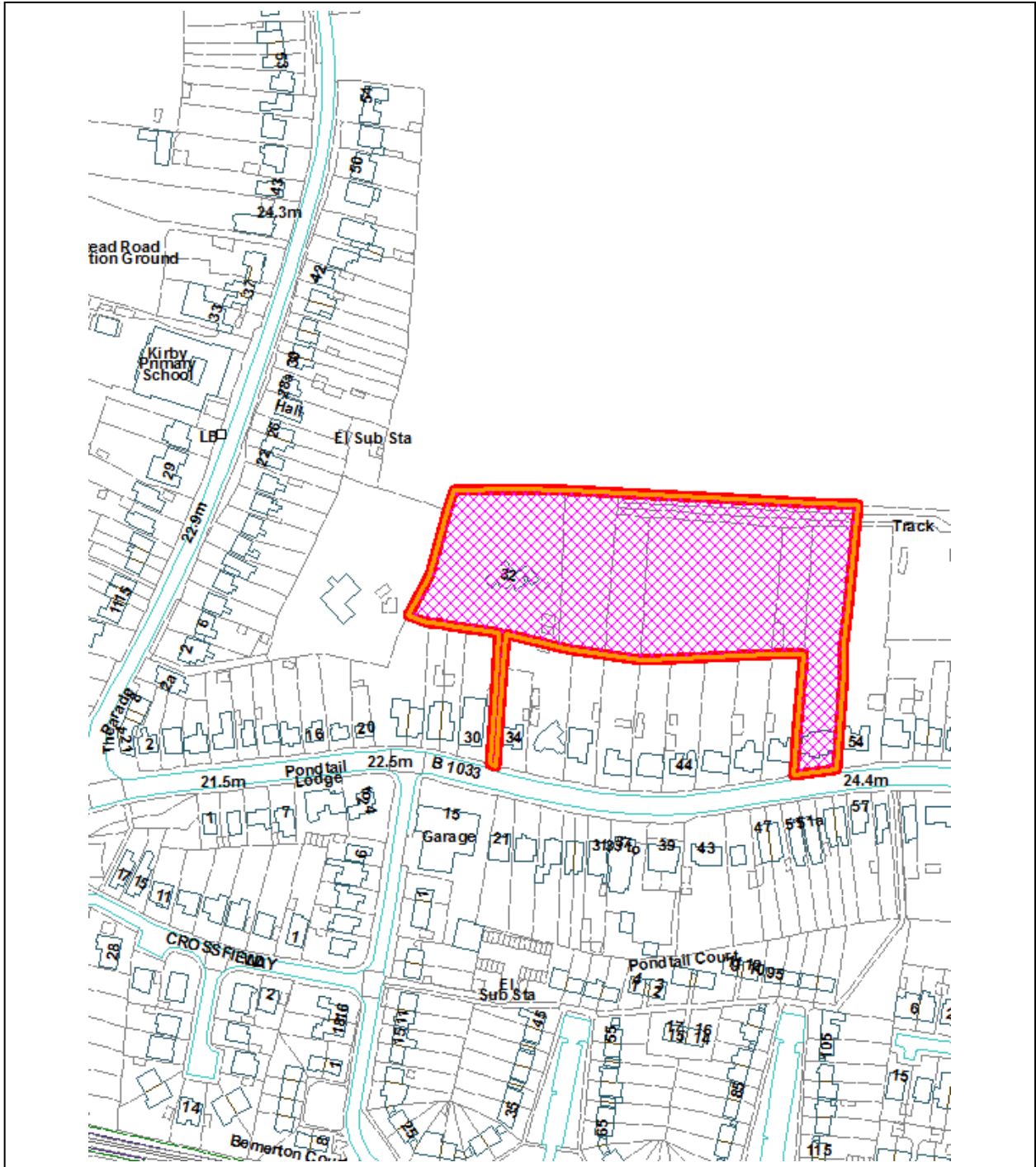


PLANNING COMMITTEE

17th NOVEMBER 2015

REPORT OF THE HEAD OF PLANNING

A.2 PLANNING APPLICATIONS - 15/00278/OUT - REAR OF 32 - 52 FRINTON ROAD KIRBY CROSS, FRINTON ON SEA, CO13 0LE



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Application:	15/00278/OUT	Town / Parish: Frinton & Walton Town Council
Applicant:	EMP Kirby Ltd	
Address:	Rear of 32 - 52 Frinton Road Kirby Cross Frinton On Sea CO13 0LE	
Development:	Outline planning application with all matters reserved except for access for the demolition of No. 32 and 52 Frinton Road and erection of up to 28 No. bungalows and chalets with parking, garages and access.	

1. Executive Summary

- 1.1 The application was received on 25th February 2015. As an outline application, approval is being sought only for the principle of developing up to 28 dwellings, with all other matters reserved (apart from access) for approval through a detailed application at a later date. The applicant has however submitted supporting information that demonstrates how a scheme of bungalows and chalets with parking and garages could be achieved on the site in question.
- 1.2 The site comprises 1.48 hectares of garden land located to the rear of 34 to 52 Frinton Road, Kirby Cross. The application site is made up from the entire plots to Nos. 32 and 52 Frinton Road and both properties will be demolished to make way for the development. In addition, parts of the gardens to number 48 and 50 are included within the site.
- 1.3 The site is not allocated for housing or mixed use development in the adopted Local Plan and lies outside the settlement development boundary. However, the site is located within the settlement development boundary for Frinton, Walton and Kirby Cross as shown in the emerging Local Plan. Because the Council is currently unable to identify a five-year supply of deliverable housing sites along with a 20% 'buffer', as required by the National Planning Policy Framework, the Council's housing policies are therefore out of date and Officers have had to consider the application on its merits in line with the government's 'presumption in favour of sustainable development'.
- 1.4 Kirby Cross along with Frinton and Walton is classified as a Town or Urban Settlement in the adopted and emerging Local Plans respectively in recognition of existing infrastructure and facilities and, in principle, offering sustainable locations for growth.
- 1.5 The proposal has attracted objection from members of the public and the Town Council has highlighted a number of concerns relating mainly to the backland nature of the site and impact on local infrastructure. There are no outstanding objections however from any of the statutory consultees or other technical bodies.
- 1.6 The Highways Authority has no objection to the scheme subject to conditions and the Education Authority has no objection subject to securing a financial contribution toward early years and child care and primary school provision. Concerns that Essex County Council originally had in relation to drainage have now been resolved and TDC Officers advising on open space, housing, environmental health and trees and landscapes have commented on the application and have no objections to the proposal subject to appropriate conditions or legal agreements being put in place to secure an appropriate level of Council/affordable housing, a contribution toward play equipment and to retain and enhance important trees and landscape features.

