

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case Officer recommendation:	MP	28/03/23
Planning Manager / Team Leader authorisation:	AN	28/03/23
Planning Technician final checks and despatch:	ER	29/03/2023

**Application:** 22/01922/FUL **Town / Parish:** Elmstead Market Parish Council

**Applicant:** Mr Steve Williams - Hills Residential Construction Ltd

**Address:** Blue Barn Farm Cottages Clacton Road Elmstead

**Development:** Proposed demolition of existing barn and erection of five dwellings with associated infrastructure.

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

Elmstead Parish Council (05.01.2023):

Development Boundary/Housing Supply

This proposed development is outside of the development boundary for Elmstead as shown in the Local Plan. Now that Section 1 has been adopted Tendring has in excess of a five-year housing supply and therefore the presumption should not be in favour of development. This developer has obtained planning consent for a number of adjacent small scale developments so that the final result is a larger estate, with one access road, of:- 16 approved (as three separate applications for 5, 2 and 9), and these 5 in application. This has all been built on the boundary of the village, changing the landscape of where built form changes to countryside. The development is part of an overall larger development and should be subject to the same obligations as a larger development. This overall site has been developed piecemeal. The footpaths between this location and the village facilities are not fit for purpose. Residents at this location complain about this and say that they have to drive into Elmstead because the path is too narrow and in such bad condition that it is not safe to use. This results in more car journeys, the more houses are built, which is not sustainable. The existing barn is an important transition from this development to the countryside. The Parish Council is in the process of completing a Neighbourhood Development Plan and has been informed by Tendring District Council that it does not have to allocate any sites as Elmstead has met its development requirements. We have not allocated any sites in our emerging NDP because of the significant speculative development the Parish has already experienced and the significant number of houses to be built in the Parish as part of the Tendring Colchester Borders Garden Community. The draft NPD has been through its Regulation 14 consultation, a submission Plan has been approved by the Parish Council and will very shortly be submitted to TDC. Additionally, the emerging NDP contains a policy that defines a corridor of significance from Lanswood to Frating Hill along the A133 Clacton Road for the spatial purpose of preventing harmful ribbon development along this corridor and help maintain a clear separation between settlements in order to retain their individual identity. It recognises that coalescence is a process and that development in this corridor may contribute to it even if each separate development does not specifically cause it. As part of the NDP process an independent housing needs assessment was completed which concludes that the village does not need more 3-bedroom houses and suggests that the balance of housing should be heavily weighted in the favour of 1-2 bedroom dwellings (almost 90%).

Appeal Ref: APP/P1560/W/21/3283545 Land adjacent to Grange Farm Bungalow, Elmstead Market CO7 7DF

The Phase 2 Planning Statement refers on page 106 to an application submitted on land to the northwest of the site for 9 dwellings which is “the subject of a non-determination appeal”. This appeal has now been decided and dismissed with the reasons being that the location of the development is not appropriate and is in conflict with LP policies which seek to manage patterns of growth. The

Planning Statement also gives a history of successful planning applications around the site, but the Planning Inspector points out in the Appeal Decision document (for the appeal as referenced above) that there are permissions which were approved at a time when the Council could not demonstrate a 5 year supply of housing and so the tilted balance was engaged.

## Village Growth

The village already has 417 approved housing developments for a village size of just under 800. This equates to a more than 52% increase. This development will add to the already disproportionate levels of growth allowed in the village. This runs contrary to the core principle of the National Planning Policy Framework to actively manage sustainable patterns of growth, and paragraph 3.3.1.3.1 of Local Plan Section 2 which talks about Rural Service Centres accommodating a modest increase in housing stock. The cumulative adverse impacts of unrestricted development around the village will include the unnecessary and permanent loss of productive agricultural land, increased traffic, visual impact on landscape setting of the village and increased pressure on local services - all of which will impact upon the character and enjoyment of the village. Although the village was designated a key rural service centre it has limited facilities with no pub, a very limited bus service, a one form entry Primary School and a part time GP surgery that does not take new patients outside of a limited catchment area.

## **2. Consultation Responses**

ECC Highways Dept  
09.01.2023

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image.

