

DELEGATED DECISION OFFICER REPORT

| AUTHORISATION | INITIALS | DATE |
|---|----------|------------|
| File completed and officer recommendation: | NH | 30/04/2021 |
| Planning Development Manager authorisation: | TF | 30/04/2021 |
| Admin checks / despatch completed | DB | 30.04.2021 |
| Technician Final Checks/ Scanned / LC Notified / UU Emails: | CC | 30.04.2021 |

Application: 20/01027/FUL **Town / Parish:** Tendring Parish Council

Applicant: Fat Goose Property Developments Ltd

Address: The Fat Goose Heath Road Tendring

Development: Proposed erection of two detached 4-bed properties with associated parking and amenity area.

1. Town / Parish Council

Tendring Parish Council
02.09.2020

Tendring Parish Council objects to this application. A community facility is paramount to the village. The site was only approved on appeal as the inspector had stated that a key reason for approval was the retention of the community asset, this application is trying to remove that. There are also more than enough new 4 bedroom properties within the village.

2. Consultation Responses

ECC Highways Dept
12.03.2021

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated March 2019. Having regard to the fact that the site was once a pub/ restaurant and car park and the properties will utilise the vehicle access points that formed part of the previous application 17/01091/FUL that was allowed at appeal and when compared to the sites previous use the proposal will generate less vehicle movements. As far as can be determined from the submitted plans the proposal provides adequate room and provision for off-street parking and turning:

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

1. There should be no obstruction above ground level within a 2.4-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 obstruction above 600mm at all times.

Reason: To provide adequate inter-visibility between users of the access and the public highway in the interests of highway safety in

accordance with policy DM1.

2. Prior to occupation of the development the vehicular parking and turning facility, as shown on the submitted plan 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 the occupation of any of the proposed dwellings, the existing private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary and provided with an appropriate dropped kerb crossing of the footway/verge.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

5. Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

6. Each single garage should have a minimum internal measurement of 7m x 3m.

Reason: To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety and in accordance with Policy DM8.

7. The Cycle / Powered Two-wheeler 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 / powered two-wheeler parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

8. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

9. At no point shall gates be provided at either vehicular access. The accesses shall remain open and free for use in perpetuity.

Reason: To give vehicles using the access free and unhindered access to and from the highway in the interest of highway safety and

in accordance with policy DM1.

10. 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.

11. 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

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: 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.

4: During the construction phase 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

| | | | |
|-----------------|---|----------|------------|
| 17/01091/FUL | Demolition of existing pub/restaurant and erection of 2 no. four bedroom detached properties and one micropub with flat on first floor, all with associated parking and amenity. | Refused | 24.08.2017 |
| 19/00387/DISCON | Discharge of Condition 3 (Materials) of Planning Application 17/01091/FUL - allowed at appeal. | Approved | 15.03.2019 |
| 19/00491/DISCON | Discharge of Condition 3 to application 17/01091/FUL (allowed on Appeal - APP/P1560/W/17/3189713) to replace approved grey UPVC windows with white UPVC windows to plots A and B. | Approved | 18.04.2019 |
| 19/00549/DISCON | Discharge of Condition 4 (Hard and Soft Landscaping) of application 17/01091/FUL (allowed on Appeal - APP/P1560/W/17/3189713). | Approved | 23.04.2019 |

4. Relevant Policies / Government Guidance

National Planning Policy Framework 2019

National Planning Practice Guidance

Adopted Tendring District Local Plan (2007) (part superseded)

| | |
|-------|---|
| QL12 | Planning Obligations |
| HG7 | Residential Densities |
| HG9 | Private Amenity Space |
| HG14 | Side Isolation |
| COM6 | Provision of Recreational Open Space for New Residential Development |
| ER3 | Employment |
| EN1 | Landscape Character |
| EN6 | Biodiversity |
| EN11A | Protection of International Sites European Sites and RAMSAR Sites |
| EN11C | Protection of Local Sites: Local Nature Reserves, County Wildlife Sites, Regionally Important Geological/Geomorphological Sites |
| TR1A | Development Affecting Highways |

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021)

SP1 Presumption in Favour of Sustainable Development

SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)

SP3 Spatial Strategy for North Essex

SP4 Meeting Housing Needs

SP5 Employment

SP7 Place Shaping Principles

SPL1 Managing Growth

SPL3 Sustainable Design

HP5 Open Space, Sports and Recreational Facilities

LP4 Housing Layout

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Parking Standards 2009

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 site is located on the southern side of Heath Road. The application site is located outside of the settlement development boundary.

