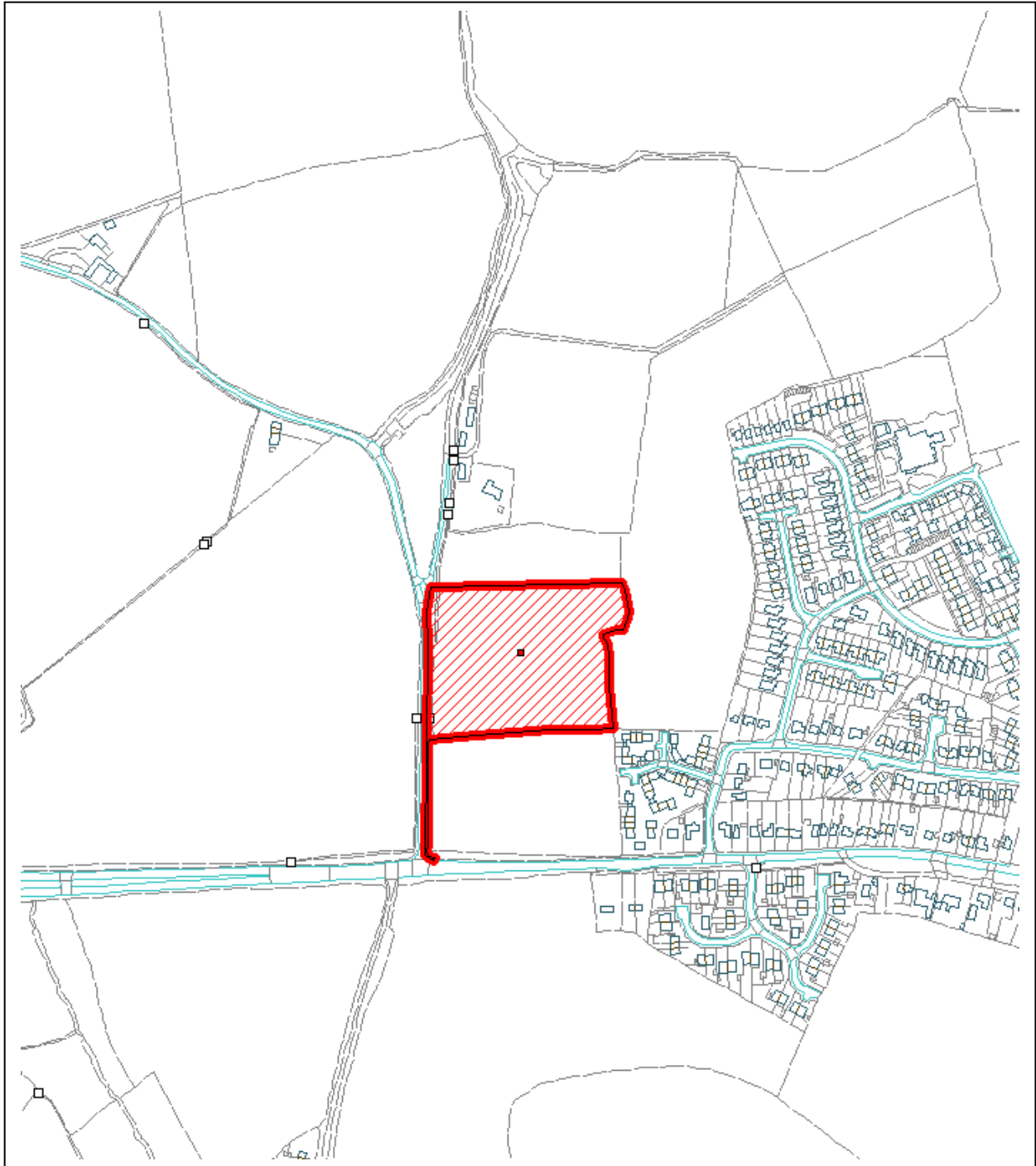


PLANNING COMMITTEE

26<sup>th</sup> June 2018

REPORT OF THE HEAD OF PLANNING

**A.3 PLANNING APPLICATION - 18/00681/DETAIL - LAND TO THE EAST OF TYE ROAD, ELMSTEAD, CO7 7BB**



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<b>Application:</b>	18/00681/DETAIL	<b>Town / Parish:</b> Elmstead Market Parish Council
<b>Applicant:</b>	Mr S Williams - Hills Residential Ltd	
<b>Address:</b>	Land to The East of Tye Road, Elmstead, CO7 7BB	
<b>Development:</b>	Reserved matters application for construction of new access to serve housing development approved under 16/00219/OUT (amendment to application 17/00927/DETAIL).	

