

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	NW	26/05/2021
Planning Development Manager authorisation:	JJ	27/05/2021
Admin checks / despatch completed	DB	27.05.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	27.05.2021

Application: 21/00094/OUT

Town / Parish: Weeley Parish Council

Applicant: Mr Evershed and Mr Bouchard

Address: Land to The rear of The Gables and The Towers Clacton Road Weeley Heath

Development: Proposed development of five detached self build or custom build houses.

1. Town / Parish Council

Mrs Nicola Baker
15.02.2021

21/00094/OUT

Weeley Parish Council objects to this application for the following reasons: this represents backland development outside the development boundary. It is inappropriate and will harm the appearance of the landscape (policies SPL3 and PPL3.) It is now clearly evidenced that there is sufficient housing land supply. There is no detail on foul water drainage. It will cause an unacceptable level of additional traffic on a busy road. It will be detrimental to the wide range of wildlife on the site.

2. Consultation Responses

ECC Highways Dept
26/05/2021

The information that was submitted in association with the application has been fully considered by the Highway Authority. 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 April 2019. The site is located off Clacton Road and is subject to a 30-mph speed limit and is near some existing public transport facilities to the south. The proposal offers adequate parking and turning facilities within the site, 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. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

2. Prior to occupation of the development, the road junction / access at its centre line shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

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

3. Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety in accordance with policy DM1.

4. Prior to occupation of the development 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.

5. 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.

6. Prior to the occupation of any of the proposed dwellings, the proposed 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.

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

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

8. The existing second access at 'The Gables' (closest to the proposed access) shown on the site layout plan (204 01) shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge / footway / kerbing, boundary feature prior to 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 in accordance with policy DM1.

9. Prior to occupation of the development and as indicated on drawing no. 204 01, a minimum of one suitable vehicle passing place shall be provided on the private access road with minimum dimensions: 1.5 metres wide x 8 metres in length (Overall length 16 metres including tapers); details to be agreed in writing with the Local Planning Authority.

Reason: To ensure that vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

10. 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.

11. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, sealed and if required marked out in parking bays. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.

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

12. 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.

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: There is an existing telegraph pole and BT chamber located in the verge/ footway close to where the proposed access is to be located for the development. The agent/ applicant may have already investigated this; if not they need to discuss this with the respective Utility Company to see what would be acceptable to them in relation to the driveway access and what potential costs would be entailed to possibly re-locate the apparatus (telegraph pole/ BT chamber) which would be at the applicants expense; as such this aspect of the proposal needs to be investigated further.

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: 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.

4: 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.

UU Open Spaces
08.02.2021

Response from Public Realm
Open Space & Play

Application Details

Application No: 21/00094/OUT

Site Address: Land to The rear of The Gables and The Towers
Clacton Weeley Heath Clacton on Sea

Description of Development: Proposed development of five detached self-build or custom build houses.

Current Position

There is currently a deficit of -2.18 hectares of equipped play and formal open space in Weeley.

Recommendation

Although there is a deficit of play and open space in Weeley Heath, it is not thought that there will be an impact on these facilities as a result of this development. Therefore no contribution is being requested on this occasion. Should there be further development on this site a contribution maybe required.

The application site currently forms part of the residential curtilage of the host properties. The main body of the application site is the southern part of the rear gardens with a new access road running from Colchester Road between the existing dwellings.

Both front gardens contain several established trees some of which would need to be removed to facilitate the creation of the new vehicular access. It appears that some tree felling has been carried out prior to the submission of this application.

Although the remaining trees feature prominently in the public realm their condition and form are such that they do not merit formal legal protection by means of a Tendring District Council Tree Preservation Order. Nevertheless it would be desirable for them to be retained if it were not necessary for them to be removed to implement the development proposal.

The rear garden of the property known as The Towers is set to grass with established boundary trees and hedgerows with only a few small trees in the main body of the land. The property known as The Gables is well populated with established trees both on the boundary and in the main body of the land.

Notwithstanding the quantity and quality of the trees an assessment of their amenity value establishes that they have low amenity value. The trees are in a land locked location and are not visible from the Clacton Road or from land to the south of the application site. Glimpses of some of the trees can be enjoyed when looking between the new dwellings in Kidby Way and from the public open space, also in Kidby Way, however the degree to which they can be seen and the contrition that they make to the amity of the locality is relatively low.

Nevertheless for their own sake and for the benefit that they would provide to the character and appearance of the development it would be desirable to retain some of the best trees on the land.

Therefore, in order to show how retained trees will be physically protected for the duration of the construction phase of any development the applicant will need to provide details of the extent of the Root Protection Areas (RPA's) of the trees. They will also need to show how the RPA's will be physically protected for the duration of the construction phase of any development for which planning permission may be granted. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations.

