

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	NH	05/02/2020
Planning Development Manager authorisation:	TF	05/07/2020
Admin checks / despatch completed	BB	05/02/2020
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**Application:** 19/01513/OUT **Town / Parish:** Brightlingsea Town Council

**Applicant:** Bruce B Ltd.

**Address:** Rear of 6 Maltings Road Brightlingsea Colchester

**Development:** Proposed detached bungalow.

### 1. Town / Parish Council

Mrs Brightlingsea Town Council

Brightlingsea Town Council makes the following comments:-

(1) Inappropriate backland development having a detrimental impact on a number of existing residents; (2) Too close to properties in Sarre Way.

### 2. Consultation Responses

ECC Highways Dept

The information that was submitted in association with the application has been fully considered by the Highway Authority. It appears a similar application was made back in 2014 (14/00736/OUT) as a result the proposal is at the end of a private drive and retains adequate room and provision for off street parking and turning, for the existing and proposed dwelling 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. Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety in accordance with policy DM1.

2. Prior to occupation of the development a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

3. As per the block plan no unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

4. Prior to the occupation of the proposed dwellings, a single vehicular access shall be retained for both dwellings; the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Footway and provided with an appropriate dropped kerb crossing of the footway.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

5. Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the footway or where no provision of footway is present, the carriageway.

Reason: To enable vehicles using the access to stand clear of the carriageway whilst gates are being opened and closed and to allow parking off street and clear from obstructing the adjacent footway/cycleway/carriageway in the interest of highway safety in accordance with policy DM1.

6. Each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles for each dwelling.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

7. The Cycle / Powered Two-wheeler parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle / powered two-wheeler parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

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.

Informative 1: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Informative 2: Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

Informative 3: All work within or affecting the highway is to be laid out

and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to:

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

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

### **3. Planning History**

07/01176/OUT	Erection of 2 detached bungalows.	Refused	05.09.2007
08/60020/HOUEN Q	Detached garage	Permission Required	24.11.2008
14/00736/OUT	Proposed detached 2 bedroom bungalow.	Refused	24.07.2014

### **4. Relevant Policies / Government Guidance**

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

HG3 Residential Development Within Defined Settlements

HG9 Private Amenity Space

HG13 Backland Residential Development

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

COM6 Provision of Recreational Open Space for New Residential Development

TR1A Development Affecting Highways

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

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

LP1 Housing Supply

LP3 Housing Density and Standards

LP4 Housing Layout

LP8 Backland Residential Development

PPL4 Biodiversity and Geodiversity

HP5 Open Space, Sports & Recreation Facilities

CP1 Sustainable Transport and Accessibility

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 (including Site Description and Proposal)**

### Site Description

The application site relates to 6 Maltings Road, Brightlingsea, Colchester which is a single storey bungalow located to the south easterly side of Maltings Road. The proposed dwelling will be located to the rear of number 6 Maltings Road and access via a driveway which runs adjacent to number 6. The application site is located within the development boundary of Brightlingsea.

### Site History

Planning permission was refused under reference 07/01176/OUT for the erection of two detached bungalows on the proposed site. The application was refused due to the characteristics of tandem development as well as the two dwellings being situated in a tight, awkward and a poor relationship to one another. The access was directly abutting the back fences of the rear gardens to properties in Sarre Way with no room for planting. The access was long being poorly relating to the existing street frontage and surrounding area.

Planning permission was refused under reference 14/00736/OUT for the erection of a detached two bedroom bungalow. The application was refused due to the site being backland development without a proper road frontage, out of keeping with the existing pattern and spacing characteristics of development prevailing in this part of Brightlingsea. The proposed development also necessitated the almost complete loss of existing soft landscaping to the front and its replacement with hard surfacing. Soft landscaping is a positive feature of properties along Maltings Road and therefore its loss will have negative impact on the visual amenity of the streetscene and be out of character with the surrounding area. The new housing will require the use of access to the rear of the existing properties abutting on Sarre way and alongside the host dwelling No.6 Maltings Road. The introduction of such a private drive will intensify vehicular activity and disturbance into a backland setting and thereby result in a loss of amenity, quiet enjoyment and expectations of living conditions enjoyed by neighbouring residents to an extent that would cause material harm. The second reason for refusal was for the lack of a financial contribution towards open space contrary to policy COM6 of the Tendring District Local Plan 2007.

## Proposal

The application seeks outline planning permission for the erection of two dwellings with some matters reserved. This application is considering the access, layout, scale, landscaping and appearance is therefore reserved for subsequent approval as part of the detailed application. An indicative layout plan has been submitted with this application which demonstrates one detached dwelling to the south east of the site.