- 1.7 The site is relatively well contained within the landscape and the visual and landscape impact of the development is expected to be low. The site has low to intermediate ecological value and development can take place without any overriding impact on important trees.
- 1.8 Officers consider that the proposal satisfies the three dimensions of 'sustainable development' as set out in national planning policy (economic, social and environmental) and the application is therefore recommended for approval subject to the satisfactory completion of a Section 106 planning obligation to secure affordable housing and financial contributions toward educational facilities and play space to make the development acceptable, as well as a number of planning conditions.

Recommendation: Approve

That the Head of Planning be authorised to grant planning permission for the development subject to:-

a) Within 6 (six) months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters (where relevant):

- On-site Council Housing/Affordable Housing;
- Education contribution; and
- Contribution toward play provision.

b) Planning conditions in accordance with those set out in (i) below (but with such amendments and additions, if any, to the conditions and detailed wording thereof as the Head of Planning in their discretion considers appropriate).

(i) Conditions:

1. Standard 3 year time limit for submission of reserved matters application.
2. Standard 2 year limit for commencement of development following approval of reserved matters.
3. Details of appearance, access, layout, scale and landscaping (the reserved matters).
4. Layout and phasing plan/programme.
6. Development to contain up to (but no more than) 28 dwellings.
7. Highways conditions (as recommended by the Highway Authority).
8. Environmental Health conditions.
9. Parking to be in line with adopted Parking Standards.
10. Surface water drainage scheme.
11. Hard and soft landscaping plan/implementation.
12. Ecological mitigation/tree protection measures.
13. Details of lighting, materials and refuse storage/collection points.
14. Details of water, energy and resource efficiency measures.

c) That the Head of Planning be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a s106 planning obligation.

2. Planning Policy

National Policy

National Planning Policy Framework (NPPF)

The National Planning Policy Framework (March 2012) sets out the Government's planning policies and how these are expected to be applied at the local level.

Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The NPPF doesn't change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan it should be approved and where it does not it should be refused - unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:

- an economic role;
- a social role; and
- an environmental role.

These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.

Section 6 of the NPPF relates to delivering a wide choice of quality new homes. It requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years worth of deliverable housing land against their projected housing requirements (plus a 5% or 20% buffer to ensure choice and competition in the market for land). If this is not possible, housing policies are to be considered out of date and the presumption in favour of sustainable development is engaged with applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.

Local Plan Policy

Section 38(6) of the Planning Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the 'development plan' unless material considerations indicate otherwise. In the case of Tendring the development plan consist of the following:

Tendring District Local Plan (Adopted November 2007) - as 'saved' through a Direction from the Secretary of State. Relevant policies include:

QL1: Spatial Strategy

Directs most new development toward urban areas and seeks to concentrate development within settlement development boundaries.

QL2: Promoting Transport Choice

Requires developments to be located and designed to avoid reliance on the use of the private car.

QL3: Minimising and Managing Flood Risk

Seeks to direct development away from land at a high risk of flooding and requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

QL9: Design of New Development

Provides general criteria against which the design of new development will be judged.

QL10: Designing New Development to Meet Functional Needs

Requires development to meet functional requirements relating to access, community safety and infrastructure provision.

QL11: Environmental Impacts

Requires new development to be compatible with its surrounding land uses and to minimise adverse environmental impacts.

QL12: Planning Obligations

States that the Council will use planning obligations to secure infrastructure to make developments acceptable, amongst other things.

HG1: Housing Provision

Sets out the strategy for delivering new homes to meet the need up to 2011 (which is now out of date and needs replacing through the new Local Plan).

HG3: Residential Development Within Defined Settlements

Supports appropriate residential developments within the settlement development boundaries of the district's towns and villages.

HG3a: Mixed Communities

Promotes a mix of housing types, sizes and tenures to meet the needs of all sectors of housing demand.

HG4: Affordable Housing in New Developments

Seeks up to 40% of dwellings on large housing sites to be secured as affordable housing for people who are unable to afford to buy or rent market housing.

HG6: Dwellings Size and Type

Requires a mix of housing types, sizes and tenures on developments of 10 or more dwellings.

HG7: Residential Densities

Requires residential developments to achieve an appropriate density. This policy refers to minimum densities from government guidance that have long since been superseded by the NPPF.

HG9: Private Amenity Space

Requires a minimum level of private amenity space (garden space) for new homes depending on how many bedrooms they have.

COM2: Community Safety

Requires developments to contribute toward a safe and secure environment and minimise the opportunities for crime and anti-social behaviour.

COM6: Provision of Recreational Open Space for New Residential Developments

Requires residential developments on sites of 1.5 hectares or more to provide 10% of the site area as public open space.

COM21: Light Pollution

Requires external lighting for new development to avoid unacceptable impacts on the landscape, wildlife or highway and pedestrian safety.

COM23: General Pollution

States that permission will be refused for developments that have a significant adverse effect through the release of pollutants.

COM26: Contributions to Education Provision

Requires residential developments of 12 or more dwellings to make a financial contribution, if necessary, toward the provision of additional school places.

COM29: Utilities

Seeks to ensure that new development on large sites is or can be supported by the necessary infrastructure.

COM31a: Sewerage and Sewage Disposal

Seeks to ensure that new development is able to deal with waste water and effluent.

EN1: Landscape Character

Requires new developments to conserve key features of the landscape that contribute toward local distinctiveness.