The proposal is acceptable to the Highway Authority, subject to the following requirements;

1. Prior to the occupation of any of the proposed dwellings, the access shall remain at a width of 6 metres and provided with an appropriate dropped kerb crossing.

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 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

2. 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 in accordance with Policy DM8 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

3. Each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles.

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

4. Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient,

covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

5. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council.

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 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

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

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

2: 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.

3: 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.

Tree & Landscape Officer  
12.12.2022

In order to show the impact of the development proposal on trees situated on the application site the applicant has provided an Arboricultural Impact Assessment (AIA).

This information is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations and provides an accurate description of the health, vitality, condition and amenity value of trees on the land.

None of the trees on the application site merit retention or formal legal protection by means of a Tendring District Council Tree Preservation Order.

In terms of soft landscaping the information submitted by the applicant will help to create a soft edge to the development, on the southern boundary, and is sufficient to satisfactorily soften, screen and

enhance the appearance of the development.

Thank you for consulting Place Services on the above application.

No objection subject to securing:

- a) a proportionate financial contribution towards Essex Coast RAMS
- b) biodiversity mitigation and enhancement measures

#### Summary

We have reviewed the Preliminary Ecological Appraisal (Eco-planning UK, January 2022) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures.

The site falls within the evidenced recreational Zone of Influence (ZOI) of Colne Estuary Ramsar and SPA. Therefore, given the residential element of this development is relevant to the Essex Coast RAMS, we note that the LPA has prepared a project level HRA Appropriate Assessment to secure a per dwelling tariff by a legal agreement for delivery of visitor management measures at the designated sites. This will mitigate for predicted recreational impacts in combination with other plans and projects and avoid Adverse Effect on Integrity of the designated habitat site

We are satisfied that there is sufficient ecological information available for determination of this application.

This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in the Preliminary Ecological Appraisal (Eco-planning UK, January 2022) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly nesting birds.

We would also support proposed reasonable biodiversity enhancements, which have been recommended to secure net gains for biodiversity, as outlined under Paragraph 174d of the National Planning Policy Framework (2021). The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Strategy and should be secured by a condition of any consent.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013.

We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

#### Recommended conditions

#### 1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Eco-planning UK, January 2022) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details."

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

## 2. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

"A Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter."

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the NPPF 2021 and s40 of the NERC Act 2006 (Priority habitats & species).

UU Open Spaces  
06.01.2023

### Current Position

There is currently a deficit of 4.51 hectares of equipped play/formal open space in Elmstead Market.

### Recommendation

Due to the lack of open space and recreation facilities in Elmstead a contribution towards play and open space is justified and relevant to this development.

The Parish Council have identified a new area of open space plans in to provide additional facilities, at the site known as Charity Fields on

Essex County Council  
Archaeology  
21.12.2022

School Road, this will help towards the current deficit of play and open space in Elmstead.

The proposed development lies adjacent to a site recorded on the HER and evaluated through trial trenching which has revealed extensive Roman activity and scattered prehistoric activity in the area. The prehistoric activity is recorded close to the boundary of the site and further north a ring ditch and cremation were excavated. There is potential for prehistoric activity to extend into the proposed development site.

Paragraph 194 of the NPPF states: "Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation." The potential for disturbance to archaeological remains will need to be established through a programme of trial trenching evaluation.

The following recommendations are made in line with the National Planning Policy Framework:

**RECOMMENDATION:** Archaeological trial trenching and excavation

1. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant, and approved in writing by the local planning authority.
2. No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in 1 above.
3. The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

**Reason for recommendation**

The Essex HER shows that the proposed development is located within an area with potential for below ground archaeological deposits. The development would result in harm to non-designated heritage assets with archaeological interest.

**Further Recommendations:**

A professional team of archaeologists should undertake the archaeological work. The archaeological work will comprise initial trial trenching evaluation. A brief outlining the level of archaeological investigation will be issued from this office on request. Tendring District Council should inform the applicant of the recommendation and its financial implications.

If you have any questions about this advice, please do not hesitate to contact me.