## Assessment

The main considerations for this application are;

- o Principle of Development
- o Backland development
- o Trees and Landscaping
- o Financial Contributions - Open Space
- o Habitat Regulations Assessment
- o Representations

### Principle of development

The site lies within the Settlement Boundary for Brightlingsea , as outlined in the saved Tendring District Local Plan (2007) and the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

Policy HG3 of the Tendring District Local Plan 2007 states that within defined development boundaries of towns and villages, residential development will be permitted provided it satisfies amenity, design, density, environmental, highway, local housing needs and sustainability criteria, as appropriate, and can take place without material harm to the character of the local area. The principle for residential development is therefore accepted subject to the detailed consideration below.

### Backland Residential Development

'Backland' forms of development can undermine the established character of an area, particularly if that character predominantly comprises linear street fronting development as is the case here. Allowing such development, especially if similar schemes were to be repeated elsewhere in a locality, will undermine the character of the area and set an undesirable precedent. Development behind an established building line can also appear incongruous, forming an inappropriate tandem and cramped form of development. To avoid such problems, backland development requires careful consideration, including the need for an appropriate means of access to 'backland' plot, which is in a form which is safe and convenient for both drivers and pedestrians.

Paragraph 127 of the Framework requires that development should respond to local character and history, and reflect the identity of local surroundings and materials and adds that it is proper to seek to promote or reinforce local distinctiveness. Saved Policy HG13 of the adopted 2007 Local Plan and emerging Policy LP8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 are of particular relevance in this instance due to the nature of the development constituting backland development. Saved Policy HG13 states that proposals for the residential development of backland sites must comply with certain criteria (echoed in emerging Policy LP8) which is set out and addressed below:

- i. the site lies within a defined settlement development boundary and does not comprise land allocated or safeguarded for purposes other than a residential use;

The plot is located within the Settlement Development Boundary of Brightlingsea and is not safeguarded or allocated for any use other than residential.

ii. where a proposal includes existing private garden land which would not result in less satisfactory access or off-street parking arrangements, an unacceptable reduction in existing private amenity space or any other unreasonable loss of amenity to existing dwellings;

#### - Highways and Parking

Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Essex Highways Authority have been consulted on this application and have stated that the information that was submitted in association with the application, has been fully considered by the Highway Authority. It appears a similar application was made back in 2014 (14/00736/OUT) as a result the proposal is at the end of a private drive and retains adequate room and provision for off street parking and turning, for the existing and proposed dwelling. Therefore, the Highway Authority have no objection to this application subject to conditions relating to pedestrian visibility splays, vehicular turning facility, width of private drive, single vehicular access shall be retained for both dwelling, gates shall be inward opening only and shall be set back a minimum of 6 metres, tandem parking spaces and cycle parking.

Essex Parking Standards require that for dwellings with 2 or more bedrooms 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. Parking provision has not been demonstrated on the plans provided. A parking plan has been provided to demonstrate that two parking spaces have been provided to serve the proposed dwelling and two tandem parking spaces have been provided to serve the existing dwelling. The proposed site can therefore accommodate sufficient parking in line with the standards.

#### - Private Amenity Space

To accord with Saved Policy HG9 of the adopted Tendring District Local Plan 2007 the following minimum garden sizes would be required;

- 1 bedroom = 50 square metres
- 2 bedroom = 75 square metres
- 3 or more bedrooms = 100 square metre

The application proposes a 3 bedroom dwelling which exceeds 100 square metres and number 6 Maltings road comprises of 2 bedrooms which exceeds the 75 square metres. Therefore the private amenity space for both dwellings complies with Policy HG9.

#### - Impact on Residential Amenities

Saved Policy QL11 of the Tendring District Local Plan (2007) states that new development will only be permitted if, amongst other things, the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

The NPPF, in paragraph 127 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) 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 (2017).

Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted, if amongst other things, access to the site is

practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Appearance and layout are reserved for later consideration. It is considered that the proposed bungalow could be accommodated on the site with no material loss of amenity in terms of loss of light, outlook or privacy. It is therefore considered that sufficient spacing between properties could be achieved to result in a development that would not harm the amenities of neighbours.

iii. a safe and convenient means of vehicular and pedestrian access/egress can be provided that is not likely to cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will be discouraged;

The development will be served by a long narrow shared access drive that would be detrimental to the character and appearance of the locality and wholly out of character with the pattern of development in the area.

iv. the proposal does not involve "tandem" development using a shared access;

The development would constitute tandem development that could set a harmful precedent for other similar forms of development in the vicinity.

v. the site does not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution;

This criterion is not considered relevant to this case as it would not open up a more comprehensive form of development.

vi. the site is not on the edge of defined settlements and likely to produce a hard urban edge or other form of development out of character in its particular setting; and

The site is located within the built up area surrounded by existing dwellings and would not create a hard urban edge. However, the development is considered to be out of character in its setting which is characterised by linear, road frontage development.

vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.

