

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	DM	05/03/21
Planning Development Manager authorisation:	TF	09/03/21
Admin checks / despatch completed	CC	09.03.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	DB	09.03.2021

Application: 21/00063/FUL **Town / Parish:** Tendring Parish Council

Applicant: Fairley & Sons (Farms) Ltd

Address: Land East of Wolves Hall Lane Tendring

Development: Proposal for two bespoke custom built dwellings.

1. Town / Parish Council

N/A

2. Consultation Responses

TDC UU Open Spaces No response

ECC Highways Dept No response

TDC Tree & Landscape Officer
02.02.2021

The application site is currently in agricultural use. There are no trees or other significant vegetation within the main body of the land. The boundary with the highway is demarcated by low, but well-established, hawthorn hedgerow. Apart from the creation of a new vehicular access to the highway this feature is not compromised by the development proposal

Although the proposed development is immediately adjacent to existing built development and taking into account the fact that the local landscape character has no special qualities; the proposed development would result in a further incursion into the countryside and would contribute to the gradual erosion of the countryside.

The site layout plan gives an indication of the level of new planting that would be associated with the development of the land. If planning permission is likely to be granted then the indicative planting should be secured by a condition attached to any such permission.

3. Planning History

17/00101/OUT Outline planning application with all matters reserved for the residential development of 0.6 ha of land to create 4 detached dwellings. Refused 09.03.2017

17/00600/OUT	Outline planning application with all matters reserved for the residential development of 0.6 ha of land to create 4 detached dwellings.	Refused	05.06.2017
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APP/P1560/W/17/3190833 was submitted as an appeal to the 17/00600/FUL refusal and was dismissed. Reference is made below to the appeal and it is a material consideration in the determination of planning applications.

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
TR1A	Development Affecting Highways
EN6	Biodiversity
EN6A	Protected Species
EN1	Landscape Character
EN11A	Protection of International Sites European Sites and RAMSAR Sites
COM6	Provision of Recreational Open Space for New Residential Development
TR7	Vehicle Parking at New Development
TR1A	Development Affecting Highways

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

SP1	Presumption in Favour of Sustainable Development
SPL1	Managing Growth
SPL3	Sustainable Design
LP1	Housing Supply
LP3	Housing Density and Standards
LP4	Housing Layout
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
CP1	Sustainable Transport and Accessibility
CP2	Improving the Transport Network
HP5	Open Space, Sports & Recreation Facilities

5. Officer Appraisal

Site Description

The site is located to the east of the junction of Wolves Hall Lane, Chapel Lane and Parsonage Lane in the open countryside. The settlement adjacent to the west and south is defined in the existing Plan by a Settlement Development Boundary (SDB) as Tendring Green however it is not defined as a village with a SDB in the emerging Draft Plan and does not feature in the lowest settlement hierarchy group such is the very limited range of facilities available. Once the Draft Plan is adopted Tendring Green will be considered to be entirely countryside as there are no facilities or amenities that would qualify the settlement as definable a village. As such it is considered to be a very unsustainable location for residential development. Wolves Hall Lane is a country lane

extending from countryside to the east to Tendring Green. Tendring Green is triangular in form and characterised by this strong linear plan form. Recent appeals have provided for development adjacent to the site however they relate to the linear form whereas this proposal does not extending beyond the triangle plan form's northeast vertex into fields. The site measures approximately 0.48 hectares in area and forms part of a larger agricultural field extending to the east and appears as grassland suitable for pasture or tillage. In planning policy terms and visually, the site lies on the edge of the (old) existing Settlement Development Boundary in open countryside with flat agricultural land interspersed by hedgerow abounding as one looks eastward from the crossroads. It is not in a conservation area nor does it affect the setting of a listed structure.

Proposal

The application seeks permission for two bespoke custom built dwellings.

Specifically the development proposes two large, executive style dwellings in the countryside adjacent to the 2007 Plan SDB. Each dwelling would be two storey in scale, include four bedrooms and feature two bay garages to the side. Access is to be shared from Wolves Hall Lane.

Principle of Development

The 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). Tendring Green lies to the west of the site. This settlement is not included within the District's Settlement Hierarchy due to a lack of services and facilities within the settlement. The Council's settlement hierarchy document confirms that Tendring Green does not have a primary school, doctor surgery, a village centre, defined employment area or railway station. Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed 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.

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.

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.

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 Green as defined within the adopted Tendring District Local Plan 2007. Tendring Green does not feature as a settlement defined by a SDB in 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 focussed 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, and regardless of the proximity, or lack thereof, 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 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 11 of the NPPF and contrary to the development plan Saved Policy QL1 and emerging Policy SP1.

Impact on Countryside Character and Design

Saved Policy EN1 and Draft Policy PPL3 state that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced and any development which would significantly harm landscape character or quality will not be permitted.