### **3. Planning History**

07/02023/FUL	Removal of agricultural occupancy Condition (Schedule 2 of TEN/1036/90).	Approved	03.03.2008
22/00253/FUL	Proposed demolition of existing barn and erection of five dwellings with associated infrastructure.	Refused	08.06.2022

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

National:

National Planning Policy Framework July 2021 (NPPF)

National Planning Practice Guidance (NPPG)

Local:

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

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL10 Renewable Energy Generation

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

- CP1 Sustainable Transport and Accessibility
- HP5 Open Space, Sports & Recreation Facilities
- DI1 Infrastructure Delivery and Impact Mitigation

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

Draft Elmstead Market Neighbourhood Plan

ELM1 Settlement Development Boundaries

ELM5 Affordable Housing

ELM7 Housing Mix

### **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 area of land subject to this planning application, which measures 0.17ha, relates to land to the rear of Blue Barn Cottages along Grange Farm Close, within the parish of Elmstead Market. The site currently comprises a barn that was previously used for agricultural purposes and is now



utilised for storage. The site also contains an area of garden land currently associated with Number 2 Blue Barn Farm Cottages.

The character of the immediate surrounding area is largely dominated with modern residential development either completed or under construction, situated to the north, south and west of the site. Further out to all sides, the character becomes more rural, with open grassed and agricultural land to all sides, with the exception to this being to the west where the commercial buildings at 'Lanswood Park' are situated.

The application site is situated on the south side of Clacton Road (A133) to the south-east of Elmstead Market. The village lies approximately 6km to the east of Colchester and 3 km north-east of Wivenhoe. The village comprises development mainly to the north of A133, a road which connects Colchester to Clacton and which runs east/west along the southern fringe of the village.

The site falls outside of a recognised Settlement Development Boundary, as identified within the Adopted Tendring District Council 2013-2033 and Beyond Local Plan.

### Description of Proposal

This planning application seeks full planning permission for the demolition of the existing barn and the erection of five dwellings.

The proposal will form a pair of semi-detached dwellings each served by two bedrooms, and three detached houses, served by three bedrooms.

### Planning History

The application site, and surrounding area, has been subject of numerous planning applications in recent years, with the key decisions summarised below.

Most recently, in June 2022 under planning reference 22/00253/FUL, a similar scheme was refused on this application site for a total of five dwellings. The reasons for this refusal focussed on the fact that the site fell outside of a recognised Settlement Development Boundary and included a poor layout not in-keeping with the existing building lines, and the harm exacerbated with the proposed road adjacent to the countryside. This application is currently in the process of being appealed at the time of writing, under appeal reference APP/P1560/W/22/3301724.

In January 2021, under planning reference 20/00239/FUL, planning permission was granted for a hybrid application which consisted of outline permission for 10,000sqm of B1, B2 and B8 commercial space and 14 dwellings, and full permission for 71 dwellings. This permission relates to land to the north-west and south-west of this application site, and at the time, was approved mainly on the basis that the significant economic benefits of the proposal in providing up to 10,000sqm of employment floor space, estimated to provide around 600 jobs, outweighed the modest landscape harm.

There have been seven new dwellings approved and built at Grange Farm Close to the north-west of the application site under planning references 17/01617/OUT and 18/00003/DETAIL, and 16/00724/OUT and 18/00004/DETAIL. Work has completed on the construction of the consented dwellings.

Under planning reference 19/01031/OUT on land to the north-west of this application site, planning permission was refused on the grounds that the application, and those previously approved under planning references 16/00724/OUT, 16/02004/DETAIL and 17/01617/OUT, constituted a sub-division of a single site and therefore resulted in a total of 15 units, with no affordable housing contribution provided. In addition, no legal agreement was secured for RAMS or public open space contributions.

However, under appeal decision APP/P1560/W/20/3248849, dated 14th August 2020, the application was allowed with the Inspector confirming the following:

*"I acknowledge the appeal sites are connected to the recently permitted and developed dwellings to the south by both land ownership and a shared common access road. However, in my view, the provision of 2 new dwellings in Appeal A and 8 new dwellings in Appeal B alongside the permitted, constructed and occupied 7 dwellings to the south, would not amount to part of a 'more substantial development.'"*

On land to the north-west of the access of the site, under planning permissions 18/01858/OUT and 19/01140/DETAIL, office development of up to 929sqm B1 office with associated car parking, infrastructure and landscaping was approved. However, under planning reference 21/00367/FUL an application was submitted to instead construct nine dwellings on this site. The application was then the subject of a non-determination appeal, which has since been dismissed in November 2022 on the grounds that the location of the development is not appropriate.