Should planning permission be likely to be granted then a condition should be attached, to any such permission, to secure details of soft landscaping to soften, screen and

enhance the appearance of the development

Environmental
Protection
25.05.2021

With reference to the above OUTLINE application, should the application be approved and progress to a further planning phase, the EP Team would suggest the following documentation and recommendations are submitted or applied as conditions on any further application approvals -

Construction Method Statement: Prior to the commencement of any demolition or construction works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, Environmental Protection. This should at minimum include the following where applicable -

- Noise Control

- 1) The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.
- 2) No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00(except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
- 3) The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228.
- 4) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
- 5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.
- 6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.

- Emission Control

- 1) All waste arising from the demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
- 2) No materials produced as a result of the site development or clearance shall be burned on site.
- 3) All reasonable steps, including damping down site roads,

shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.

4) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

REASON: to protect the amenity of nearby residential premises

Lighting Control: Any lighting of the site under development shall be located, designed and directed [or screened] so that it does not cause avoidable intrusion to adjacent residential properties/ constitute a traffic hazard/cause unnecessary light pollution outside the site boundary. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Professionals.

REASON: to protect the amenity of nearby residential premises

Contaminated Land - Given the proposal sites proximity to a registered piece of historic contaminated land, the EP Team are requesting a Watching Brief to be applied to any approval: We are requesting that the LPA are contacted in the event of unexpected ground conditions being encountered during construction and that the below minimum precautions are undertaken until such time as the LPA responds to the notification. I would also advise that the developer is made aware that the responsibility for the safe development of the site lies with them.

Minimum requirements for dealing with unexpected ground conditions being encountered during construction.

1. All site works at the position of the suspected contamination will stop and the Local Planning Authority and Environmental Health Department will be notified as a matter of urgency.

2. A suitably trained geo-environmental engineer should assess the visual and olfactory observations of the ground and the extent of contamination and the Client and the Local Authority should be informed of the discovery.

3. The suspected contaminated material will be investigated and tested appropriately in accordance with assessed risks. The investigation works will be carried out in the presence of a suitably qualified geo-environmental

engineer. The investigation works will involve the collection of solid samples for testing and, using visual and olfactory observations of the ground, delineate the area over which contaminated materials are present.

4. The unexpected contaminated material will either be left in situ or be stockpiled (except if suspected to be asbestos) whilst testing is carried out and suitable assessments completed to determine whether the material can be re-used on site or requires disposal as appropriate.

5. The testing suite will be determined by the independent geo-environmental specialist based on visual and olfactory observations.

6. Test results will be compared against current assessment criteria suitable for the future use of the area of the site affected.

7. Where the material is left in situ awaiting results, it will either be reburied or covered with plastic sheeting.

8. Where the potentially contaminated material is to be temporarily stockpiled, it will be placed either on a prepared surface of clay, or on 2000-gauge Visqueen sheeting (or other impermeable surface) and covered to prevent dust and odour emissions.

9. Any areas where unexpected visual or olfactory ground contamination is identified will be surveyed and testing results incorporated into a Verification Report.

10. A photographic record will be made of relevant observations.

11. The results of the investigation and testing of any suspect unexpected contamination will be used to determine the relevant actions. After consultation with the Local Authority, materials should either be: o re-used in areas where test results indicate that it meets compliance targets so it can be re-used without treatment; or o treatment of material on site to meet compliance targets so it can be re-used; or o removal from site to a suitably licensed landfill or permitted treatment facility.

12. A Verification Report will be produced for the work.

Third Party

REASON: to protect the health of site workers and end users

Three letters of objection have been received raising the following points:

- Outside the development boundary
- Not necessary
- Sets a dangerous precedent
- Creates a large driveway losing open space
- Changes the landscape for the neighbours
- The impact on the local wildlife
- Adds to traffic and noise
- Contributes towards flooding
- There is a housing surplus so why is this being allowed
- Inappropriate back Land development
- Loss of privacy

- How will the self builds not be turned into something else?

One letter of support commenting:

- The development would have a minor impact on the street scene.
- Self builds will raise property values in the area
- More numbers locally will improve the broadband locally
- Similar to developments on Millers Green and Kidby Gardens
- The development will protect the loss of green fields in the District

There was a single neutral letter asking where are the drainage details.

3. Planning History

01/01170/FUL	Extensions	Approved	13.09.2001
17/00991/FUL	Proposed two storey side extension.	Approved	02.08.2017
12/00223/FUL	Proposed rear extension for additional family accommodation.	Approved	18.05.2012
14/01509/FUL	Erection of part two storey and part single storey side extension, and first floor rear extension.	Approved	28.11.2014
15/00303/FUL	Erection of part two storey and part single storey side extension, and first floor rear extension - Amendment to planning approval 14/01509/FUL to include new garden room to rear.	Approved	10.04.2015
15/01773/FUL	Retrospective planning consent for 1.8 metre steel railings and 2 metre brick pillars, adjacent to highway.	Approved	20.01.2016
21/00094/OUT	Proposed development of five detached self build or custom	Current	

build houses.

