

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	10 th Feb 2021
Planning Development Manager authorisation:	TF	24/02/2021
Admin checks / despatch completed	CC	01.03.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	DB	01.03.2021

Application: 21/00018/FUL **Town / Parish:** Weeley Parish Council

Applicant: Mrs Tim Tweed

Address: Land East of Hawk Lane Colchester Road Weeley

Development: Variation of condition 2 (approved plans) of approved application 19/01695/FUL to allow for changes in design.

1. Town / Parish Council

No comments received

2. Consultation Responses

No comments received

3. Planning History

00/01830/FUL	Replacement barn for hay and straw	Approved	26.01.2001
19/01695/FUL	One Dwelling.	Approved	28.02.2020
21/00018/FUL	Variation of condition 2 (approved plans) of approved application 19/01695/FUL to allow for changes in design.	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

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

- HG9 Private Amenity Space
- COM6 Provision of Recreational Open Space for New Residential Development
- EN6 Biodiversity
- 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)

- SP1 Presumption in Favour of Sustainable Development
- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- HP5 Open Space, Sports & Recreation Facilities
- PPL4 Biodiversity and Geodiversity
- LP1 Housing Supply

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF.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. In this latter regard, as of 26th January 2021, 'Section 1' of the emerging Local Plan for Tendring (Tendring District Local Plan 2013-2033 and Beyond Publication Draft) has been adopted and forms part of the 'development plan' for Tendring.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) has been examined by an Independent Planning Inspector who issued his final report and recommended 'main modifications' on 10th December 2020. The Inspector's report confirms that, subject to making his recommended main modifications (including the removal from the plan of two of the three 'Garden Communities' proposed along the A120 i.e. those to the West of Braintree and on the Colchester/Braintree Border), the plan is legally compliant and sound and can proceed to adoption. Notably, the housing and employment targets in the plan have been confirmed as sound, including the housing requirement of 550 dwellings per annum in Tendring.

The Council has now formally adopt Section 1 of the Local Plan, in its modified state, at the meeting of Full Council on 26th January 2021, at which point it became part of the development plan and carries full weight in the determination of planning applications – superseding, in part, some of the more strategic policies in the 2007 adopted plan.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will proceed in early 2021 and two Inspectors have been appointed by the Secretary of State to undertake the examination, with the Council preparing and updating its documents ready for the examination. In time, the Section 2 Local Plan (once examined and adopted in its own right) will join the Section 1 Plan as part of the development plan, superseding in full the 2007 adopted plan.

Where emerging policies are particularly relevant to a planning application and can be given 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 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.

With the adoption of the modified Section 1 of the emerging Local Plan, the Councils 'objectively assessed housing need' of 550 dwellings per annum has been found 'sound' and there is no housing shortfall. The Council is able to report a significant surplus of housing land supply over the 5 year requirement, in the order of 6.5 years.

5. Officer Appraisal

Site Description

The small holding extends to 9.1 acres (3.7 hectares) and is partly laid for grazing of sheep together with an area for vegetables, fruit etc. A large storage barn and adjoining animal shelter are located on the southern part of the site. A vehicular access and turning facility are provided to the south west corner, direct on to Hawk Lane. This lane serves a couple of other properties, but otherwise has a rural character from beyond the entrance gateway into the application site.

Immediately to the south is a modern church development which is positioned almost hard on the southern boundary of the current site. This development was approved by the Council in 2010. Adjoining this development, planning permission was granted in March 2018 for the construction of 9 large detached houses.

Relevant History

This application follows the granting of application 19/01695/FUL.

Proposal

In proposing to vary the approved-plans condition (2) of planning approval 19/01695/FUL, the current application seeks to amend the siting, design and external appearance of the approved dwelling.

Rather than sitting centrally within the proposed plot, the dwelling has been moved both further easterly to the rear of the plot and the south. This position is extremely well screened by trees and hedgerow both along Hawk Lane and within the site itself. These trees and hedgerow would remain unaffected. The development would not therefore be visible from Hawk Lane.

