

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	ML	03/03/2021
Planning Development Manager authorisation:	TF	03/03/2021
Admin checks / despatch completed	DB	04.03.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	04.03.2021

**Application:** 20/01508/FUL **Town / Parish:** Tendring Parish Council

**Applicant:** A Smith

**Address:** Land adjacent Fat Goose PH Heath Road Tendring

**Development:** 2no. New dwellings with associated parking and landscaping.

### **1. Town / Parish Council**

Tendring Parish Council object to this application for the following reasons:

- The site is outside the development boundary of both the current and published draft local plan
- As the planning statement confirms, this is backland development. Under TDC planning rules, backland development is only allowed if the site meets all seven required criteria. The first of these is that the site is within the development boundary, which it is not. Therefore TDCs own guidelines say the application should be refused.
- The application is not materially different to two previous applications on this site, both of which were refused by TDC and the second refusal also upheld by HM Inspector.
- There is no infrastructure in the village to support the sustainability argument and even the planned micro-pub next door now has a planning application lodged to build houses instead.
- Tendring Heath has had 11 new homes approved in the last 4 years, which has nearly doubled the number of houses in the hamlet. This area is already over-developed and with 7 new houses already now on the market and does not need more housing provision.

### **2. Consultation Responses**

ECC Highways Dept  
04.01.2021

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated March 2019. The proposal is utilising an existing private vehicular access approved as part of application 17/02142/FUL and retains adequate room and provision for off street

parking and turning, for the proposed development 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. There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage with Heath Road. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of obstruction above 600mm at all times.

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

2. As indicated on drawing no. P02 and 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 indicated on drawing no. P02 and prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a minimum width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary.

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.

4. The proposed development shall not be occupied until such time as the vehicle parking areas indicated on the approved plans, has been hard surfaced and sealed. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

Reason: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided in accordance with Policy DM8.

5. All double garages should have a minimum internal measurement of 7m x 5.5m.

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.

6. 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.

7. 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.

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

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

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and 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.

TDC Tree & Landscape  
Officer  
25.11.2020

The site is rough grassland and there are no trees or other vegetation in the main body of the application site. There are isolated specimen trees on the site boundaries that will not be adversely affected by the development.

The site layout plan shows new tree planting to the front of the proposed dwellings and this should be secured by a condition attached to any planning permission that may be granted.

TDC UU Open Spaces  
16.12.2020

There is currently a deficit of '1.33 hectares of equipped play/formal open space in the village of Tendring.

There is only one play area in Tendring, located in Heath Road.  
Recommendation

A contribution is both relevant and justified to this planning application. The contribution would be used by the Parish Council towards providing new equipment or up grading the play area in Heath Road, Tendring.

TDC Building Control and  
Access Officer  
18.11.2020

No adverse comments at this time.

### 3. Planning History

15/01222/FUL	Retention of mobile home for a temporary period of one year.	Approved	13.04.2016
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17/02141/OUT	Proposed 5 No. detached dwellinghouses, garaging and parking spaces.	Refused	28.02.2018
18/01093/OUT	Proposed 5 No. detached dwellinghouses, garaging and parking spaces.	Refused <b>(Dismissed at Appeal)</b>	17.08.2018
20/01508/FUL	2no. New dwellings with associated parking and landscaping.	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
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
HG13	Backland Residential Development
HG14	Side Isolation
TR1A	Development Affecting Highways
TR7	Vehicle Parking at New Development
EN1	Landscape Character
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
<i>Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)</i>	
SP1	Presumption in Favour of Sustainable Development
SPL1	Managing Growth

SPL3	Sustainable Design
LP1	Housing Supply
LP3	Housing Density and Standards
LP4	Housing Layout
LP8	Backland Residential Development
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
CP1	Sustainable Transport and Accessibility
CP2	Improving the Transport Network
HP5	Open Space, Sports & Recreation Facilities

*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 26<sup>th</sup> 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 10<sup>th</sup> 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 26<sup>th</sup> 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 (including Site Description and Proposal)**

### Site Description

The application site is situated on the south side of Heath Road. The site generally is roughly square and flat, and mainly laid to grass and the perimeter boundaries to three sides are densely wooded with mature trees. On the land to the north, fronting onto Heath Lane, 3 dwellings have recently been constructed.

The land is currently accessed via Heath Road to the north via the recently constructed development to the north.

### Proposal

This application proposes the construction of 2 no. detached properties in a setback location from Heath Road. The properties would consist of 4 bedrooms each and measure approximately 17m x 18.5m in size.

The dwellings would be accessed via Heath Road between two recently constructed dwellings to the north. To the front of the properties would be a large turning area. Each property would be served by a front projecting double garage.

Tree planting and post and rail fencing is proposed to the front of the dwellings and the perimeter of the site.

### Planning History

17/02141/OUT - Proposed 5 No. detached dwellinghouses, garaging and parking spaces. Refused on 28th February 2018.

