



# TENDRING DISTRICT COUNCIL

## Planning Services

Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex CO16 9AJ

**AGENT:** Roger Balmer Design  
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**APPLICANT:** Mr Cox  
C/o Agent

### TOWN AND COUNTRY PLANNING ACT 1990

**APPLICATION NO:** 19/01830/FUL

**DATE REGISTERED:** 3rd December 2019

Proposed Development and Location of Land:

**Proposed two dwellings and amended highway access.  
Land adjacent Lower Park The Walls Mistley Essex**

THE TENDRING DISTRICT COUNCIL AS LOCAL PLANNING AUTHORITY **HEREBY REFUSE PLANNING PERMISSION** in accordance with the application form, supporting documents and plans submitted for the following reason(s)

- Paragraph 8 of the National Planning Policy Framework 2019 (NPPF) sets out the overarching objectives for achieving sustainable development, one being the environmental objective which requires the planning system to contribute to protecting and enhancing our natural, built and historic environment. Furthermore, Paragraph 127 of the NPPF requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes on to say that local distinctiveness should be promoted and reinforced. Saved Policy QL9 and EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake.

The proposed development is located within an area designated as a 'Local Green Gap' within the Tendring District Local Plan 2007 and as a 'Strategic Green Gap' in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. Policy EN2 of the adopted Tendring District Local Plan 2007 Local Plan states Local Green Gaps will be kept open, and essentially free of development in order to prevent coalescence of settlements, and to protect their rural setting. It goes on to say that minor development proposals may be permitted if they do no harm, individually or collectively, the purposes of a Local Green Gap or to its open character. Furthermore, paragraphs 6.9 and 6.10 of adopted Policy preamble expand on the purposes of the Local Green Gaps. In particular one of the purposes is to maintain separation between urban areas and free-standing smaller settlements that surround them and by conserving the countryside between residential settlements to preserve the open character of these important breaks between settlements. Draft Policy PPL6 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 echo the aims of the saved policy stating that the council will not permit any development which would result in the joining of

settlements or neighbourhoods, or which would erode their separate identities by virtue of their close proximity. Planning permission may be granted where the development would not compromise the open setting between settlements or neighbourhoods.

The application site is situated in the Stour Valley System Landscape Character Area (LCA) directly adjacent to, and overlooking, The Stour Estuary Marshes LCA as defined and described in the Tendring District Council Landscape Character Assessment. One of the key characteristics of the Stour Valley System is; as defined in the document 'the southern slopes and scenic tributary valleys of the Stour, form a setting to one of the most important wildlife estuaries in Europe and a setting to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB)'. It is therefore vitally important that planning permission is not granted unless it can be demonstrated that harm will not be caused to the scenic beauty of the area.

The companion document for the above Landscape Character Assessment entitled 'Guidance for the Built Environment' emphasises the importance of protecting the landscape for its value as the rural backdrop and setting for the Suffolk Coast and Heaths AONB. It is important to note that at the present time the application site is adjacent to land that has been proposed, by Natural England, as an extension to the AONB.

The area identified for the construction of the dwellings is a neglected lawn area with established trees and other boundary vegetation. This part of the site can be viewed from New Road to the south and new soft landscaping on this boundary with Mistletoe Place Park would be required to screen the dwellings from this aspect

In order to show the potential impact of the development proposal on the area the applicant has provided a document entitled 'Desk Review of Landscape and Visual Effects'. This document sets out the baseline qualities of the existing landscape, quantifies the harm likely to result from the development of the land and identifies the extent of mitigation required to remediate harm.

In essence the report acknowledges that there will be a low level of harm but that mitigation, by way of the positioning and design of the dwellings, along with new soft landscaping makes the development acceptable.

Whilst not disputing the findings of the 'Desk Review of Landscape and Visual Effects' it is considered that development in this location would contribute to the gradual erosion of the countryside and the degradation of the Mistletoe and Manningtree Conservation Area. It is therefore considered that the application would set a precedent for development which would harm the local landscape character.

The character of the site itself would be altered to a more urban form of development than currently exists. For these reasons the character of the proposed development would be at odds with the open quality of the landscape. This has an important role in separating the built up areas of the immediate locality and thereby maintaining their separate character. The proposal would not accord with saved policy EN2 of the adopted Local Plan in terms of the Local Green Gap or with saved policies EN1 and QL9 of the adopted Local Plan which require that the settings and character of settlements are conserved.

For these reasons, the proposal would unacceptably harm the character and appearance of the area. Significant weight must be attributed to this harm due to the location of the site within the open landscape and the strategic value of the Green Gap. In applying the tilted planning balance, the adverse impacts identified would significantly and demonstrably outweigh the benefits of the development including taking into account the

extent and validity of the housing shortfall and its effect on the weight to be attached to development plan policies.

- 2 Paragraph 189 of the National Planning Policy Framework ("the Framework") requires applicants to describe the significance of any heritage assets affected. This requirement is retained by draft Policy PPL9 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Paragraph 193 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) which states that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.

