

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	AL	07/08/2024
EIA Development - Notify Planning Casework Unit of Decision:	N/A	N/A
Team Leader authorisation / sign off:	AN	08/08/24
Assistant Planner final checks and despatch:	ER	09/08/2024

Application: 23/01315/FUL **Town / Parish:** Great Bentley Parish Council

Applicant: Mr Peter Murphy

Address: Land to the rear of Hill Cottages Flag Hill Great Bentley

Development: Proposed construction of 2 x 3-bedroom dwellings with associated access, parking/turning areas.

1. Town / Parish Council

Great Bentley Parish Council No comments received.

2. Consultation Responses

Building Control and Access Officer No comments received.

Essex County Council Archaeology
20.10.2023
NO OBJECTION SUBJECT TO CONDITIONS

The above planning application for the Proposed construction of 2 x 3 bedroom dwellings with associated access, parking/turning areas, has been identified as having the potential to harm non-designated heritage assets with archaeological interest.

The Essex Historic Environment Record indicates the potential for below ground archaeological deposits adjacent to the development site. Cropmark features, recorded through aerial photography, reveal a large circular cropmark adjacent to the site. The feature likely represents a large Bronze Age ritual feature situated on the lower slopes overlooking the estuary. The feature is recorded adjoining the site boundary where a new access is proposed. Further cropmark features to the east of the site suggest further ritual and settlement activity in the area.

Historic mapping reveals part of the site has been subject to quarrying activities however the areas of the proposed houses lay beyond this and there is potential for disturbance to archaeological remains. The site lies within an area identified as having potential for archaeological remains and nearby evidence suggests possible prehistoric ritual and settlement activity within the area.

The following recommendations are made in line with the National Planning Policy Framework (Para 194):

RECOMMENDATION: A Programme of Archaeological evaluation 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 a final archaeological report or (if appropriate) a Post Excavation Assessment report and an Updated Project Design for approval in writing by the Local Planning Authority. This shall be done within 6 months of the date of completion of the archaeological fieldwork unless otherwise agreed in advance in writing by the Local 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.

Further Recommendations:

A professional team of archaeologists should undertake the archaeological work. 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.

UU Open Spaces

27.10.2023

**NO CONTRIBUTION
SOUGHT**

Public Realm Assessment

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.

- 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

Environmental Protection

With reference to the above application, please see below comments

from the EP Team:

Contaminated Land: Given the proximity of the site to several pieces of historic, registered contaminated land, and having consideration for the surrounding historical agricultural land, the EP Team are requesting a minimum of a Phase One Contaminated Land Survey be performed, to ensure the land is suitable for the proposed end use

- The following works shall be conducted by competent persons and in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and Environment Agencies "Land Contamination Risk Management (LCRM) " and other current guidance deemed authoritative for the purposes. The development hereby permitted shall not commence until the measures set out in the approved report have been implemented.

A. Site Characterisation

Notwithstanding the details submitted with this application, no development shall commence other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:

- (i) a survey of extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - Human health,
 - Properly (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Groundwaters and surface waters,
 - Ecological systems
 - Archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

REASON - To ensure that any risks (to future users of the land and neighbouring land and to controlled waters, property and ecological systems) arising from any land contamination are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Asbestos: If there is any asbestos present on site then adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

REASON: to protect the health of workers and nearby existing residents

Construction Activities: In order to minimise potential nuisance caused by demolition/construction works, Environmental Protection recommend that the following hours and actions be adhered to, should the application be approved;

- No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.
- No materials produced as a result of the site development or clearance shall be burned on site.

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

REASON: to protect the amenity of nearby residential premises

Should you have any queries concerning this, please do not hesitate to contact me.

Tree & Landscape Officer
17.10.2023
NO OBJECTION

The application site is to the west of the cottages on Flag Hill and cannot be seen from the highway.

The land is set to rough grass and contains several trees most notably a mature and established Oak in the northern part of the application site.

The Oak is a good specimen with reasonable form and no obvious structural defects. It has a long safe useful life expectancy. Nevertheless, the position of the tree is such that it does not feature in the public realm and consequently its amenity value is commensurately low.

The positions of the proposed new dwellings is such that the Oak will not be affected by their construction.

For the reasons set out above the Oak does not meet the criteria under which it merits formal legal protection by means of a tree preservation order.

ECC Highways Dept
17.01.2024
OBJECTION

From a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reasons:

The Highway Authority will protect the principal use of the highway as a right of free and safe passage of all highway users.

The applicant has failed to demonstrate adequate visibility splays from the proposed access in accordance with the speed of the road, to the satisfaction of the Highway Authority. The lack of such visibility would

result in an unacceptable degree of hazard to all highway user to the detriment of highway safety.

The existence of an access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety.

The proposal is therefore contrary to policy DM1, DM3 and DM7 contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

1. The vehicular access is located on the B1027 Flag Hill (secondary distributor in the County's Route Hierarchy). It is located within a 40-mph speed limit. Drawing no. 23-635-13 highlights a visibility splay of only 2.4m x 98m to the south and 2.4m x 141m to the north, however, this has not been measured to the nearside edge of carriageway and it is unclear whether the visibility splay can be achieved over land in the applicant's control and/or highway land. It is possible that vehicles on the northbound approach would be slowing on the approach to the site, however there is no supporting information to determine this.

2. The applicant has not demonstrated visibility splays in accordance with those required for the speed of the road. Alternatively, the applicant would need to conduct a speed survey in accordance with CA 185 Vehicle Speed Measurement (Design Manual for Roads and Bridges), to establish the 85th percentile speed of the road and provide visibility splays in accordance (A suitably qualified service provider with properly calibrated vehicle speed measuring equipment must carry out the survey). Speed surveys should be taken at the extent of the achievable visibility splays on each approach. Visibility splays must be achieved within the limits of public highway and/or land in the control of the applicant. Highway boundary information can be obtained from Highway.Status@essexhighways.org

3. Once a speed survey has been completed a Site Access as Proposed Layout Plan, must be provided, (including the extent of highway should be coloured on the drawing) which shows the appropriate clear to ground visibility splays in both directions with a minor or "X" distance of 2.4 metres by "Y" distance:

- a). "Y" distance appropriate for vehicle speeds travelling along Flag Hill on the traffic approach to the vehicular access (vehicles approaching from the south) as determined from the outcome of the speed survey for the measured 85th percentile speeds.
- b). "Y" distance appropriate for vehicles travelling along Flag Hill on the non-traffic approach to the vehicular access (vehicles approaching from the north).
- c). The location points of the speed measurement must be shown on a Site Layout Plan and the speed survey data must be appended.

