

## **//DELEGATED DECISION OFFICER REPORT**

<b>AUTHORISATION</b>	<b>INITIALS</b>	<b>DATE</b>
File completed and officer recommendation:	AL	29/04/2021
Planning Development Manager authorisation:	JJ	29/04/2021
Admin checks / despatch completed	DB	30.04.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	30.04.2021

**Application:** 20/00688/OUT **Town / Parish:** Thorpe Le Soken Parish Council

**Applicant:** Mr C Neilson

**Address:** Land adjacent to Comarques Colchester Road Thorpe Le Soken

**Development:** Outline planning application with all matters reserved for the erection of one dwelling (renewal of 17/00257/OUT).

### **1. Town / Parish Council**

Thorpe-le-Soken Parish Council      No comments received.

### **2. Consultation Responses**

ECC Highways Dept  
26.06.2020      The information that was submitted in association with the application has been fully considered by the Highway Authority. It is noted that the application is a renewal of 17/00257/OUT therefore:

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 dwelling, the full width of the site frontage shall be provided with a clear to ground parallel visibility band with dimensions of no less than 2 metres depth as measured from and along the nearside edge of the highway. Such vehicular visibility band shall be provided before 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 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. 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.

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: 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](mailto:development.management@essexhighways.org) or by post to:

SMO1 - Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

2: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

### **3. Planning History**

02/00591/OUT	Proposed dwelling	Refused	20.05.2002
17/00257/OUT	Outline planning application with all matters reserved for the erection of one dwelling.	Approved	09.05.2017
20/30186/PREAPP	Proposed 2 storey dwelling and detached garage.	Closed	05.03.2021

### **4. Relevant Policies / Government Guidance**

NPPF	National Planning Policy Framework February 2019
NPPG	National Planning Practice Guidance
	Adopted Tendring District Local Plan 2007 (part superseded)
QL11	Environmental Impacts and Compatibility of Uses
QL12	Planning Obligations
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
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) (Section 1 adopted on 26th January 2021)

SP1	Presumption in Favour of Sustainable Development
SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP4	Meeting Housing Needs
SP7	Place Shaping Principles
SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
HP5	Open Space, Sports & Recreation Facilities
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

### **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 26<sup>th</sup> 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 10<sup>th</sup> 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 26<sup>th</sup> 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 site measures approximately 0.1 ha and currently comprises part of the residential curtilage associated with the property known as Comarques Farm House a detached two storey house situated immediately to the west. Adjacent to the east is a bungalow. Both dwellings were associated with an extensive farm holding which has since been sold away. These two properties are set back from the road with a wide greensward laid to grass. An 'in-and-out' driveway serves Comarques Farm House, with a vehicular entrance available from the site direct onto Colchester Road. This access is positioned at the start of the 30 mph speed zone entering into Thorpe-le-Soken.

The site is close to the junction with Golden Lane opposite. This section of Colchester Road is lined to the north by a number of larger detached dwellings of a variety of architectural styles. Thorpe Green is to the west and on the corner with Thorpe Road is a detached

house, The Elms, where planning permission has recently been granted for three dwellings. The access to the commercial site known as Tendring Fencing is close by, where a further residential scheme for four dwellings has also been approved.

The site is situated outside of the Settlement Development Boundary for Thorpe-le-Soken as defined by both the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

### Description of Proposal

The application seeks outline planning permission with all matters reserved for the erection of one dwelling.

This application follows the previously approved application 17/00257/OUT approved on 9<sup>th</sup> May 2017.

### Assessment

The main considerations in this instance are;

- Principle of Development;
- Layout, Scale and Appearance
- Trees and Landscaping;
- Highway Safety and Parking;
- Residential Amenities;
- Financial Contributions – Open Space and Play space;
- Financial Contributions – Recreational Disturbance; and,
- Representations.

### Principle of Development

Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise as set out in (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). The 'development plan' for Tendring comprises, in part, the 'Saved' policies of the 2007 Local Plan. Paragraph 213 of the Framework allows local planning authorities to give due weight to adopted albeit outdated policies, according to their degree of consistency with the policies within it.

As mentioned above, the site lies outside of the Thorpe-le-Soken Settlement Development Boundary as defined within the adopted and emerging Local Plans. Therefore, in the context of the progress of the emerging Local Plan and the Council's ability to demonstrate a 5 year housing land supply, the residential development of the land is unacceptable in principle.

However, a material planning consideration of significant weight in this instance is the previous approval for 1 dwelling reference 17/00257/OUT and the temporary modifications to the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 made through the Business and Planning Act 2020. This temporary modification enables certain planning permissions which have lapsed or are due to lapse during 2020 to be extended. This is in recognition of the effect coronavirus has had on the planning system and the construction sector and in particular the delays it has caused to the commencement of new development.

Time limits for implementation relating to outline planning permissions are subject to extension in the same way as other planning permissions:

- time limits for implementation passed between 19 August 2020 and 31 December 2020 are automatically extended to 1 May 2021
- time limits for implementation passed between 23 March 2020 and 19 August 2020 are extended to 1 May 2021 if Additional Environmental Approval is granted in respect of the relevant planning permission

In addition, any deadline for the submission of applications for the approval of reserved matters under an outline planning permission which would otherwise expire between 23 March 2020 and 31 December 2020 is extended to 1 May 2021.

Application 17/00257/OUT was approved on 9<sup>th</sup> May 2017 subject to the standard time limit conditions including condition 2, which states:

- *Application for the approval of Reserved Matters must be submitted before the expiration of three years from the date of this permission.*

*Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.*

The deadline for the submission of an application for the approval of the reserved matters expired on 8<sup>th</sup> May 2020 and is therefore extendable until 1<sup>st</sup> May 2021 through the above-mentioned temporary change in planning law.