History

17/01091/FUL - Demolition of existing pub/restaurant and erection of 2 no. four bedroom detached properties and one micropub with flat on first floor, all with associated parking and amenity – Refused – Allowed at Appeal - APP/P1560/W/17/3189713 – dated 6th June 2018

Proposal

This application seeks planning permission for the erection of two detached 4-bed properties with associated parking and amenity area.

Assessment

The main considerations for this application are:

- Principle of Development
- Loss of Employment
- Layout, Scale and Appearance;
- Residential Amenities;
- Access and Parking;
- Legal Obligations - Open Space/Play Space Contribution;

- Legal Obligations - Recreational Impact Mitigation;
- Other Considerations

1. 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) has recently been completed and will in due course join the Section 1 Plan as part of the development plan, superseding in full the 2007 adopted plan.

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

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

As the supply of deliverable housing sites in the modified Section 1 of the Local Plan is now in the order of 6.5 years this actual objectively assessed housing need for Tendring is a significant material consideration in the determination of planning applications which substantially tempers the amount of weight that can reasonably be attributed to the benefit of additional new housing - particularly in the consideration of proposals that fall outside of the settlement development boundaries in either the adopted or the emerging Section 2 Local Plan.

In this instance, the site lies outside of the settlement development boundary for Tendring Heath as defined within both the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focused towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft.

Saved Policy QL1 of the adopted Local Plan remains broadly consistent with the NPPF objective for achieving sustainable development. This is through a plan-led approach that focuses development to locations which are or can be made sustainable, limiting the need to travel and offering a genuine choice of transport modes. This also includes making effective use of land, particularly that which is previously developed, in meeting the need for homes. Those planned for rural areas are responsive to local circumstances and support local needs, whilst recognising the intrinsic character and beauty of the countryside. Emerging Policy SPL1 of the Publication Draft gain traction due to the same consistency with the NPPF as found in respect of those in the adopted Local Plan.

As set out above, the policies for the delivery of housing are considered up-to-date and the application must therefore be determined in accordance with Paragraph 11 c) of the NPPF, thus in accordance with the development plan.

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

2. Loss of Employment

Paragraph 85 of the National Planning Policy Framework (2019) states planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

Policy ER3 of the Adopted Tendring Local Plan 2007 states that land in, or allocated for employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use. These sentiments are carried forward in Policy SP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021).

This application seeks to remove the micro pub which was allowed under appeal reference APP/P1560/W/17/3189713 and to replace with two dwellings.

The micropub was approved to ensure that the employment use continued on this site. To demonstrate that this use is no longer viable or suitable, an unsuccessful marketing campaign is required.

A letter dated 30th April has been provided from the Estate agent which states that the site has been marketed since 7th October 2019 on both Rightmove Commercial and on the David Abbot website. However, insufficient information has been provided in regards to the price, if there has been any interest and an update since 30th April. Not only this, the proposed development of two dwellings on this application site also goes against the comments provided by the Planning Inspectorate within the planning appeal. The Planning Inspectorate within paragraph 26 states 'including the retention of a valuable local service, the micropub'. The Inspectorate imposed a condition to ensure the provision and retention of the micropub as a local facility that supports the sustainability of the development and the area.

It is therefore considered that insufficient information has been provided that does not demonstrate that the micropub is no longer viable or suitable on this application site which therefore is contrary to policy ER3 of the Tendring District Local Plan 2007 and SP5 of Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021).