The main character of Maltings Road is road frontage, linear development with an established front building line with several cul de sacs. The proposed development would represent an unacceptable form of backland development being wholly out of character with the area setting a harmful precedent for other cramped inappropriate plot sub-divisions to the rear of other properties within the street and surrounding area.

### Trees and Landscaping

Paragraph 170 of the National Planning Policy Framework (2019) states planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and should protect and enhance valued landscapes.

Policy EN1 of the Saved Local Plan states the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted. The sentiments of this policy are carried forward within Emerging Local Plan Policy PPL3.

Landscaping will be secured at the reserved matters stage. There is a small Goat Willow (*Salix caprea*) on the western boundary and a slightly larger Horse Chestnut (*Aesculus hippocastanum*) in, or close to, the north eastern corner of the application site. Neither tree merits retention or protection by means of a tree preservation order. A soft landscaping condition will be imposed at



the reserved matters stage to secure details of the indicative soft landscaping, including tree planting shown on the site layout plan.

#### Financial Contribution - Open Space/Play 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". These sentiments are carried forward within emerging Policy HP5.

In line with the requirements of saved Policy COM6 and emerging Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space.

No contribution is being requested from Open Spaces on this occasion.

#### Financial Contribution - RAMS;

Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.

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.

The application scheme proposes two dwellings on a site that lies within the Zone of Influence (Zoi) being approximately 3.2 km away from Colne Estuary RAMSAR Site, SAC and SPA.

New housing development within the Zoi would be likely to increase the number of recreational visitors to Colne Estuary and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A completed unilateral undertaking has been received to secure the financial contribution required to mitigate against any recreational impact from the new dwelling and to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with 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.

#### Representations

Brightlingsea Town Council have been consulted on this application and objects for the following reasons;

- Inappropriate backland development having a detrimental impact on a number of existing residents
- Too close to properties in Sarre Way

The concerns above have been addressed within the report.

- 4 letters of representation have been received raising the following concerns;
1. The proposal will set a precedent on the estate
2. Impact upon neighbouring amenities
3. Foul sewage drainage is to be by mains sewerage - impact of this?
4. Maximum height of 4.3 metres to reduce light onto neighbouring amenities
5. Use of existing fence to the boundary of 8 Maltings Road - it is a mix match of broken fencing.
6. New dropped kerb adjacent to 8 Maltings Road to provide two parking spaces for 6 Maltings Road
7. Existing garage used for storage purposes
8. Covenant on the land saying only one dwelling on this land is allowed

Concern number 1 and 2 have been addressed within the report. In response to concern number 3, the application form submitted as part of this application states that the dwelling will use mains drainage. However if another method is used, then the applicant will need to get a licence from the Environment Agency. In response to concern 4, the height of the dwelling will be established at the reserved matters stage of the application process. This application is to establish whether the principle of the development is acceptable in this location. In response to concern number 6, Essex Highways Authority have no objection to this application subject to conditions listed within the report. In response to concern number 7, the proposed application involves the removal of the existing garage which will be replaced with parking spaces to serve the proposed dwelling. In response to concern number 8, covenants are private matters and are not material planning considerations. Therefore, this has not been taken into consideration when determining the application.

## **6. Recommendation**

Refusal - Outline

## **7. Conditions / Reasons for Refusal**

- 1 Paragraph 127 of the National Planning Policy Framework (NPPF) requires that development should respond to local character and history, and reflect the identity of local surroundings and materials. Paragraph 192 adds that it is proper to seek to promote or reinforce local distinctiveness. Saved Policy HG13 of the adopted 2007 Local Plan and emerging Policy LP8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 are of particular relevance in this instance due to the nature of the development constituting backland development. Saved Policy HG13 states that proposals for the residential development of backland sites will only be approved where it meets specific criteria.

The development will be served by a long narrow shared access drive that would be detrimental to the character and appearance of the locality and wholly out of character with the pattern of development in the area.

The development would constitute tandem development that could set a harmful precedent for other similar forms of development in the vicinity.

The site is located within the built up area surrounded by existing dwellings and would not create a hard urban edge. However, the development is considered to be out of character in its setting which is characterised by linear, road frontage development.

The main character of Maltings Road is road frontage, linear development with an established front building line. The proposed development would represent an unacceptable form of backland development being wholly out of character with the area setting a harmful precedent for other cramped inappropriate plot sub-divisions to the rear of other properties within the street and surrounding area.

For these reasons, the proposal is considered contrary to Saved Policy HG13 criterion iii, iv, vi and vii and the aims of the NPPF.

## 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.

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