4. Relevant Policies / Government Guidance

National:

National Planning Policy Framework 2019
National Planning Practice Guidance

Local:

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

QL1 Spatial Strategy
QL2 Promoting Transport Choice
QL9 Design of New Development
QL10 Designing New Development to Meet Functional Needs
QL11 Environmental Impacts and Compatibility of Uses
QL12 Planning Obligations
HG1 Housing Provision
HG6 Dwelling Size and Type
HG7 Residential Densities
HG9 Private Amenity Space
HG13 Backland Residential Development
HG14 Side Isolation
COM6 Provision of Recreational Open Space for New Residential Development
EN1 Landscape Character
EN6 Biodiversity
EN6a Protected Species
EN11a Protection of International Sites
TR1A Development Affecting Highways
TR7 Vehicle Parking at New Development

Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017

Section 1: North Essex Authorities' Shared Strategic Section 1 Plan, adopted January 2021

SP1 Presumption in Favour of Sustainable Development
SP2 RAMS
SP4 Meeting Housing Needs
SP6 Infrastructure & Connectivity
SP7 Place Shaping Principles

Section 2: Emerging

SPL1 Managing Growth
SPL2 Settlement Development Boundaries
SPL3 Sustainable Design
HP5 Open Space, Sports & Recreation Facilities
LP1 Housing Supply

- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- LP7 Self Build and Custom – Built Homes
- LP8 Backland Residential Development
- PPL1 Development and Flood Risk
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL6 Strategic Green Gaps
- CP1 Sustainable Transport and Accessibility
- CP2 Improving the Transport Network

Supplementary Planning Guidance:

Parking Standards Design and Good Practice Guide (2009)
Essex Design Guide (2005)

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 and Context

The host site is situated on the southwestern side of Clacton Road.

The main body of the application site is the southern part of the rear gardens of the existing dwellings 'The Towers' and 'The Gables'. Both front gardens contain a majority of parking hard standing areas and several established trees. The trees feature prominently in the public realm however do not have protection by means of a Tendring District Council Tree Preservation Orders.

The rear garden of the property known as The Towers is set to grass with established boundary trees and hedgerows with only a few small trees in the main body of the land. The property known as The Gables is well populated with established trees both on the boundary and in the main body of the land. It appears that some tree felling has been carried out prior to the submission of this application. Nevertheless, none of the existing trees are protected.

The land is within Flood Zone One. The application site is not within a Conservation Area and there are no heritage assets in the immediate vicinity that might be affected by the proposals. Surface water flooding is not a problem in this location.

The depth of the rear garden from the rear building line is 165m from The Gables and 128m from The Towers. The width of both garden area is 30m. Both garden areas are triangular in nature. Both host dwellings are impressive large two storey properties set in spacious plots. The dwelling to the south, Tudour Lodge has been extended significantly to the rear. While to the north, adjacent to the northern half of 'The Gables' garden, are a series of new build dwellings within Kidby Way.

The site lies outside of the Weeley Heath 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).

However, the host site lies immediately adjacent to the settlement boundary as drawn within the emerging local plan of Weeley Heath (some 230m outside the existing adopted settlement boundary). The host site is also some 435m north of the settlement boundary with Little Clacton in both the adopted and emerging Local Plans.

There is a footpath (PROW 178_13) some 300m to the south of the site and a bridleway (PROW 178_13) some 330m to the south west. Although views of the site are obscured by tree lines half the distance away.

Description of Proposal

Planning permission is sought for the construction of 5 detached bespoke self-build or custom built houses with associated garaging and off-street parking. All matters are reserved except for access.

The host site measures 0.49 hectares in size, and is rectangular in nature. There is an approx. 4.8m wide x 90m deep entrance road into an approx. 75 m wide x 70 m deep plot.

The access road will go directly between the two dwellings and connect to Colchester Road. This shall involve the loss of several mature trees to the front of the site and various trees to trees to the rear.

Assessment

The main considerations in this instance are:

- 1 Principle of Development
- 2 Self Build / Custom Homes
- 3 Layout, Design and Appearance
- 4 Impact upon neighbours
- 5 Trees and Landscaping
- 6 Ecology
- 7 Highway Safety
- 8 Legal Obligations - Recreational Disturbance Contribution
- 9 Legal Obligations - Open Space Contribution
- 10 Other Matters

1. Principle of Development

Weeley Heath is classified as a 'Smaller Rural Settlement' in the emerging local plan, primarily due to the lack of job opportunities, local services, facilities and other

infrastructure. There is also a reliance on neighbouring towns and villages for work, shopping and other services, often involving car travel. These smaller villages are considered to be the least sustainable locations for growth.