On land to the immediate rear (south-west) of the application site, under planning reference 22/00057/FUL permission was granted in August 2022 for one dwelling.

## Assessment

### 1. Principle of Development

Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements. Policy ELM1 of the Draft Elmstead Neighbourhood Plan further adds that proposals for development outside the settlement boundaries will only be supported if they accord with development plan policies managing development in the countryside. The application site lies outside of a defined settlement boundary in the 2013-2033 Local Plan, with the nearest settlement of Elmstead Market located approximately 900 metres to the north-west. The proposed development would therefore extend beyond the area planned to provide growth for this settlement.

While it is noted that within previous appeal decisions on land adjacent to this application site, Inspectors have previously acknowledged that the site can be a sustainable location for development, this was at a time when the Council did not have an up to date adopted local plan and was unable to demonstrate a five year housing land supply, and therefore the titled balance was applied. There has been a significant recent change in local plan policy, with the Council in January 2022 having adopted its Local Plan to cover the period of 2013-2033 and being able to demonstrate a five year housing land supply.

In addition to this, in November 2022 an appeal decision was reached for the development of nine dwellings on land to the north-west of the application site (appeal reference APP/P1560/W/21/3283545 - Land adjacent to Grange Farm Bungalow, Elmstead Market). In dismissing this appeal, the Inspector was clear at Paragraph 18 that the site is not suitably located for residential development:

*"The Framework emphasises that the planning system is to be plan-led. At this point in time the proposal is clearly contrary to that plan as adopted as the development it seeks is not within nor adjoining the SDB of Elmstead Market."*

The proposal is for five dwellings outside of the settlement development boundary (SDB), and to the south-east of Elmstead Market, which is a Rural Service Centre under the Policy SPL1 Settlement Hierarchy. Within the Settlement Development Boundary identified under Policy SPL 2 there is a general presumption in favour of development. In locations such as the application site outside of the SDB, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy and any other relevant policies.

Paragraph 3.3.1.3.1 of the Local Plan identifies that for Rural Service Centres smaller scale growth is envisaged; some of these villages will accommodate a modest increase in housing stock. Developments will be of a scale that is proportionate, achievable and sustainable for each of the settlements concerned having regard to the existing size and character of each settlement and their more limited range of jobs, shops, services and facilities. These developments will make a

meaningful contribution toward addressing local housing needs, supporting the village economy and assisting with the overall housing growth proposed for the District.

The proposal does not however accord with the Spatial Strategy under SP3 - the proposal is not directed towards the existing settlement - it is separated from Elmstead Market by some distance. While there is a good bus service, fundamentally the site is located outside the SDB, the Council cannot be certain that footway improvements and bus stop improvements will be delivered by earlier consented schemes. Moreover, the proposal would not benefit from an attractive walking route to access basic services in the village as it follows the busy A133, and it is therefore likely that the development would be car reliant.

In view of the housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement. The proposal therefore gives rise to harm through failing to comply with a statutory plan-led approach to the location of future housing.

In view of this, the proposal's conflict with policy gives rise to a degree of harm. The spatial strategy of Policy SP3 and place shaping principles of Policy SP7 reflect the Framework's sustainable development objectives and the proposal's conflict with both is given full weight. The principle of development is therefore not acceptable in this location.

## 2. Affordable Housing

Paragraph 64 of the NPPF (2021) states provision of affordable housing should be sought for residential developments that are major developments. Within the glossary of the NPPF (2021), major development is defined as development where ten or more homes will be provided, or the site has an area of 0.5 hectares or more.

Adopted Local Plan Policy LP5 states that the Council will expect for schemes of 11 or more (net) homes, 30% of new dwellings to be made available for affordable housing. Draft Elmstead Neighbourhood Policy ELM5 states that development proposals outside of the Tendring Colchester Borders Garden Community, involving the creation of 6 or more (net) homes, will be required to provide 30% of the new dwellings as affordable housing on-site unless it can be demonstrated that it is more appropriate to make a financial contribution towards the provision of affordable housing elsewhere in the village within the plan period.

