

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	16 th April 2021
Planning Development Manager authorisation:	SCE	21.04.2021
Admin checks / despatch completed	ER	21.04.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	21.04.21

Application: 20/01831/FUL **Town / Parish:** Lawford Parish Council

Applicant: Mr and Mrs Peter and Marylin Bell

Address: Land West of 89 Hungerdown Lane Lawford Manningtree

Development: Replacement of two agricultural buildings with one 4-bedroom bungalow (in lieu of Prior Approval for one x 3-bedroom dwelling and one x 4-bedroom dwelling, subject of application 20/01117/COUNOT).

1. Town / Parish Council

Mrs Peachey Lawford
Parish Council
18.02.2021

Despite 20/01117/COUNOT having received approval, LPC objects to the building of additional dwellings on designated Agricultural Land.

2. Consultation Responses

ECC Highways Dept

The information that was submitted in association with the application has been fully considered by the Highway Authority. Due to the current COVID-19 restrictions 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 and previous applications 18/00123/OUT and 20/01117/COUNOT.

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

UU Open Spaces
10.02.2021

There is currently a deficit of -3.44 hectares of equipped play/open space in Lawford.

Recommendation

No contribution is being requested from Open Spaces on this occasion. Should there be further development at this site a contribution may be required in the future.

Tree & Landscape Officer
02.02.2021

The application site is currently being set to grass with small trees and appears to form part of the residential curtilage of the host property.

The boundary with the highway is demarcated by an established conifer hedge with a Holly and a small Oak tree either side of the existing access.

Neither of the trees merit formal legal protection by means of a tree preservation order although it would be desirable to retain the young Oak if it were possible. The boundary hedge is of only moderate amenity value and the removal of a section to create a new vehicular access will not have a significantly adverse impact on the amenities of the locality.

If planning permission were likely to be granted then a condition should be attached to secure details of soft landscaping to soften, screen and enhance the appearance of the development.

3. Planning History

94/01141/FUL	(89/90 Hungerdown Lane, Lawford) Proposed extension and alterations to detached dwelling (former pair of semi-detached houses)	Approved	03.11.1994
98/01349/FUL	Proposed workshop/store and boiler/generator room	Approved	26.07.1999
98/01436/FUL	(P & M A Bell Nurseries, 89 Hungerdown Lane, Lawford and) Laying of a 125mm diameter medium density polyethylene pipe supplying gas to P & M A Bell Nurseries (total length 430 metres)	Approved	23.12.1998
15/01353/FUL	Installation of ground mounted solar PV panels.	Approved	09.11.2015
17/01364/OUT	Permission for one dwelling.	Refused	29.09.2017
18/00123/OUT	Outline permission for one dwelling on land adjacent to 89 Hungerdown Lane	Refused	20.03.2018
20/01117/COUNOT	Conversion of two agricultural buildings into two dwellings.	Determination	13.10.2020
20/01831/FUL	Replacement of two agricultural buildings with one 4-bedroom bungalow (in lieu of Prior Approval for one x 3-bedroom dwelling and one x 4-bedroom dwelling, subject of application 20/01117/COUNOT).	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
- COM6 Provision of Recreational Open Space for New Residential Development
- EN6 Biodiversity
- EN11A Protection of International Sites European Sites and RAMSAR Sites
- HG1 Housing Provision
- HG9 Private Amenity Space
- LP1 Housing Supply
- 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
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- HP5 Open Space, Sports & Recreation Facilities
- PPL4 Biodiversity and Geodiversity

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. In this latter regard, as of 26th January 2021, 'Section 1' of the emerging Local Plan for Tendring (Tendring District Local Plan 2013-2033 and Beyond Publication Draft) has been adopted and forms part of the 'development plan' for Tendring.

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

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

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

Where emerging policies are particularly relevant to a planning application and can be given weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices.

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.

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

5. Officer Appraisal (including Site Description and Proposal)

Site Description

No.89 is situated on the southern side of Hungerdown Lane. The applicants own both No.89 and No.90, which were previously two semi-detached dwellings and has since been merged into one dwelling. The dwelling presents itself to the public domain as a single chalet-bungalow; 'The Bungalow' opposite the application site is a modest single-storey bungalow.

To the rear of No. 89 and No.90 Hungerdown Lane are two agricultural buildings which are made from profile metal sheeting with a steel framework. The agricultural buildings are attached, the smaller building to the east was built in 1999 and the larger one to the west in 2004. The buildings are currently used for the storage of equipment in relation to the lettuce growing of the tenanted glasshouses on site. There has been no other use of the buildings other than for agricultural purposes. The barns are permanent structures in a sound condition, measuring a total floor area of approximately 364sqm. There is an established vehicular access available onto the drive serving the existing property together with the agricultural buildings and glasshouses.

Relevant History

In October 2020, the Council deemed that prior approval was not required for conversion of two agricultural buildings into two dwellings on the land rear of No.89 Hungerdown Lane (reference: 20/01117/COUNOT).

Description

The current application is in lieu of the two approved dwellings under 20/01117/COUNOT with one new bungalow in the parcel of land to the west; the block plan indicates that the two agricultural buildings, subject of the Prior Approval, would be demolished. The new property would have an external floor area of 247sqm, eaves typically of 2.8m and a maximum height of 6.7m.

Assessment

The main planning considerations are:

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

Principle of Development:

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. Under Section 38 of the Planning and Compulsory Purchase Act 2004, decisions on planning applications must be made in accordance with the development plan unless other material considerations indicate otherwise.