The site lies outside of the Weeley Heath 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).

Policy QL1 (Spatial Strategy) sets out the spatial strategy and defines a hierarchy of settlements, seeking to concentrate new development within the larger urban areas of the District; seeking to concentrate development within settlement development boundaries.

Draft policy SPL2 also refers to settlement boundaries and indicates that new development should be within these settlement boundaries.

The settlement boundary for Weeley Heath has already been expanded in the Proposals Maps accompanying the emerging Plan to account for land with extant planning permission and sites which have been allocated for significant new development within the emerging Plan.

As such, there is allowances for sustainable growth in this settlement as outlined above. In addition the Local Authority has a 6.5 year supply of housing – this has been confirmed in a recent appeal decisions. Therefore, the principle of housing development being located within settlement boundaries and focused towards larger urban areas remains a core strategic policy requirement.

The emerging Local Plan is progressing well. Part 1 has been adopted in January 2021 and part 2 is expected to be adopted later this year. The core planning principles under paragraph 15 of the National Planning Policy Framework (NPPF) states development should be genuinely plan-led and that the Council should actively manage patterns of growth is entitled to be given significant weight. Further development in this location would be contrary to saved policy QL1 and draft policy SPL2 due to the site's location outside of the settlement boundary of Weeley Heath in both the adopted and emerging Local Plans.

This mantra chimes with Paragraph 117 of the NPPF which seeks to promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.

Therefore, there is a fundamental policy objection to this development in this location as the proposal is in conflict with the above mentioned adopted and emerging policies.

Policy QL1 also ensures that the countryside beyond the settlement boundaries is to be protected from development that is not in accordance with the specific 'countryside policies' of the plan. The application is not a rural exception site (adopted Policy HG5) as the dwellings are not affordable houses.

Decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990, section 38(6) of the Planning and Compulsory Purchase Act 2004 and Paragraph 47 of the NPPF.

- Material Consideration 1 - Recent approvals in the area

With regards to other material planning considerations the applicant points to the fact that 4 new dwellings have been approved on appeal several plots down the road at The Oaks, (Ref: 19/00723/OUT Appeal Decision APP/P1560/W/20/3246370). This development was for 4 'custom build' houses. The Inspector in that case accepted there would be harm to the environment. However, due to the lack of a 5 year housing supply at that time, the application was assessed via the titled balance of Paragraph 11d) of the NPPF and subsequently approved.

For the host case, due to the positive housing figures, there is no need to use the NPPF titled balance approach and applications must be made in accordance with adopted Local plan policy. The fundamental spatial objection to the proposal therefore remains. The proposal is contrary to the development plan being outside the settlement boundary the development will harm to the environment, there are no significant material planning considerations to justify a departure from policy in this case.

- Material Consideration 2 – NPPF 2019 Housing Development in the Countryside

The NPPF outlines several possibilities where housing development in such locations could be considered acceptable. However, the proposal does not fit within the countryside exemption criteria of Paragraphs 77, 78 or 79 of the 2019 NPPF.

Paragraph 77 deals with affordable housing, which this application is not.

Paragraph 78 is concerned with 'sustainable development in rural areas,' providing opportunities for 'villages to grow and thrive'. However, given the limited services in Weeley Heath it is considered that most trips would be to Weeley itself or Little Clacton for everyday services. Both these areas are classed as 'Rural Service Centre'. This is not aligned with being a 'village'.

Furthermore, any development in the countryside has to be balanced against the harm to the area's character and appearance, ie is it environmentally sustainable or within the 'ribbon of development' most associated with the area. Thus, together with the outside of settlement boundary location, the environmental harm arising would significantly and demonstrably outweigh the public benefits of the proposal and Paragraph 78 of the NPPF is not engaged in this case.

Paragraphs 79 deals with circumstances where isolated homes in the countryside could be acceptable and the application does not for fill the set criteria.

Therefore, there remains a fundamental strategic policy objection to having housing in this countryside location. The development is contrary to saved policy QL1 and draft policy SPL2.

2. Self-Build / Custom Built Homes

The development will deliver self-build or custom build houses on site.

The National Planning Policy Guidance (NPPG) tells us that The Self-build and Custom Housebuilding Act 2015 requires each relevant authority to keep a register of individuals and associations of individuals who are seeking to acquire serviced plots of land in the authority's area in order to build houses for those individuals to occupy as homes (referred to in the guidance as self-build and custom housebuilding registers). The guidance accompanies the Self-build and Custom Housebuilding (Register) Regulations 2016 made under the Act.

