



# TENDRING DISTRICT COUNCIL

## Planning Services

Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex CO16 9AJ

**AGENT:** Mr Jamie Cambridge - AGC  
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**APPLICANT:** Lewis Black  
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### TOWN AND COUNTRY PLANNING ACT 1990

**APPLICATION NO:** 21/00203/FUL

**DATE REGISTERED:** 20th January 2021

Proposed Development and Location of Land:

**Erection of self-contained two storey dwelling with private amenity space, cartlodge for parking and stable block for equine housing and hay storage  
Land Between Sangro and Bowtens Colchester Road Ardleigh Essex**

THE TENDRING DISTRICT COUNCIL AS LOCAL PLANNING AUTHORITY **HEREBY REFUSE PLANNING PERMISSION** in accordance with the application form, supporting documents and plans submitted for the following reason(s)

- 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 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) being but is approximately 5.4km away from Stour and Orwell Estuaries RAMSAR and SPA.. New housing development within the Zol would be likely to increase the number of recreational visitors to the Stour and Orwell 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 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.

- 3 Policy COM6 of the adopted Local Plan 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". The financial contribution would be secured through a legal agreement.

There is currently a deficit of 1.70 hectares of equipped play/open space in Ardleigh. Any additional development in Ardleigh will increase demand on already stretched facilities and increase the deficit further.

There are two play areas in Ardleigh one located at Colchester Road that was renovated a couple of years ago and the other is The Recreation Ground on Station Road which is in need of improvements and maintaining to cope with any additional development.

Due to the significant lack of facilities in the area if it felt that a contribution is justified and relevant to this planning application. The contribution would be used to make

improvements and maintain The Recreation Ground/Millennium Green.

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.

- 4 Paragraph 175 of the National Planning Policy Framework (2018) states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Paragraph 5.3 of government document 'Planning for Biodiversity and Geological Conservation: A Guide To Good Practice', states that "In the development control process, the onus falls on the applicant to provide enough information to enable the Local Planning Authority to assess the impacts on biodiversity and geological conservation. Planning applications must be supported by adequate information". Standing advice from Natural England recommends that an initial scoping or extended Phase 1 habitat survey should be conducted to assess the site and the results of this used to inform (the need for) subsequent species specific surveys. No such information has been provided with this application. Neither is evidence provided to outweigh the need to protect such species in accordance with the tests outlined in Article 16 of the EC Habitats Directive. As such, the proposal is in conflict with the afore-mentioned policies, guidance, directive and the Framework.

The proposal is contrary to Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species', that state development proposals will not be granted planning permission unless existing local biodiversity and protected species are protected. A similar approach is taken in draft Policy PPL4 'Biodiversity and Geodiversity' of the emerging local Plan.

The preliminary Ecological Appraisal states that further surveys for Great Crested Newts are required. The applicant has not provided the surveys. The Local Planning Authority is therefore unable to say with confidence that the proposal will not have an adverse impact on any protected species and therefore would be contrary to saved Policies EN6, EN6a, draft Policy PPL4 and Paragraphs 175 of the National Planning Policy Framework.

**DATED:** 22nd April 2021

**SIGNED:**




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Graham Nourse  
Assistant Director  
Planning Service

**IMPORTANT INFORMATION :-**

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

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

HG9 Private Amenity Space

HG14 Side Isolation

COM6 Provision of Recreational Open Space for New Residential Development

COM12 Equestrian Uses and Buildings

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)

SP1 Presumption in Favour of Sustainable Development

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

### 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.

**The attached notes explain the rights of appeal.**

## NOTES FOR GUIDANCE

### WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

#### APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within the set time frame as outlined below:
  - a. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Householder Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
  - b. If this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
  - c. If you want to appeal against your local planning authority's decision on a development which is not caught by a. and b. above then you must do so within **6 months** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
- Appeals must be made using the relevant form (as detailed above) which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission for the proposed development or could not have granted it without the conditions imposed having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

#### ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.

- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.