

proposal.

The change of use of the existing building will not adversely affect any existing trees or other significant vegetation

If the existing trees are retained there will be little need to secure additional soft landscaping associated with the development proposal.

3. Planning History

91/00497/FUL	Extensions and minor alterations to dwelling house	Approved	26.06.1991
03/01223/FUL	Extension to kitchen/breakfast room	Approved	06.08.2003
20/00661/FUL	Conversion of office/garage into a dwelling.	Refused	31.07.2020
21/00151/COUNOT	Proposed conversion of offices into a dwelling.	Determination	22.03.2021
21/01957/FUL	Proposed conversion of office/garage into a dwelling (revised submission following prior approval of application 21/00151/COUNOT for use of building as a dwelling)	Current	

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework July 2021

National Planning Practice Guidance

Tendring District Local Plan 2013-2033 and Beyond Section 1 (adopted January 2021)

SP1 Presumption in Favour of Sustainable Development

SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)

SP3 Spatial Strategy for North Essex

SP4 Meeting Housing Needs

SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

CP1 Sustainable Transport and Accessibility

Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

Tendring Provision of Recreational Open Space for New Development SPD 2008

Local Planning Guidance

Essex Design Guide

Essex County Council Development Management Policies 2011 (the Highways SPD)

Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils 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 of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

5. Officer Appraisal

Site Description

The Lodge House is a large, early twentieth century detached dwelling located on the western side of Crow Lane. The property is positioned in the centre of a large plot, with a vehicular entrance to the south side of the house. The site is extremely verdant and benefits from established planting

along the front boundary and within the rear garden, visible as a backdrop behind the wall which separates the front/rear gardens.

To the left hand side of the front garden is a large double-range garage with an office suite and associated store at first floor level; it has a semi-octagonal footprint. This building benefits from a Prior Approval application to convert it from an office to a dwelling.

The site is located amongst a small cluster of detached houses along this stretch of Crow Lane. To the south is Hieland House which has been permitted to be used as a wedding venue while The Bicycle restaurant is located on the corner of Crow Lane and Thorpe Road. Just beyond the restaurant is the village of Tendring, located approximately 400m from the site.

Relevant History

It is established in case law that permitted development rights can legitimately represent a fallback position when considering alternative proposals for development of the same site.

The relevant legal principles relating to fallback were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fallback test:

"First whether there is a fallback use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is "yes" a comparison must be made between the proposed development and the fallback use."

The notion of the Class Q fallback position was subsequently and comprehensively dealt with at the landmark Court of Appeal case, Mansell vs Tonbridge and Malling Borough Council [2017].

The new dwelling would occupy the same footprint and be no greater in terms of height than the Class Q development.

Description

Assessment

The main planning considerations are:

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

Principle of Development

Having regard to the above and the approval of 21/00151/COUNOT, the principle of a new dwelling of an identical footprint and roof height to replace the building subject of the Class Q approval is accepted.

Layout, Scale and Appearance

Section 1 Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Section 2 Policy SPL3 of the 2013-33 Local Plan also requires, amongst other things, that the development respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Section 2 Policy LP4 requires that the design and

layout of new residential and mixed-use developments in the Tendring District will be expected to deliver new dwellings that are designed to high standards of architecture, which respect local character and which together with a well-considered site layout, create a unique sense of place. Paragraph 130 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.

The proposed new dwelling would be identical in footprint, form and massing to the building it replaces. The only changes externally amount to door/window replacement. On the basis that the replacement building would substantially replicate the existing structure it is considered that the development would respect existing street patterns and is sympathetic to local character.

Neighbouring Amenities

The NPPF, at paragraph 130 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Section 1 Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking. Section 2 Policy LP4 requires that new residential developments will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area.

Space Standards:-

In March 2015, the government launched a new approach to housing standards and published a new set of streamlined national technical standards. This included publication of Technical housing standards – nationally described space standard.

	No. of Bedrooms	No. of Bed Spaces	Storeys	Min Requirement	Actual Floorspace	Compliance
	2	4	1	70sqm	109sqm	Yes

Neighbouring properties are a significant distance to the south.

Overall the proposal is considered to secure a good standard of amenity for future occupants of the proposed dwelling.

Highway Considerations

Paragraph 130 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. These objectives are supported adopted Policy SP7 of the Tendring District Local Plan 2013-2033.

The information that was submitted in association with the application has been fully considered by the Highway Authority. A previous visit was undertaken in conjunction with an earlier planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated March 2021.

It is noted that the proposed application is a revised submission of previous application no. 21/00151/COUNOT that the Highway Authority did not raise any objections to at the time. As per the previous application no new or altered means of access is proposed. The proposal retains adequate parking and turning for the host and proposed dwelling; considering these factors the impact of the proposal is acceptable to the Highway Authority subject to mitigation and conditions.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS):

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

The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 4,248 metres from Hamford Water SPA and Ramsar. Since the development is for 1 dwelling only, the number of additional recreational visitors would be limited and the likely effects on Hamford Water SPA and Ramsar 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 Hamford Water SPA and Ramsar; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation. A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance Section 1 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Public Open Space

Paragraph 54 of the National Planning Policy Framework (2019) 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 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.

Section 2 Policy HP5 states that The Council will work with partners and sports providers across the district to maintain, expand and improve the quality and accessibility of public open space, sports and recreational facilities of different types and will aim to achieve and exceed standards set out in the Council's 2017 Open Spaces Strategy or any future update. Financial contributions will also be sought through s106 legal agreements (or an appropriate alternative mechanism) towards ongoing maintenance.

In line with the requirements of Section 2 Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space. The outcome of the consultation is that there is currently a deficit of 1.33 hectares of equipped play/formal open space in the village of Tendring, with only one play area in Tendring located on Heath Road. Due to the current deficit a contribution is both justified and relevant to the application. To improve the currently facilities at the play area on Heath Road.

Representations

No letters have been received in response to the publicity of this application.

The Parish Council do not object to the development.

6. Recommendation

Approval - Full

7. Conditions

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

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

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:- 0749_A_DD_06, 0749_A_DD_07/ A and 0749_A_DD_08; received 15th November 2021.

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

- 3 There should be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of obstruction above 800mm at all times.

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

- 4 Prior to occupation of the proposed dwelling a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety.

- 5 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.

- 6 Prior to the occupation of the proposed dwelling, the shared private drive shall be constructed to a minimum width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Highway Boundary.

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.

- 7 At no point shall gates be provided at the vehicular access. The access shall remain open and free for use thereafter.

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

- 8 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.

- 9 As indicated on drawing no. 0749_A_DD_06 each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

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

- 10 The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

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 - 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. Please note that any subsequent variation / removal of condition applications (s73 applications) will require a new legal agreement to secure this obligation unless the development has commenced (subject to all necessary condition discharges) and the contribution has already been paid.

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. Please note that any subsequent variation / removal of condition applications (s73 applications) will require a new legal agreement to secure this obligation unless the development has commenced (subject to all necessary condition discharges) and the contribution has already been paid.

Highways:-

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org

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.

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.

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