EN4: Protection of the Best and Most Versatile Agricultural Land

Seeks to ensure that where agricultural land is needed for development, poorer quality land is used as priority over higher quality land.

EN6: Biodiversity

Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

EN6a: Protected Species

Ensures protected species including badgers are not adversely impacted by new development.

EN6b: Habitat Creation

Encourages the creation of new wildlife habitats in new developments, subject to suitable management arrangements and public access.

EN12: Design and Access Statements

Requires Design and Access Statements to be submitted with most planning applications.

EN13: Sustainable Drainage Systems

Requires developments to incorporate sustainable drainage systems to manage surface water run-off.

TR1a: Development Affecting Highways

Requires developments affecting highways to aim to reduce and prevent hazards and inconvenience to traffic.

TR3a: Provision for Walking

Seeks to maximise opportunities to link development with existing footpaths and rights of way and provide convenient, safe attractive and direct routes for walking.

TR5: Provision for Cycling

Requires all major developments to provide appropriate facilities for cyclists.

TR6: Provision for Public Transport Use

Requires developments to make provision for bus and/or rail where transport assessment identifies a need.

TR7: Vehicle Parking at New Development

Refers to the adopted Essex County Council parking standards which will be applied to all non-residential development.

Tendring District Local Plan Proposed Submission Draft (November 2012), as amended by the Tendring District Local Plan Pre-Submission Focussed Changes (January 2014).

Relevant policies include

SD1: Presumption in Favour of Sustainable Development

Follows the Planning Inspectorate's standard wording to ensure compliance with the NPPF.

SD3: Urban Settlements

Identifies Frinton, Walton and Kirby Cross as an 'Urban Settlement' and one of the settlements that will be a focus for future growth.

SD5: Managing Growth

Seeks to direct new development to sites within settlement development boundaries.

SD7: Securing Facilities and Infrastructure

Requires developments to address their individual or cumulative infrastructure impacts and states that the Council will use planning obligations and/or CIL (when it is in place), where necessary, to ensure this happens.

SD8: Transport and Accessibility

Requires the transport implications of development to be considered and appropriately addressed.

SD9: Design of New Development

Sets out the criteria against which the design of new development will be judged.

SD10: Sustainable Construction

Requires development to maximise measures to reduce energy consumption and reduce carbon emissions and other forms of pollution both during construction and during use.

PRO2: Improving the Telecommunications Network

Requires new development to be served by a superfast broadband (fibre optic) connection installed on an open access basis and that can be directly accessed from the nearest British Telecom exchange and threaded through resistant tubing to enable easy access for future repair, replacement or upgrading.

PRO3: Improving Education and Skills

Requires applicants to enter into an Employment and Skills Charter or Local Labour Agreement to ensure local contractors are employed to implement the development and that any temporary or permanent employment vacancies (including apprenticeships) are advertised through agreed channels.

PEO1: Housing Supply

Sets out the proposed growth in new housing for the district, but is subject to considerable change to ensure compliance with the NPPF, as being overseen by the new Local Plan Committee.

PEO3: Housing Density

Policy requires the density of new housing development to reflect accessibility to local services, minimum floor space requirements, the need for a mix of housing, the character of surrounding development and on-site infrastructure requirements.

PEO4: Standards for New Housing

Sets out proposed minimum standards for the internal floor area and gardens for new homes. Internal floor standards have however now been superseded by national standards to be imposed through building regulations.

PEO5: Housing Layout in Tending

Policy seeks to ensure large housing developments achieve a layout that, amongst other requirements, promotes health and wellbeing; minimises opportunities for crime and anti-social behaviour, ensures safe movement for large vehicles including emergency services and waste collection; and ensures sufficient off-street parking.

PEO7: Housing Choice

Promotes a range of house size, type and tenure on large housing developments to reflect the projected needs of the housing market.

PEO9: Family Housing

Promotes the construction of family homes within new housing developments.

PEO10: Council Housing

Requires up to 25% of new homes on large development sites to be made available to the Council, at a discounted price, for use as Council Housing.

PEO19: Green Infrastructure

Requires new developments to contribute, where possible, toward the district's green infrastructure network.

PEO20: Playing Pitches and Outdoor Sports Facilities

Requires new developments to contribute where possible to the district's provision of playing pitches and outdoor sports facilities.

PEO22: Green Infrastructure in New Residential Developments

Requires larger residential developments to provide a minimum 10% of land as open space with financial contributions toward off-site provision required from smaller sites.

PEO23: Children's Play Areas

Requires new children's play areas as an integral part of residential and mixed-use developments.

PLA 1: Development and Flood Risk

Seeks to direct development away from land at a high risk of flooding and requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

PLA3: Water Conservation, Drainage and Sewerage

Requires developments to incorporate sustainable drainage systems to manage surface water run-off and ensure that new development is able to deal with waste water and effluent.

PLA4: Nature Conservation and Geo-Diversity

Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

PLA5: The Countryside Landscape

Requires developments to conserve, where possible, key features that contribute toward the local distinctiveness of the landscape and include suitable measures for landscape conservation and enhancement.

Other Guidance

Essex County Council Car Parking Standards - Design and Good Practice
Essex Design Guide for Residential and Mixed-Use Areas.

Other guidance

Parking Standards Design and Good Practice Guide (2009)
Essex Design Guide (2005)
Urban Place Supplement (2007)

3. Relevant Planning History

03/02019/FUL	Drop kerb (52 Frinton Road).	Approved	24.12.2003
09/01325/FUL	Conversion of 3 no. existing dormer windows to 1 no. front facing flat roof dormer. Erection of pitched roof to replace existing flat roof to front porch (52 Frinton Road).	Refused	23.03.2010
15/00278/OUT	Outline planning application with all matters reserved except for access for the demolition of No. 32 and 52 Frinton Road and erection of up to 28 No. bungalows and chalets with parking, garages and access.	Current	

4. Consultations

Natural England

No objections with regard to statutory nature conservation sites. This application is in close proximity to the Hamford Water Site of Special Scientific Interest (SSSI). This SSSI forms part of the Hamford Water Wetland of International Importance under the Ramsar Convention (Ramsar Site), Special Protection Area (SPA) and Special Area of Conservation (SAC).