4. As the vehicular access is on a B road a Stage 1 Road Safety Audit should be provided and swept path analysis drawing for a fire tender and refuge vehicle shall also be provided for the development.

5. The development should be provided with a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose. To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety.

Clearly if the applicant does commission additional work there is no guarantee that the required standards can be met or that the proposal will be acceptable to the Highway Authority.

Environmental Protection
16.11.2023
**INSUFFICIENT
INFORMATION**

We don't normally comment on drainage, so thank you for drawing this to our attention. It is rare to receive an application where a cesspool is being proposed, as most new developments where attaching to a mains drainage system is not viable, would utilise a sewerage treatment plant for foul waste disposal and cesspools are not a preferred option in these instances. Please see below for comments from the EP Team -

Foul Water Disposal: The submitted drainage form indicates that the proposed development of x 2 3 bed houses will connect to the existing cesspool. No information has been supplied by the applicant in relation to the location of the current system, its capacity and its current maintenance and disposal plan. In addition the form confirms that there has been no evidence submitted to justify the use of a cesspool in place of other disposal methods eg: connection to mains sewers or installation of a preferred sewerage treatment plant.

We also require information on any other dwelling that is utilising the existing system, in order to determine whether it has suitable capacity to service this proposal.

In addition to this we would like confirmation on a maintenance programme along with a disposal schedule, and whether the existing system has an alarm to notify residents when the tank is almost full and requires emptying.

REASON: to minimise any potential nuisance to nearby residential dwellings, assist in preventing a potential Public Health nuisance, and minimise the potential for adverse incidents, of which may result in formal enforcement action.

Should you need any clarification on the above, or have any queries, please do not hesitate to contact me.

Essex County Council
Ecology
25.10.2023
OBJECTION

Thank you for consulting Place Services on the above application.

Holding objection due to insufficient ecological information on European Protected Species (bats and GCN).

Summary

We have reviewed the documents supplied by the applicant, Magic Maps (<https://magic.defra.gov.uk>), Great Crested Newt Risk Zones (Essex) | GCN Risk Zones (Essex) | Natural England Open Data Geoportal (arcgis.com) and aerial photographs relating to the likely impacts of development on designated sites, protected & Priority species and habitats, and identification of proportionate mitigation.

We are not satisfied that there is sufficient ecological information available for determination of this application.

This is because no ecological report has been submitted in support of this application and the Proposed Black Plan - Drawing No. 01 (September 2023) indicates that the current buildings onsite, as shown by aerial imagery, are likely to be removed. Furthermore, we note several trees are also onsite, however it is unclear if all or any of these trees are to be retained or felled. This could impact upon bats (European Protected Species), if potential roosting features are present within any trees or buildings, onsite. Therefore, the LPA does not have certainty of the likely impacts to these European Protected Species nor any mitigation to avoid impacts and potentially an offence of disturbing or destroying bats or their roosts.

We also note that there is a pond within the development site, which likely appears to be removed as shown on the proposed plans. Furthermore, the development site lies within an Amber Risk Zone for Great Crested Newt as shown on the Great Crested Newt Risk Zones (Essex) | GCN Risk Zones (Essex) | Natural England Open Data Geoportal (arcgis.com) and four potentially suitable waterbodies are observed within 250m of the site. As a result, the LPA does not have certainty of the likely impacts to Great Crested Newts, European Protected Species.

Therefore, it is considered reasonable that a Preliminary Ecological Appraisal should be prepared by the applicant's ecologist to provide adequate assessment of the proposal to inform the need for any further surveys and, if necessary, mitigation & compensation for impacts from this application. Any surveys must be undertaken by suitably qualified ecologists, at the appropriate time of year, using standard methodologies, and professional judgement should be used to come to reasoned conclusions as to the likelihood of species being present and affected by the proposed development. This should include a Preliminary Roost Assessment of potential roosting features for bats upon any buildings and/or trees which are likely to be removed as part of the proposals. This should follow the new guidance as set out by the Bat Conservation Trust's - Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edition) (BCT, 2023).

The results of these surveys are required prior to determination because paragraph 99 of the ODPM Circular 06/2005 highlights that: "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."

This information is therefore required to provide the LPA with certainty of impacts on legally protected species and be able to secure appropriate mitigation either by a mitigation licence from Natural England or a condition of any consent. This will enable the LPA to demonstrate compliance with its statutory duties, including its biodiversity duty under s40 NERC Act 2006 and prevent wildlife crime under s17 Crime and Disorder Act 1998.

The site falls within the evidenced recreational Zone of Influence (ZOI) of Essex Coast RAMs. 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 Habitats sites.

Additionally, no biodiversity enhancement measures are identified in the documents provided. We recommend that, to secure net gains for biodiversity, as outlined under Paragraph 174d and 180d of the National Planning Policy Framework 2021, reasonable biodiversity enhancement measures will need to be provided.

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

We look forward to working with the LPA and the applicant to receive the additional information required to support a lawful decision and overcome our holding objection.

Essex County Council
Ecology
07.08.2024
OBJECTION

Holding objection due to insufficient ecological information on European Protected Species (GCN).

Summary

We have reviewed the newly supplied document Preliminary Ecological Appraisal and Roost Assessment (Arbtech, April 2024). We have also re-reviewed the non-ecological documents supplied by the applicant, as well as Magic Maps (<https://magic.defra.gov.uk>) and aerial photographs.

Whilst we now deem there is sufficient ecological information regarding bats, we are still unsatisfied sufficient information has been submitted regarding Great Crested Newts.

The Preliminary Ecological Appraisal and Roost Assessment (Arbtech, April 2024) states a pond is present on site and an eDNA survey is required, as the risk of an offence is highly likely. We therefore require the results of the survey to be submitted to the LPA for review along with suitable mitigation measures, as this pond is proposed to be removed by the proposals and suitable terrestrial habitat for the European Protected Species will be impacted.

