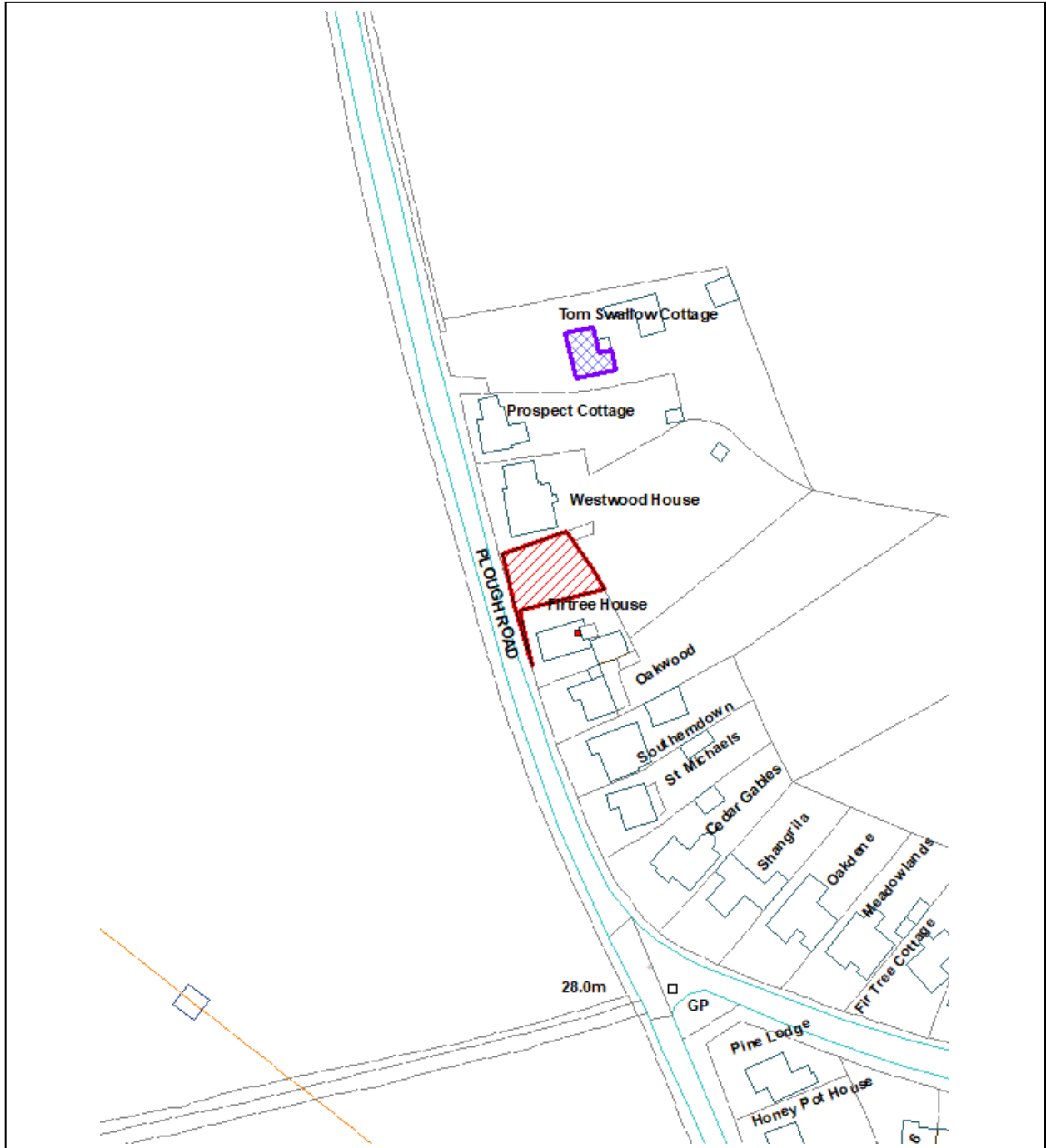


PLANNING COMMITTEE

19 DECEMBER 2023

REPORT OF THE DIRECTOR OF PLANNING

**A.3. PLANNING APPLICATION – 23/01312/FUL – FIR TREE HOUSE PLOUGH ROAD GREAT BENTLEY COLCHESTER**



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<b>Application:</b>	23/01312/FUL	<b>Expiry Date:</b>	28th November 2023
<b>Case Officer:</b>	Charlotte Cooper	<b>EOT Date:</b>	
<b>Town/ Parish:</b>	Great Bentley Parish Council		
<b>Applicant:</b>	Mrs M Fox		
<b>Address:</b>	Fir Tree House Plough Road Great Bentley Colchester CO7 8NA		
<b>Development:</b>	Proposed erection of detached dwelling with new vehicular access.		

## 1. Executive Summary

- 1.1 The application is before members as officers are recommending approval for a proposal that represents a departure from the Local Plan. The application seeks planning approval for a new residential development outside of the Great Bentley Settlement Development Boundary (SDB) as defined currently within the adopted Tendring District Local Plan 2013 to 2033 and Beyond.
- 1.2 The application site serves a vacant piece of land, currently in use as part of the side garden for Fir Tree House, located amongst established residential development to the eastern side of Plough Road.
- 1.3 The application seeks full planning permission for the erection of a detached two-storey dwelling with vehicular access from Plough Road.
- 1.4 The site currently benefits from previous, and currently still extant planning approval 20/01618/FUL for the erection of a detached dwelling with new vehicular access. This approval is extant and will expire on 23<sup>rd</sup> February 2024. It is important to note this approval was granted under a previous Tendring district local Plan (2007), whereby the site was included in the settlement development boundary of Aingers Green. The current application is essentially looking to extend the timeframe of this approval.
- 1.5 The site lies approximately 0.63 Km (629.5 metres) outside of the settlement development boundary of Great Bentley and is therefore contrary to the spatial strategy set out within the Tendring District Local Plan Policy SP3 and Policy SPL2. Whilst Policy SPL2 does not explicitly preclude residential development outside of the defined boundary, it nevertheless requires decision makers to carefully consider the scale of development in relation to the settlement hierarchy category, site-specific characteristics, and sustainability of the site.