If undertaken in accordance with the details submitted, the development is not likely to have a significant effect on these designated areas and an Appropriate Assessment will not be required. Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which the Hamford Water SSSI has been notified.

Natural England wishes to be re-consulted on the means of foul drainage disposal if it cannot be achieved via the mains drainage system.

The Council should apply Natural England's standing advice on protected species to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation.

This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application.

This application may provide opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment; use natural resources more sustainably; and bring benefits for the local community, for example through green space provision and access to and contact with nature.

Anglia Water

Our records show that there are no assets owned by Anglian Water or those subject to an adoption agreement within the development site boundary.

The foul drainage from this development is in the catchment of Walton on the Naze Water Recycling Centre that will have available capacity for these flows.

Development will lead to an unacceptable risk of flooding downstream. A drainage strategy will need to be prepared in consultation with Anglian Water to determine mitigation measures. We request a condition requiring the drainage strategy covering the issue(s) to be agreed.

The preferred method of surface water disposal would be to a sustainable drainage system (SUDS) with connection to sewer seen as the last option.

Anglian Water recommends conditions relating to:

- 1) The submission and approval of a foul water strategy prior to occupation of any dwellings; and
- 2) The submission and approval of a surface water management strategy prior to any drainage works.

Essex County Council Highways

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

- 1) The dimensions of the junction with Frinton Road;
- 2) The width of the carriageway;
- 3) The width of footways;
- 4) Compliance with off-street parking standards;
- 5) Cycle storage facilities;
- 6) The distance of garages from the highway;
- 7) Width of individual residential accesses;
- 8) Restriction on the use of unbound materials;
- 9) Pedestrian visibility splays;
- 10) Carriageway dimensions;
- 11) Street lighting;
- 12) Internal road junctions;

- 13) Turning heads;
- 14) Width of the pedestrian/cycleway links through to Frinton Road;
- 15) Communal bin/recycling/refuse collection points;
- 16) The need for a Stage 1 Safety Audit; and
- 17) Improvements to nearby bus stops.

Essex County Council Education Authority

According to the latest information available to Essex County Council's Early Years and Childcare, places in the Holland and Kirby ward are at 100% capacity, and we would need to provide additional places to support this development, based on 28 bungalows this would generate a need for an additional 1.7 places.

The proposed development is located within the priority admissions area for Kirby Primary Academy. The Academy has a capacity of 210 places, of which 30 places are in temporary accommodation. The school is forecast to have 180 pupils on roll by the school year 2018-19, filling it to its permanent capacity.

Prior to the implementation of the revised Community Infrastructure Levy Regulations on the 6th April 2015 the County Council would have sought a developer contribution from this proposed development for additional secondary school places. However, the implementation of the revised Regulations will restrict the pooling of contributions for a specific item of infrastructure, such as the expansion of a school, to contributions from five separate planning obligations. Under these changed circumstances the County Council has decided not to request a contribution for the provision of additional secondary school places from this proposed development.

In view of the above I request on behalf of Essex County Council that any permission for this development is granted subject to a section 106 agreement to mitigate its impact on education. I request that the s106 agreement include a contribution towards secondary school transport costs as outlined above. Using the unit mix referred to above the early years and childcare contribution would be £15,564 to be used towards early years and childcare expansion in the Holland and Kirby ward. The primary school contribution would be £45,499 to be used to replace temporary accommodation at Kirby primary school, Index linked to April 2014 costs.

Essex County Council SUDS Team

The proposed development will only meet the requirements of the National Planning Policy Framework if the following measures as detailed in the Flood Risk Assessment and the other documents submitted with this application are implemented and secured by way of a planning condition on any planning permission. Before each phase of development approved by this planning permission, a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, should be submitted to and approved in writing by the local planning authority.

TDC Principal Tree & Landscape Officer

The development proposal has the potential to adversely affect established trees shrubs and hedgerows on the land. In order to assess the impact of the development proposal on the existing trees and other vegetation on the land the applicant has provided a detailed Tree Survey and Report to show the extent of the constraint that trees are on the development of the land. The report has been carried out in accordance with the recommendations contained in BS5837: 2012 Trees in relation to design, demolition and construction.

In order to show how the retained trees will be protected for the duration of the construction phase of the development the applicant has submitted a Tree Protection Plan as part of the Tree Report. Although at an early stage in the development process, the trees identified for retention on this document do not 'tie-up' with those marked for retention on the indicative site layout plan ' this matter requires clarification.

At the present time the application site is being used as garden space and the trees and shrubs being cultivated on the land include decorative and fruit trees as well as garden shrubs and sections of coniferous hedge. Several large and mature Oaks have been felled prior to the submission of the planning application.

In terms of the degree to which the trees contribute to the amenity of the locality; when viewed from the highway only the tallest trees on the land can be seen, from the south, between gaps in the development on Frinton Road. Most of these trees are Cupressus macrocarpa or Cupressocyparis 'Leylandii' and are coarse hedging species that do not merit retention or protection by means of a Tree Preservation Order.

To the north west of the application site the agricultural land abuts the rear garden of properties in Halstead Road ' the site is not overlooked from a public place from this aspect and views of the site and the trees contained thereon are limited. Their amenity value from the perspective is therefore commensurately low.

Approximately 800m to the north of the application site a Public Right of Way runs east to west. There are distant views of the application site from this footpath although the existing boundary hedgerow adequately screens the land and the trees on the land are not significant features in the landscape. The screening currently provided could relatively easily be replicated by new planting.

Although the application site is well populated with trees their amenity value is relatively low and none of the trees on the land merit protection by means of a Tree Preservation Order.

As the land is currently being used as private amenity space and because the development proposal includes extensive tree planting, it is considered that, in landscape terms, although the development will result in the removal of most of the trees on the land it would also bring about new tree planting that will provide trees in prominent locations. Each new dwelling will have a garden space that will go some way to replace the existing garden area.