The results of these surveys are required prior to determination because paragraph 99 of the ODPM Circular 06/2005 highlights that: *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."*

This information is therefore required to provide the LPA with certainty of impacts on legally protected species and be able to secure appropriate mitigation either by a mitigation licence from Natural England or a condition of any consent. This will enable the LPA to demonstrate compliance with its statutory duties, including its biodiversity duty under s40 NERC Act 2006 and prevent wildlife crime under s17 Crime and Disorder Act 1998.

The applicant may be interested to know that Natural England's District Level Licensing for GCN is available in Essex – see <https://www.gov.uk/government/publications/great-crested-newts-district-level-licensing-schemes> - where sites can be registered to be covered by this strategic mitigation scheme. Guidance for developers and registration forms to join the scheme are available and the LPA will need an Impact Assessment and Conservation Payment Certificate (IACPC) document countersigned by Natural England as

evidence of site registration prior to determination where this European Protected Species is likely to be present and affected by development. This approach does not require surveys to be provided to support the provision of the licence.

We look forward to working with the LPA and the applicant to receive the additional information required to support a lawful decision and overcome our holding objection.

Please contact us with any queries.

3. Planning History

21/02095/FUL

Proposed change of use from 8-month holiday use to 12 month holiday use.

Approved 13.07.2022

16/00282/FUL

Revised application for removal of 2 no lawful caravans and replacement with 1 permanent timber clad single storey lodge for leisure and recreational purposes and occupation between 1st March and 31st October each calendar year including re-siting to avoid area of unknown fill identified on contaminated land maps.

Approved 19.04.2016

15/01453/FUL

Removal of 3 existing caravans and replacement with one permanent timber clad single storey lodge for leisure and recreational purposes and occupation between 1st March and 31st October in each calendar year.

Approved 16.11.2015

14/01729/LUEX

Retention of 2 holiday caravans.

Lawful Use Granted 13.04.2015

14/01006/LUEX

Use for siting of two static caravans for holiday occupation.

Lawful Use Granted 08.09.2014

4. 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 Local Plan 2013-33 and Beyond (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 made and the Minerals and Waste Local Plans adopted by Essex County Council.

In relation to housing supply:

The Framework requires Councils to significantly boost the supply of homes to meet the District's housing need. However, the revised Framework, published on 19th December 2023, sets out in Paragraph 76 that (for applications made on or after the date of publication of this version of the Framework) local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:

- their adopted plan is less than five years old; and
- that adopted plan identified at least a five-year supply of specific, deliverable sites at the time that its examination concluded.

The adopted Local Plan meets these criteria.

Notwithstanding this updated provision, the Council will continue to demonstrate an updated supply of specific deliverable sites within its Strategic Housing Land Availability Assessment (SHLAA), which is published annually. The most recent SHLAA was published by the Council in November 2023, and demonstrates a 6.44-year supply of deliverable housing sites against the annual requirement of 550 dwellings per annum set out within the adopted Local Plan, plus a 5% buffer to ensure choice and competition in the market. (The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>)

On 19th December 2023 the Government published the Housing Delivery Test (HDT) 2022 measurement. Against a requirement for 1,420 homes for 2019-2022, the total number of homes delivered was 2,207. The Council's HDT 2022 measurement was therefore 155%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

5. 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 draft or adopted neighbourhood plans relevant to this site.

6. Relevant Policies / Government Guidance

National:

National Planning Policy Framework December 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
- 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
- LP8 Backland Residential Development

- PPL1 Development and Flood Risk
- PPL2 Coastal Protection Belt

PPL3 The Rural Landscape
PPL4 Biodiversity and Geodiversity
PPL5 Water Conservation, Drainage and Sewerage
PPL7 Archaeology
PPL10 Renewable Energy Generation and Energy efficiency Measures

CP1 Sustainable Transport and Accessibility

DI1 Infrastructure Delivery and Impact Mitigation

Essex Minerals Local Plan Adopted July 2014

S8 Safeguarding mineral resources and mineral reserves
DM1 Development Management Criteria

Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)
Tendring Provision of Recreational [Open Space for New Development SPD](#) 2008

Essex Design Guide

[Technical housing standards](#): nationally described space standard Published 27 March 2015

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

7. Officer Appraisal (including Site Description and Proposal)

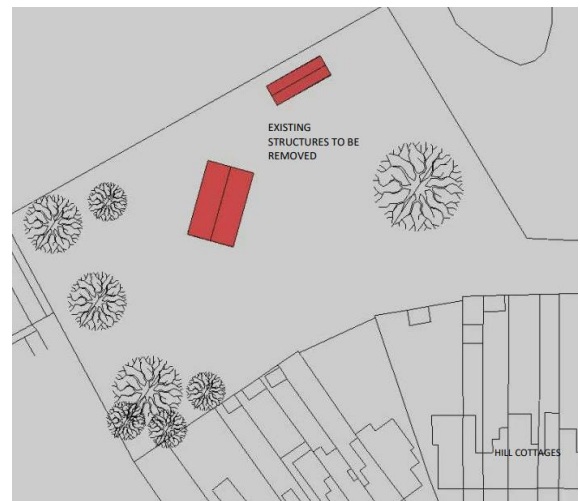
Site Description

The application site relates to a parcel of land to the rear of an existing row of terraced dwellings at numbers 15 to 32 Flag Hill Cottages, Great Bentley.

The application site extends approximately 0.47 hectares in size. Access to the application site is via an existing access located adjacent to number 15 Flag Hill Cottages.

The site currently comprises a single storey timber cabin which is located in the centre of the site and a brick built shed. There is an apparent change in levels with the site sloping down in a westerly direction.

The site is located outside of any Settlement Development Boundary as defined within the adopted Tendring District Local Plan 2013-2033 and Beyond. The site is located within the defined Coastal Protection Belt.



Planning History

A lawful use certificate was granted under planning reference 14/01729/LUEX for the retention of 2 holiday caravans.

Planning permission was granted under planning reference 15/01453/FUL for the removal of 3 existing caravans and replacement with one permanent timber clad single storey lodge for leisure and recreational purposes and occupation between 1st March and 31st October in each calendar year.

Planning permission was granted under planning reference 16/00282/FUL for the removal of 2 no lawful caravans and replacement with 1 permanent timber clad single storey lodge for leisure and recreational purposes and occupation between 1st March and 31st October each calendar year.

