

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	13/04/2021
Planning Development Manager authorisation:	TF	14/04/2021
Admin checks / despatch completed	DB	15.04.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	15.04.2021

Application: 20/01491/OUT **Town / Parish:** Great Bromley Parish Council

Applicant: Mr John Askew

Address: Land adjacent 4 Boulton Cottages Frating Road

Development: Proposed erection of one dwelling and associated parking (all matters reserved).

1. Town / Parish Council

Great Bromley Parish Council
10.12.2020

No objection to the application.

2. Consultation Responses

ECC Highways Dept
30.12.2020

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 and Google image dated March 2019. The proposal site is accessed from and along Frating Road with good visibility in either direction. It noted that the site appears to offer sufficient parking and turning within the confines of the site.

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. Prior to occupation of the development, the road junction / access at its centre line shall be provided with a minimum clear to ground visibility splay dimensions of 2.4 metres by 104 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

2. Prior to occupation of the dwelling 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. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

4. Prior to occupation of the development the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 4.5 metres (equivalent of 5 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge

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

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

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

6. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

7. The proposed dwelling shall not be occupied until such time as a domestic car parking and turning for a minimum of two vehicles has been provided in accordance with the Parking Standards, details to be agreed with the Local Planning Authority. The agreed car parking shall be retained at all times for such purpose.

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

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

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

9. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

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

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

1: On the completion of the Development, all roads, footways/paths,

cycle ways, 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.

2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

SMO1 - Development Management Team
Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
CO7 7LT

3: The applicant must ensure that no mud or detritus is taken onto the highway, such measures include provision of wheel cleaning facilities and sweeping/cleaning of the highway Under Section 148 of the Highways Act 1980 it is an offence to deposit mud, detritus etc. on the highway. In addition, under Section 161 any person, depositing anything on a highway which results in a user of the highway being injured or endangered is guilty of an offence.

3. Planning History

No site specific planning history.

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
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
HG14	Side Isolation

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

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

SPL1	Managing Growth
SPL3	Sustainable Design
HP5	Open Space, Sports & Recreation Facilities
LP1	Housing Supply
LP2	Housing Choice
LP3	Housing Density and Standards
LP4	Housing Layout
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
CP1	Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

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 (including Site Description and Proposal)

Site Description

The application relates to a triangular shaped parcel of land to the side of 4 Boulton Cottages, on the southern side of Frating Road within the Parish of Great Bromley. The site measures approximately 0.1 hectares and is described as amenity land within the application, bounded by maintained hedgerow along the road frontage of the site and mature trees and hedgerow along its rear boundary. The trees with the greatest amenity value are a single Field Maple and two Oaks. During the application a new Tendring District Council Tree Preservation Order Ref: 21/02/TPO has been made in order to afford these trees formal legal protection (covered in more detail below). Boulton Cottages are a small group of 4 semi-detached dwellings with 2 bungalows to the north and Marks Farm to the south.

The site lies outside of the Great Bromley 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.

Description of Proposal

The application seeks outline planning consent with all matters reserved for the erection 1 no. detached, two-storey dwelling.

Access, scale, layout, appearance and landscaping are all reserved for future consideration.

Assessment

The main considerations in this instance are;

- Nearby Planning History;
- Principle of Development;
- Trees and Landscaping;
- Impact on Character and Appearance;
- Access, Parking and Highway Safety;
- Residential Amenities;
- Biodiversity;
- Financial Contribution - Open Space/Play Space;
- Financial Contribution - Recreational Disturbance; and,
- Representations.

Nearby Planning History

The Planning Statement accompanying the application cites planning approvals for nearby sites. These are shown below with an officer response to their relevance in italics:

- Outline planning permission was granted in January 2017 for the erection of six dwellings, 160 metres from the proposed development site (reference: 16/01040/OUT).

The reserved matters has now been approved under planning application reference 18/00623/DETAIL. This out of settlement site was approved at a time when the Council were unable to demonstrate a 5 year housing land supply and is therefore not comparable to this current application.

