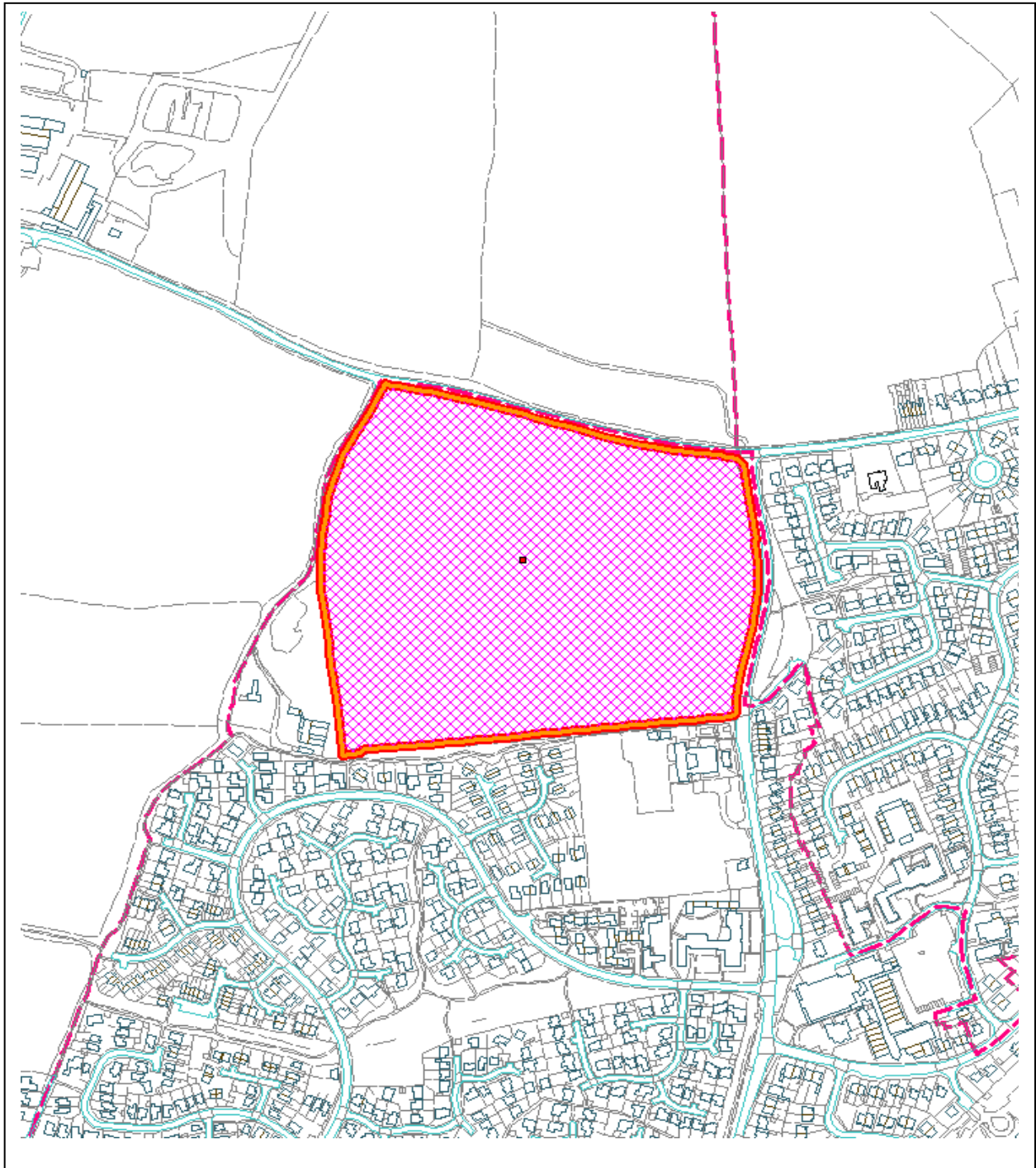


PLANNING COMMITTEE

12 JULY 2016

REPORT OF THE HEAD OF PLANNING

A.3 PLANNING APPLICATION – 16/00031/OUT – TURPINS FARM, ELM TREE AVENUE, KIRBY LE SOKEN, CO13 0DA



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Application:	16/00031/OUT	Town / Parish: Frinton & Walton
Applicant:	The Burghes Estate	
Address:	Turpins Farm, Elm Tree Avenue, Kirby Le Soken, CO13 0DA	
Development:	The erection of up to 250 dwellings with access from Elm Tree Avenue and Walton Road, including green infrastructure, children's play areas, school drop off and parking facility and other related infrastructure.	