18/01093/OUT - Proposed 5 No. detached dwellinghouses, garaging and parking spaces. Refused on 17th August 2018 and Dismissed at Appeal on 31st May 2019.

In the appeal decision noted above the inspector concluded the following;

Given the significant harm to character and appearance, including the intrusion into the countryside, the proposed development would also conflict with the Framework in this regard and I attribute significant weight to adverse impacts of the proposal. Therefore, applying the presumption

in favour of sustainable development in the terms of paragraph 11(d) of the Framework, the adverse impacts would significantly and demonstrably outweigh the benefits.

It is notable that the appeal was dismissed at a time where the Council could not demonstrate a 5 year housing supply.

### Principle of Development

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 for Tendring Heath 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.

Accounting for the housing land supply situation then, regardless of the proximity of the site in relation to services and amenities, there is no longer a requirement to consider such sites due to their location outside of the defined settlement development boundaries as the planned growth for the District to meet housing need has been established. In applying the NPPF's presumption in favour of sustainable development, the adverse impacts of the proposal both on the character of the locality and on the Council's ability to manage growth through the plan-led approach, are not outweighed by any benefits. The development is an unnecessary intrusion into the countryside and there are no public benefits that might warrant the proposal being considered in an exceptional light. The proposal is therefore contrary to the aims of paragraph 11 of the NPPF and contrary to the development plan Saved Policy QL1 and emerging Policy SP1.



## Design/Layout

The application proposal involves erecting 2 no. further dwellings on a greenfield site within the open countryside and set back away from the ribbon development along the Heath Road frontage. The proposed dwellings would be substantial in size and no special or extenuating circumstances exist to justify need. The dwellings are bulky in design and lack coherence in terms of their form, massing and fenestration styling/size. The design approach therefore fails to promote local distinctiveness and the dwellings would appear incongruous in this semi-rural location contrary to saved policy QL9 of the Tendring District Local Plan (2007) and emerging policy SPL3.

Moreover, the proposed development would impact significantly the openness of the surrounding landscape, by reason of its scale, siting and appearance, and represent an unnecessary and intrusive form of development within the countryside.

As such, the proposed development would out of keeping within its surroundings and constitute an inappropriate form of development that would neither enhance nor conserve the countryside for its own sake, and detract from the open character of the landscape. As such the proposed development would not comply with saved policy EN1 of the Tendring District Local Plan (2007).

Furthermore, the application proposal is also contrary to saved policy HG13 of the local plan because it would constitute backland development outside of a 'Settlement Development Boundary'. The provision of a long narrow driveway through the development to the north flanked by houses and fencing enclosing rear gardens would appear overly harsh and urban in this semi-rural location as there would be no space for planting to soften its appearance.

As such the development would be wholly out of character with the linear form of ribbon development in the vicinity and would set a harmful precedent for other similar development within the area.

Notwithstanding the issues raised above the layout provided shows that the site can accommodate 2 properties in a spacious manner with opportunities for soft landscaping to enhance the appearance of the development. Each property is shown to be provided with ample parking and private amenity space provision.

## Residential Amenities

The flank walls of plots 2 and 3 (approved to the north), which will face the proposed access, do not contain any openings that could be affected by the through movement of traffic. The additional traffic movements associated with 2 dwellings would not cause sufficient noise and disturbance to be harmful to the future resident's enjoyment of their properties and rear amenity areas.

The layout plan provided confirms that there would be sufficient spacing between the proposed dwellings and those to the north not to cause any loss of privacy or outlook concerns to arise.

## Highway Safety

ECC-Highways have no objections to the proposals subject to the following requirements;

- There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage with Heath Road.
- As indicated on drawing no. P02 and 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.
- As indicated on drawing no. P02 and prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a minimum width of 5.5 metres for at least the first 6 metres from the back of carriageway.
- The proposed development shall not be occupied until such time as the vehicle parking areas indicated on the approved plans, has been hard surfaced and sealed. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not

be used for any purpose other than the parking of vehicles that are related to the use of the development.

- All double garages should have a minimum internal measurement of 7m x 5.5m.
- The cycle parking shall be provided in accordance with the EPOA Parking Standards.
- 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.
- No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period.

Where not shown on the submitted plans these requirements would be secured via conditions.

In terms of parking provision each property is shown to be served by ample parking which would comfortably accord with the requirement of the current parking standards.

### Tree/Landscaping

The site is rough grassland and there are no trees or other vegetation in the main body of the application site. There are isolated specimen trees on the site boundaries that will not be adversely affected by the development.

The site layout plan shows new tree planting to the front of the proposed dwellings and this would be secured by a condition attached to any planning permission that may be granted.

### Legal Obligations - Open Space Contribution

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 1.33 hectares of equipped play/formal open space in the village of Tendring. There is only one play area in Tendring, located in Heath Road.

A contribution is both relevant and justified to this planning application. The contribution would be used by the Parish Council towards providing new equipment or up grading the play area in Heath Road, Tendring.