Subsequently, planning permission was granted for a variation to the above, allowing for occupancy for 12-month holiday use under planning application reference 21/02095/FUL. Application reference 21/02095/FUL is subject to the following conditions (officers' own emphasis):

1. The development hereby permitted shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The operators of the site shall maintain an up-to-date register of the names of all occupiers of the holiday let accommodation and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.

Reason - To prevent the use of the site for permanent accommodation in the interests of the tourism economy and local community infrastructure.

2. No person shall occupy the site for more than 28 consecutive days and shall not be permitted to return to the site within less than 14 days of vacating the site.

Reason - To prevent the use of the site for permanent accommodation in the interests of the tourism economy and local community infrastructure.

As explained above, the site currently comprises a single storey timber cabin and a brick built shed. Based on the planning history for the site, the cabin is for holiday purposes only with an ancillary shed.

Description of Development

The application seeks full planning permission for the construction of 2 no. bedroom dwellings with associated access, parking/turning areas (following the demolition / removal of the existing structures on the site).

The development comprises 2 no. 2 storey scale dwellings with accommodation within the roof space served by dormers and roof lights (giving the appearance of 1.5 storey properties). The dwellings would be served by a shared access and driveway leading to 2 parking bays to the front and side of the dwellings.



Assessment

The main planning considerations relevant to the assessment and determination of this application can be summarised and addressed as follows.

1. Principle of Residential Development
2. Layout, Scale, Design and Landscape Impact (including "Backland" Development)
3. Trees and Landscaping
4. Access and Parking
5. Protected Species, Biodiversity Mitigation and Enhancement (including BNG & RAMS)
6. Residential Amenities
7. Drainage and Foul Sewage Disposal
8. Sustainable Construction & Energy Efficiency
9. Environmental Protection
10. Archaeology
11. Objections and Representations
12. Other matters – Open Space and Play Space Contribution
13. Conclusions and Recommendation

1. Principle of Residential Development

Spatial Strategy

As addressed above (Status of the Local Plan), in line with Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning law requires that planning application decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. 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. The site is not located within an area subject of any adopted Neighbourhood Plans.

Adopted Tendring District Local Plan 2013-2033 and Beyond Section 1 (TDLPS1) Policy SP1 states that when considering development proposals, Local Planning Authorities will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. They will always work pro-actively with applicants to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area. Development that complies with the Plan will be approved without delay, unless material considerations indicate otherwise.

TDLPS1 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.

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 TDLPS2 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, i.e., by explicitly defining settlement development boundaries around relevant settlements to make land available as necessary for development to meet the planned housing requirement.

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.

Whilst the site falls within the Parish of Great Bentley, the application site falls outside of the defined settlement boundary for the area as identified on the Local Plan Policies Maps, and therefore does not benefit from the general presumption in favour of new development offered by Policy SPL2.

Site-Specific Characteristics

As mentioned above, adopted Local Plan Policy SPL1 identifies a hierarchy of settlements to where new development will be directed. In doing so, it seeks to prioritise locations with access to the strategic road network, public transport, and those with the potential to offer the widest range of services. In areas outside of development settlement boundaries, these are considered to be part of the countryside. Great Bentley is categorised as a 'Rural Service Centre' in recognition of its services and amenities. For these settlements, the Local Plan identifies opportunities for smaller-scale planned growth.

The application site is located over 2.5 km (as the crow flies) from the edge of the defined settlement boundary of Great Bentley and a similar distance to neighbouring settlements of Thorrington and St Osyth. In policy terms, the site is therefore located within the countryside where development is restricted to protect and enhance the character and openness of the countryside.

Whilst it is recognised that there is a bus stop to the front of the site providing services to Colchester and Clacton, the site is poorly located in terms of accessibility of local services and future occupants would be reliant on their private car, therefore failing to represent sustainable development.

Coastal Protection Belt

The application site falls within the defined Coastal Protection Belt (CPB). TDLPS2 Policy PPL2 states that, within the CPB, applications will be refused unless the development has a compelling functional or operational requirement to be located in the CPB. There is no definition of functional or operational requirement in the LP, but it is reasonable to relate this to the nature of the CPB, that is the proximity to the coast.

The proposal is for two dwellings. There is no compelling functional or operational requirement for such development to be located close to the coast or otherwise to be within the CPB.

The reasoned justification for the policy states that protection of the CPB is to direct development not needing to be located in the CPB to more sustainable locations. No evidence has been provided that such development is required within the CPB. Policy PPL2 requires both the principle of location and character and appearance tests to be met. The site is in an inappropriate location for the development and it is therefore not necessary to consider the effect of the proposal on the character and appearance of the area. (This conclusion is supported by recent appeal decision reference APP/P1560/W/23/3321311 Vicarage Field, Church Road, Brightlingsea, Essex CO7 0QU).

Other Material Planning Considerations - Five-year housing land supply

One of the material planning considerations that might sometimes require the Council to depart from the approach in Policy SPL2 (providing support for development outside of the settlement development boundary) is our ability (or otherwise) to demonstrate a five-year supply of deliverable housing. In the past and particularly before the adoption of the new Local Plan, a number of residential developments outside of settlement development boundaries were granted permission as a departure from policy to address a shortfall in the demonstrable housing supply.

However, at the time of writing, those circumstances do not apply as there is now an up-to-date Local Plan in place and the Council is able to report a comfortable surplus of housing land supply over and above the 5-year requirement. There is consequently no argument in housing supply terms for extending the general presumption in favour of development set out in Policy SPL2 to sites beyond the defined settlement development boundaries and thus a plan-led approach should prevail.

Principle of Development Conclusions

Given the site's location outside of any defined settlement development boundary and within the Coastal Protection Belt, the site is not located in an area which is promoted as a suitable location for further housing growth under normal policy consideration and does not demonstrate a compelling functional need in accordance with TDLPS2 Policy PPL2.

The proposed development would conflict with adopted Local Plan Section 1 Policies SP1 and SP3 and Section 2 Policies SPL1, SPL2, and PPL2.

2. Layout, Scale, Design and Landscape Impact

Paragraph 131 of the National Planning Policy Framework (NPPF) states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and

development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Local Plan Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Furthermore, Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness. The development should relate well to its site and surroundings and should respect or enhance local landscape character and other locally important features.