3. Layout, Scale 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. Saved Policy QL9 of the Tendring District Local Plan (2007) and Policy SPL3 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 proposed development will appear as an infill plot along Heath Road. The submitted plans demonstrate the layout of the proposed two dwellings alongside the previously approved plots A and B. Although the principle of an additional two plots on this site is acceptable, due to the size of the proposed dwellings being large and bulky, the limited space in between the plots creates an urbanised appearance which is not considered appropriate in this rural location. The introduction of two dwellings on the application site will appear cramped due to the close proximity to neighbour dwellings which will appear out of character within the street scene of Heath Road. The development is inappropriate in this locality and fails to make a positive contribution to the quality of the local environment contrary to the aims of the above-mentioned national and local plan policies.

Policy HG9 of the Saved Tendring District Local Plan 2007 states that private amenity space for a dwelling of three bedrooms should accommodate a minimum of 100 square metres. The plans provided demonstrate that both plots C and C can accommodate in excess of 100 sqm in line with Policy HG9.

4. Residential Amenities;

Paragraph 127 of the NPPF states that planning should always seek to secure a good standard of amenity for all existing and future occupants. In addition, Policy QL11 of the Tendring District Local Plan (2007) 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. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) supports these objectives. Furthermore, Policy HG14 states that a minimum of 1 metre should be retained to boundaries in order to safeguard the amenities of neighbouring residents. In addition, Saved Policy HG9 sets out the minimum standards for private amenity space provision.

Plot D will be visible to the neighbouring dwelling to the east however at least 1 metre is proposed to the neighbouring boundary to not cause any impact upon neighbouring amenities. First floor windows are proposed to serve bedroom 2 and 4, however a condition will be imposed to ensure that they are obscure glazed to reduce any overlooking onto neighbouring amenities.

Plot C will be visible to both plots A and plots D. First floor windows are proposed to serve bedroom 2 and 3, however a condition will be imposed to ensure that they are obscure glazed to reduce any impact of overlook onto neighbouring amenities.

5. Access and Parking;

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 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.

Essex Highways Authority have no objection subject to conditions relating to visibility splays, vehicular parkin and turning facility, no unbound materials, construction of private drive, hardstanding, garage dimensions, cycle parking, residential travel pack, gates and storage of building materials. The cycle parking condition would not be imposed as sufficient space is provided to the rear of the dwellings to accommodate the storage. The residential travel pack condition will not be imposed as this application is for a minor development only. The storage of building materials will be imposed as an informative.

The Council's Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied on to provide a parking space, should measure 7 metres by 3 metres internally. The plans provided demonstrate that the dwelling will be served by a parking space and a garage in line with Essex Parking Standards.

6. Legal Obligations - Open Space/Play Space Contribution;

Policy COM6 of the adopted Tendring District Local Plan 2007 states that for residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built. These sentiments are carried forward within emerging Policy HP5.

In line with the requirements of saved Policy COM6 and emerging Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space.

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

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

7. Legal Obligations - Recreational Impact Mitigation;

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 5.6km from the Stour and Orwell Estuaries RAMSAR, some 7.7km from the Hamford Water RAMSAR and some 9.9km from the Colne Estuary RAMSAR. Stour and Orwell Estuaries and Colne Estuary New housing development within the Zol would be likely to increase the number of recreational visitors to Stour and Orwell Estuaries and 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 received to secure this financial contribution. 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.

8. Other Considerations

Tendring Parish Council objects to this application. A community facility is paramount to the village. The site was only approved on appeal as the inspector had stated that a key reason for approval was the retention of the community asset, this application is trying to remove that. There are also more than enough new 4 bedroom properties within the village.

4 letters of objection have been received raising the following concerns:

Concerns over the previous application and that permission was granted to replace the demolished asset.

Concerns raised over the site being located outside the settlement boundary

The above concerns have been addressed within the report.