- Full planning permission was granted in November 2017 for the erection of three dwellings on land adjacent to and rear of Kia, Frating Road, 500 metres from the proposed development site (reference: 17/00629/FUL).

This site lies partly within the Settlement Development Boundary as defined within the adopted Tendring District Local Plan 2007 and wholly within the extended boundary as defined by the Tendring District Local Plan 2013-2033 and Beyond Publication Draft and is not comparable to this site.

- Full planning permission was granted in June 2019 for the erection of a 5-bedroom chalet-style dwelling with new vehicular access, 600 metres from the proposed development site (reference: 19/00321/FUL).

The extent of the site is wholly contained within the settlement boundary of Frating, as defined within the adopted Tendring District Council Local Plan 2007 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and is not comparable to this site.

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 Great Bromley 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, 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.

Trees and Landscaping

Saved Policy EN1 relates to landscape character and states, inter alia, that development control will seek in particular to conserve features which contribute to local distinctiveness, which includes important hedgerows and trees. In terms of the impact of the development proposal on the local landscape character it is important to recognise the existing qualities and value of the landscape and to quantify the potential impact of the proposed development on the local landscape.

The application site set to rough grass with rank and ruderal vegetation over most of the land. In the main body of the land, centrally situated and close to the boundary with the highway, there is a small Ash (*Fraxinus excelsior*) and a culinary Apple. Neither tree makes such a contribution to the amenities of the locality that they merit retention. On, or close to, the southern boundary of the application site there are several trees that feature prominently in the street scene and make a positive contribution to the public realm. As stated above, the trees with the greatest amenity value are a single Field Maple and two Oaks. Their roots will spread some distance from the main stem and be present in part of the application site. Consequently, the trees are a constraint on the development potential of the land. As the development proposal has the potential to have an

adverse impact on the root zones of these trees and may compromise their long term retention a new Tendring District Council Tree Preservation Order Ref: 21/02/TPO has been made in order to afford them formal legal protection. Unfortunately, the TPO as originally made by the Council incorrectly plotted the protected trees. This was corrected and a new TPO served in the timeliest manner possible.

In the interim, upon request, the agent provided a site plan showing the position of the trees in relation to the siting of the proposed dwelling and specification for protective fencing during construction. However, the information provided by the agent was based on the positions of the trees shown on the map forming part of the incorrect TPO and did not reflect the actual impact of the development proposal on the trees in the positions they are growing.

Unfortunately, the fact that original TPO did not accurately reflect the positions of the trees has misled the applicant and has caused confusion between both parties. An email of apology has been sent to the agent on behalf of the Council.

Nevertheless, it is clear, that the position of the proposed dwelling would be within the RPA of T2 - Oak. Additionally the canopy of the tree would likely have a significant adverse impact on the use and enjoyment of the garden from overshadowing. Taking into account the RPA of T2 and the proposed position of the dwelling a satisfactory juxtaposition between the tree and the dwelling has not been achieved. The degree to which the RPA constrains the site suggests that a satisfactory layout cannot be achieved and the agent has not provided any information to the contrary.

These issues are matter of principle and the application fails to demonstrate that the site can accommodate the proposed dwelling without resulting in harm to the mature, protected trees present on the boundary of the site. Consequently, the development is contrary to the aforementioned policy.

Impact on Character and Appearance

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.

The application site lies between existing dwellings either side. Boulton Cottages appear as a standalone group of dwellings of a distinct character that differ from the other neighbouring properties. The site relates closely to Boulton Cottages being sited directly adjacent to number 4 and separated from Marks Farm to the south by trees and vegetation.

As part of the planning application it has been necessary to seek further information from the agent in respect of the siting of the dwelling in relation to the root protection areas of the newly protected trees. As addressed above, the plan provided is based on inaccurate information contained within the original TPO. Although an accurate layout plan has not been provided, it is clear that any new dwelling would need to be sited a considerable distance forward of the front elevations of Boulton Cottages to avoid the root protection area of the trees.

