

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	JD	20/04/2020
Planning Development Manager authorisation:	AN	21/04/2020
Admin checks / despatch completed	CC	22/04/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	LN	22/04/2020

Application: 20/00153/FUL **Town / Parish:** Elmstead Market Parish Council

Applicant: Mr Steve Williams - Hills Residential Construction Limited

Address: Land to The East of Tye Road Elmstead

Development: Proposed amendment to north east and south east corners of 19/01179/DETAIL by removing plots 11, 25 and 26 to introduce 11 new homes. Net increase of 8 and 2 which are affordable homes.

1. Town / Parish Council

Elmstead Parish Council
15.04.2020

Elmstead Parish Council wishes to make the following objections to this application:

This is an overdevelopment. The applicant had a separate planning application and appeal refused for the rest of the field (18/00512/OUT and PP/P1560/W/18/3211471), now they are looking to net 8 extra houses on the same site as the original application. This can't be an acceptable way to get round an unsuccessful application by increasing an existing one.

Public open space has been incrementally removed from site, and no amenities are provided for the village. Elmstead has a deficit of open space and the original application included an area to be given to the village (4115-0001 P11). This area was in the north east corner of the site, where we now see an additional 6 houses. There was a local area of play in the south east corner and a public open space in the north east corner (4115-0001 P18). These have now been amalgamated into one area in the north east corner and there is an additional house in the south east corner.

The developer should consider assisting the village by providing a much needed facility for the youngsters of this village, be it a play area (ideally a LEAP area) or skate park area. This development is a good walking distance from the play park in Old School Road and with 40 houses the children will need a closer play facility.

Village Growth

The village already has 287 approved housing developments for a village size of just under 800. This equates to a more than 35% increase. With additional applications of 175 currently in process this total increases to 462 which would be approximately 57% growth. This is overdevelopment and not sustainable. Particularly on the village's infrastructure including the Primary School and GP surgery.

Although Elmstead was designated a Rural Service Centre, in its assessment for suitability for strategic expansion it only scored 2/4. It already has more approved development than that envisaged in the draft local plan.

2. Consultation Responses

Housing Services
08.04.2020

The application proposes to increase the number of homes on the site and the applicant has proposed a further 2 x 2 bed houses as affordable homes to take into account the increase. This is compliant with the terms of the emerging Local Plan and as the plots we have already agreed as affordable homes do not appear to be affected, I have no objections to the proposal.

UU Open Spaces
24.03.2020

No further comments are being made by open spaces.

Tree & Landscape Officer
31.03.2020

In terms of the impact of the amendment to the layout of the development proposal on the trees on the boundary of the application site it appears, from the amended site plan provided, that the dwellings are not situated within the Root Protection Areas (RPA's) of

the protected trees.

However the applicant has not provided a plan showing the RPA's overlaid with the amended positions of the dwellings so it is not possible to confirm this categorically.

Prior to the determination of the application a plan should be provided that demonstrates that no part of the development will be within the RPA of the trees covered by the Tendring district Council Tree Preservation Order.

The requisite plan was subsequently provided by the agent and the Tree and Landscape Officer confirmed, in an email of 6th April, that the plan provided adequately demonstrates that the amended site layout will not result into an incursion into the Root Protection Areas (RPA's) of the preserved trees and consequently will not cause harm to them or compromise their long term viability.

ECC Highways Dept
12.03.2020

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 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.

2. No unbound material shall be used in the surface treatment of the vehicular accesses throughout.
Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

3. Prior to occupation of the development the vehicular accesses shall be constructed at right angles to the highway boundary and to the carriageway. The width of the access at its junction with the highway shall not be more than 3.6 metres (equivalent to 4 low kerbs) or 7.2 metres if they are adjoining vehicle accesses (equivalent to 4 low kerbs in front of each property), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety in accordance with policy DM1.

4. There shall be no discharge of surface water onto the Highway.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety to ensure accordance with policy DM1.

5. Prior to commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure roads/footways are constructed to an appropriate standard in the interests of highway safety in accordance with Policy

DM7.

6. Each new property shall be provided with 2 parking spaces and each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres or each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles.

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

7. Any single garages should have a minimum internal measurement of 7m x 3m

Reason: To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety and in accordance with Policy DM8.

8. The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

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

9. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

10. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway/carrageway (delete as appropriate).