- 1.6 The site benefits from a bus stop directly to the front of the site providing services to nearby Great Bentley and Colchester, the site is therefore considered to be reasonably accessible to a range of services and facilities.
- 1.7 As briefly alluded to above, another key material consideration lies in the existence of an extant planning permission for the construction of a detached dwelling with vehicular access at the site. Officers believe that this significantly tips the planning balance in favour of approval despite the high-level policy conflict in regard to the location of the site outside of the defined settlement development. Moreover, the development would not result in any material harm in terms of design, impact, residential amenities, or highway safety over and above the extant approval, and is also considered to be acceptable in all other regards.

**Recommendation:** Approval subject to Unilateral Undertaking and Conditions set out in section 8.2

- 1) On appropriate terms as summarised below and those as may be deemed necessary to the satisfaction of the Head of Planning and Building Control, and subject to a Unilateral Undertaking securing:
  - A financial contribution of £156.76 towards RAMS
- 2) That the Head of Planning and Building Control be authorised to grant planning permission subject to the Unilateral Undertaking and conditions as stated at paragraph 8.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 3) The informative notes as may be deemed necessary.

## 2. Planning Policy

### **National:**

National Planning Policy Framework July 2023 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

### **Local:**

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic 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
- SP6 Infrastructure and Connectivity
- 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 and Recreation Facilities
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- PPL5 Water Conservation, Drainage and Sewerage
- PPL10 Renewable Energy Generation and Energy efficiency Measures
- CP1 Sustainable Transport and Accessibility
- CP2 Improving the Transport Network
- DI1 Infrastructure Delivery and Impact Mitigation

Supplementary Planning Documents

Essex Design Guide

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

Provision of Recreational Open Space for New Development May 2008 (under review) Technical housing standards – nationally described space standard (DCLG March 2015)

### Local Planning Guidance

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), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) 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.