Policy PPL3 states that the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance.

Furthermore, Policy LP8 deals with proposals for the residential development of “backland” sites. Such developments must comply with the criteria contained within the policy, as set out and addressed below:

- a. where the development would involve the net loss of private amenity space serving an existing dwelling, that dwelling must be left with a sufficient area of private amenity space having regard to the standards in this Local Plan

The application site will not result in the loss of private amenity space serving an existing dwelling. This criterion is not applicable.

- b. a safe and convenient means of vehicular and pedestrian access/egress must be provided that does not cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will not be permitted

The application fails to demonstrate that a safe and convenient means of vehicular and pedestrian access/egress can be provided to serve the proposed development.

Although the application fails to demonstrate that the access is suitable to serve the proposed development, the access is existing and will not result in any visual detriment to the street scene.

The existence of an access in this location is a matter of fact and the passage of vehicles already occurs or can occur. Having regard to the existing situation, the traffic movements associated with 2 no. dwellings will not cause significant disturbance or loss of privacy to neighbouring residents.

The application fails the first part of this criterion.

- c. the proposal must avoid “tandem” development using a shared access

The layout of the site and position of the proposed dwellings will not result in tandem development. This criterion is not applicable.

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

The site is not in a location suitable for residential development as covered in the principle of development section above. This criterion is not considered applicable to this site and development.

- e. the site must not be on the edge of defined settlements where likely to produce a hard urban edge or other form of development out of character in its particular setting, and

The site is not located on the edge of a defined settlement and is not in a suitable location for new housing (as covered in the principle of development section above). This criterion is not considered applicable to this site and development.

- f. the proposal must not be out of character

The proposal is considered out of character and fails this criterion (as addressed in more detail below).

The area is semi-rural in character with sporadic residential properties in a linear arrangement fronting Flag Hill (B1027) separated by open fields. Examples of built form in a “backland” position, including the application site, relate to holiday park accommodation with associated infrastructure and leisure facilities only, all being single storey. There is an established car sales business to the south accessed via a shared access with the Country Park. The character of existing residential dwellings in the surrounding locality are predominantly traditional in design and appearance. The site is located directly to the rear of an existing row of modest, terraced cottages (Flag Hill Cottages).

As explained above, the site currently accommodates a single storey timber cabin which is located in the centre of the site and a brick built shed. There is an apparent change in levels with the site sloping down in a westerly direction. Flag Hill Cottages therefore sit slightly higher than the application site, and the land falls away beyond the application site.



The application proposes the erection of 2 no. detached, 2-storey dwellings positioned almost centrally within the site, facing inwards fronting the extended shared access driveway. Whilst it is recognised that the development provides spacious plots, the “backland” siting, layout and orientation of the dwellings is wholly out of keeping in this context, thus failing to respond to local character and the existing pattern of residential development.

Moreover, the dwellings would replace a single, modest single storey holiday cabin with two large detached, 2-storey houses with an overall ridge height of approximately 7.6 metres. The excessive height and scale would be further exacerbated by the sloping site appearing prominent and harmful in the landscape.

The development constitutes poor design by failing to relate well to the site or its surroundings in terms of layout, scale or appearance. The introduction of dwellings in this “backland” siting of the scale and appearance proposed, would result in overriding harm to local character and distinctiveness, contrary to the above mentioned national and local plan policies. In addition, the development would also be contrary to Local Plan Policy PPL2 by failing to protect the open character of the undeveloped coastline.

3. Trees and Landscaping

Paragraph 136 of the NPPF sets out the importance of trees and the contribution they make to the character and quality of urban environments. It states that planning policies and decisions should ensure that opportunities are taken to incorporate trees in developments and that existing trees are retained wherever possible.

TDLPS2 Policy LP4 relates to housing layout and states; to ensure a positive contribution towards the District's 'sense of place', the design and layout of new residential developments will be expected to incorporate and maximise the use of green infrastructure, verges, trees and other vegetation.

Consultation has been undertaken with the Council's Trees and Landscaping Officer (comments in full above).

Whilst the site contains several trees, including a mature and established Oak in the northern part of the application site, the Oak tree nor any others on the site meet the criteria under which they merit formal legal protection by means of a tree preservation order.

Nevertheless, the position of the dwellings is such that, no harm to the existing trees on site will occur as a result of the development.

In the event of an approval on site, a hard and soft landscaping scheme would be secured to soften and enhance the quality of the development.

4. Access and Parking

Paragraph 114 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. TDLP Policy SPL3 Part B seeks to ensure that access to a new development site is practicable, and the highway network will be able to safely accommodate the additional traffic the proposal will generate, and provision is made for adequate vehicle and cycle parking.

The EPOA Parking Standards 2009 require that for dwellings with 2 or more bedrooms, a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres and garages should have internal dimensions of 7 metres by 3 metres (if being replied upon as a parking space). One secure, covered parking space for bicycles is required per dwelling.

The application demonstrates that parking to serve the development can be achieved. Cycle parking could be secured via condition in the event of an approval on site.

However, the application fails to demonstrate adequate visibility splays from the proposed access in accordance with the speed of the road, to the satisfaction of the Highway Authority. The existence of an access in this location is a matter of fact. Some degree of conflict and interference to the passage of through vehicles already occurs. However, the site is currently used for a single holiday cabin. The proposed development of the site for 2 permanent dwellings would result in an intensification of the existing conflict and interference. In the absence of sufficient information to demonstrate the appropriate visibility can be achieved, the development would result in an unacceptable degree of hazard to all highway user to the detriment of highway safety.

The application is contrary to the above-mentioned national and local plan policies.

5. Protected Special, Biodiversity Mitigation and Enhancement (including BNG & RAMS)

General duty on all authorities

Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity. Section 40 A1 states "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England".

The duty to conserve and enhance biodiversity is placed on public authorities with functions exercisable in relation to England, this includes local authorities, which encompass local planning authorities. Section 40 provides authorities must consider what actions they can take to further the general biodiversity objective and, after consideration, determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. While the Section doesn't explicitly state that planning decisions must contribute to biodiversity conservation, it's essential to consider the broader context of planning functions within the authority. Typically, local planning authorities play a crucial role in land use decisions, and decisions related to development and land management can have significant implications for biodiversity. In conclusion for decision making, it is considered that the LPA must be satisfied that the development would conserve and enhance.

