00724/OUT, 16/02004/DETAIL and 17/01617/OUT constitute a sub-division of a single site and therefore result in a total of 15 units. The above policy is therefore applicable and therefore there is a need to provide for affordable housing through a s106 legal agreement.

A completed Section 106 obligation to secure the affordable housing contribution has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

- 2 Paragraph 54 of the National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of 4.51 hectares of equipped play in Elmstead, with the nearest play area located on Old School Lane. The play area is classified as a Local Equipped Area for Play and provides facilities for various age groups. As this is the only play area in Elmstead it is already well used and further development in the village will put added pressure on the facility.

A contribution towards the improvements at the only play area in Elmstead Market is both relevant and justified to this planning application, with improvements to be made at the play area in Old School Lane. This play area has recently been refurbished but to cope with any additional development this will still be in need of continued improvements, and therefore a contribution is both relevant and justified.

No such contribution has been included within this application nor has any justification for the lack of a contribution and therefore this scheme does not comply with Policy COM6.

- 3 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This

residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Colne Estuary Ramsar and SPA site, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

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.