### **Neighbourhood Plans**

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

At the time of writing, there are no adopted or draft neighbourhood plans relevant to this site.

### **3. Relevant Planning History**

99/01687/TPO	Lop branches of Eucalyptus tree which are touching house and growing through power lines	Approved	10.12.1999
12/01350/TPO	Eucalyptus - fell due to decay in base of trunk. No replacement planned.	Approved	04.01.2013
19/01773/FUL	Erection of detached dwelling with new Vehicular Driveway Access.	Withdrawn	06.04.2020
20/01618/FUL	Erection of detached dwelling with new vehicular driveway access.	Approved	23.02.2021
23/01687/DISCON	Discharge of condition 13 (Landscaping) of application 20/01618/FUL.	Pending	

#### 4. **Consultations**

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

#### **UU Open Spaces**

**02.11.2023**

Play Space - current deficit:

- Deficit of 1.78 hectares of equipped play in Great Bentley

Formal Play - current deficit:

- Adequate formal open space in the area to cope with some future development

Settlement provision:

- Heckford Road/Forge Lane Play Area LEAP 0.6mils from development

Officer Conclusions and Recommendations

Contribution necessary, related, and reasonable?

to comply with CIL Regs\*

- No contribution is being requested from this development.
- Further to other applications at this site there has been some recent improvements to the only play area in the village, these facilities are adequate to cope with some development.

Identified project:

(In consultation with Town / Parish Council on upcoming projects or needs for maintenance)

- N/a

#### **Tree & Landscape Officer**

**16.10.2023**

The application site currently forms part of the residential curtilage of the host property. The boundary with the highway is demarcated by an established Hawthorn hedge that encloses

the garden and ties in well with nearby field boundary hedgerows. Nevertheless, it does not fall within the scope of any legislation under which it could be afforded legal protection.

The garden is well planted with established shrubs and small trees.

In order to show the extent of the constraint that the trees are on the development potential of the land the applicant has provided an Arboricultural Impact Assessment (AIA). This shows how retained trees will be physically protected for the duration of the construction phase of any development for which planning permission may be granted. This information is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations.

The proposed layout and position of the dwelling makes provision for the most visually prominent trees on the application site: a Cedar (T1), a Cherry (T2) and a False Cypress (T3). This is desirable and would ensure that trees that currently make a reasonable contribution to the appearance of the area are retained. However, if planning permission were likely to be granted then the new dwelling would screen the trees from view and their amenity value would be significantly diminished.

The size, position and amenity value of the trees is such that they do not meet the criteria under which they merit formal legal protection by means of a tree preservation order.

The tree report suggests that it may be prudent to fell the Cedar and to replace with a more appropriate species. This would be likely to be a species with a smaller ultimate height.

If it were possible, it would be desirable for the proposed dwelling to be 'set back' further into the plot to provide room for small trees to be planted between the front elevation of the proposed dwelling and the highway. Trees in this position would feature prominently in the street scene and make a positive contribution to the appearance of the public realm.

Should planning permission be likely to be granted then details of soft landscaping should be secured by a planning condition. Soft landscaping should aim to soften, screen and enhance the appearance of the development.

**ECC Highways Dept**

**24.10.2023**

The information that was submitted in association with the application has been fully considered by the Highway Authority. The conclusions have been drawn from a desktop study with the observations below based on submitted material and google earth image dated April 2019. The site is located off Plough Road which is subject to a 30-mph speed limit and the proposed site offers adequate parking and turning within the confines of the site.

Given the previous approval under application no. 20/01618/FUL, from a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. Prior to commencement of development, areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

2. Prior to occupation of the development, the access at its centre line shall be provided with a visibility splay with dimensions as shown on submitted drawing no. FTC/AG/2A, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of obstruction above 600mm at all times.

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

3. Prior to occupation of the development the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 3.6 metres (equivalent to 4 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety in accordance with policy DM1.