The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) provides a legal definition of self-build and custom housebuilding. The Act does not distinguish between self-build and custom housebuilding and provides that both are where an individual, an association of individuals, or persons working with or for individuals or associations of individuals, build or complete houses to be occupied as homes by those individuals.

Section 2 (1) of the Self-build and Custom Housebuilding Act 2015 (as amended) places a duty on relevant bodies to have regard to each self-build and custom housebuilding register that relates to their area when carrying out their plan-making and decision-taking functions. The registers that relate to their area may be a material consideration in decision-taking. Plan-making functions should use their evidence on demand for this form of housing from the registers that relate to their area in developing their Local Plan and associated documents.

Section 2A (2) of the Self-build and Custom Housebuilding Act 2015 (as amended) states that the Authority must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register.

The Council does have a Custom and Self-Build Register. This is split into different 'Base Periods'. The Government gives Councils three years to identify enough sites to cover the demand for that Base Period.

The Council has granted planning permission for a sufficient number of suitable serviced plots of land since the beginning of each base period to meet the demand arising in that base period. Therefore, the self-build aspect of the proposal is not considered to constitute a material consideration that warrants a departure from the adopted Local Plan. Policy LP7 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) is a new policy which aims to satisfy the requirements set out within legislation and national policy and guidance. There is no equivalent saved policy within the adopted Local Plan (2007) as this pre-dates the Self-build and Custom Housebuilding Act 2015 (as amended).

The NPPF is silent on policies relating directly to the delivery mechanism for self-build or custom-built dwellings.

Emerging Policy LP7 states that the Council will consider, on their merits, proposals for Self-Build and Custom-Built Homes on land outside of settlement development boundaries, where they will still support 'a sustainable pattern of growth' in the District. Such developments must either:

- be located on a site safely accessible on foot within 600 metres of the edge of the settlement development boundary of one of the District's 'strategic urban settlements' or 'smaller urban settlements'; or,
- be located on a site safely accessible on foot within 400 metres of the edge of the settlement development boundary of one of the District's 'rural service centres'; or,
- involve the redevelopment of vacant or redundant previously developed land that can be shown, with evidence, to be unviable for employment use.

The application as proposed does not fit within any of the above criteria, therefore fails this policy. The site is 435m in a straight line at its closest point, however an additional 90m needs to be added to that distance to take into consideration the driveway.

Whilst the emerging Local Plan is progressing well, Draft Policy LP7 has not yet been scrutinised by the Planning Inspectorate by an appeal or through the Local Plan process. It can therefore only be given very limited weight. Other policies such as Draft Policy SPL1 have been adopted. Importantly in this case the proposed development is not considered to be a 'sustainable pattern of growth' due to its prominent outline location.

Ultimately, irrespective of the need identified through our Self-build and Custom Housebuilding Register or the merits of the application in relation to Draft Policy LP7, the self-build aspect of the proposal is not considered to constitute a material consideration that warrants a departure from the adopted Local Plan.

The status of Draft Policy LP7 means that a refusal based on this policy is not required at this time.

3. Layout, Design and Appearance

The NPPF recognises the importance of good design in Chapter 12, in particular Paragraph 127, while Paragraph 122 d) reminds decision makers about the 'desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change'.

Policy QL9 requires all new development to make a positive contribution to the quality of the local environment and protect or enhance local character.

Policies SPL3 and SP7 of the recently adopted section 1 of the TDC Local Plan to 2033 reinforces these objectives. The policies seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form.

In this case, due to the outline nature of the proposal these elements cannot be fully assessed.

However, being a backland development, the proposal is chiefly governed by adopted Policy HG13 'Backland Residential Development'. This policy is concerned with residential

development on land that; lies behind the line of the existing development frontage, has little or no frontage to a public highway and is a piecemeal development, ie it does not form part of a large area allocated for development. The emerging Local Plan includes a very similar policy to the adopted policy on these matters, namely emerging policy LP8 'Backland Residential Development'. Therefore, the criteria for these forms of developments remains consistent in existing and emerging local plans. Adopted Policy HG13 'Backland Residential Development' contains 7 main elements, they shall be answered in turn:

i) the site lies within a defined settlement development boundary and does not comprise land allocated or safeguarded for purposes other than a residential use

The host site is outside the 2007 Local Plan settlement boundary map and outside emerging settlement boundary of Weeley Heath. The proposal will therefore be in conflict with the first part of point (i) of policy HG13.

ii) where a proposal includes existing private garden land which would not result in less satisfactory access or off-street parking arrangements, an unacceptable reduction in existing private amenity space or any other unreasonable loss of amenity to existing dwellings

The host site is of sufficient size to rule out there being a lack of space for gardens for both existing and proposed dwellings.