As outlined above, in street scene terms, the development would appear closely related to Boulton Cottages. The introduction of a detached dwelling on this site, together with its forward siting would appear at odds in its immediate setting. The development would be prominent, out of keeping and harmful to the character of the locality. Furthermore, the development would represent an unplanned advance of urbanisation into the countryside eroding the semi-rural character of the locality resulting in a detrimental impact upon the landscape.

The application fails to demonstrate that the site can appropriately accommodate the proposed development without causing harm to the character and appearance of the area and is therefore contrary to the above-mentioned national and local plan policies.

Access, Parking and Highway Safety

Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted if amongst other things; access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and the design and layout of the development provides safe and convenient access for people. The sentiments of this policy are carried forward within draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new dwellings.

The Planning Statement accompanying the application explains that the proposed scheme is to have a new access in order to create an entrance to the dwelling. The proposed access is within the 40mph speed limit zone along Frating Road. There is visibility splays of 2.4 x 140m to the east and 2.4 x 140m to the west available.

Essex County Council Highway Authority raise no objection to the principle of the development.

Due to the constraints of the site, any new dwelling would need to be sited forward of Boulton Cottages, most likely in close proximity to the highway. Officers consider that sufficient space is available on site to provide a development that could achieve a parking area to serve the new dwelling in line with the requirements the Essex County Council Parking Standards. Nonetheless, the layout would be visually harmful as addressed above. On this basis, a refusal based on access and highway safety grounds is not justified in this instance.

Residential Amenities

Paragraph 127 of the National Planning Policy Framework 2019 states that planning should always seek to create places that are safe, inclusive and accessible with a high standard of amenity for existing and future users. Saved Policy QL10 of the adopted Tendring District Local Plan (2007) states that permission will only be granted if; buildings and structures are orientated to ensure adequate daylight, outlook and privacy and provision is made for functional needs including private amenity space and accessibility. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 supports these objectives. Furthermore, Saved Policy HG14 of the adopted Tendring District Local Plan (2007) states that proposals for new dwellings will be required to retain appropriate open space between the dwellings and the side boundaries of the plot to safeguard the amenities and aspect of adjoining residents. In addition, saved Policy HG9 of the adopted local plan provides minimum private amenity space standards requiring 75 square metres for dwellings with 2 bedrooms and 100 square metres for dwellings with 3 or more bedrooms.

Officers consider that through the submission of a reserved matters application, it would be possible to secure a development that could achieve an internal layout and separation distances that would not detract from the amenities of existing neighbouring dwellings. The trees and hedgerows retained along the rear/side boundaries would also soften the impact. Furthermore, in terms of amenity space, officers consider that sufficient space is available on site to provide a private garden area that accord with minimum standards. However, the protected trees would be a dominant feature in the private amenity space. The canopy of T2 – Oak would likely have a significant adverse impact on the use and enjoyment of the garden of the proposed dwelling and potentially on the amount of light reaching the dwelling.

The development would therefore create a poor standard of amenity for future occupants of the proposed dwelling contrary to the aims of the aforementioned national and local policies.

Biodiversity

As stated above, the agent describes the site as 'amenity land'. There is no planning history for the site confirming its use but the pedestrian access gate to the front and kempt appearance of the site suggests that the site is maintained.

Should an approval come forward for the site, any potential disturbance to biodiversity could be sufficiently mitigated by appropriately worded conditions relating to the timing of any vegetation clearance, approval of lighting details and approval of biodiversity enhancement measures.

Financial Contribution - Open Space/Play Space

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 -1.15 hectares of equipped play and formal open space in Great Bromley. It is unlikely that there will be any significant impact on this play area. Therefore no contribution is requested on this occasion. However, should there be further development in the area a contribution may be required.

Financial Contribution - Recreational Disturbance

Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.

The application scheme proposes a residential on a site that lies within the Zone of Influence (Zol) being approximately 5000 metres from the Colne Estuary RAMSAR and SPA and the Essex Estuaries SAC. New housing development within the Zol would be likely to increase the number of recreational visitors to the Colne Estuary 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 completed unilateral undertaking has been provided to secure this legal obligation and to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with 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.