## 1. Executive Summary

- 1.1 This application is referred to Planning Committee as it seeks to amend a condition which was originally imposed by Planning Committee on 27<sup>th</sup> February 2018.
- 1.2 Outline application 16/00219/OUT sought consent for the erection of up to 32 dwellings, land for a community facility and associated parking and infrastructure. This application was granted at appeal in April 2017, with all matters of detail reserved. Following this approval a reserved matters application for details of access was submitted (17/00927/DETAIL). This application was approved by Planning Committee on 27<sup>th</sup> February 2018, subject to a condition requiring the footpath and highway works to be provided prior to development commencing.
- 1.3 This application is a resubmission of application 17/00927/DETAIL to seek permission to amend the wording of Condition No. 2. The change proposes that the footpath and highway works will be provided prior to any dwelling being occupied rather than development commencing. All other aspects of the proposal remain unchanged.
- 1.4 It is considered that for the reasons set out above Condition No. 2 on 17/00927/DETAIL fails to meet the relevant tests for conditions set out in the NPPF as it is not entirely necessary, not directly related to the development and therefore is unreasonable in requiring the provision of the footpath and highway works prior to commencement of development. The amended wording to require the provision of the footpath and highway works prior to first occupation of any dwelling meets the relevant tests, therefore this proposed amendment is recommended for approval.
- 1.5 The visual impact and highway safety aspect of the proposal has not been amended since the Planning Committee granted application 17/00927/DETAIL and therefore it would be unreasonable to refuse this application on these grounds.

**Recommendation: Approve**

**Conditions:**

1. In accordance with approved plans
2. Prior to occupation the highway improvement works shall be provided entirely at the Developer's expense.

## 2. **Planning Policy**

National Planning Practice Guidance

National Planning Policy Framework

Tendring District Local Plan 2007

- QL1 Spatial Strategy
- QL3 Minimising and Managing Flood Risk
- QL9 Design of New Development
- QL10 Designing New Development to Meet Functional Needs
- QL11 Environmental Impacts and Compatibility of Uses
- QL12 Planning Obligations
- HG1 Housing Provision
- HG4 Affordable Housing in New Developments
- HG6 Dwelling Size and Type
- HG7 Residential Densities
- HG9 Private Amenity Space
- COM1 Access for All
- COM6 Provision of Recreational Open Space for New Residential Development
- COM26 Contributions to Education Provision
- COM31A Sewerage and Sewage Disposal
- EN1 Landscape Character
- EN4 Protection of the Best and Most Versatile Agricultural Land
- EN6 Biodiversity
- EN6A Protected Species
- EN6B Habitat Creation
- EN13 Sustainable Drainage Systems
- TR1A Development Affecting Highways
- TR10A General Aviation
- TR3A Provision for Walking

- TR5 Provision for Cycling
- TR6 Provision for Public Transport Use
- TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- HP5 Open Space, Sports & Recreation Facilities
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- PPL1 Development and Flood Risk
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- CP1 Sustainable Transport and Accessibility
- CP2 Improving the Transport Network

### **Status of the Local Plan**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. Part 1 was examined in January 2018 with the Inspector's report awaited and whilst its policies cannot yet carry the full weight of adopted policy, they can carry some weight in the determination of planning applications. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

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

16/00219/OUT	Outline planning application for	Refuse	27.07.2016
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	residential development of up to 32 dwellings, land for a community facility and associated parking and infrastructure.	Allowed at Appeal	
16/01950/OUT	Outline planning application for residential development of up to 32 dwellings and associated open space, car parking and infrastructure.	Withdrawn	26.04.2017
17/00927/DETAIL	Reserved matters application for construction of new access to serve housing development approved under 16/00219/OUT.	Approved	12.03.2018
18/00512/OUT	Outline planning application for residential development of up to 18 dwellings and associated open space, car parking and infrastructure.	Current	

#### 4. Consultations

##### **ECC Highways Department**

Raise no objection to the proposed amendment for the footpath and highway works to be completed prior to first occupation.

#### 5. Representations

Elmstead Parish Council objects to the application for the following reasons:

- Due to the location of this development, where pedestrian access to the village will be along Tye Road, this footpath is critical.
- It is necessary and vital that the footpath is provided prior to development commencing to ensure that the footpath is viable.