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 NPPF at Paragraph 127 f) reminds decision makers developments should have a 'high standard of amenity for existing and future users'. Whilst the Essex Design Guide seeks in part to provide minimum standards of back to back distances between dwellings to overcome both overlooking and over shadowing. Normally 'new dwellings' should be 15 metres from the rear boundary of existing dwellings. Providing for a minimum of 25 metres gap between both. However, the design guide also says that this distance can be reduced if one or both of the houses concerned are 'designed in such a way as not to overlook one another'.

The issue of residential amenity for existing and future users has been considered by Officers. When reviewing the layout, there is space between plots to ensure privacy is maintained. In any event this will be controlled via the Reserved Matters application. Overall, Officers accept the relationship with regards residential amenity and do not consider there to be an over dominance, overshadowing or overlooking concerns created.

iii. a safe and convenient means of vehicular and pedestrian access/egress can be provided that is not likely to cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will be discouraged

The length of the access road is some 90m. The applicant says the service vehicles shall enter the site therefore distance to wheel bins out is not objectional. Furthermore, ECC Highways have no objections to the proposed access arrangements. In the light of no formal objections from ECC Highways no objection to the access / driveway arrangement is raised, subject to various highway related conditions.

iv. the proposal does not involve "tandem" development using a shared access

The proposed layout is not being assessed at this stage however, there is no reason to believe the layout will be linear or 'tandem'. In any event, this will be controlled at Reserve Matters Stage.

v. the site does not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution

The site does not contain an awkwardly shaped development or parcel of land. The host site is a large rectangular parcel of land with ample space for such a redevelopment of the site. The host properties and proposed, retain sufficient spacing between each other to ensure that the development would not appear overly cramped. Subject to detailing, there is not a sense of 'over development' within the site proposed.

Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling of two bedrooms should be a minimum of 75 square metres and for a dwelling of three bedrooms or more should be a minimum of 100 square metres. Each property shown on the indicative site plan has a private amenity space well over the required levels which accords with the requirements saved policy HG9.

The dwelling should be designed with floor areas equal or greater than nationally Described Space Standards.

vi. the site is not on the edge of defined settlements and likely to produce a hard urban edge or other form of development out of character in its particular setting

The site is located outside of the settlement boundary as per the 2007 plan and the emerging settlement boundary designations. A hard urban edge would be created, this could be mitigated against to some extent via layout, scale and landscaping at Reserve Matters stage. However, a significant 'urban' edge would be created in this outlying rural countryside location. The application therefore fails point (vi) of the criteria of policy HG13.

vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.

Aside from the concerns already outlined above, there is a possibility that other neighbouring sites and those with similar circumstances to the host site could seek to construct residential development in the same undesirable outside of settlement locations. Each application, however shall be assessed on its own merits. As the application is in outline form, no specific conclusions on appearance, scale or layout can be drawn.

However, as previously stated, the proposed development would represent an erosion of the rural undeveloped character of this countryside in this location. The development would intensify the appearance of urbanisation and is considered contrary to policies EN1, HG13 (i) and (vi) of the adopted Local Plan, which require proposals to contribute to local distinctiveness and seek to ensure that development is appropriate in its locality and does not harm the appearance of the landscape. Also, Policies SPL3 and SP7 of the recently adopted section 1 of the TDC Local Plan to 2033, that reinforces these objectives.

4. Impact upon neighbours

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. Policy

QL11 of the ALP 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).

Based on the information submitted, officers consider that sufficient space is available on site to provide a development that 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 dwellings.

5. Trees and Landscaping

Policy EN1 of the adopted Local Plan and Policies SPL3 and PPL3 in the emerging Local Plan seek to ensure that development is appropriate in its locality and does not harm the appearance of the landscape. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake. New housing will be assessed in relation to the Settlement Hierarchy and relevant countryside policies.

The application site currently forms part of the residential curtilage of the host properties. The main body of the application site is the southern part of the rear gardens with a new access road running from Colchester Road between the existing dwellings.

Both front gardens contain several established trees some of which would need to be removed to facilitate the creation of the new vehicular access. It appears that some tree felling has been carried out prior to the submission of this application.

Although the remaining trees feature prominently in the public realm their condition and form are such that they do not merit formal legal protection by means of a Tendring District Council Tree Preservation Order. Nevertheless, the Landscape officer has commented

'it would be desirable for them to be retained if it were not necessary for them to be removed to implement the development proposal'.

Officers would comment that is unrealistic given the absence of a formal TPO on these trees.

The rear garden of the property known as The Towers is set to grass with established boundary trees and hedgerows with only a few small trees in the main body of the land. The property known as The Gables is well populated with established trees both on the boundary and in the main body of the land.

The Landscape Officer has commented on this application and has said:

'Notwithstanding the quantity and quality of the trees an assessment of their amenity value establishes that they have low amenity value. The trees are in a land locked location and are not visible from the Clacton Road or from land to the south of the application site. Glimpses of some of the trees can be enjoyed when looking between the new dwellings in Kidby Way and from the public open space, also in Kidby Way, however the degree to which they can be seen and the contrition that they make to the amity of the locality is relatively low.'