Mandatory Biodiversity Net Gain

Under the same Act (Environment Act 2021) mandatory Biodiversity Net Gain came into force for applications submitted on or after 12th April 2024. In this instance, this application was submitted on 20th September 2023 and does not therefore require a minimum biodiversity net gain of 10%.

Nevertheless, in the event of an approval on the site, there would be scope to enhance biodiversity through appropriately worded conditions to secure such features as new planting, permeable surfacing, wildlife-friendly fencing and lighting, nesting boxes and rainwater capture.

Protected Species

Paragraph 180 of the NPPF states that, when making planning decisions local planning authorities need to assess whether significant harm to biodiversity could result from the development. The NPPF goes on to state the hierarchy that should be applied to mitigate any harm to ecology that is identified. Paragraph 174 of the NPPF requires that Local Planning Authorities contribute to and enhance sites of biodiversity or geological value whilst Paragraph 179 requires local planning authorities to safeguard components of local wildlife-rich habitats.

TDLPS2 Policy PPL4 states that proposals for new development should be supported by appropriate ecological assessments and, where relevant, provide appropriate mitigation and biodiversity enhancements to ensure a net gain.

Consultation has been undertaken with Essex County Council Place Services Ecology Team ("Ecology"). Initial comments from Ecology raised an objection due to the absence of a Preliminary Ecological Appraisal (and any other reports this identifies). The comments highlighted the potential for bat roosting features present within the trees and buildings onsite, together with the likely impact upon Great Crested Newts due to the presence of a pond within the development site and four potentially suitable waterbodies within 250m of the site.

Subsequently, the applicant has provided a Preliminary Ecological Appraisal and Roost Assessment (Arbtech, April 2024). Ecology have provided further comments in response to the additional information. In summary, there is sufficient ecological information regarding bats, but sufficient information has been submitted regarding Great Crested Newts.

The Preliminary Ecological Appraisal and Roost Assessment (Arbtech, April 2024) states a pond is present on site and an eDNA survey is required, as the risk of an offence is highly likely. We therefore require the results of the survey to be submitted to the LPA for review along with suitable mitigation measures, as this pond is proposed to be removed by the proposals and suitable terrestrial habitat for the European Protected Species will be impacted.

This information is therefore required to provide the LPA with certainty of impacts on legally protected species and be able to secure appropriate mitigation either by a mitigation licence from Natural England or a condition of any consent. This will enable the LPA to demonstrate compliance with its statutory duties, including its biodiversity duty under s40 NERC Act 2006 and prevent wildlife crime under s17 Crime and Disorder Act 1998.

Therefore, the LPA does not have certainty of the likely impacts to these European Protected Species nor any mitigation to avoid impacts and potentially an offence of disturbing or destroying bats or their roosts.

Protected Designated Habitats

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. Mitigation measures must be secured prior to occupation and are achieved through a financial contribution of £163.86 per dwelling, secured through a legal agreement.

This residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites but is approximately 200 metres from the Colne Estuary Ramsar Site and Special Protection Area, and Essex Estuaries Special Area of Conservation.

A legal agreement request has been sent to the applicant, but no progress has been made during the application process.

Therefore, in the event of an approval on the site, in order to comply with the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), Local Plan Policies SP2 and PPL4, and Regulation 63 of the Conservation of Habitats and Species Regulations 2017, an appropriately worded condition would be added to secure the completion of a Unilateral Undertaking thus securing the payment of the required financial contribution prior to the occupation of the development.

Conclusion

The application fails to provide sufficient information in regard to the impacts of the development on legally protected species (Great Crested Newts) and any appropriate mitigation cannot be established.

This information is required to provide the LPA with certainty of impacts on legally protected species and be able to secure appropriate mitigation either by a mitigation licence from Natural England or a condition of any consent. In the absence of such information, the LPA cannot demonstrate compliance with its statutory duties, including its biodiversity duty under s40 NERC Act 2006 and prevent wildlife crime under s17 Crime and Disorder Act 1998.

6. Residential Amenities

Paragraph 135 of the NPPF includes that planning decisions should ensure developments 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.

Local Plan Policy SPL3, Part B requires that buildings and structures are designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents. Furthermore, Part B states that, new development must meet practical requirements, including provision for adequate private amenity space, waste storage and recycling facilities, vehicle and cycle parking.

Policy LP4 j. states that the design and layout of new residential will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents, and which is commensurate to the size of dwelling and the character of the area. The private amenity.

The application demonstrates that ample private amenity space, parking, turning, cycle storage and bin storage could be achieved. Therefore, there can be no objection to the development in so far as the residential amenities of the future occupants is concerned.

Turning to the impact of the development on the amenities of existing residents, the side facing elevation of the proposed dwelling closest to Flag Hill Cottages (southern plot) retains over 15 metres to the rear garden boundaries and a further, approximate, 16 metres to the rear facing elevations. The other plot (western plot) is sited further from Flag Hill Cottages being over 26 metres from the rear garden boundaries and a further 20 metres from the rear elevations.

Due to the ample distance retained between the proposal dwellings to the rear boundaries and rear facing elevations of Flag Hill Cottages, there will be no material loss of daylight, outlook or privacy.

Officers fully appreciate that the development would result in a significant change to the views currently enjoyed by the existing occupiers of Flag Hill Cottages, however, loss of view is not a material planning consideration.

The application is therefore considered acceptable in residential amenity terms.

7. Drainage and Foul Sewage Disposal

Paragraph 170 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 180 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.

Adopted Policy PPL5 of Section 2 of the Adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Connection to the mains is the preferred option having regard to the drainage hierarchy and building regulations requirements. However, where this is not possible, an application will need to confirm how foul sewage disposal will be dealt with in compliance with the building regulations and Environment Agency drainage hierarchy.

In this instance, the application proposes a cess pool.

Environmental Agency guidance explains:

Other than in very exceptional circumstances, we will not allow the use of non-mains drainage as part of your Planning or Building Regulation application unless you can prove that a connection to the public sewer is not feasible. We do not consider non-mains drainage systems to be environmentally acceptable in locations where it is feasible to connect to a public sewer.