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

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

5. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

6. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

i. 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)

ii. 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.

iii. 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.

## **5. Representations**

5.1 Great Bentley Parish council have submitted no comments on this application.

5.2 No individual letters of representation or objection have been received.

## **6. Assessment**

### Site Context

6.1 The application site consists of the side garden for Fir Tree House, located on the eastern side of Plough Road. The site is situated between established residential dwellings along the eastern side of Plough Road, with large vacant fields located to the west and further north.

6.2 The site lies approximately 0.63 Km (629.5 metres) outside of the settlement development boundary of Great Bentley however the site benefits from the provision of a decent footpath which runs along the entirety of Plough Road, providing good connection to Great Bentley station, located further north of the application site. The site also benefits from the provision of a bus stop located directly to the front of the site, providing services to St Osyth and Colchester via Great Bentley. The site is also considered to be reasonably well connected to other local facilities such as the Teso Express in Great Bentley and the Barn Café and Fusilier restaurant in Aingers Green.

### Site History

6.3 Permission for the erection of a detached dwelling with vehicular access was granted at this site under planning approval 20/01618/FUL, this permission remains live until the 23<sup>rd</sup> February 2024 and is therefore extant. The current proposal is seeking permission for the same development and is effectively increasing the timeframe for this approval.

6.4 It is important to note that the previous development was approved under the Tendring District Local Plan 2007, when the application site was located within the settlement development boundary of Aingers Green. The adopted Tendring District Local Plan 2013 to 2033 and beyond has removed this settlement development boundary following a settlement hierarchy review and because of the lack of local amenities. In light of the above this latest planning application therefore constitutes a departure from the Local Plan.

### Principle of Development

6.5 Policy SP1 of the Tendring District Local Plan 2013-2033 and beyond states that when considering development proposals, the Local Planning Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

6.6 Policy SP3 describes the overarching spatial strategy for growth across North Essex up to 2033. It provides that existing settlements will be the principal focus for additional growth and that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area. It states that future growth will be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting.

6.7 Policy SP3 in Section 1 of the Local Plan also provides that the Section 2 Local Plan for each local planning authority will identify a hierarchy of settlements where new development will be



accommodated according to the role of the settlement, sustainability, its physical capacity and local needs. It is the Tendring district Local Plan Section 2 that subsequently gives effect to the overarching spatial strategy through Policy SPL1 which defines the settlement hierarchy in Tendring and Policy SPL2 that determines how sustainable development will be achieved. Policy SPL2 thus states that to encourage sustainable patterns of growth and to carefully control urban sprawl, each settlement listed in Policy SPL1 is defined within a 'Settlement Development Boundary' as shown on the relevant Policies Map and Local Map. It goes on to state that within the Settlement Development Boundaries, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.

6.8 Policy SPL2 of the TDLP indicates that outside of settlement development boundaries, the Council will consider proposals in relation to the pattern and scales of growth promoted through Policy SPL1 and other relevant development plan policies.

6.9 As such, by virtue of its location outside the settlement boundary, the proposal is contrary to the strategy set out in Policies SP3 and SPL2.

#### Other Site Specific Considerations (Principle of Development)

6.10 The existing planning permission for the erection of a detached dwelling with vehicular access, under planning application reference 20/01618/FUL, remains live until the 23<sup>rd</sup> February 2024. This live permission serves as a material planning consideration of some weight because it is reasonable to assume that the above mentioned planning permission can still be implemented within the next month and a half regardless of the outcome of this application.

6.11 Furthermore, within the determination period of this application, the applicant has submitted a Discharge of Condition Application for condition 13 (Landscaping) linked to the previous approval 20/01618/FUL. Condition 13 is the only pre-commencement condition attached to planning permission 20/01618/FUL. With the submission of this pre-commencement condition, it is deemed that the considerations outlined in the preceding paragraph carry very significant weight because there is now an increased likelihood, or a tangible prospect, for the implementation of the existing permission mentioned above.