Nevertheless for their own sake and for the benefit that they would provide to the character and appearance of the development it would be desirable to retain some of the best trees on the land.

Therefore, in order to show how retained trees will be physically protected for the duration of the construction phase of any development the applicant will need to provide details of the extent of the Root Protection Areas (RPA's) of the trees. They will also need to show how the RPA's will be physically protected for the duration of the construction phase of any development for which planning permission may be granted. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations.'

A soft landscape conditions is also requested.

Nonetheless, the retention of trees and mitigating soft landscaping would not outweigh the fundamental objection to the application being outside the settlement boundary. Furthermore, the significant urbanisation in this rural location would have a harmful impact on the rural landscape and the setting of the village. The development is considered contrary to adopted policy EN1 and emerging policies SPL3 and PPL3 that in part seek to conserve natural features that contribute toward local distinctiveness, such as this open rural setting outside the settlement boundary.

6. Ecology

Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the ALP state that development proposals will not be granted planning permission unless existing local biodiversity and protected species are protected. A similar approach is taken in draft Policy PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Paragraph 118 of the National Planning Policy Framework requires that Local Planning Authorities "conserve and enhance biodiversity", whilst paragraph 109 requires Local Planning Authorities to minimise impacts on biodiversity. Paragraph 99 of Circular 06/2005 states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision" it goes on to state "The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances".

Paragraph 5.3 of government document 'Planning for Biodiversity and Geological Conservation: A Guide To Good Practice', states that "In the development control process, the onus falls on the applicant to provide enough information to enable the Local Planning Authority to assess the impacts on biodiversity and geological conservation. Planning applications must be supported by adequate information".

Standing advice from Natural England recommends that an initial scoping or extended Phase 1 habitat survey should be conducted to assess the site and the results of this used to inform (the need for) subsequent species specific surveys.

Given the nature of the site, the absence of Phase 1 habitat survey means an informed decision on the wellbeing of protected species in this location cannot be made. This must therefore form a reason for separate reason for refusal.

7. Highway Safety

Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users.

Paragraph 109 of the NPPF says 109 development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted if amongst other things; access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and the design and layout of the development provides safe and convenient access for people. The sentiments of this policy are carried forward within draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new dwellings.

Officers consider that sufficient space is available on site to provide a development that could achieve parking to serve the new dwellings in line with the requirements the Council's current adopted Parking Standards.

Essex County Council Highway Authority have been consulted on this application and raise no objection to the development subject to conditions.

As a consequence, Officers raise no objections to the proposal on Highway grounds, subject to the Highway related conditions recommended by ECC Highways.

8. Legal Obligation - 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 new dwellings on a site that lies within the Zone of Influence (Zoi) of the Colne Estuary SPA, SAC and RAMSAR, approximately 4750 metres away. Since the development is for 5 dwellings only, the number of additional recreational visitors would be limited and the likely effects on the Colne Estuary from the proposed development alone may not be significant. However, new housing development within the

Zol would be likely to increase the number of recreational visitors to the Colne Estuary; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013- 2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

9. Legal Obligations - Open Space

Paragraph 54 of the National Planning Policy Framework (2018) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they meet are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of -2.18 hectares of equipped play and formal open space in Weeley.

The Open Space Officer has said:

'Although there is a deficit of play and open space in Weeley Heath, it is not thought that there will be an impact on these facilities as a result of this development. Therefore no contribution is being requested on this occasion. Should there be further development on this site a contribution maybe required.'

Therefore, no objection to policy COM6 is raised.

10. Other matters

At 0.49 hectares the application site area is under the threshold required for affordable housing provision.

No specific drainage details are considered necessary in this case as the development is classified as a 'minor development' in outline form, and the area is not susceptible to surface water drainage problems.

No details on the foul drainage details have been supplied for this application. This is considered a matter that could be resolved at Building Regulations stage. From a planning perspective refusing the application for having a septic tank for example in the absence of mains sewage connection is not deemed a realistic reason for refusal.

The Environmental Protection Department are requesting a Construction Method Statement a 'watching brief' on land contamination, due to the sites proximity to a registered piece of historically contaminated land. Also, a lighting condition is suggested. These measures would have been included in the Decision Notice as planning Conditions, in the event of an approval.

Conclusion and Planning Balance

Proposal conflicts with settlement hierarchy policies in the Local and emerging plan being outside the settlement boundary of Weeley Heath, the principle of development is therefore not supported.

The self-build aspect of the proposal is not considered to constitute a material consideration that warrants a departure from the adopted Local Plan and very limited weight is given to this element of the proposal for the reasons outlined in the body of the report.