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway/carrageway (delete as appropriate) is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

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: The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is a breach of this legislation. The public's rights and ease of passage over public footpath no.7 (Elmstead Market) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as

they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.

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.

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

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

3: 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

16/00219/OUT	Outline planning application for residential development of up to 32 dwellings, land for a community facility and associated parking and infrastructure.	Refused	27.07.2016
16/01950/OUT	Outline planning application for residential development of up to 32 dwellings and associated open space, car parking and infrastructure.	Withdrawn	26.04.2017
17/00927/DETAIL	Reserved matters application for construction of new access to serve housing development approved under 16/00219/OUT.	Approved	12.03.2018
18/00512/OUT	Outline planning application for residential development of up to 18 dwellings and associated open space, car parking and infrastructure.	Refused	04.07.2018
18/00681/DETAIL	Reserved matters application for construction of new access to serve housing development	Refused	31.07.2018

	approved under 16/00219/OUT (amendment to application 17/00927/DETAIL).		
18/01307/DETAIL	Reserved matters application for 32 dwellings, land for a community facility and associated parking and infrastructure.	Approved	02.08.2019
19/01012/NMA	Non-material amendment to application 18/01307/DETAIL - Alterations to road layout and re-ordering of house types to suit revised site layout.	Approved	
19/01179/DETAIL	Reserved matters application for the variation of the site layout as approved in 18/01307/DETAIL.	Approved	06.12.2019
20/00153/FUL	Proposed amendment to north east and south east corners of 19/01179/DETAIL by removing plots 11, 25 and 26 to introduce 11 new homes. Net increase of 8 and 2 which are affordable homes.	Current	
20/00332/DISCON	Discharge of conditions 6 (ecology), 7 (Construction Method Statement), 8 (Drainage), 9 (Drainage), 10 (Geoenvironmental assessment) and 11 (Geoenvironmental assessment) for application 16/00219/OUT allowed at appeal APP/P1560/W/16/3160793.	Current	

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements
HG4 Affordable Housing in New Developments
HG6 Dwelling Size and Type
HG9 Private Amenity Space
HG14 Side Isolation
COM6 Provision of Recreational Open Space for New Residential Development
EN6 Biodiversity
EN6A Protected Species
EN11A Protection of International Sites European Sites and RAMSAR Sites
TR1A Development Affecting Highways
TR7 Vehicle Parking at New Development

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

LP1 Housing Supply
LP2 Housing Choice
LP4 Housing Layout
LP5 Affordable and Council Housing
SPL2 Settlement Development Boundaries
SPL3 Sustainable Design
HP5 Open Space, Sports & Recreation Facilities
PPL3 The Rural Landscape
PPL4 Biodiversity and Geodiversity
CP1 Sustainable Transport and Accessibility

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

5. Officer Appraisal (including Site Description and Proposal)

The site to which this proposal relates is situated to the east of Tye Road and the western edge of Elmstead. The red line site defining the land to which this current application relates is in two parts and with access to the highway shown. The two "red line" sites are in the northwest and southeast corners of the site as a whole. The overall site to the proposed housing development as a whole is roughly rectangular in shape and measures 2.4 hectares. It was last managed as an arable field and is bounded by a continuous mixed native hedgerow with individual mature trees.

To the north of the site is a detached residential property; to the east of the site is a development site to the north of Meadow Close which was subject to an outline planning permission (14/01238/OUT) for 20 dwellings which was granted. To the south of the site lies an agricultural field beyond which is Colchester Road. Tye Road forms the western boundary of the overall housing site as a whole.

Outline planning permission (references 16/00219/OUT and APP/P1560/W/16/3160793) was granted at appeal for "Outline planning application for residential development of up to 32 dwellings, land for a community facility and associated parking and infrastructure."

The principle of residential development has therefore been established, despite this current application being a full application. Furthermore this current proposal would make more effective use of land, as encouraged by the NPPF. The issues to consider relate to detailed matters.

Nevertheless, being a full planning application for houses, the proposal must be considered in the light of current considerations regarding the Habitats Regulations and the latest advice from Natural England.

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 contribution is secured by unilateral undertaking.