The indicative site layout plan shows new tree planting as part of the soft landscaping proposals for the land. Should consent be likely to be granted then the layout will need to include a detailed soft landscaping scheme that should include new tree planting based on the indicative site layout plan.

TDC Environmental Health

The Pollution and Environmental Control team requests that if permission is to be approved, planning conditions apply in relation to the following:

- 1) The submission and approval of a construction method statement prior to any demolition works;
- 2) The use of barriers to mitigate the impact of noisy operations;
- 3) Restrictions on working hours;
- 4) The use of machinery to comply with British Standards;
- 5) The use of non-audible reversing alarms on mobile plant;
- 6) A submission and approval of a method statement relating to piling works;

- 7) The recycling and removal of waste arising from demolition, ground clearance and construction;
- 8) Not allowing the burning of materials and measures to minimise dust and litter; and
- 9) Requiring bulk-carrying vehicles to be sheeted to prevent dust emissions.

TDC Housing Department

There are currently 43 households on the housing register in need of a 3 bedroom bungalow. There are only 10 affordable rented 3 bedroom bungalows in the entire district, all of which are owned by registered providers. Households seeking such accommodation will normally have to wait for years before accommodation can be offered. There is a demonstrable demand for this type of property in this area.

At present, the Housing Department is deciding what its priorities should be for development and acquisitions and there is a possibility that there may not be funding available to purchase the units even at a discounted value. To this end and as an alternative, the Housing Department would be prepared to accept 1 gifted property at the site (this being 20% of the 7 units that should be available to purchase).

TDC Open Space

There is currently a deficit of 14.12 hectares of equipped play in Frinton, Walton & Kirby. However, there is more than adequate formal open space across the area. Any additional development in Kirby will increase demand on already stretched play areas. There are two play areas within equal distance of the development (0.8m), namely Halstead Road, Kirby Cross and Park Playing Fields, Frinton.

The play area at Halstead Road is designated as a Local Area for Play and play area at Park Playing Fields is designated as a Location Equipped Area for Play. Both sites are well used by the local community and would struggle to cope with any additional usage. Should this development go ahead it would be necessary increase the level of provision at one of these sites.

Due to the significant lack of play facilities in the area it is felt that a contribution towards play is justified and relevant to the planning application. However, Frinton, Walton and Kirby are well provided for in terms of open space and we do not consider that a contribution towards formal open space is necessary or relevant to this application.

Essex Wildlife Trust

No comment received.

Environment Agency

No comments received.

5. Representations

- 5.1 Frinton and Walton Town Council objects to the proposed development for the following reasons:
 - The proposal is backland development and overdevelopment of the site; and
 - The development would impact negatively upon the local infrastructure.

5.2 30 letters of objection have been received and the issues raised are summarised as follows:

- The existing road network is already operating at capacity and the proposed development will result in an increase in traffic in the area;
- The proposed development is outside the defined settlement boundary;
- There is insufficient infrastructure capacity in the area to cope with the new development;
- The distance between the proposed dwelling and neighbouring properties is insufficient;
- The proposed development will impact negatively on neighbouring amenities;
- Local residents are concerned that contractors will use Chestnut Avenue as an extra means of access;
- Essex Wildlife Trust have not been consulted;
- A 6ft fence should be erected along the boundary with Chestnut Avenue
- The proposed development will lead to a loss of important trees; and
- The proposed development contravenes the title register for Plot Adjoining 48 Frinton Road which clearly states: No Building shall be erected on the land within twenty feet from the northern boundary. Whilst scale does not seem accurate enough on the current drawings to determine such distances, the northern plots including their garages could be in breach.

6. **Assessment**

Site Location

- 6.1 The application site is located to the rear of 34 to 52 Frinton Road, Kirby Cross and measures approximately 1.49 hectares. The application site is made up from the entire plots to Nos. 32 and 52 Frinton Road and both properties will be demolished to make way for the development. In addition, parts of the gardens to number 48 and 50 are included within the site.
- 6.2 The northern boundary is well screened by mature trees and hedgerows and adjoins agricultural land. To the east are further gardens to neighbouring property and to the west, are the houses and gardens of Halsted Road. The site is close to the centre of Kirby Cross and is within walking distance to local shops, primary school, rail station and bus stops. The entire site is located within the 'Development Settlement Boundary' as illustrated on the Draft Local Plan Inset Map 3 (2012) for Frinton, Walton and Kirby Cross.

Proposal

- 6.3 This outline planning application seeks approval for the erection of up to 28 bungalows and chalets with parking, garages and access on land rear of 32-52 Frinton Road, Kirby Cross, Frinton-on-Sea.
- 6.4 As this is an outline planning application, all matters (apart from access) are reserved for consideration at a later stage. The applicant has however submitted an indicative layout showing how the development could be achieved in terms of layout and landscaping. The indicative layout, illustrates a scheme of 21 no. bungalows and 7 no. chalet bungalows with vehicular access achieved from Frinton Road.

6.5 The application documents are:

- The applications forms;
- Site Location Plan;
- Existing Site Plan;
- Planning Statement;
- Proposed junction layout;
- Highway junction plans;
- Transport Assessment;
- Flood Risk Assessment;
- Ecology Survey;
- Bat Survey; and
- Indicative layout.

Main Planning Consideration

6.6 The main planning considerations are:

- Principle of development;
- Highways, transport and accessibility;
- Flood risk and drainage;
- Impact on infrastructure;
- Landscape, visual impact and trees;
- Open space;
- Ecology;
- Indicative layout and impact upon neighbours;
- Council Housing / Affordable Housing; and
- Other issues.

Principle of residential development

6.7 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2014, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework (NPPF) are a material consideration in this regard.

6.8 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. The 2012 Local Plan: Proposed Submission Draft, as amended by the 2014 Local Plan: Pre-Submission Focussed Changes, is the Council's 'emerging' Local Plan.

