

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	1 st March 2022
Planning Development Manager authorisation:	SCE	2 nd March 2022
Admin checks / despatch completed	ER	02/03/2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	02.03.2022

Application: 21/01930/FUL **Town / Parish:** St Osyth Parish Council

Applicant: Mr and Mrs Green

Address: Building Adj Westcroft Rectory Road Weeley Heath

Development: Proposed reversion from office back to residential.

1. Town / Parish Council

Parish Clerk St Osyth
Parish Council
21.01.2022

No objections.

2. Consultation Responses

UU Open Spaces
04.01.2022

Response from Public Realm
Open Space & Play

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.

ECC Highways Dept
31.01.2022

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material. It is noted that no new or altered means of access is proposed for this application and that it is proposed to revert the existing offices back into a dwelling identical to the previous property prior to 1993 with no external alterations proposed. The proposal is at the end of a private road and retains adequate room and provision for off-street parking and turning, for the proposed dwelling. Considering these factors:

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

3. Planning History

93/00746/FUL	(Westcroft Farm, Rectory Road, Rowheath, St Osyth) Removal of Condition No. 7 of planning permission TEN/212/81 (agricultural occupancy)	Withdrawn	09.11.1993
94/01463/FUL	(Westcroft Farm, Rectory Road, Rowheath, St Osyth) Covered loading area, boiler room and external rendering	Approved	02.02.1995
19/01715/FUL	Change of use from office to dwellinghouse.	Application Returned	
20/00373/TELLIC	Installation of 1x 10m wooden pole (8.2m above ground).	Determination	08.04.2020
21/01930/FUL	Proposed reversion from office back to residential.	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 North Essex Authorities' Shared Strategic Section 1 Plan (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

Supplementary Planning Documents

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

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

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 site is located to the east of Rectory Road, at the end of a drive leading to Row Heath Farm. This drive also gives access to Westcroft Farm, Westcroft (occupied by the applicant's business, Kevin Greenscapes) and a dwelling, Oakwood. The drive is owned by the occupant of Row Heath Farm but the applicant has a Right of Access to his properties.

The building on the site is a chalet style, with most of the accommodation on the ground floor and some rooms with limited height within the roof space.

The building was originally part of an intensive poultry rearing farm but altered during the 1980's to a meat preparation operation. A dwelling had been constructed in association with the farm in 1981 (reference TEN/212/81). The site was acquired by Beckenvale Ltd in 1992.

Relevant History

In 1993 planning permission was granted for change of use of the dwelling to offices in association with the meat processing business (reference TEN/93/0000403). A further permission for the change of use of a poultry shed to be used in connection with a food processing business was granted in 1994 (reference TEN/94/00371). A subsequent application in 2008 for a Lawful Use Certificate to confirm the status of various activities at the site was refused, although the Council accepted at that time the office element was authorised (Reference 08/00953/LUEX).

Description

The proposal is to change the offices back into a dwelling house in an identical format to that which existed prior to 1993. No external alterations are required. Other than the replacement of the bathroom and kitchen facilities, only decorative work is necessary. The dwelling has a full phase electricity supply and water connections. A Klargestor sewage treatment plant will be installed to replace the original septic tank system. The dwelling will have its own residential curtilage reinstated with 1.8 metre fences to side and rear boundaries. The vehicular access is as per the existing entrance serving the former processing unit.

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

Fallback Position:-

This current application seeks to revert the use of the building from an office back to residential use. Although no prior approval submission has been made, 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].

On the grounds that the application proposes a reversion back to its original residential use, in conjunction with there being a real prospect that a Prior Approval submission would not only be permitted but would also be implemented for an identical proposal amounts to sufficiently represent a fallback position which holds significant weight as a material consideration.

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 existing building is a diminutive and quaint building which has all the characteristics of appearing like a residential property already with mock-timber panelling to the facades and side elevations. All fenestration and the entrance also have a domestic appearance. No changes are proposed to the external elevations and its residential character would be retained.

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	72sqm	yes

Both of the adjacent dwellings are in the same ownership as the applicant and whilst there is a rear-facing dormer not only are separation distances in excess of 30m to both Westcroft Farm and Westcroft but the application proposes a reversion back to residential. The private amenity space is 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.

Overall the proposal is considered to secure a good standard of amenity for both existing occupiers of adjacent dwellings and 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. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material. It is noted that no new or altered means of access is proposed for this application and that it is

proposed to revert the existing offices back into a dwelling identical to the previous property prior to 1993 with no external alterations proposed. The proposal is at the end of a private road and retains adequate room and provision for off-street parking and turning, for the proposed dwelling. Considering these factors:

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to 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 4,552 metres from Colne Estuary (Mid-Essex Coast Phase 2) SPA, SAC and Ramsar. However, new housing development within the Zol would be likely to increase the number of recreational visitors to Stour And Orwell Estuaries; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with 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 no contribution is being requested from Open Spaces on this occasion.

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: WRW/1; received 11th November 2021.

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

- 3 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.

- 4 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.

- 5 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.

Reason - In the interests of reducing the need to travel by car and promoting sustainable development and transport.

8. Informatives

Positive and Proactive Statement:-

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

Legal Agreement Informative - Recreational Impact Mitigation

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

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.

Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to 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.

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