Application 17/00257/OUT therefore remains extant until 1<sup>st</sup> May 2021 and this fall-back position carries significant weight in the acceptability of the principle of this current application.

To deem this current application for the same number of dwellings unacceptable in principle would be wholly unreasonable as there is a clear fall-back position that could be implemented through the submission of a reserved matters application. The approval of this new application for 1 dwelling does not compromise the Council's spatial strategy for the area and cannot be considered contrary to Emerging Policy SPL1 as it essentially replaces the previous permission.

The application is therefore considered acceptable in principle.

#### Layout, Scale and Appearance

Adopted Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context, and to protect the district's landscape and the quality of existing places and their environs. Emerging Policies SPL3 and LP4 of Section 2 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout, create a unique sense of place. Paragraph 127 of the Framework requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place.

It is acknowledged that, in terms of settlement shape and form, development in this location is unlikely to have a significantly detrimental impact being an infill to the existing development on this side of the road. The site is located in close proximity to the settlement development boundary as defined in the emerging Local Plan and not isolated from the existing built up area. The development will not have a significant impact upon the landscape character appearing as part of the existing built up area. The development would not appear prominent or out of character in this location.

One dwelling on the site is considered to be an appropriate response to the existing pattern and density of development. Due to the size of the site ample private amenity space is achievable to serve one new dwelling. The donor dwelling also retains ample private amenity space. A full assessment of the design and impact on the character of the area in accordance with the above national and local plan policies will be undertaken at the reserved matters stages of the application to ensure the development is policy compliant. However, there can be no objection to the development of the site for 1 dwelling.

#### Trees and Landscaping

The application site is set to grass and contains a small Laburnum and Juniper close to the boundary with the highway. Neither makes such a contribution to the appearance of the area that they merit retention or protection by means of a tree preservation order. Details of soft

landscaping, including tree planting, will be secured as part of the reserved matters stages of the application in order to enhance the appearance of the development and street scene.

### Highway Safety and Parking

Sufficient space is available on site to provide a development that will achieve parking in excess of the requirements the Essex County Council Parking Standards.

Essex County Council as the Highway Authority has been consulted on the application and raise no objections subject to a number of conditions. As all matters are reserved the conditions will be included as informatives.

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. It is considered that the site is capable of accommodating this level of parking.

Parking provision for both the donor dwelling and new dwelling will accord with the standards. Whilst the permission is in outline form with all matters reserved, there is an existing in and out driveway serving the property located in the application site. An additional access will not result and the addition of 1 dwelling is not considered harmful to highway safety.

### Residential Amenities

The NPPF, in paragraph 127 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 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'. Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) supports these objectives. Furthermore, Saved Policy HG9 stipulates appropriate private garden size standards.

The application is in outline form with all matters reserved and a full assessment of the impact of the detailed development will be undertaken at the reserved matters stage of the application process. However, officers consider that sufficient space is available on site to provide a development that, through the submission of a reserved matters application, could achieve an internal layout and separation distances that would not detract from the amenities of nearby properties or the future occupiers of the proposed dwelling and would provide private amenity areas in excess of the standards set out within Saved Policy HG9 of the adopted Local Plan.

### Financial Contributions – Open Space and Play space

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

There is currently a deficit of 2.43 hectares of play and formal open space in Thorpe-le-Soken. The Parish have recently developed another area of open space known as Lockyer Wood. They have included some play provision but this is an ongoing project to provide reduce the deficit of play facilities in Thorpe. Due to the significant lack of provision in the area it is felt that a contribution, is justified and relevant to the planning application and that this money would be used towards providing additional facilities at Lockyers Wood.

A completed unilateral undertaking has been provided to secure this financial obligation.

### Financial Contributions – 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 1.9km from the Hamford Water Ramsar site. New housing development within the Zol would be likely to increase the number of recreational visitors to Hamford Water 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, policies SP2 and 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

No comments have been received from Thorpe-le-Soken Parish Council or local residents.

### Conclusion

Having regard to the extant permission on the site (extended through the temporary changes to the Town and County Planning Act) and capacity to develop the site for 1 dwelling through the approval of a reserved matters application, the approval of this application for 1 dwelling within the same site will not undermine the Council's ability to manage growth through the plan-led approach. For the reasons set out above, the proposed development is acceptable in all other regards. Accordingly, the application is recommended for approval.

## **6. Recommendation**

Approval - Outline

## **7. Conditions**

- 1 Application for the approval of Reserved Matters must be submitted before the expiration of three years from the date of this permission.  
  
Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.
- 2 The development hereby permitted shall be begun before the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.  
  
Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
- 3 No development shall be commenced until plans and particulars of "the Reserved Matters" referred to in the above conditions relating to the Access, Appearance, Landscaping, Layout and Scale have been submitted to and agreed in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
  
Reason - The application as submitted does not provide sufficient particulars for consideration of these details.

## **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.

#### 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.

#### Legal Agreement Informative - Open Space/Play Space Contribution

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: Public Open Space financial contribution in accordance with Policy COM6 of the adopted Tendring District Local Plan (2007) and Policy HP5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

#### Highways Informatives

1: 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](mailto:development.management@essexhighways.org) or by post to:

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2: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

3: Conditions of the Reserved Matters

- The full width of the site frontage shall be provided with a clear to ground parallel visibility band with dimensions of no less than 2 metres depth as measured from and along the nearside edge of the highway. Such vehicular visibility band shall be provided before access is first used by vehicular traffic and retained free of any obstruction at all times.

- The development shall include a vehicular turning facility to ensure vehicles access and leave the site in a forward gear.

- No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

- 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.