6.9 On 25th March 2014, the Council decided that further substantial revisions to the emerging plan will be required before it is submitted to the Secretary of State to be examined by a Planning Inspector. These revisions will aim to ensure conformity with both the NPPF and the legal 'duty to cooperate' relating mainly to issues around housing supply. The separate Local Plan Committee is overseeing this work with a view to a new version of the plan being published for consultation later in 2015.

6.10 The site is not allocated for housing or mixed use development in the adopted Local Plan (2007) and lies outside the settlement development boundary. However, the site is located

within the settlement development boundary for Frinton, Walton and Kirby Cross as shown in the Tendring District Local Plan Proposed Submission Draft (2012) (as amended by the 2014 Focussed Changes).

- 6.11 Because the site lies outside of the settlement development boundary and is not allocated for development in the adopted Local Plan (2007), this proposal for residential development is contrary to local policy as only limited weight can be attached to the emerging Local Plan (2012).
- 6.12 However, as it stands, both the adopted and emerging Local Plans fall significantly short in identifying sufficient land to meet the objectively assessed need for housing and, as a result, the Council is unable to identify a five-year supply of deliverable housing sites as required by paragraph 47 of the NPPF. In November 2015, the Council is only able to identify a 3.2 year supply. In line with paragraph 49 of the NPPF, housing policies are considered to be 'out-of-date' and therefore the government's 'presumption in favour of sustainable development' is engaged. The Council would not be justified therefore in refusing this planning application, at this time, purely on the basis that it lies outside of the settlement development boundary.
- 6.13 'Sustainable Development', as far as the NPPF is concerned, is development that contributes positively to the economy, society and the environment and under the 'presumption in favour of sustainable development', authorities are expected to grant permission unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole; or
 - specific policies in the NPPF indicate development should be restricted.
- 6.14 One of the NPPF's core planning principles is to *"actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable"*. With this in mind, the emerging Local Plan includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations. Kirby Cross along with Frinton and Walton are classified as a 'Town' or 'Urban Settlement' in the adopted and emerging local plans in recognition of existing infrastructure and facilities. Urban settlements are considered to offer the most sustainable locations for significant levels of growth.
- 6.15 The density of development proposed is 19 dwellings per hectare gross and 23 dwellings per hectare net (excluding the land taken up by the new access road. Policy PEO3 in the emerging Local Plan sets out the factors that should be taking into account when assessing the density of a scheme. These are:
- a) Accessibility to local services;
 - b) Minimum internal floor area and private amenity space standards (as set out in emerging Policy PEO4);
 - c) The required mix of housing;
 - d) The character of development in the immediate area; and
 - e) On-site infrastructure requirements (such as green infrastructure and highways).
- 6.16 Kirby Cross in the main is characterised by inter-war ribbon development and other areas of post-war estate development. Given the site's containment within the landscape and the size and mix of properties suggested, the density proposed for the application site is acceptable for this location and, as shown through the indicative plans provided.

- 6.17 Bearing in mind the current lack of a five-year supply of housing sites to meet objectively-assessed needs in Tendring, the status of Kirby Cross, Frinton and Walton as an urban settlement, and the density of development proposed, Officers consider that, in principle, residential development on this site is acceptable and would make a positive contribution toward housing supply and addressing the social dimension of sustainable development.

Highways, transport and accessibility

- 6.18 Paragraph 32 of the NPPF relates to transport and requires Councils, when making decisions, to take account of whether:
- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
 - safe a suitable access to the site can be achieved for all people; and
 - improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 6.19 Policy QL2 in the adopted Local Plan and Policy SD8 in the emerging Local Plan seek to ensure that developments maximise the opportunities for access to sustainable transport including walking, cycling and public transport. The application site is within 500 metres walking distance of the of the primary school and train station. It is also within 200 metres of a bus stop on a bus route with services to and from Frinton. The site offers a reasonable level of accessibility which is reflected in Frinton, Walton and Kirby Cross' categorisation as an urban settlement in both the adopted and emerging Local Plan.
- 6.20 Policy TRA1a in the adopted Local Plan requires that development affecting highways be considered in relation to reducing and preventing hazards and inconvenience to traffic including the capacity of the road network. Policy SD8 in the emerging Local Plan states that developments will only be acceptable if the additional vehicular movements likely to result from the development can be accommodated within the capacity of the existing or improved highway network or would not lead to an unacceptable increase in congestion.
- 6.21 The Town Council and some local residents have objected to the proposal with concerns about the capacity of Frinton Road to cope with additional vehicular movement and highway safety. Essex County Council, in its capacity as the Local Highways Authority, has however considered the proposal and concluded that it would be acceptable from a highways perspective subject to a number of conditions.
- 6.22 In conclusion, , the site is reasonably accessible, by foot and cycle, to local services and facilities and public transport and the vehicular access and highways matters have been considered and deemed acceptable by the Highway Authority. The transport impacts of the development are not considered to be severe and, from this perspective, Officers consider the proposal to be acceptable.

Flood risk and drainage

- 6.23 Paragraph 103 of the NPPF requires Councils, when determining planning applications, to ensure flood risk is not increased elsewhere. Although the site is in Flood Zone 1 (low risk), the NPPF, Policy QL3 in the adopted Local Plan and Policy PLA1 in the emerging Local Plan still require any development proposal on site larger than 1 hectare to be accompanied by a site-specific Flood Risk Assessment (FRA). This is to assess the potential risk of all potential

sources of flooding, including surface water flooding, that might arise as a result of development.

- 6.24 The applicant has submitted a Flood Risk Assessment which has been considered by Essex County Council as the authority for sustainable drainage. Initially, ECC issued a 'holding objection' and required further work to be undertaken to ensure compliance with the guidelines set out in the relevant National Planning Practice Guidance. The applicant responded to the objection with further information requested and the objection has now been addressed. ECC now supports the grant of outline planning permission subject to conditions relating to the submission and subsequent approval of a detailed Surface Water Drainage Scheme before development can take place.
- 6.25 In conclusion, the applicant has demonstrated through their Flood Risk Assessment and supplementary information that development can, in principle, be achieved without increasing flood risk elsewhere. With the planning condition suggested by ECC, the scheme should comply with the NPPF and Policies QL3 and PLA 1 of the adopted and emerging Local Plans (respectively) and therefore addresses the flood risk element of the environmental dimension of sustainable development.