A completed legal agreement has not been provided to secure this planning obligation and the proposal therefore fails to comply with the above-mentioned local plan policy.

### Legal Obligations - Recreational Disturbance Contribution

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 new dwellings on a site that lies within the Zone of Influence (Zoi) of the Hamford Water SAC, SPA, Ramsar sites. New housing development within the Zoi would be likely to increase the number of recreational visitors to the Hamford Water SAC, SPA, Ramsar sites 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.

### Other Considerations

The Council's Building Control Team have no comments at this stage.

Tendring Parish Council object to this application for the following reasons:

- The site is outside the development boundary of both the current and published draft local plan - As the planning statement confirms, this is backland development. Under TDC planning rules, backland development is only allowed if the site meets all seven required criteria. The first of these is that the site is within the development boundary, which it is not. Therefore TDCs own guidelines say the application should be refused.
- The application is not materially different to two previous applications on this site, both of which were refused by TDC and the second refusal also upheld by HM Inspector.
- There is no infrastructure in the village to support the sustainability argument and even the planned micro-pub next door now has a planning application lodged to build houses instead.
- Tendring Heath has had 11 new homes approved in the last 4 years, which has nearly doubled the number of houses in the hamlet. This area is already over-developed and with 7 new houses already now on the market and does not need more housing provision.

4 letters of objection have been received covering the following matters;

- Two previous refusals and an appeal dismissal on this site. The latest application does not address the previous reasons for refusal.
- Site is located 2 miles out of the settlement development boundary for Tendring Village and conflict with LP Policy QL1.
- No services and lack of infrastructure to cater for new housing.
- Tendring Heath is a small rural hamlet with minimal infrastructure.
- Unsustainable piecemeal development.
- Backland development outside of any defined settlement boundary.
- No need for more houses in Tendring Heath.
- Homes are not needed and are not affordable.

## **6. Recommendation**

Refusal

## **7. Reasons for Refusal**

- 1 Paragraph 11 of the National Planning Policy Framework 2019 (NPPF) states that plans and decisions should apply a presumption in favour of sustainable development. 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. 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.

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, 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.

For the purposes of the determination of this application the Council can currently demonstrate that a 5 year housing land supply exists. Engaging the presumption in favour of sustainable development under paragraph 11d) of the NPPF does not apply in this instance. 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.

The application site lies outside of any 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). Regardless of the proximity of the site in relation to services and amenities, there is no longer a requirement to consider such sites due to their location outside of the defined settlement development boundaries as the planned growth for the District to meet housing need has been established. The adverse impacts of the proposal both on the character of the locality and on the Council's ability to manage growth through the plan-led approach, are not outweighed by any benefits or other material considerations. The development is unnecessary and there are no public benefits that might warrant the proposal being considered in an exceptional light. The proposal is therefore contrary to the aims of paragraph 11c) of the NPPF and contrary to the development plan Saved Policy QL1 and emerging Policy SP1.

- 2 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 by not allowing new housing unless it is consistent with countryside policies.

The application proposal involves erecting 2 no. further dwellings on a greenfield site within the open countryside and set back away from the ribbon development along the Heath Road frontage. The proposed dwellings would be substantial in size and no special or extenuating circumstances exist to justify need. The dwellings are bulky in design and lack coherence in terms of their form, massing and fenestration styling or size. The design approach therefore fails to promote local distinctiveness and the dwellings would appear incongruous in this semi-rural location contrary to the above-mentioned policies.

Moreover, the proposed development would impact significantly the openness of the surrounding landscape, by reason of its scale, siting and appearance, and represent an unnecessary and intrusive form of development within the countryside.

As such, the proposed development would out of keeping within its surroundings and constitute an inappropriate form of development that would neither enhance nor conserve the countryside for its own sake, and detract from the open character of the landscape. Furthermore, the application proposal is also contrary to saved policy HG13 of the local plan because it would constitute backland development outside of a 'Settlement Development

Boundary'. The provision of a long narrow driveway through the development to the north flanked by houses and fencing enclosing rear gardens would appear overly harsh and urban in this semi-rural location as there would be no space for planting to soften its appearance.

The development would therefore be wholly out of character with the linear form of ribbon development in the vicinity and would set a harmful precedent for other similar development within the area.

- 3 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.

There is currently a deficit of 1.33 hectares of equipped play/formal open space in the village of Tendring. There is only one play area in Tendring, located in Heath Road. A contribution is both relevant and justified to this planning application. The contribution would be used by the Parish Council towards providing new equipment or up grading the play area in Heath Road, Tendring.

A completed S106 legal agreement to secure the above-mentioned planning obligations has not been provided and the application is therefore contrary to the above-mentioned policies.

- 4 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 new dwellings on a site that lies within the Zone of Influence (Zol) of the Hamford Water SAC, SPA, Ramsar sites. New housing development within the Zol would be likely to increase the number of recreational visitors to the Hamford Water SAC, SPA, Ramsar sites 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.

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