The use of cesspools is an option of last resort as set out in the non-mains drainage hierarchy of preference in Building Regulations Approved Document H. In principle, a properly constructed and maintained cesspool, being essentially a holding tank with no discharges, should not lead to environmental, amenity or public health problems. However, in practice, it is known that such problems occur as a result of frequent overflows due to poor maintenance, irregular emptying, lack of suitable vehicular access for emptying and even through inadequate capacity. In addition to this the requirement for frequent emptying is usually carried out by a contractor involving road transport with associated environmental costs. For these reasons, the use of cesspools will not normally be considered to be a long-term foul sewage disposal solution. In view of the environmental risks associated with their use, any proposal to use cesspools must be fully justified to the Local Planning Authority.

The applicant has provided a Foul Drainage Assessment Form. However, the form is incomplete and is not accompanied by supporting information to explain or justify the use of a cess pool.

The application therefore fails to comply with the above policy requirements, Building Regulations Approved Document H and Environment Agency drainage hierarchy.

8. Sustainable Construction & Energy Efficiency

Paragraph 116 of the NPPF 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. Policies PPL10 and SPL3 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.

In the event of an approval on the site, compliance with requirements of Policies PPL10 and SPL3 could be secured via condition.

9. Environmental Protection

Consultation with the Council's Environmental Protection Team (EPT) has been undertaken. EPT raise no objection to the development subject to conditions securing a contaminated land watching brief and construction management (timing and clearance). Environmental protection matters can be satisfactorily controlled by the recommended conditions.

10. Archaeology

TDLPS2 Policy PPL7 states that any new development which would affect, or might affect, designated or non-designated archaeological remains will only be considered where accompanied by an appropriate desk-based assessment. Where identified as necessary within that desk-based assessment, a written scheme of investigation including excavation, recording or protection and deposition of archaeological records in a public archive will be required to be submitted to, and approved by, the Local Planning Authority.

The Council has consulted our Historic Environment Advisors at ECC Place Services and they have reviewed the application and the Essex Historic Environment Record (HER). The HER indicates the potential for below ground archaeological deposits adjacent to the development site. Cropmark features, recorded through aerial photography, reveal a large circular cropmark adjacent to the site. The feature likely represents a large Bronze Age ritual feature situated on the lower slopes overlooking the estuary. The feature is recorded adjoining the site boundary where a new access is proposed. Further cropmark features to the east of the site suggest further ritual and settlement activity in the area. Historic mapping reveals part of the site has been subject to quarrying activities however the areas of the proposed houses lay beyond this and there is potential for disturbance to archaeological remains. The site lies within an area identified as having potential for archaeological remains and nearby evidence suggests possible prehistoric ritual and settlement activity within the area.

As there is good potential for archaeological remains to be present, ECC Archaeology recommends a programme of archaeological investigation be carried out prior to development commencing. This can be secured by planning condition in the event of an approval on the site.

11. Objections and Representations

No comments have been received from Great Bentley Parish Council.

9 letters of objection have been received from interested parties or neighbouring residents. The concerns raised can be summarised and addressed as follows (officer comment in italics):

- Inaccuracies with the plans, boundaries and land ownership.
- Intrudes on the 30ft right of access land to the rear of Flag Hill Cottages to allow access to septic tanks and soakaway maintenance. None of this appears to have been considered or acknowledged within the planning application.

Land ownership and boundary disputes are not a planning matter. The onus is on the applicant to provide accurate information on the application form and associated Certificate of Ownership. Should the information provided be inaccurate, it may invalidate any permission approved on the site.

- Out of character with the local area.
- Harm to semi-rural location.
- No need for more housing.
- 2 residential houses rather than holiday homes.

The principle of housing development in this location is addressed in the main report above.

- Loss of outlook, privacy and loss of light.
Residential amenities are addressed in the main report above.

- Unsuitable and unsafe access.
- Increase in traffic movements on an already busy road where people do not adhere to the speed limit.
Access and highway safety are addressed in the report above and form a reason for refusal.

- Harm to protected species, biodiversity and wildlife.

This is addressed *in the main report above.*

- Loss of views.
Loss of view is not a material planning consideration.
- Existing building built in different position without permission.
This has been referred to the Council's Enforcement Team. After investigation, the LPA have taken the view that the slight deviation from the approved plans in relation to the position of the building is not significant and cannot be considered harmful. It would not be expedient to take enforcement action.

12. Other matters – Open Space and Play Space Contribution

TDLP Section 2 Policy HP 5 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. TDLP Section 2 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 and the appropriate infrastructure provider. Such measures may include financial contributions towards new or expanded facilities and the maintenance thereof.

Consultation has been undertaken with the Council's Public Realm Team who do not request a contribution in this instance.

Nonetheless, since the submission of this application, the LPA have taken the decision not to seek contributions for open space for minor scale development projects such as this.

13. Conclusions and Recommendation

The proposal is not in accordance with the Local Plan's spatial approach to housing delivery representing a new dwelling in the countryside. The proposal is therefore contrary to the Council's plan-led spatial strategy to direct development to the main urban areas and manage growth. In terms of its location, the proposal is therefore contrary to Policies SP1, SP3, SPL1 and SPL2, and is unacceptable in principle.

Moreover, the application site falls within the defined Coastal Protection Belt (CPB) where TDLP S2 Policy PPL2 states that applications will be refused unless the development has a compelling functional or operational requirement to be located in the CPB. No such justification has been provided.

The development constitutes poor design by failing to relate well to the site or its surroundings in terms of siting, layout, scale or appearance. The introduction of dwellings in this "backland" siting of the scale and appearance proposed, would result in overriding harm to local character and distinctiveness.

The application fails to demonstrate adequate visibility splays from the proposed access in accordance with the speed of the road. The development would result in an unacceptable degree of hazard to all highway users to the detriment of highway safety.

The application fails to provide any evidence to justify the use of a cesspool in place of other disposal methods. No information has been supplied in relation to the location of the current system, its current users, its capacity and its current maintenance and disposal plan. The application therefore fails to comply with the above policy requirements, Building Regulations Approved Document H and Environment Agency drainage hierarchy.