Infrastructure Impact

- 6.26 Policy QL12 in the adopted Local Plan and Policy SD7 in the emerging Local Plan require that new development is supported by the necessary infrastructure. The Parish Council and local residents has raised concern about the impact of the cumulative impact of additional homes on local infrastructure, in particular schools, health services and sewage.
- 6.27 Essex County Council as the Local Education Authority has been consulted on the planning application and has made representations. ECC advises that Early Years and Childcare, places in the Holland and Kirby ward are at 100% capacity, and additional places are required to support this development, based on 28 bungalows this would generate a need for an additional 1.7 places. The proposed development is located within the priority admissions area for Kirby Primary Academy. The Academy has a capacity of 210 places, of which 30 places are in temporary accommodation. The school is forecast to have 180 pupils on roll by the school year 2018-19, filling it to its permanent capacity.
- 6.28 Prior to the implementation of the revised Community Infrastructure Levy Regulations on the 6th April 2015 the County Council would have sought a developer contribution from this proposed development for additional for secondary school places. However, the implementation of the revised Regulations will restrict the pooling of contributions for a specific item of infrastructure, such as the expansion of a school, to contributions from five separate planning obligations. Under these changed circumstances the County Council has decided not to request a contribution for the provision of additional secondary school places form this proposed development.
- 6.29 Essex County Council request that the s106 agreement include a contribution towards secondary school transport costs as outlined above. The early years and childcare contribution would be £15,564 to be used towards early years and childcare expansion in the Holland and Kirby ward. The primary school contribution would be £45,499 to be used to replace temporary accommodation at Kirby primary school, Index linked to April 2014 costs.
- 6.30 NHS England has not made any comments on the application but in areas where there the NHS is concerned about the capacity of surgeries, it will carry out a Health Impact Assessment and does, if necessary, request financial contributions toward the provision of health services. Contributions are generally only requested from developments of 50 or more dwellings. With this in mind, the impact of an additional 28 dwellings on health provision is not considered to be significant enough to justify the refusal of planning permission. The

cumulative impact of development on health provision is however a matter of great importance that the Council will need to address district wide, in cooperation with the NHS, through the Local Plan.

- 6.31 In conclusion, the impacts on local infrastructure arising from this development can either be addressed by way of developer contribution (in the case of education) or are otherwise not considered to be significant or demonstrable enough to justify the refusal of planning permission when applying the presumption in favour of sustainable development.

Landscape, visual impact and trees

- 6.32 Policy QL9 in the adopted Local Plan and Policy SD9 in the emerging Local Plan require developments to respect and enhance views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Policy EN1 of the adopted Local Plan and Policy PLA5 in the emerging Local Plan seek to protect and, wherever possible, enhance the quality of the district's landscape; requiring developments to conserve natural and man-made features that contribute toward local distinctiveness and, where necessary, requiring suitable measures for landscape conservation and enhancement. Policies QL9 and SD9 also require developments to incorporate important existing site features of landscape, ecological or amenity value such as trees, hedges, water features, buffer zones, walls and buildings.
- 6.33 Despite being undeveloped garden land, the site is well contained within its wider landscape and is well screened by existing hedging and trees. In conclusion, the landscape and visual impact of the development is expected to be low and enhancements through additional soft landscaping can be secured through planning conditions. Officers are satisfied that, subject to the landscaping being agreed and implemented, the visual and landscape impacts will be acceptable and the scheme can perform well against the environmental dimension of sustainable development.

Open Space

- 6.34 Policy COM6 in the adopted Local Plan and Policy PE022 of the emerging Local Plan require large residential developments on sites of 1.5 hectares or above to provide at least 10% of land as public open space or otherwise make financial contributions toward off-site provision. For smaller sites, the Council can secure financial contributions toward open space and play equipment in the surrounding area.
- 6.35 This site falls just below the 1.5ha threshold. The Council's Open Space and Bereavement Service Manager has commented on the application and has identified a deficiency of equipped play in Frinton, Walton & Kirby. A financial contribution has been requested toward off-site play provision. The financial contribution toward play provision would need to be secured through a s106 legal agreement. If the Committee is minded to approve this application, Officers will engage in negotiations with the applicant to agree the necessary contribution in line with the guidance contained within the Council's Supplementary Planning Document on Open Space.

Ecology

- 6.36 Paragraph 118 of the NPPF requires Councils, when determining planning applications, to aim to conserve and enhance biodiversity. Where significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for, Councils should refuse planning permission. Policy EN6 of the adopted Local Plan and Policy PLA4 of the emerging Local Plan give special protection to designated sites of international, national or local importance to nature conservation but for non-designated sites still require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for. Policy EN6b in the adopted Local Plan and PLA4 in the emerging Local Plan support the creation of new

habitats within developments subject to appropriate management and public access arrangements. Policy EN6a in the adopted Local Plan refers specifically to protected species.

- 6.37 The application site is not designated as a site of international, national or local importance to nature conservation and Natural England has offered no objection, in principle, to the proposed development.
- 6.38 The applicant prepared and submitted a phase one habitat survey which revealed possible bat roosts in certain trees and the potential for Great Crested Newts using the site boundaries for foraging. The site has no ponds or standing water, so there are no newts present. The survey recommends further survey work to be done during May – September to establish the potential for newts on neighbouring land or bat roosts in specific trees. Overall there were no protected habitats found on the site.
- 6.39 As recommended by the phase one habitat survey the applicant submitted a detailed bat survey which confirmed that there are no bat roosts present in either 32 Frinton Road or, the mature willow at 52 Frinton Road. The survey recommends that:
- The mature willow has numerous features of potential for roosting bats and the tree should be sensitively felled in sections, with larger limbs lowered to the ground rather than cut and dropped.
 - If felling of the willow can be undertaken immediately then no ecological supervision is considered necessary given the recent completion of the bat surveys. If however, felling is undertaken beyond two to three weeks of this report date (28/05/15) then felling of the willow should be supervised by a licensed bat surveyor given the number of potential roosting features present.
 - If in the unlikely event that bats are found during the works, all works should stop and a licensed bat surveyor contacted immediately for advice.
 - Given the bat activity during the surveys and considering *Secured by Design*, lighting around the Frinton Road project should be hooded, cowled or shielded and directed to the ground to avoid light spillage onto potential foraging and commuting habitats (BCT/ILE 2009). Designing 'dark corridors' within the project where security is of least concern, ensures commuting connectivity from the site to offsite bat habitats is maximised and limits the potential for impacts upon bat species that are particularly sensitive to light spillage.
- 6.40 In conclusion, the impact on biodiversity is expected to be low and through the recommended mitigation measures, the ecological value of the site could be enhanced. Officers consider that these measures are acceptable, would ensure compliance with the policies in the Local Plan and the environmental dimension of sustainable development.