The application scheme proposes eleven new dwellings (an additional eight from the quantity already granted planning permission) on a site that lies within the Zone of Influence (Zoi) being approximately 4.6km from the Colne Estuary Ramsar site and 8.7km from the Stour Estuary Ramsar site. The planning application site is 3.4km from the Upper Colne Marshes SSSI. New housing development within the Zoi would be likely to increase the number of recreational visitors to the Colne and Stour Estuaries and, in combination with other developments it is likely that the proposal would have significant effects on the designated sites. 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.

With regard to Policies QL1 and QL2, the principle of development has been agreed by the outline planning permission; the current proposal represents more efficient use of land.

The houses and their layout are well designed and would relate well to their surroundings. The proposal is considered acceptable with regard to Policies QL9 and HG14.

Access to the sites involved in this application and to the housing development site as a whole is practicable. The highway network would be able to safely accommodate the additional traffic. The Highway Authority has no objection subject to imposition of conditions regarding detailed matters. The houses would have adequate daylight and outlook. Privacy would be adequate for housing forming a comprehensive development such as is proposed. Housing is to be created on land north of Meadow Close. This will be to the east of the southeast part of the land relating to this current application. The size of the garden to plot 10 is ample to ensure that there would be no material overlooking to the properties to be built north of Meadow Close. The proposal is acceptable with regard to Policies QL10 and QL11.

Two of the eleven houses would be for Affordable Housing. Housing Services has commented that this is compliant with the terms of the emerging Local Plan and, as the plots already agreed as affordable homes do not appear to be affected, there is no objection to the proposal. The agent has referred, in an email of 3rd April, to need to vary the UU/S106 to formalise this. Accordingly the proposal is considered acceptable in principle with regard to Policies HG3a and HG4.

The houses proposed are two- and three-bedroom properties and the house designs would provide sufficient diversity in design terms. The proposal is considered acceptable with regard to Policy HG6.

It is noted that the Parish Council considers the proposal to be overdevelopment. However, in terms of residential density, the current proposal would fit well with the density approved elsewhere in the housing development east of Tye Road as a whole. It is understood that the alterations for which planning permission is now sought represents an increase from 13.2 dwellings per hectare (dph) to 16.5dph; significantly less than a figure of 30dph referred to in Policy HG7. With regard to residential density, the proposal is considered acceptable with regard to Policy HG7.

The three smallest plots, plots 1, 5 and 8, have private amenity areas of 104 sq m, 170 sq m and 144 sq m respectively. The provision of private amenity space is acceptable and the proposal is acceptable with regard to Policy HG9 which requires a minimum of 75 sq m for 2 beds and 100 sq m for 3+ beds.

All the houses involved in the proposal are two- or three-bedroom houses and all the properties would have adequate on-site parking. The proposal is considered acceptable with regard to Policy TR7.

The comments of the Parish Council regarding public open space; provision of community facilities, such as a skate park area; and, additional demand on the infrastructure of Elmstead from additional housing are noted. However, the current proposal involves no loss of public open space; the land in question was last approved as housing and very generous back gardens. Provision of community facilities outside the red line site could not reasonably be pursued for the scale of development involved. Incremental additional demand on existing services by relatively piecemeal additional housing development is a feature of the difficulty of creating current Local Plans and is an issue which cannot be addressed in this planning application.

6. Recommendation

Refusal.

7. Conditions / Reasons for Refusal

1. 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 eight new dwellings (in net terms, beyond replacement dwellings) on a site that lies within the Zone of Influence (Zol) being approximately 4.6km from the Colne Estuary Ramsar site and 8.7km from the Stour Estuary Ramsar site. New housing development within the Zol would be likely to increase the number of recreational visitors to the Colne and the Stour and Orwell Estuaries and in combination with other developments it is likely that the proposal would have significant effects on the designated sites. 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.

2. Paragraph 34 of the National Planning Policy Framework 2019 (NPPF) state that Local Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required. Paragraph 63 of the NPPF 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. This proposal represents part of a larger site for residential development and is therefore required to contribute to affordable housing.

Policy HG4 in the adopted Local Plan requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. Policy LP5 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or Council Housing.

There is a high demand for housing in Elmstead from households on the housing register and it has been agreed that two 2 bedroom dwellings are required for affordable housing.

Although the applicant has confirmed agreement a completed Section 106 agreement to secure the above-mentioned planning obligations has not been provided and the application is therefore contrary to the above policies.

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 determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development.

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