Insufficient ecological information has been provided and the application is contrary to the Local Plan Policy PPL4. The local planning authority are unable to assess, with certainty, the impacts on

protected species, specifically Great Crested Newts, and are unable to demonstrate compliance with its statutory duties, as well as its biodiversity duty under s.40 NERC Act 2006.

All other relevant material planning considerations as set out in the main body of the report are either policy compliant, or capable of being policy compliant subject to relevant, necessary and reasonable planning conditions, which can be secured upon any planning approval.

8. Recommendation

Refusal - Full

9. Reasons for Refusal

1. UNACCEPTABLE IN PRINCIPLE

Adopted Tendring District Local Plan 2013-2033 and Beyond Section 1 Policy SP3 sets out the Council's spatial strategy for development within the district. The Council's spatial strategy focusses new development within or adjoining settlements subject to their scale, sustainability and existing role within their district and, where relevant, across the wider strategic area. Local Plan Section 2 Policy SPL1 identifies a hierarchy of settlements to where new development will be directed and Policy SPL2 defines the settlement boundaries themselves.

The application site is located over 2.5 km from the edge of the defined settlement boundary of Great Bentley and a similar distance to neighbouring settlements of Thorington and St Osyth. In policy terms, the site is therefore located within the countryside where development is restricted to protect and enhance the character and openness of the countryside. Whilst it is recognised that there is a bus stop to the front of the site providing services to Colchester and Clacton, the site is poorly located in terms of accessibility of local services and future occupants would be reliant on their private car, therefore failing to represent sustainable development.

Given the site's location outside of any defined settlement development boundary, the site is not located in an area which is promoted as a suitable location for further housing growth, therefore being contrary to the Council's spatial strategy and in conflict with adopted Local Plan Section 1 Policies SP1 and SP3 and Section 2 Policies SPL1 and SPL2.

2. COASTAL PROTECTION BELT

The application site falls within the defined Coastal Protection Belt (CPB). TDLPS2 Policy PPL2 states that, within the CPB, applications will be refused unless the development has a compelling functional or operational requirement to be located in the CPB.

No evidence has been provided that the proposed development is required within the CPB. Policy PPL2 requires both the principle of location and character and appearance tests to be met. The site is in an inappropriate location for the development, and it is therefore not necessary to consider the effect of the proposal on the character and appearance of the area.

3. POOR DESIGN, CHARACTER & LANDSCAPE HARM

Adopted Local Plan Section 2 Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Furthermore, Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness. The development should relate well to its site and surroundings and should respect or enhance local landscape character and other locally important features. Local Plan Section 2 Policy PPL3 states that the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance. Furthermore, Policy LP8(f) states that proposals for the residential development of "backland" sites must not be out of character.

The application proposes the erection of 2 no. detached, 2-storey dwellings in a "backland" position

on large plots in a location characterised by road frontage, linear, terraced dwellings. The dwellings would replace a single, modest single storey holiday cabin with two large detached, 2-storey houses with an overall ridge height of approximately 7.6 metres. The excessive height and scale would be further exacerbated by the sloping site appearing prominent and harmful in the landscape.

The development constitutes poor design by failing to relate well to the site or its surroundings in terms of siting, layout, scale or appearance. The introduction of dwellings in this “backland” siting of the scale and appearance proposed, would result in overriding harm to local character and distinctiveness, contrary to the above mentioned national and local plan policies.

4. FAILURE TO DEMONSTRATE: HIGHWAY SAFETY

National Planning Policy Framework 2023 (NPPF) Paragraph 114 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Adopted Local Plan Section 2 Policy SPL3 Part B seeks to ensure that access to a new development site is practicable, and the highway network will be able to safely accommodate the additional traffic the proposal will generate.

The application fails to demonstrate adequate visibility splays from the proposed access in accordance with the speed of the road. The existence of an access in this location is a matter of fact. Some degree of conflict and interference to the passage of through vehicles already occurs. However, the site is currently used for a single holiday cabin. The proposed development of the site for 2 permanent dwellings would result in an intensification of the existing conflict and interference. In the absence of sufficient information to demonstrate the appropriate visibility can be achieved, the development would result in an unacceptable degree of hazard to all highway users to the detriment of highway safety being contrary to the above-mentioned national and local plan policies.

5. FAILURE TO DEMONSTRATE: FOUL SEWERAGE DISPOSAL

Adopted Local Plan Section 2 Policy PPL5 states that all new development must make adequate provision for drainage and sewerage disposal. Connection to the mains is the preferred option having regard to the drainage hierarchy and building regulations requirements. However, where this is not possible, an application will need to confirm how foul sewage disposal will be dealt with in compliance with the building regulations and Environment Agency drainage hierarchy.

The application fails to provide any evidence to justify the use of a cesspool in place of other disposal methods. No information has been supplied in relation to the location of the current system, its current users, its capacity and its current maintenance and disposal plan.

The application therefore fails to comply with the above policy requirements, Building Regulations Approved Document H and Environment Agency drainage hierarchy.

6. FAILURE TO DEMONSTRATE: ECOLOGY IMPACTS

Adopted Tendring District Local Plan 2013-2033 and Beyond Section 2 Policy PPL4 states that, proposals for new development should be supported by appropriate ecological assessments and, where relevant, provide appropriate mitigation and biodiversity enhancements to ensure a net gain.

Insufficient ecological information has been provided and the application is contrary to the Local Plan Policy PPL4. The local planning authority are unable to assess, with certainty, the impacts on protected species, specifically Great Crested Newts, and are unable to demonstrate compliance with its statutory duties, as well as its biodiversity duty under s.40 NERC Act 2006.

10. 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 Agent and 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 reasons 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):

- 01 Amended Block Plan
- 02 Amended Part Site Layout Plan
- 03 Amended Site Plan
- 05 Amended Ground Floor Plan
- 06 Amended First Floor Plan
- 07 Amended Roof Plan
- 10 Amended Street Scene Views
- 11 Amended Site Perspectives
- 12 Amended Existing Block Plan
- 13 Visibility Splay
- P04 A Amended Location Plan
- P08 A Amended Front and Side Elevations
- P09 A Amended Rear and Side Elevations
- Foul Drainage Form received 03.11.2023
- Preliminary Ecological Appraisal and Roost Assessment dated 23.04.2024

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (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 that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

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.

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

12. **Notification of Decision**

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