#### 6. Assessment

##### Site Context

- 6.1 The site is situated to the east of Tye Road and the western edge of Elmstead. The application site is roughly rectangular in shape and measures 2.4 hectares. It is currently managed as an arable field and is bounded by a continuous mixed native hedgerow with individual mature trees.
- 6.2 To the north of the site is a detached residential property and land which is subject to a current planning permission for a further 18 dwellings (18/00512/OUT). To the east of the site is a development site to the north of Meadow Close which was subject to an outline planning permission (14/01238/OUT) for 20 dwellings which was granted. To the south of the site lies an agricultural field beyond which is Colchester Road. Tye Road forms the western boundary of the site.

### Planning History

- 6.3 Outline planning permission for 32 dwellings, land for a community facility and associated parking and infrastructure was granted at appeal on 6<sup>th</sup> April 2017 (16/00219/OUT). This application was subject to a legal agreement and a number of conditions, including that details of the access, appearance, landscaping, layout and scale be submitted. Following this approval a reserved matters application for details of access was submitted (17/00927/DETAIL). This application was approved by Planning Committee on 27<sup>th</sup> February 2018, subject to a condition requiring the footpath and highway works to be provided prior to development commencing.

### Proposal

- 6.4 This application is a resubmission of application 17/00927/DETAIL to seek permission to amend the wording of Condition No. 2 which states:

No development shall commence until the footpath and highways works as shown on Drawing No. S161/216 Rev. C have been provided (entirely at the developer's expense).

It is proposed to amend the condition to the following:

No dwelling shall be occupied until the footpath and highways works as shown on Drawing No. S161.216 Rev. C have been provided entirely at the developers expense.

- 6.5 The change proposes that the footpath and highway works will be provided prior to any dwelling being occupied rather than development commencing. All other aspects of the proposal remain unchanged.

### Principle

- 6.6 Paragraph 206 of the NPPF states that planning conditions should only be imposed where they are:

- Necessary
- Relevant to planning
- Relevant to the development to be permitted
- Enforceable
- Precise
- Reasonable in all other respects

### Necessary

- 6.7 The guidance states that a condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms. It is considered that a footpath to serve the proposal is necessary and therefore it is necessary to control its provision and that time of provision to ensure that it is carried out. However as the condition has to be related to the development permitted the footpath only becomes necessary when the development becomes occupied as it is only at that stage that the development will generate pedestrians to use the footpath.

### Relevant to planning

- 6.8 A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building

consents or tree preservation) and specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).

- 6.9 The provision of the footpath and highway works is considered to be relevant to planning, the condition seeks to control the provision of the works, rather than the exact detailing which will be subject to highways' consent. The condition as existing and as proposed meets this criterion.

#### Relevant to the development to be permitted

- 6.10 It is not sufficient that a condition is related to planning objectives; it must also be justified by the nature or impact of the development permitted. A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.
- 6.11 The reason for the existing condition is to make adequate provision for additional pedestrian and vehicular traffic generation within the highway as a result of the proposed development. It is therefore relevant to the proposed development, but only once the development is occupied and generates pedestrians. It is accepted that pedestrians walk along Tye Road at present and the footpath would be of benefit to these pedestrians, but as stated above, a condition cannot be imposed to remedy a pre-existing issue not created by the development. It is considered that the condition will only meet this criterion if it is reworded as proposed, as it cannot be related to the development unless the development generates pedestrians to use the footpath and this will only occur once the dwellings are occupied.

#### Enforceable

- 6.12 It must be possible to enforce any planning condition proposed; it is considered that the condition as existing and as proposed is enforceable.

#### Precise

- 6.13 Any condition must be written in a way that makes it clear to the applicant and others what must be done to comply with it. The condition as existing and as proposed is clear and meets this criterion.

#### Reasonable in all other respects

- 6.14 Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. It is considered that the condition as existing is unjustifiable and disproportionate as for the reasons set out above it is not entirely necessary or relevant to the development permitted.
- 6.15 For the above reasons, the proposal to amend the condition as proposed is supported.

#### Highway Safety

- 6.16 At the stage of the outline application the indicative plan submitted indicated a footpath along the eastern side of Tye Road. The Council's reason for refusal states that it had not been demonstrated that pedestrian links to local facilities could be provided without harm to the character of the area resulting from the removal of significant trees and hedgerow. However, as part of the appeal process a plan was submitted showing a footpath to the west of Tye Road. The Inspector considered as the application was submitted in outline with all matters reserved for future consideration, the revised details are indicative only and

do not therefore materially alter the proposed development and therefore took this revision into account when determining the appeal.