Furthermore, the proposed development would represent an erosion of the rural undeveloped character of this countryside in this location and the absence of Phase 1 habitat survey means an informed decision on the wellbeing of protected species in this location cannot be made. A financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The very minor social and economic benefits of five detached self build or custom build houses will not come close to outweighing the significant environmental harm and the clear conflict with the settlement hierarchy policies in the Local Plan.

6. Recommendation

Refusal

7. Reasons for Refusal

1. For the purposes of the determination of this application the Council can currently demonstrate that a 5 year housing land supply exists. Therefore, 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.

Policy QL1 (Spatial Strategy) of the adopted Tendring District Local Plan 2007 sets out the spatial strategy and defines a hierarchy of settlements, seeking to concentrate new development within the larger urban areas of the District; seeking to concentrate development within settlement development boundaries.

Draft policy SPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 also refers to settlement boundaries and indicates that new development should be within these settlement boundaries.

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). Therefore, the application is contrary to the Core Spatial Policy of QL1 of the adopted Tendring District Local Plan 2007 and Draft policy SPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

These policies are 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.

Weeley Heath is classified as a 'Smaller Rural Settlement' in the emerging local plan, primarily due to the lack of job opportunities, local services, facilities and other infrastructure. There is also a reliance on neighbouring towns and villages for work, shopping and other services, often involving car travel. These smaller villages are considered to be the least sustainable locations for growth.

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 public benefits or other material considerations that might warrant the proposal being considered in an exceptional light.

The development is unnecessary and would represent a completely unjustified intrusion into the countryside, extending and entrenching development outside the existing ribbon developments along Clacton Road to the detriment of the character and visual amenity of the surrounding countryside. The proposal is deemed contrary to the aims of paragraph 11c) of the NPPF and contrary to the development plan Saved Policy QL1 of the adopted Tendring District Local Plan 2007 and emerging Policy SP2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

2. Paragraph 8 of the National Planning Policy Framework 2019 (NPPF) sets out the overarching objectives for achieving sustainable development, one being the environmental objective which requires the planning system to contribute to protecting and enhancing our natural, built and historic environment. Furthermore, Paragraph 127 of the NPPF requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes on to say that local distinctiveness should be promoted and reinforced. Saved Policy QL9 and EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013-2033

and Beyond Publication Draft (June 2017) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape including rural lanes. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake by not allowing new housing unless it is consistent with countryside policies.

Paragraph 170 of the Framework (NPPF) states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services.

Policy HG13 of the Tendring District Local Plan (2007) and emerging Policy LP8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) state back land developments must be located within the defined settlement development boundary, be in keeping with the character of the area, avoiding long or narrow driveways.

The host site is outside the settlement boundaries contrary to policy HG13 (i). Furthermore, as a result of the depth of the red line area and the site layout proposed, the development would not be surrounded by residential development and will result in a harmful projection into the countryside. Consequently, the development gives the impression that the site has significantly encroached into the surrounding countryside having a severely adverse impact on the character and appearance of the countryside land, creating a 'hard urban edge'. The development is therefore contrary Saved Policy HG13 (vi).

In totality, in relation to environmental harm, the proposal is considered contrary to Saved Policy HG (i) and (vi) also EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013- 2033 and Beyond Publication Draft (June 2017) and paragraphs 127 c) and 170 of the NPPF 2019 in particular.

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

The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zoi) of the Colne Estuary SPA and RAMSAR and the Essex Estuaries SAC. Since the development is for 5 dwellings only, the number of additional recreational visitors would be limited and the likely effects on the Colne Estuary 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 the Colne Estuary; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

4. Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the Adopted Local Plan state that development proposals will not be granted planning permission unless existing local biodiversity and protected species are protected. A similar approach is taken in draft Policy PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Paragraph 118 of the National Planning Policy Framework requires that Local Planning Authorities "conserve and enhance biodiversity", whilst paragraph 109 requires Local Planning Authorities to minimise impacts on biodiversity. Paragraph 99 of Circular 06/2005 states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision" it goes on to state "The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances".

Paragraph 5.3 of government document 'Planning for Biodiversity and Geological Conservation: A Guide To Good Practice', states that "In the development control process, the onus falls on the applicant to provide enough information to enable the Local Planning Authority to assess the impacts on biodiversity and geological conservation. Planning applications must be supported by adequate information".

Standing advice from Natural England recommends that an initial scoping or extended Phase 1 habitat survey should be conducted to assess the site and the results of this used to inform (the need for) subsequent species specific surveys.

Given the nature of the site, the absence of Phase 1 habitat survey, means an informed decision on the wellbeing of protected species in this location cannot be made. The application is therefore contrary to Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the Adopted Local Plan and draft Policy PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

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.

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