Representations

Great Bromley Parish Council had no objection to the application.

1 letter of objection has been received from the immediate neighbour. The concerns raised can be summarised as follows (officer response in italics);

- Development of this site would increase the risk of surface water flooding.
The size of the site and scale of the proposal means that a surface water drainage strategy is not a requirement. Should an approval come forward for the site, appropriately worded conditions to secure permeable surfacing could be imposed.
- Ground instability.
This is not a material planning consideration and construction techniques would be dealt with at the building control stages of development.

- Harm to mature trees.
Harm to the now protected trees is address in the report above and forms a reason for refusal.
- Site constraints means that the proposed dwelling would potentially be at the front of the site which would affect the linear frontage of the existing properties within this sight line.
Harm to the character and appearance of the area is addressed in the main report above and forms a reason for refusal.

Conclusion

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 on the character of the locality, protected trees, residential amenity 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 11 of the NPPF and contrary to the development plan Saved Policy QL1 and emerging Policy SP1 and is therefore recommended for refusal.

6. Recommendation

Refusal - Outline

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 Saved Policy EN1 relates to landscape character and states, inter alia, that development control will seek in particular to conserve features which contribute to local distinctiveness, which includes important hedgerows and trees. In terms of the impact of the development proposal on the local landscape character it is important to recognise the existing qualities and value of the landscape and to quantify the potential impact of the proposed development on the local landscape.

On, or close to, the southern boundary of the application site there several trees that feature prominently in the street scene and make a positive contribution to the public realm. The trees with the greatest amenity value are a single Field Maple and two Oaks which are subject of Tendring District Council Tree Preservation Order Ref: 21/02/TPO affording them formal legal protection.

It is clear that the position of the proposed dwelling would be within the root protection area (RPA) of T2 -Oak. Additionally the canopy of the tree would likely have a significant adverse impact on the use and enjoyment of the garden from overshadowing. The degree to which the RPA constrains the site suggests that a satisfactory layout cannot be achieved.

These issues are matter of principle and the application fails to demonstrate that the site can accommodate the proposed dwelling without resulting in harm to the mature, protected trees present on the boundary of the site. Consequently, the development is contrary to the aforementioned policy.

- 3 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 onto 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.

The application site lies between existing dwellings either side. Boulton Cottages appear as a standalone group of dwellings of a character that differ from the other neighbouring properties. The site relates closely to Boulton Cottages being sited directly adjacent to number 4 and separated from Marks Farm to the south by trees and vegetation.

In street scene terms, the development would appear closely related to Boulton Cottages. The introduction of a detached dwelling on this site, together with its forward siting to avoid the root protection areas of the protected trees on the site would appear at odds in its immediate setting. The development would be prominent, out of keeping and harmful to the character of the locality. Furthermore, the development would represent an unplanned advance of urbanisation into the countryside eroding the semi-rural character of the locality.

The application fails to demonstrate that the site can appropriately accommodate the development without causing harm to the character and appearance of the area and is therefore contrary to the above-mentioned national and local plan policies.

- 4 Paragraph 127 of the National Planning Policy Framework 2019 states that planning should always seek to create places with a high standard of amenity for existing and future users. Saved Policy QL10 of the adopted Tendring District Local Plan (2007) states that permission will only be granted if buildings and structures are orientated to ensure adequate daylight and outlook and provision is made for functional needs including private amenity space. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 supports these objectives.

Although the site can accommodate a private amenity space of a size that accords with policy requirements, the protected trees would be a dominant feature in the private amenity space. The canopy of T2 - Oak of Tendring District Council Tree Preservation Order Ref: 21/02/TPO would have a significant adverse impact on the use and enjoyment of the garden of the proposed dwelling and potentially on the amount of natural light reaching the windows of the dwelling.

The development would therefore create a poor standard of amenity for future occupants of the proposed dwelling contrary to the aims of the aforementioned national and local policies.

8. **Informatives**

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and 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 reasons for the refusal, approval has not been possible.

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