6.12 As such, insofar as the principle of development is concerned, and having regard to the site specific considerations set out above, officers consider that the site is a suitable one for new residential development. Due to the specific merits of the application as set out above the proposal would not set a harmful precedent for further development outside defined settlement boundary and would not prejudice the overall spatial strategy of the District.

#### Design and Appearance

6.13 Paragraph 130 of the National Planning Policy Framework (NPPF) 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.

6.14 Policy SP7 of the Tendring District Local Plan seeks high standards of urban and architectural design, which responds positively to local character and context. Policies SPL3 and LP4 of the Local Plan also require that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout that relates well to its site and surroundings, create a unique sense of place.

6.15 The proposed dwelling will front the new access road and will be sited between the established residential units of Fir Tree House to the south and Westwood house to the north. The dwelling will measure approximately 10.2 metres wide by 8.1 metres deep, with an overall height of 7.8 metres.

- 6.16 The proposed dwelling will be constructed approximately 8.3 metres from Fir Tree House and 3.8 metres from Westwood House. This leaves sufficient space between the proposed development and the neighbouring dwellings so that the proposal does not appear overly cramped within its plot. The proposed application site offers adequate private amenity space to accommodate for future residents.
- 6.17 The exterior walls of the dwelling will be finished in a cream render over a red brick plinth, with a pitched roof design finished in natural slate.
- 6.18 The proposed dwelling is considered to be of an acceptable size, scale and design, in keeping with the character of the locality. The application therefore has no significant harmful impacts on the visual amenities of the area and is consistent with the above-mentioned national and local planning policies.

#### Impact on Neighbouring amenities

- 6.19 Paragraph 130 of the NPPF confirms planning policies and decisions should create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users.
- 6.20 Policy SP7 of the Tendring District Local Plan requires that the amenity of existing and future residents is protected. Policy SPL3 seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.
- 6.21 The proposed dwelling does not extend past the rear elevation of either adjacent neighbouring property and is located an adequate enough distance for it to have no significant harmful impact on the loss of daylight/sunlight, as indicated by the 45 degree rule highlighted within the Essex Design Guide.
- 6.22 There are no side facing windows located at first floor level to impact upon the loss of privacy to the adjacent neighbouring dwellings. The proposal does however include the installation of three facing rear windows which will provide the dwelling with views overlooking into the residential amenity areas of Fir Tree House and Westwood House. It is the duty of the Local Planning Authority to protect the amenities of all existing and future residents. Whilst the rear facing windows will provide views overlooking into the private amenity areas of the adjacent sites, two of these windows will be serving an en-suite and a bathroom, with the third serving a bedroom. None of these areas are considered to be primary living spaces and therefore pose no significant threat to the loss of privacy.

#### Highway Safety

- 6.23 Essex County Council highways have been consulted on this application. Their comments can be viewed in full above. Highways have confirmed they have no objection and deem the proposal to be acceptable in terms of highway safety, subject to mitigation and conditions. These conditions will be included on any subsequent approval of this application.
- 6.24 Whilst there is no proposed garage to provide parking at the site, a driveway and turning area has been provided to the front of the site. This hardstanding area provides adequate parking spaces for two vehicles and is deemed appropriate for a dwelling of this size and scale.

#### Landscape

- 6.25 The application site currently forms part of the residential curtilage of the host property. A well-established Hawthorn hedge is situated along the front boundary enclosing the garden. The Council's landscape officer does not believe this hedge falls within the scope of any legislation under which it could be afforded legal protection.