The footprint has been changed from a 'U' shape to a simple rectangle (with an additional single-storey rear extension). This has resulted in a reduction in the proposed footprint from 119msqm down to 103sqm. The ridge height has been increased from 3.6m to 4.7m.

The structure would have a timber weatherboarded appearance above a brickwork plinth and a clay-tiled roof. Vehicular access would remain as existing, with ample space for vehicle parking and turning alongside the existing buildings. The use of the remainder of the site for sheep grazing would continue.

Assessment

The main planning considerations are:

- Principle of Development;
- Layout, Scale and Appearance;
- Neighbouring Amenities;
- Highway Considerations;
- Financial Contributions - RAMS;
- Financial Contributions - COM6;
- Representations; and,
- Other Considerations.

Principle of Development (5 Year Housing Land Supply):

Paragraph 7 of the National Planning Policy Framework 2019 (NPPF) states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 explains that achieving sustainable development means that the planning system has three overarching objectives, namely an economic objective, a social objective and an environmental objective. However, Paragraph 9 emphasises that these objectives should be delivered through the preparation and implementation of plans and the application of the policies in the NPPF; they are not criteria against which every decision can or should be judged. This is supported through Paragraph 11 which states that plans and decisions should apply a presumption in favour of sustainable development and for plan-making this means that plans should positively seek opportunities to meet the development needs of their area. Strategic policies should, as a minimum, provide for objectively assessed needs for housing.

For decision-taking this means approving development proposals that accord with an up-to-date development plan without delay. Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date then permission should be granted. Footnote 7 explains that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites with the appropriate buffer, as set out in paragraph 73.

However, Paragraph 12 of the NPPF states that presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed. Paragraph 47 confirms that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

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) has been examined by an Independent Planning Inspector who issued his final report and recommended 'main modifications' on 10th December 2020. The Inspector's report confirms that, subject to making his recommended main modifications (including the removal from the plan of two of the three 'Garden Communities' proposed along the A120 i.e. those to the West of Braintree and on the Colchester/Braintree Border), the plan is legally compliant and sound and can proceed to adoption. Notably, the housing and employment targets in the plan have been confirmed as sound, including the housing requirement of 550 dwellings per annum in Tendring.

The Council has now formally adopted Section 1 part of the development plan which carries full weight in the determination of planning applications - superseding, in part, some of the more strategic policies in the 2007 adopted plan. In the interim, the modified policies in the Section 1 Local Plan, including the confirmed housing requirement, can be given significant weight in decision making owing to their advancement through the final stages of the plan-making process.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) is now expected to proceed in 2021 and two Inspectors have already been appointed by the Secretary of State to undertake the examination, with the Council preparing and updating its documents ready for the examination. In time, the Section 2 Local Plan (once examined and adopted in its own right) will join the Section 1 Plan as part of the development plan, superseding in full the 2007 adopted plan.

Where emerging policies are particularly relevant to a planning application and can be given 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.

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.

As the supply of deliverable housing sites in the modified Section 1 of the Local Plan is now in the order of 6.5 years this actual objectively assessed housing need for Tendring is a significant material consideration in the determination of planning applications which substantially tempers the amount of weight that can reasonably be attributed to the benefit of additional new housing - particularly in the consideration of proposals that fall outside of the settlement development boundaries in either the adopted or the emerging Section 2 Local Plan.

In this instance, the site lies outside of the settlement development boundary as defined within both the adopted Tendring District 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 focused 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.

Saved Policy QL1 of the adopted Local Plan remains broadly consistent with the NPPF objective for achieving sustainable development. This is through a plan-led approach that focuses development to locations which are or can be made sustainable, limiting the need to travel and offering a genuine choice of transport modes. This also includes making effective use of land, particularly that which is previously developed, in meeting the need for homes. Those planned for rural areas are responsive to local circumstances and support local needs, whilst recognising the intrinsic character and beauty of the countryside. Emerging Policy SPL1 of the Publication Draft gain traction due to the same consistency with the NPPF as found in respect of those in the adopted Local Plan.