1. Executive Summary

- 1.1 This is an outline planning application seeking approval for the principle of up to 250 dwellings on a 12 hectare parcel of agricultural greenfield land lying immediately north of the Turpin's Farm housing estate within the Hamford Ward in the Frinton and Walton Town Council area. The development would represent an extension to the Frinton, Walton and Kirby Cross urban area but the site lies a short distance from the eastern edge of the nearby village of Kirby le Soken. The proposed development will include open space and children's play areas along with a school dropping off and parking facility to serve the neighbouring Hamford Primary School.
- 1.2 The site is in a highly accessible location within a relatively short distance of schools, shops and other community facilities and with bus and rail services within easy reach. The site is not allocated for development in the Council's 2007 Local Plan and forms part of the Local Green Gap. In the Council's 2012 draft Local Plan, the 2014 revisions to that plan and the new Local Plan proposed for consultation this summer, the site is allocated for residential development in recognition of its sustainable location and its potential to make a significant contribution to future housing supply.
- 1.3 The proposal has attracted some objections, including 24 residents and Frinton & Walton Town Council, Frinton Residents Association, the Kirby le Soken Village Preservation Society and the local TDC Ward Councillor. The main concerns relate to the impact on traffic, schools and health provision, the impact on attractive views over Hamford Water, the loss of land within a designated Local Green Gap and the number and density of dwellings proposed for the site. For some, there is no objection to the principle of development on this site, which has been established in the emerging Local Plan, but there are concerns that the number of dwellings proposed is well above what was originally envisaged for the site – to the detriment of the local area.
- 1.4 Because the Council does not have an up to date Local Plan and is currently unable to identify a five-year supply of deliverable housing sites as required by government planning policy, this application has been considered in line with the government's 'presumption in favour of sustainable development'. Although the site lies outside of the settlement development boundaries of the adopted Local Plan, to comply with government requirements Officers have needed to approach the application with a view to positively addressing, as far as possible, technical issues and other matters raised by consultees and residents.

- 1.5 Officers recognise that the development would result in the loss of an area of undeveloped and visually exposed agricultural land which lies on the edge of the coastal slopes to Hamford Water and part of the Local Green Gap. However, the emerging Local Plan recognises this sensitivity and the applicants propose open space at the north of the site to preserve, enhance and maximise views across this area. Detailed design, layout and landscaping would need to respect this sensitive location and will be judged at a later stage through reserved matters applications. A significant green gap between the development site and Kirby le Soken would still remain, in line with the emerging Local Plan. When weighed against the significant need for housing in the Tendring area, it the Officers' balanced judgement that the adverse impacts do not significantly or demonstrably outweigh the benefits.
- 1.6 Ecological impacts have been carefully considered and Officers are satisfied that the development would not result in significant recreational disturbance to habitats at the internationally important Hamford Water due to the proposed recreational areas and connections with existing green links that development would provide. The site itself is of limited value in ecological terms, but a number of measures are proposed that could significantly enhance the environment for a range of species within the locality.
- 1.7 There are no objections from Essex County Council Highways and Essex County Council as the Education Authority and NHS England have requested financial contributions towards addressing the impact of the development on local education and health services. Ecological, flood risk and archaeological impacts have been addressed to the satisfaction Officers and whilst there are objections to the proposed dwelling numbers, the indicative layout submitted by the applicant demonstrates that a scheme of 240 dwellings, open space, play area and car park could be accommodated on the site in an appropriate manner.
- 1.8 In the absence of an up to date Local Plan and a five-year supply of deliverable housing sites, Officers consider that this development complies with the requirements of the National Planning Policy Framework and the recommendation is approval subject to a s106 agreement to secure affordable housing, open space, and financial contributions towards health and education.

Recommendation: Approval

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;
 - Health contribution, and;
 - Completion and transfer of public open space and maintenance contribution.

- b) Planning conditions in accordance with those set out in (i) below (but with such amendments and additions, if any, to the detailed wording thereof as the Head of Planning (or the equivalent authorised officer) 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. General conformity with the illustrative layout diagram.
 5. Layout and phasing plan/programme.
 6. Development to contain up to (but no more than) 250 dwellings.
 7. Highways conditions (as recommended by the Highway Authority).
 8. Archeologic trial trenching and assessment.
 9. Contamination survey.
 10. Ecological mitigation/enhancement plan.
 11. Foul water strategy.
 12. Surface water drainage scheme for construction and occupation phases.
 13. SuDS maintenance/monitoring plan.
 14. Hard and soft landscaping plan/implementation.
 15. Details of lighting, materials and refuse storage/collection points.
 16. Broadband connection.
 17. Local employment arrangements.
- c) That the Head of Planning (or the equivalent authorised officer) 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 Planning Policy Framework (NPPF)

- 2.1 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.
- 2.2 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.