A material consideration which tempers the weight in allowing development in this particular instance is the existence of permitted development as a 'fallback position'. The case of [Mansell v Tonbridge And Mailing Borough Council [2017] EWCA Civ 1314] established that the key factor to consider is whether there is a "real prospect" of permitted development rights being utilised. Case law has established that, in order for this to be considered as a fall-back position, the prospect of utilising permitted development rights does not need to be 'probable', merely a 'possibility'. In this regard the site benefits from a Prior Approval application to convert two agricultural buildings in to two dwellings having a floorspace of 364sqm.

It is therefore considered that the fallback position holds significant weight as a material consideration.

Layout, Scale and Appearance:

The Government attach great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. One of the core planning principles of The National

Planning Policy Framework (NPPF) as stated at paragraph 130 is to always seek to secure high quality design.

Saved Policies QL9, QL10 and QL11 aim to ensure that all new development makes a positive contribution to the quality of the local environment, relates well to its site and surroundings particularly in relation to its form and design and does not have a materially damaging impact on the amenities of occupiers of nearby properties. Emerging Policy SP1 reflects these considerations.

The proposal would introduce a new dwelling on a vacant plot of land to the west of 89/90 Hungerdown Lane. Externally its appearance would comprise render and hardi-plank; there is not local vernacular and for this reason the external materials are considered appropriate in this location. The siting and footprint of the proposed dwelling would closely reflect No. 89/90. The Prior Approval application (should it be implemented) introduces a pair of dwellings behind 89/90 Hungerdown Lane; if a full planning application for new dwellings had been submitted for this type of development it would amount to an inappropriate form of Backland Development as the site is outside the settlement boundary. Further, as a Prior Approval submission only permits minor external alterations the proposed dwellings have a somewhat uninspiring and utilitarian appearance. The cumulative effect of the demolition of the unattractive buildings and replacement with a dwelling of an entirely domestic appearance in conjunction with the loss of 75sqm of built form are considered to make a positive contribution to the quality of the local environment; the dwelling would relate well to its site and surroundings particularly in relation to its form and design and does not have a materially damaging impact on the amenities of occupiers of nearby properties.

Amenities of Existing & Future Occupiers:

The NPPF, at paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The development is single storey and separated from the occupiers of 89/90 Hungerdown Lane by more than 20m.

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

Private amenity space shall be provided to new dwellings in accordance with the following standards:- a three-or-more bedroom house should provide a minimum of 100 square metres. The amenity space, at over 1,000sqm is extensive.

Overall the proposal the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties and is considered to secure a good standard of amenity for future occupants of the proposed dwelling.

Highways:

Paragraph 108 of the NPPF 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. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

The Council's current Parking Standards require that for dwellings with 3 bedrooms a minimum of 2 parking spaces be provided per unit. The preferred bay size for cars is 5.5 metres by 2.9 metres and the minimum bay size is 5 metres by 2.5 metres.

The information that was submitted in association with the application has been fully considered by the Highway Authority. Having regard to previous submissions 18/00123/OUT and 20/01117/COUNOT, from a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to mitigation and conditions.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS):

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

The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zoi) being approximately 3,190 metres from Stour And Orwell Estuaries Ramsar. Since the development is for 1 dwelling only, the number of additional recreational visitors would be limited and the likely effects on Stour And Orwell Estuaries from the proposed development alone may not be significant. However, new housing development within the Zoi would be likely to increase the number of recreational visitors to Stour And Orwell Estuaries; 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 unilateral undertaking has been prepared to secure this legal obligation. This will 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

One letter of support has been received as a result of the publicity of this application.

The Parish Council object on the grounds that, despite 20/01117/COUNOT having received approval, LPC objects to the building of additional dwellings on designated Agricultural Land. In response to this, the process for determining Prior Approval submissions does not involve any Policy consideration – as such the countryside location of the development is not considered.

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

The approval of 20/01117/COUNOT holds significant weight as a material consideration which tempers the weight in allowing development in this particular instance is the existence of permitted development as a 'fallback position'. The case of [Mansell v Tonbridge And Mailing Borough Council [2017] EWCA Civ 1314] established that the key factor to consider is whether there is a "real prospect" of permitted development rights being utilised. Case law has established that, in order for this to be considered as a fall-back position, the prospect of utilising permitted development rights does not need to be 'probable', merely a 'possibility'. In this regard the site benefits from a Prior Approval application to convert two agricultural buildings in to two dwellings having a floorspace of 364sqm.

6. Recommendation

Approval - Full

7. Conditions

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

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

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:- 1302/101, 1302/102, 1302/103 and 1302/104 ; received 14th December 2020.

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

- 3 There should be no obstruction above ground level within a 2.4-metre-wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. 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 users of the access and the public highway in the interests of highway safety.

- 4 As indicated on drawing no. 1302/103 and 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.

- 5 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.

- 6 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.

- 7 Prior to occupation of the dwelling the vehicular access shall be constructed centrally and 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 to 5 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate vehicular crossing of the highway verge.

Reason - To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety.

- 8 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.

- 9 The existing and redundant access as shown on drawing no. 1302/103 shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge immediately the proposed new access is brought into first beneficial use.

Reason - To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety.

- 10 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.

- 11 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.

- 12 No building or engineering operations authorised by this permission shall be commenced until the two existing agricultural buildings (subject of 20/01117/COUNOT and shown as being demolished on drawing 1302/103) on the site have been demolished and all materials resulting therefrom shall be cleared from the site.

Reason - The development hereby permitted has only been supported on the basis that the existing agricultural buildings be removed from the site to justify their replacement with a single dwelling which ordinarily would be contrary to the development plan which directs new development to sites within settlement development boundaries.

8. Informatives

Positive and Proactive Statement

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

Highways:-

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

Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

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.

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.

Legal Agreement Informative - Recreational Impact Mitigation:-

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

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