As set out above, the policies for the delivery of housing are considered up-to-date and the application must therefore be determined in accordance with Paragraph 11 c) of the NPPF, thus in accordance with the development plan.

Planning law requires that applications are determined in accordance with the Development Plan unless material considerations exist otherwise. In this particular case, the approval of application 19/01695/FUL remains extant until March 2023. There were no 'prior to commencement' conditions attached to that permission which require discharging; as such that application could be implemented at any point. The Local Planning Authority consider that the weight of approval 19/01695/FUL holds significant weight as a material consideration in determining this application otherwise than in accordance to the Development Plan.

The dwelling it would have a rustic character to it, being single-storey in nature and finished externally in timber weatherboard. Overall its scale and external appearance is still considered to be well-designed and entirely appropriate for this semi-rural location.

Amenities of Existing & Future Occupiers:

The NPPF, at paragraph 17 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 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 siting of the proposed dwelling is a significant distance from the only other residential dwelling on the road and, in regards to the new development of nine dwellings approved, the intervening church will continue to provide ample separation distances. Overall the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

Different dwelling sizes and types provide accommodation for individuals and families with a wide range of expectations and need for private amenity space. "Private amenity space" comprises a private outdoor sitting area not overlooked by adjacent or opposite living rooms or outdoor sitting areas. It will therefore not necessarily always amount to the entire rear garden. Apart from its private recreation function, private amenity space is also important in achieving well laid out development.

Private amenity space of a minimum of 100sqm is required for new three bedroom dwellings to maintain sufficient amenity space. The new dwelling has a proposed amenity space in excess of 220sqm. Overall the proposal is likely to secure a good standard of amenity for future occupants of the proposed dwelling.

Highways:

The site is located off Hawk Lane which is basically a single-track lane utilising an existing vehicular access, however the plot will provide adequate room and provision for off street parking and turning within the extents of the proposed site.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS):

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; this undertaking was secured against application 19/01695/FUL

Public 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". These sentiments are carried forward within emerging Policy HP5. As per approved scheme 19/01695/FUL; no contribution is being requested from Open Spaces on this occasion.

Representations:

No contributions have been received in response to the publicity of the application.

6. Recommendation

Approval – Full

7. Conditions

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plan: 02, received 21st December 2020.

Reason - For the avoidance of doubt and in the interests of proper planning.

- 3 The external materials and finishes shall be as indicated on the approved plans and/or schedule.

Reason - To ensure an appropriate choice of materials having regard to the location of this site and to ensure that the choice of materials will harmonise with the character of the surrounding area.

- 4 Prior to occupation of the proposed dwelling, the private drive shall be constructed to a maximum width of 4.5 metres for at least the first 6 metres from the back of carriageway.

Reason -To ensure that vehicles can enter and leave the highway in a controlled manner and clear of the limits of the highway, in the interests of highway safety.

- 5 No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the carriageway.

Reason -To avoid displacement of loose material onto the highway in the interests of highway safety.

- 6 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.

- 7 Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the carriageway.

Reason - To ensure that appropriate loading / unloading facilities are available to ensure that the carriageway is not obstructed during the construction period in the interest of highway safety.

- 8 The development to which this planning permission relates shall not commence if any part of the development for which planning permission was granted by the Local Planning Authority on 28th February 2020 pursuant to planning application reference no. 19/01695/FUL has already commenced.

Reason - The site is outside the Settlement Boundary of Weeley and, whilst the principle of one dwelling has already been accepted under reference 19/01695/FUL (permitted at a time where the Council could not identify five years' worth of deliverable housing land) - it has now been ascertained that the Council can demonstrate a significant surplus of housing land supply over the 5-year requirement. As such, no other material considerations exist which would amount to a second dwelling on the site being a sustainable form of development.

8. Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Highways Informative(s)

On the completion of the Development, all roads, footways/paths, 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.

Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to 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.

Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with the agreement prepared for application 19/01695/FUL. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision?		NO