- 6.17 Application 17/00927/DETAIL proposed a footpath with a width of 1.5 metres which is below the recommended width of a footpath as set out in The Manual for Streets and The Essex Design Guide. Paragraph 6.3.22 of The Manual for Streets states that: 'there is no maximum width for footways. In lightly used streets (such as those with a purely residential function), the minimum unobstructed width for pedestrians should generally be 2m. Additional width should be considered between the footway and a heavily used carriageway, or adjacent to gathering places, such as schools and shops'. Page 122 of the Essex Design Guides sets out the minimum carriageway width and footway requirements for different types of roads and when referring to footpath it states they should be 2 metres wide. However, these documents are not legislative duty, but guidance only. Paragraph 6.3.23 of The Manual for Streets states that 'footway widths can be varied between different streets to take account of pedestrian volumes and composition' and page 117 of the Essex Design Guide states the width of footways to roads 'will vary according to the type of road, but normally is sufficient to allow two people to pass'. It is clear from these documents that there whilst the recommended width of a footpath is 2 metres that there is some flexibility.
- 6.18 Essex County Council Highways also considered the frequency of use of the proposed footpath using the TRICS database, which is the natural system of trip generation analysis. This shows that both morning and evening peak usage will generate an average of 5.5 pedestrians per peak hour. Bearing in mind there are public right of way routes which also lead to the village and therefore some of these pedestrians will not use the footpath, the development is considered unlikely to generate more than 4 pedestrian movements in a peak hour. The Highway Officer re-examined the collision data website and there have been no collisions recorded in Tye Road.
- 6.19 Essex County Council Highways have been consulted on the application and raise no objection to the application. Following a previous site visit Essex County Council Highways confirmed that they consider that the new footway, albeit of a lesser width than normal standards, will not only provide a suitable refuge for the very limited number of new pedestrians, but will also be of benefit to those existing pedestrians who already use Tye Road.
- 6.20 During the determination of application 17/00927/DETAIL highways safety issues were raised, it was considered that without an objection from Highways that a reason for refusal on highway grounds could not be justified or successfully defended on appeal.
- 6.21 In terms of the impact on highway safety the proposal has not been amended since the Planning Committee granted application 17/00927/DETAIL and therefore it would be unreasonable to refuse this application, which is a re-submission to amend the wording of a condition on these grounds.

#### Visual Amenity/Appearance

- 6.22 The Inspector considered that the removal of the hedgerow on the west side of Tye Road, which is no longer proposed, would not unduly harm the character or appearance of the area. The Inspector was satisfied that it was demonstrated that adequate footpath links to the village could be provided and that such details could be suitably dealt with a part of a future reserved matters application.
- 6.23 The submitted plans show the existing hedgerow to be retained. Given the location of the hedgerow it will be a constraint on the development. However at outline stage the Inspector was satisfied that its loss would not unduly harm the character or appearance of the area. It is noted that the hedgerow is not within the applicants or Highways ownership but this is



not a material planning consideration, as Essex County Council Highways would have rights to carry out any works on highway land to whatever depth is required.

- 6.24 When considering the principle of development on the site the Inspector found that whilst the development would result in limited harm to the character of the area, this harm would not significantly and demonstrably outweigh the benefits of the scheme. Given that consent has been given for development of the site and that the character of area will change to become more urbanised and it is therefore considered that the proposed footpath would not result in any greater harm.
- 6.25 The visual impact of the proposal has not been amended since the Planning Committee granted application 17/00927/DETAIL and therefore it would be unreasonable to refuse this application on these grounds.

### Conclusion

- 6.26 It is considered that for the reasons set out above Condition No. 2 on 17/00927/DETAIL fails to meet the relevant tests for conditions set out in the NPPF and therefore is unreasonable in requiring the provision of the footpath and highway works prior to commencement of development. The amended wording to require the provision of the footpath and highway works prior to first occupation of any dwelling meets the relevant tests, therefore this proposed amendment is recommended for approval.
- 6.27 The visual impact and highway safety aspect of the proposal has not been amended since the Planning Committee granted application 17/00927/DETAIL and therefore it would be unreasonable to refuse this application on these grounds.

### Background Papers

None.