The proposal would not in itself trigger requirements for affordable housing provision - Policy LP5 applies to schemes of 11 or more dwellings and none of the earlier schemes on the adjacent land were for major development in their own right. Under appeal decision APP/P1560/W/20/3248849, in allowing up to nine dwellings on the opposite side of the road on land in the same ownership, and using the same access, the appointed Inspector did not find conflict with the then Saved 2007 Policy HG4 which has now been superseded. The Inspector found that the provision of two new dwellings in Appeal A and 8 new dwellings in Appeal B alongside the permitted, constructed and occupied 7 dwellings to the south, would not amount to part of a 'more substantial development'.

Therefore, while the Council continues to be concerned regarding the piecemeal manner in which sites have come forward in this location, given the Inspectors previous findings at the appeal to the adjacent site, it would not be reasonable to require the applicant to provide an affordable housing contribution on this occasion.

## 3. Design and Visual Impacts

Paragraph 130 of the NPPF (2021) 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.

Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context, and to protect the district's landscape and the quality of existing places and their environs. Policy SPL3 and LP4 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout which create a unique sense

of place. Draft Elmstead Neighbourhood Plan Policy ELM7 states that new residential development should seek to include in their housing mix a majority of one bedroom and two bedroom dwellings.

The proposed dwellings are to consist of a pair of semi-detached properties and three detached properties, all to be sited partly in place of an existing large agricultural barn. Given the siting of the existing barn, there is already built development in this location, and therefore while the dwellings are sited to the edge of the development and will be viewed from the south-east, some of the harm is mitigated via this baseline position.

Within the earlier application (reference 22/00253/FUL), concerns were raised that the proposed layout did not follow any existing building line, and the inclusion of the road led to a harsh transition between the countryside and built form. To address these concerns, the layout of the dwellings has been altered to rotate Plots 3, 4 and 5 so that they more closely align with the dwellings to west, and additional soft landscaping has been included to the eastern boundary. While Officers still have some minor concerns that the overall development is slightly cramped and will still result in the road adjacent to the countryside, it is acknowledged that efforts have been made to soften the overall impact and provide for a development that is more in-keeping with the existing built form. Furthermore, it is noted that there is existing built form on part of the application site, and the proposed dwellings would be bounded on three sides with existing dwellings. Accordingly, on balance, Officers consider that the harm identified is not so significant to the character and appearance of the area that it warrants recommending a reason for refusal.

The design of all dwellings are overall considered to be acceptable. There is some variation with semi-detached and detached properties, while features have been included to break up the overall bulk of the development, including front dormers and window detailing. While it would be preferable to see additional variety in the design, it is equally acknowledged that the development is a modest total of five dwellings and the design is in-keeping with the previously constructed dwellings within the immediate vicinity. Therefore, on balance, the design issues identified is not significant enough to justify a refusal reason on this occasion.

It is also noted that on Drawing Number 170210/11 there is an error with the right elevation, as it should show the side gable without the rear projection attached, as that section of the dwelling is set back. Given the application is recommended for refusal on this occasion in any case, this is purely just raised for noting purposes and would have been requested to be amended had the application been recommended for approval.

#### 4. Impact to Neighbouring Amenities

Paragraph 130 of the National Planning Policy Framework (2021) confirms planning policies and decisions 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.

Policy SP7 of Section 1 of the 2013-33 Local Plan requires that the amenity of existing and future residents is protected. Section 2 Policy SPL 3 (Part C) seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

There are a number of existing residential properties within the immediate vicinity, most notably to the south and west, but also further to the north. However, there are considered to be sufficient separation distances to each existing plot, which significantly reduces the potential for loss of daylight/sunlight and the dwellings appearing imposing or oppressive. With respect to potential overlooking, Plot 3 has been designed to ensure no first floor side elevation windows that would have direct views to the neighbouring garden area. While Plot 2 has one first floor side elevation window that has the potential to cause a level of overlooking, this will serve a bathroom and will therefore be obscure glazed. The rear bedroom windows on each property will also not have harmful views to any existing neighbouring garden areas.