- 6.26 The garden is well planted with established trees and small shrubs. The applicant has provided an Arboricultural Impact Assessment (AIA) to show how the retained trees will be physically protected for the duration of the construction phase of any development for which planning permission may be granted
- 6.27 The proposed layout and position of the dwelling makes provision for the most visually prominent trees on the application site: a Cedar (T1), a Cherry (T2) and a False Cypress (T3). The Landscape Officer sees this as desirable and would ensure that trees that currently make a reasonable contribution to the appearance of the area are retained. However, if planning permission were likely to be granted then the new dwelling would screen the trees from view and their amenity value would be significantly diminished. However, the size, position and amenity value of the trees is such that they do not meet the criteria under which they merit formal legal protection by means of a tree preservation order.
- 6.28 The landscape officer has also stated that it would be desirable for the proposed dwelling to be set back further into the plot to provide room for small trees to be planted between the front elevation of the proposed dwelling and the highway. Trees in this position would feature prominently in the street scene and make a positive contribution to the appearance of the public realm. However, officer have not deemed it necessary to negotiate on this point as the application is identical to previously approved planning application 20/01618/FUL (of which the permission is still live and therefore forms a material consideration of very significant weight as set out above.
- 6.29 The Landscape Officer has suggested that details of soft landscaping should be secured by a planning condition on any subsequent approval. Officers will include this condition on approval of this application.

#### Drainage and Sewerage

- 6.30 Policy PPL 5 states that all new development must make adequate provision for drainage and sewerage.
- 6.31 The sewerage from the proposed dwelling will be connected to the mains sewer, this is considered the preferred approach and is acceptable.
- 6.32 The proposal is considered a minor development where there is no requirement to consult Essex County Council for sustainable drainage planning advice. Sustainable Drainage Systems (SuDS) are designed to replicate natural drainage systems, to drain surface water run-off, and in this case infiltration within the site, which will need to meet building regulation standards will be installed and is considered acceptable

#### Renewable Energy

- 6.33 Chapter 14 of the National Planning Policy Framework supports the transition to a low carbon future in a changing climate while Policy PPL10 of the Local Plan supports renewable energy generation and energy efficiency measures for residential development.
- 6.34 No energy efficiency measures have been submitted with the planning application and therefore a condition to secure minimum measures of a water-butts and compost bin, agreement of heating for the dwelling and a scheme for waste reduction will be secured on the grant of planning permission to reduce the demand for fossil fuels which are a finite resource and release carbon into the atmosphere and accelerate global warming contributing to climate change.

#### Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

6.35 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.

6.36 The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 2.2 KM from the Colne Estuary. New housing development within the Zol would be likely to increase the number of recreational visitors to the Colne Estuary; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site.

6.37 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

#### Financial Contribution – Open Space

6.38 Policy DI1 states that all new development should be supported by, and have good access to, all necessary infrastructure. Local Plan 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).

6.39 In line with the requirements of Local Plan Policy HP 5 the Council's Open Spaces Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution towards public open or play space. Whilst they advise that there is a deficit of Open Space within Great Bentley no contribution is sought on this occasion, stating that there has been come recent improvements to the only play area in the village and these facilities are adequate to cope with some development.

#### Other Considerations

6.40 Great Bentley Parish Council have not provided any comments on this application.

6.41 No other letters of representation have been received.

### **7. Conclusion**

7.1 Officers are satisfied that the existing services and facilities within Great Bently would be capable of supporting the development of 1 dwelling, and that these are easily accessible due to the location of the bus stop to the front of the site.

7.2 The proposed dwelling is of an acceptable size, scale and design that will appear in keeping with the existing character of Plough Road and its locality.

7.3 Other than the high-level policy conflict in regard to the location of the site outside the defined settlement development boundary, the development would not result in any material harm in terms of design, impact, residential amenities or highway safety and is acceptable in all other regards. Furthermore, significant weight must be given to the existing approval at the site under planning application reference 20/01618/FUL, this permission remains live until the 23rd

February 2024. The current proposal is seeking permission for the same development and is effectively increasing the timeframe for this approval.