The application site lies within Mistley and Manningtree Conservation Area. As a result the Historic Environment Team have been consulted on this application and have stated that Lower Park is noted as a 'positive building' in the conservation area appraisal and as such may be considered a non-designated heritage asset with regard to the NPPF. No Heritage Statement has been provided with the application and as such the application is not considered compliant with paragraph 189 of the NPPF.

The application site is located in an important undeveloped space in the Conservation Area and historically was the parkland associated with Mistley Place. The undeveloped form of this historic parkland forms an important part of the Conservation Area and the open space between Manningtree and Mistley. Much of the area between Manningtree and Mistley was shaped by three generations of the Rigby family as they developed the Mistley Hall Estate in the 18th and early 19th centuries. Many elements of the parkland landscape survive, including Hopping Bridge, the ornamental lake behind it and established tree planting. The historic parkland and its context/character should be safeguarded from inappropriate development to ensure it retains its special interest.

This proposal is not appropriate in principle and will fail to preserve or enhance the character and appearance of conservation area. It is therefore considered that the proposal will cause less than substantial harm to a designated heritage asset and this harm should be considered in the context of the 'great weight' noted in paragraph 193 of the NPPF.

Following the Historic Environment Managers comments, the applicant provided a heritage, landscape, policy supplementary statement. The Historic Environment Team were reconsulted and stated that the comments outlined in the previous response still stand. It is considered that the proposal is inappropriate and fails to preserve or enhance the character and appearance of the Conservation Area. Further to this previous assessment, the following is relevant:

The proposal is located within the historic designed parkland of the now demolished Mistley Place. From the applicant's heritage statement, it is understood that the proposed development is located within the original triangular portion of land owned by the Normans upon which Mistley Place was built, located to the west of the historic road bounding Mistley Hall's parkland at its north and north west extents leading to the Stour. This road subsequently became a HaHa to Mistley Place when this initial parkland was extended following purchases of land to the east of the house. The proposals would

therefore be sited within the original 1820 gardens to Mistley Place prior to the 1844 land purchases that expanded this formal parkland to the house eastward. This parkland, combined with the larger Parkland of Mistley Hall Estate has historically constituted a separating buffer between the settlements of Mistley and Manningtree and continues to do so. The proposals would compromise the open character of this parkland which contributes significantly to the Conservation Area and is of special interest.

Consequently, the proposed development fails to accord with paragraph 193 of the National Planning Policy Framework (2019) and the afore-mentioned local and national planning policies.

- 3 Saved Policy EN3 of the Tendring District Local Plan 2007 and Draft Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development as well as seeking to improve public access to and enjoyment of the coast in accordance with the National Planning Policy Framework.

Although the proposed dwellings are set back from 'The Walls', it is considered that the introduction of two dwellings in this location is an inappropriate form of development which will cause significant harm to the landscape character of the area.

The proposal is therefore contrary to Saved Policy EN3 of the Tendring District Local Plan 2007 and Draft Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

- 4 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 -3.00 hectares of equipped play/formal open space in Mistley. The closest play area to the development site is located at the Welcome Home Field, 0.5 miles from the proposed development. This play area is classified as Local Equipped Areas but provides limited provision and is in need of improvement to meet the needs of a growing resident population resulting from new development. Due to the significant lack of facilities in the area, a contribution towards play and formal open space, as required through Policy COM6, is justified and relevant to this planning application. The contribution would be used towards upgrading existing equipment at Welcome Home Field, Mistley.

This application is not accompanied by a completed unilateral undertaking to secure the necessary contribution towards play and formal open space facilities and therefore this scheme does not comply with Policy COM6.

- 5 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 a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 0.1 km away from Stour and Orwell Estuaries Ramsar Site and SPA..

New housing development within the Zol would be likely to increase the number of recreational visitors to Stour and Orwell Estuaries 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 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.

**DATED:** 27th March 2020

**SIGNED:**




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Catherine Bicknell  
Head of Planning

**IMPORTANT INFORMATION :-**

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG14 Side Isolation

EN1 Landscape Character

EN2 Local Green Gaps

EN3 Coastal Protection Belt

EN5 Areas of Outstanding Natural Beauty (AONB's)

EN5A Area Proposed as an Extension to the Suffolk Coasts and Heaths AONB

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN17 Conservation Areas

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

COM6 Provision of Recreational Open Space for New Residential Development

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

SPL3 Sustainable Design

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

PPL1 Development and Flood Risk

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL6 Strategic Green Gaps

PPL8 Conservation Areas

HP5 Open Space, Sports & Recreation Facilities

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

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.

**The attached notes explain the rights of appeal.**

## NOTES FOR GUIDANCE

### WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

#### APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within the set time frame as outlined below:
  - a. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Householder Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
  - b. If this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
  - c. If you want to appeal against your local planning authority's decision on a development which is not caught by a. and b. above then you must do so within **6 months** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
- Appeals must be made using the relevant form (as detailed above) which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission for the proposed development or could not have granted it without the conditions imposed having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

#### ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.



- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.