In addition, in August 2022, a further dwelling was approved which is sited adjacent to the west of Plot 3 and to the south of Plot 2. While this is more closely related than the aforementioned existing properties, there is still approximate separation distances of 6 metres to Plot 3 and 20

metres from Plot 2. Given this, and that neither plot will result in a significant loss of daylight/sunlight due to the sun rising in the east and setting in the west, Officers are content that the level of harm to the amenities of the future occupants of this property will not be significantly harmful.

Therefore, there is not significant identified harm that would warrant a reason for refusal in terms of impacts to existing and future neighbouring amenities.

## 5. Ecology

Adopted Policy PPL4 (Biodiversity and Geodiversity) states that as a minimum, there should be no significant impacts upon any protected species, including European Protected Species and schemes should consider the preservation, restoration or re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations.

The barn highlighted to be demolished as part of the proposed development has the potential to host protected species. Accordingly, a Preliminary Ecological Appraisal accompanies the planning application. Essex County Council Place Services (Ecology) have been consulted, and have confirmed they have no objections subject to securing biodiversity mitigation and enhancement measures. Had the application been recommended for approval, a condition to reflect these comments would have been included.

## 6. Landscape/Trees

The Councils Tree and Landscape Officer has been consulted on the application, and has stated the following:

*"In order to show the impact of the development proposal on trees situated on the application site the applicant has provided an Arboricultural Impact Assessment (AIA).*

*This information is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations and provides an accurate description of the health, vitality, condition and amenity value of trees on the land.*

*None of the trees on the application site merit retention or formal legal protection by means of a Tendring District Council Tree Preservation Order.*

*In terms of soft landscaping the information submitted by the applicant will help to create a soft edge to the development, on the southern boundary, and is sufficient to satisfactorily soften, screen and enhance the appearance of the development."*

Officers therefore raise no objections in this regard.

## 7. Highways Impacts

Paragraph 110 of the National Planning Policy Framework 2021 seeks to ensure that safe and suitable access to a development site can be achieved for all users, whilst Paragraph 104 requires that streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

Adopted Policy CP1 (Sustainable Transport and Accessibility) of the Tendring District Local Plan 2013-2033 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.

Essex Highways Authority have been consulted and have confirmed they have no objections subject to conditions relating to the width of the access, provision for cycle/powered two-wheeler parking, and the submission of a Residential Travel Information Pack. In addition, the layout plan demonstrates that the site will be accessed via gates, however some concerns are raised that

these could obstruct either entry to the site or on site turning. However, this can be addressed by an appropriately worded condition.

Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new development, and confirm that for residential properties of two bedrooms or more there should be two parking spaces measuring a minimum of 5.5 metres x 2.9 metres or, if being used as one of the parking spaces, a garage should measure a minimum of 7 metres x 3 metres. The submitted information demonstrates this would be achievable for all five dwellings plus one visitor parking space.

## 8. Drainage

Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Furthermore, Paragraph 185 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.

Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010. A completed Foul Drainage Assessment Form 1 (FDA1) form, or equivalent information, should accompany all planning applications where use of a non-mains system is proposed for foul drainage. The operation of small sewage discharges such as those from septic tanks or package treatment plants is regulated under the Environmental Permitting Regulations 2016 (EPR).

Adopted Policy PPL5 of Section 2 of the Adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour.

The application form accompanying the application has stated that the development would be connected to a septic tank. This does not adhere to the above local and national policy requirements which seek to connect new development to an existing public foul sewer.

Given the above, a completed Foul Drainage Assessment Form 1 (FDA1) form has been completed and received on 8th February 2022. The FDA1 form confirms that it is not feasible to connect to the public foul sewer as at the shortest point is in excess of 150 metres. However, Officers consider that it could be possible to connect to the wider adjacent development, which itself is connected to a mains, and therefore Officers would expect a mains connection in this location. Had the application been recommended for approval, a condition prior to any above ground level works would have been requested to provide full details of this.

## 9. Financial Contributions - Open Space and RAMS

### (i) Open Space

Paragraph 55 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 57 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.