## 8. **Recommendation**

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section106 legal agreement with the agreed Heads of Terms, as set out in the table below:

<b>CATEGORY</b>	<b>TERMS</b>
Financial contribution towards RAMS.	£156.76 x 1 dwelling

## 8.2 **Conditions and Reasons**

### 1 COMPLIANCE REQUIRED: COMMENCEMENT TIME LIMIT

CONDITION: The development hereby permitted shall be begun not later the expiration of one year 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 Section 51 of the Planning and Compulsory Purchase Act 2004, and in light of the weight given to the existing approval at the site under planning application reference 20/01618/FUL

NOTE/S FOR CONDITION:

The development needs to commence within the timeframe provided. Failure to comply with this condition will result in the permission becoming lapsed and unable to be carried out. If commencement takes place after the time lapses this may result in unlawful works at risk Enforcement Action proceedings. You should only commence works when all other conditions requiring agreement prior to commencement have been complied with.

### 2 APPROVED PLANS & DOCUMENTS

CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

Drawing No. FTC/AG/1  
Drawing No. FTC/AG/2A  
Design and Access Statement

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved,

unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

### 3 ACTION REQUIRED PRIOR TO COMMENCEMENT - HARD AND SOFT LANDSCAPING

CONDITION; No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard (including boundary treatments) and soft landscaping which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction."

Reason - In the interest of visual amenity and the character of the area.

### 4 COMPLIANCE WITH DETAILS AND TIMESCALE REQUIRED - LANDSCAPING SCHEME

CONDITION: All changes in ground levels, soft/hard landscaping shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development, or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

### 5 COMPLIANCE REQUIRED PRIOR TO COMMENCEMENT

CONDITION; Prior to commencement of development, areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety

6 COMPLIANCE REQUIRED - VISIBILITY SPLAY

CONDITION; Prior to occupation of the development hereby approved, the access at its centre line shall be provided with a visibility splay with dimensions as shown on submitted drawing no. FTC/AG/2A, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of obstruction above 600mm at all times.

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

7 COMPLIANCE REQUIRED - ACCESS

CONDITION; Prior to occupation of the development hereby approved the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 3.6 metres (equivalent to 4 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety

8 COMPLIANCE REQUIRED - MATERIALS

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

9 COMPLIANCE REQUIRED - BOUNDARY PLANTING

CONDITION; 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

10 ACTION REQUIRED - RESIDENTIAL TRAVEL INFORMATION PACK

CONDITION: Prior to occupation of the dwelling hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

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

## 11 AGREEMENT OF MEASURES TO IMPROVE SUSTAINABILITY OF DEVELOPMENT

CONDITION: No development shall commence above slab level until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include as a minimum to achieve:-

- A Water-butt per dwelling
- Compost bin per dwelling
- Agreement of heating of each dwelling/building
- Agreement of scheme for waste reduction

The scheme shall be fully implemented prior to the first occupancy of the development unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

REASON: To enhance the sustainability of the development through better use of water, energy and resources reduce harm to the environment and result in wider public benefit in accordance with the NPPF.

### NOTE/S FOR CONDITION:

Slab level is normally refers to the concrete slab supported on foundations or directly on the subsoil and is used to construct the ground floor of the development. In any other case, please assume slab level to be the point before any walls and/or development can be visually above ground level or seek confirmation from the Local Planning Authority for your development.

The greatest threat to our planet is the belief that someone else will save it and also forgetting that small acts, when multiplied by millions of people, can transform the world. Developments will provide buildings/homes to thousands/millions of people over their lifetime. A well designed sustainable development in the beginning will restrict the contribution each person makes to that threat and help enable them to transform the world.

REASON: To enhance the sustainability of the development through better use of water, energy and resources reduce harm to the environment and result in wider public benefit in accordance with the NPPF.

## 8.3 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.

### Highways Informative:



i. 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)

ii. 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.

iii. 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.

## 9. **Additional Considerations**

### Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 9.6 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

9.7 The proposal overall shall have a neutral impact.

9.8 Consultations undertaken with the affected communities or groups have not been required in this case.

9.9 No mitigation measures required.

#### Human Rights

9.10 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.

9.11 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).

9.12 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### Finance Implications

9.13 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.

9.14 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by

Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

**10. Background Papers**

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.