Indicative layout and impact upon neighbours

- 6.41 Policy QL11 of the Tendring District Local Plan (2007) and Policy SD9 of the Tendring District Local Plan Proposed Submission Draft (November 2012) states that new development will only be permitted if, amongst other things, the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.
- 6.42 As an outline planning application, detailed design and layout is a reserved matter for future consideration but the Council needs to be satisfied that an appropriate scheme of up to 28 dwellings with associated infrastructure can be accommodated on the site in an appropriate manner. The indicative material submitted in support of the application; including the indicative layout demonstrate that there is a reasonable prospect of an acceptable scheme

being achievable on the site at an average density of 19 dwellings per hectare gross and 23 dwellings per hectare net.

- 6.43 A number of residents have raised concern that new residential development will result in a loss of their amenities in terms of loss of light, overlooking and noise. Whilst these concerns are noted, in conclusion, Officers consider that the impact of the development on neighbours is likely to be low and that, subject to detailed consideration of reserved matters such as design and layout at a later stage, will be acceptable.
- 6.44 The Town Council objects to the backland nature of the proposed development. Policy HG13 of the Tendring District Local Plan (2007) and Policy PEO6 of the Tendring District Local Plan Proposed Submission Draft (November 2012) seek to ensure that backland residential development provides a safe means of vehicular access, does not involve tandem development and will not be out of character with the area or set a harmful precedent for other similar forms of development. The indicative material submitted in support of the application including the indicative layout demonstrates that an acceptable access can be provided and the proposed development will not result in demonstrable harm to Kirby Cross which is characterised by post-war estate development set behind linear development fronting Frinton Road.

Council Housing/Affordable Housing

- 6.45 Policy HG4 in the adopted Local Plan requires 40% of dwellings on sites of 15 or more dwellings to be provided as affordable housing for people unable to afford market housing. Policy PEO10 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 25% of new dwellings on large sites to be made available to the Council to acquire at a discounted value for use as Council Housing. The policy does allow flexibility to accept as low as 10% of dwellings on site, with a financial contribution toward the construction or acquisition of property for use as Council Housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 25% requirement. The application makes provision, in principle, for 25% affordable housing within the scheme which would be secured through a s106 agreement in line with the emerging policy. On a development of 28 dwellings, the 25% requirement would equate to 7 dwellings being acquired by the Council.
- 6.46 The Council's Housing Needs team has commented on the application and advised that there is a need for affordable housing in the area based on evidence from the local housing register. It has been suggested that, as an alternative to transferring 7 properties to the Council at a discounted value, the Council would be prepared to accept 1 property 'gifted' (i.e. transferred to the Council at zero cost). Having undertaken a viability assessment which has been independently scrutinised, the applicant has indicated that they would be willing to gift 1 property to the Council at zero cost as suggested by the Council's Housing Team.
- 6.47 If the Committee is minded to approve this application, Officers will negotiate and agree an appropriate level of Council Housing to be secured through a s106 legal agreement.

Other issues

- 6.48 A local resident has stated that the proposed development contravenes the title register for Plot Adjoining 48 Frinton Road which states: "No Building shall be erected on the land within twenty feet from the northern boundary". The issue of a breach of covenant is not a material planning consideration however; the developer is aware of this and has insurance against the possibility of the covenant being invoked. The agent has suggested that the area could be avoided when the detailed layout and design are prepared in support of the reserved matters application.

6.49 A local neighbour has suggested that a 6 ft. fence should be erected along the entire length of Chestnut Avenue to prevent noise and nuisance from the construction process. The Council's Environmental Health team has however commented on the application and advised that to minimise potential nuisance to nearby existing residents caused by construction and demolition works, the developer will be required to submit a full method statement and restricted working hours conditions will be imposed.

7. Conclusion

7.1 The application has been assessed in relation to the policies of the NPPF and relevant adopted Local Plan and emerging Local Plan in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2014. The application has been assessed in relation to the following issues and potential impacts:

- Principle of development;
- Highways, transport and accessibility;
- Flood risk and drainage;
- Impact on infrastructure;
- Landscape, visual impact and trees;
- Open space;
- Ecology;
- Indicative layout and impact upon neighbours;
- Council Housing / Affordable Housing; and
- Other issues.

7.2 In conclusion, in applying the NPPF 'presumption in favour of sustainable development' the proposal addresses the three dimensions of sustainable development. The economic impact of the development would be positive both in terms of temporary construction jobs and the increased demand for goods and services that arises from population growth; the social impacts would be positive in terms of the contribution toward meeting projected housing need, play space and funding additional school places; and the environmental impacts would be neutral with the potential for them to be positive subject to securing successful approaches to landscaping, drainage and habitat creation.

7.3 The adverse impacts of the development would not significantly or demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole and therefore in line with paragraph 14 of the NPPF Officers recommend the approval of outline planning permission subject to the completion of a s106 legal agreement to secure a financial contribution toward education provision, a financial contribution toward play provision and an appropriate contribution towards Council Housing / Affordable Housing. There are also a number of conditions that would apply to the grant of planning permission, as outlined at the head of this report.

Background Papers

None.