Policy DI1 states that all new development should be supported by, and have good access to, all necessary infrastructure. Where a development proposal requires additional infrastructure capacity to be deemed acceptable, mitigation measures must be agreed with the Local Planning Authority. Such measures may include financial contributions towards new or expanded facilities and the maintenance thereof. Contributions should be used towards the delivery of improvements, expansion, or new open spaces and/or sports facilities.

In line with the requirements of Section 2 Policies HP5 and DI1 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 4.51 hectares of equipped play and formal open space in Elmstead Market, and a contribution towards play and open space is justified and relevant to this planning application, and would be used to provide additional facilities at the site known as Charity Fields on School Road. A unilateral undertaking has been prepared to secure this legal obligation.

#### (ii) Habitat Regulations Assessment

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

The application scheme proposes residential on a site that lies within the Zone of Influence (Zoi) being approximately 3.7 kilometres from the Colne Estuary Ramsar site and Special Protection Area. New housing development within the Zoi would be likely to increase the number of recreational visitors to these sites 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.

#### 10. Renewable and Energy Conservation Measures

Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.

Paragraph 112 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.

The proposal includes new roof space which has the potential to incorporate solar photovoltaic installation, and car parking areas have the potential for the provision of ULEV charging points for electric cars. In the event that planning permission was recommended for approval it would have

been considered reasonable and necessary to include a planning condition requiring a scheme, together with a timetable to be submitted for the consideration and installation of these measures as such a condition is capable of addressing these policy requirements.

### Other Considerations

Elmstead Parish Council object to the proposed development for the following reasons:

1. Site is outside of a Settlement Development Boundary;
2. The Council can now demonstrate a five year housing supply;
3. The wider development has been piecemeal and should be subject to the same obligations as a larger development;
4. The existing barn is an important transition between the adjacent development and the countryside;
5. Appeal decision nearby confirms site not suitable for residential development;
6. Village has limited infrastructure;
7. Contrary to Draft Neighbourhood Plan as not allocated for residential development.

In answer to this, points 1-5 and 7 have been addressed within the main body of the report above. While point 6 is noted, the development is specifically for five dwellings, which in itself would not result in a significant impact to local infrastructure.

There has been one additional letter of objection received, with concerns raised of loss of neighbouring amenities, out of keeping design, ecology, and that there is no reason to deviate from the previous refusal decision. In response to this, all of these matters have been addressed in the main body of the report above.

### Conclusion

While it is acknowledged that residential development has previously been approved within the immediate vicinity, there has been a significant recent change to planning policy with the adoption of the Local Plan and the Council being able to comfortably demonstrate a five year housing land supply. The Council does not need to look beyond identified settlements to meet its housing requirement, and the proposal is harmful by failing to comply with a statutory plan-led approach to the location of future housing and failing to meet the social strand of sustainable development.

Accordingly, the application is not in compliance with local and national planning policies and is therefore recommended for refusal.

## **6. Recommendation**

Refusal.

## **7. Reason for Refusal**

- 1 The site lies outside of the extended Settlement Development Boundary of Elmstead Market as set out within the adopted Tendring District Local Plan 2013-2033 and Beyond. In view of the housing land supply position, the Council does not need to look beyond identified settlements to meet its housing requirement. The proposal therefore gives rise to harm through failing to comply with a statutory plan-led approach to the location of future housing and failing to meet the social strand of sustainable development.

The proposed development would extend beyond the area planned to provide growth for this settlement. Having regard to the spatial strategy and place shaping principles set out in the adopted Local Plan Section 1 Policies SP3 and Policy SP7 and Section 2 Policy SPL2 - this would not be an appropriate site for housing. The proposal therefore gives rise to harm through failing to comply with a statutory plan-led approach to the location of future housing. This plan-led approach is endorsed through the National Planning Policy Framework 2021 (NPPF 2021) as the means to bring sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in



favour of sustainable development. In view of this, the proposal's conflict with policy gives rise to a significant degree of harm.

## **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.

### Plans and Supporting Documents:

The Local Planning Authority has resolved to refuse the application for the reason(s) set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (accounting for any updated or amended documents):

Drawing Numbers 170210/01, 170210/10, 170210/15/B, 22.5235.01, and documents titled 'Arboricultural Impact Assessment and Preliminary Method Statements', 'Preliminary Ecological Assessment' and 'Planning Statement'.