6. **Recommendation**

Refusal - Full

7. **Conditions / Reasons for Refusal**

- 1 Paragraph 11 of the National Planning Policy Framework 2019 (NPPF) states that plans and decisions should apply a presumption in favour of sustainable development. For plan-making this means that plans should positively seek opportunities to meet the development needs of their area. Strategic policies should, as a minimum, provide for objectively assessed needs for housing. For decision-taking this means approving development proposals that accord with an up-to-date development plan without delay. Paragraph 12 of the NPPF states that presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan permission should not usually be granted.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) has been examined by an Independent

Planning Inspector who issued his final report and recommended 'main modifications' on 10th December 2020. The Inspector's report confirms that, the housing and employment targets in the plan have been confirmed as sound, including the housing requirement of 550 dwellings per annum in Tendring. The Council has now formally adopted Section 1 part of the development plan which carries full weight in the determination of planning applications - superseding, in part, some of the more strategic policies in the 2007 adopted plan. In the interim, the modified policies in the Section 1 Local Plan, including the confirmed housing requirement, can be given significant weight in decision making owing to their advancement through the final stages of the plan-making process.

For the purposes of the determination of this application the Council can currently demonstrate that a 5 year housing land supply exists. Engaging the presumption in favour of sustainable development under paragraph 11d) of the NPPF does not apply in this instance. The policies for the delivery of housing are considered up-to-date and the application must therefore be determined in accordance with Paragraph 11 c) of the NPPF, thus in accordance with the development plan.

The application site lies outside of any Settlement Development Boundary as defined within both the adopted Tendring District Local Plan (2007) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). Regardless of the proximity of the site in relation to services and amenities, there is no longer a requirement to consider such sites due to their location outside of the defined settlement development boundaries as the planned growth for the District to meet housing need has been established. The adverse impacts of the proposal both on the character of the locality and on the Council's ability to manage growth through the plan-led approach, are not outweighed by any benefits or other material considerations. The development is unnecessary and there are no public benefits that might warrant the proposal being considered in an exceptional light. The proposal is therefore contrary to the aims of paragraph 11c) of the NPPF and contrary to the development plan Saved Policy QL1 and emerging Policy SP1.

- 2 Paragraph 85 of the National Planning Policy Framework (2019) states planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

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This application seeks to remove the micro pub which was allowed under appeal reference APP/P1560/W/17/3189713 and to replace with two dwellings.

The micropub was approved to ensure that the employment use continued on this site. To demonstrate that this use is no longer viable or suitable, an unsuccessful marketing campaign is required.

A letter dated 30th April has been provided from the Estate agent which states that the site has been marketed since 7th October 2019 on both Rightmove Commercial and on the David Abbot website. However, insufficient information has been provided in regards to the price, if there has been any interest and an update since 30th April. Not only this, the proposed development of two dwellings on this application site also goes against the comments provided by the Planning Inspectorate within the planning appeal. The Planning Inspectorate within paragraph 26 states 'including the retention of a valuable local service, the micropub'. The Inspectorate imposed a condition to ensure the provision and retention

of the micropub as a local facility that supports the sustainability of the development and the area.

It is therefore considered that insufficient information has been provided that does not demonstrate that the micropub is no longer viable or suitable on this application site which therefore is contrary to policy ER3 of the Tendring District Local Plan 2007 and SP5 of Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021).

- 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. Saved Policy QL9 of the Tendring District Local Plan (2007) and Policy SPL3 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 proposed development will appear as an infill plot along Heath Road. The submitted plans demonstrate the layout of the proposed two dwellings alongside the previously approved plots A and B. Although the principle of an additional two plots on this site is acceptable, due to the size of the proposed dwellings being large and bulky, the limited space in between the plots creates an urbanised appearance which is not considered appropriate in this rural location. The introduction of two dwellings on the application site will appear cramped due to the close proximity to neighbour dwellings which will appear out of character within the street scene of Heath Road. The development is inappropriate in this locality and fails to make a positive contribution to the quality of the local environment contrary to the aims of the above-mentioned national and local plan 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 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.

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| 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 |