The main body of the application site was in agricultural use but is fallow presently. The boundary with the adjacent highway is demarcated by a low hedgerow. There are no trees on the application site. The development would extend out into open countryside beyond the linear character of this section of the village. Whilst 5 dwellings have been approved to the south of the site and two opposite the site on Parsonage Lane, these developments relate more closely to the linear form of the settlement and are located opposite existing residential development. The development subject to this application would extend out northwards into open countryside alongside the rural Wolves Hall Lane. Consequently, it is considered that the proposed development does not accord with the existing settlement pattern and therefore would not sit comfortably in its setting. It would cause harm to the local landscape character and the resultant dwellings and associated garages, domestic paraphernalia and vehicular access would have a significant urbanising effect on the character of the area and result in the unplanned advance of urbanisation into this area of open countryside eroding the rural character of this section of Tendring Green and the locality resulting in a significant detrimental impact upon the rural appearance of the area.

The Council's Landscaping Officer has stated that the degree of change to the local landscape character is not significant given what has been approved adjacent to the site. However, as stated above this the approvals related more to the established linear pattern of the settlement. This proposal would extend out further northwards into open countryside and result in the consolidation of ribbon development that would harm the rural character and set an undesirable precedent for similar development.

In the dismissed appeal the Inspector noted that... *“Tendring Green has a strong linear character that is concentrated around the triangle formed by Parsonage Lane, Chapel Lane and the B1035. The appeal site is formed from an area of a larger field and it is open and undeveloped. The openness of the site provides a visual links between the existing and approved dwellings in*

Tending Green and the wider countryside. I am conscious that adjacent to the site planning permission has been granted for residential development¹ and opposite an appeal was allowed for two dwellings with a further five further along Parsonage Lane². However, these developments relate more closely to the existing linear form of the settlement around the triangle.” In Section 8 of their report the Inspector notes that... “Whilst it is adjacent to an existing site I consider that the appeal site would be an ad hoc extension of built form into the countryside north and east along Wolves Hall Lane.”

Officers have considered the application anew and find no reason to change their considered opinion and that shared by the Inspectorate that the proposal, albeit two units in this instance, would represent visual harm to the appearance of the countryside setting by way of the intrusion of suburban type development in terms of scale and layout into agricultural land. This is totally contrary to listed policy and must be refused to protect the appearance and character of the countryside location.

Layout

The indicative layout submitted shows that 2 no. detached dwellings can be sited on the land in a manner which would not result in a cramped appearing development. Each property is shown to have ample private amenity space and retain sufficient land to the side boundaries of their respective plots.

Residential Amenities

No objections in this respect. This site sizes are substantial affording residents ample room, amenity and parking provision. Similarly, such is the scale and low density layout no impacts on neighbours in terms of overlooking, loss of privacy, outlook, receipt of natural light etc. are anticipated. The comments from the neighbour at the Speyside Lodge to the south are noted but given the arrangement of development south of that dwelling the proposed relationship would be similar and would not lead to officer objection in this context.

Highways

At the time of writing no response had been received by Highway however it is assumed that their position is similar to their previous position where no objection was maintained. Were the proposal acceptable in principle standard conditions would have been applied as recommend by the Highway Officer in the previous refused application.

Arboriculture

As the arboricultural officer notes no there are no trees or other significant vegetation on the application site as it is in constant agricultural use. The unjustified encroachment into the countryside is noted. If permission were to be granted a soft landscaping condition would be attached to the decision notice to attempt to mitigate the harm caused by softening the edge of the development adjacent to the countryside.

RAMS

Habitats Regulation Assessment

Under the Habitats Directive a development which is likely to have an effect or an adverse effect (alone or in combination) on a European Designated site must provide mitigation or otherwise must satisfy the tests 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. This residential development lies with the Zone of Influence of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites in particular the Hamford Water RAMSAR and SPA site mitigation measures will need to be in place prior to occupation. A proportionate financial contribution has not been secured in accordance with 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 TDLP 2007, Policy PPL4 of the DTLP 2013-33 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Representations and Objections

Two objections had been received. The content of the letters can be summarised as follows:

- Previous reasons for refusal remain
- The site is outside SBD in the open countryside
- The development sets a precedent for ribbon development
- The proposal would reduce Highway safety
- Would not represent sustainable development with lack of facilities, amenities and employment or public transport
- Site and block plans are inaccurate and inconsistent leading to lack of clarity regarding a boundary with a neighbour
- The proposal would result in loss of privacy and views to neighbours at Speyside Lodge

6. Recommendation

Refuse

7. Reasons for Refusal

1. The National Planning Policy Framework 2019 (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.

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 Framework 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. 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. 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 unnecessary, would be entirely car reliant for occupants to access services and would represent a completely unjustified 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.

2. The development is contrary 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) and paragraphs 127 and 170 of the NPPF 2019 in particular. The introduction of two large residential properties, garages, hardstanding and related domestic paraphernalia in this location shall demonstrably urbanise the character of this rural countryside setting. The proposal is considered to have no 'compelling functional need' to be located in this area, having a seriously detrimental impact upon the wider rural countryside landscape character and setting a precedent for future ribbon development at the settlement edge. The development is therefore contrary to Policy EN3 of the Tendring District Local Plan (2007) and Draft Policy PPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017)

3. 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. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Colne Estuary RAMSAR site and Special Area of Conservation, mitigation measures will need to be in place 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 Agent. 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.

<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?</p>	<p>YES</p>	<p>NO</p>

If so, please specify:

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