- 2.3 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.
- 2.4 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.
- 2.5 Paragraph 187 of the NPPF states “*Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area*”.

Local Plan

- 2.6 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.

COM4: New Community Facilities (including Built Sports and Recreation Facilities)

Supports the creation of new community facilities where they are acceptable in terms of accessibility to local people, impact on local character, parking and traffic and other planning considerations.

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.

COM9: Allotments

Safeguards against the loss of existing allotments.

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.

EN2: Local Green Gaps

Seeks to keep areas designated as Local Green Gaps open and essentially free of development in order to prevent the coalescence of settlements and to protect their rural setting.

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.

EN11a: Protection of International Sites

Guards against development that would have an adverse impact on wildlife habitats of international importance which includes Hamford Water

EN11b: Protection of National Sites

Guards against development that would have an adverse impact on wildlife habitats of national importance such as Sites of Scientific Interest (SSSI) which again includes Hamford Water.

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.

EN29: Archaeology

Requires the archaeological value of a location to be assessed, recorded and, if necessary, safeguarded when considering development proposals.

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.

TR4: Safeguarding and Improving Public Rights of Way

Encourages opportunities to expand the public right of way network.

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.

SD2: Urban Settlements

Identifies Frinton, Walton and Kirby Cross together as an 'Urban Settlement' and one of the district's more sustainable locations 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.

PLA1: 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.

FWK9: Development at Turpins Farm

Allocates the application site for a mix of residential development and public open space and requires development of the site to meet specific requirements.

Other Guidance

Essex County Council Car Parking Standards – Design and Good Practice

Essex Design Guide for Residential and Mixed-Use Areas.

3. Relevant Planning History

3.1 The site has the following planning history:

15/30074/PREAPP	EIA Screening opinion request for development of 300 new homes together with new vehicular and pedestrian access and associated public open space, separate multi use community space and landscaping.	27.03.2015
15/30157/PREAPP	Development of up to 300 dwellings.	
16/00031/OUT	The erection of up to 250 dwellings with access from Elm Tree Avenue and Walton Road, including green infrastructure, children's play areas, school drop off and parking facility and other related infrastructure.	Current.

4. Consultations

TDC Building Control

No comments at this stage. Await detailed layouts.

TDC Environmental Health

No objection to the principle of a housing development on the site. However, should this application be approved, due to the historic agricultural activity on the land we would like to have a contaminated land condition attached to ensure one is submitted at detailed stage.

TDC Principal Tree & Landscape Officer

The site is not well populated with trees although there are established trees on, or close to, site boundaries that fulfil a valuable screening function and that are important features in the landscape. Much of the boundary of the application site benefits from existing established hedgerows. The applicant has provided an assessment of the hedgerows: which are to be retained except for short sections that will need to be removed to facilitate access.

In order to assess the extent to which the trees and hedgerows are a constraint on the development of the land and to identify the way that they would be physically protected should planning permission for development be granted, the applicant has provided a Tree Survey and Report. which has been completed in accordance with BS5837: 2012 Trees in relation to

design, demolition and construction.

Although at the outline stage, the applicant has provided a site layout plan showing proposed position of dwellings, open space provision and the position of a flood retention pond. The site layout does not identify the need to remove of any trees or other significant vegetation on the land other than the short sections of hedgerow to facilitate access to the land.

In terms of the potential impact of the development proposal on the trees those on the north, south and eastern boundaries will not be affected. The main issue appears to be the proximity of the proposed dwellings, close to the western boundary, to the trees numbered T1 to T8. These are the largest and oldest trees on the land and are within or approaching the Veteran category. Whilst the dwellings appear to be outside the Root Protection Areas (RPAs) of the trees it is not clear, from the information provided whether or not a satisfactory juxtaposition between the trees and the proposed dwellings can be achieved. It will be important to ensure that the trees are given sufficient space to avoid future problems associated with shading and obstruction to light as well as making allowances for debris that will fall from the trees.

In order to ensure that these trees are not harmed by the potential future development of the land, a new Tree Preservation Order has been made to afford them formal legal protection. Formal protection will also ensure that the trees were adequately protected during the construction phase of any development that may be granted planning permission and to deal with post development pressures.

In terms of the impact of the development on the existing landscape character it is important to recognise the existing characteristics of the landscape. The application site is situated on the southern edge of the Hamford Coastal Slopes Landscape Character Type (LCT) as defined in the Tendring District Landscape Character Assessment. To the south the application site abuts the developed land within the Clacton and the Sokens Clay Plateau. To the north the site overlooks the Hamford Drained Marshes and Islands as well as Hamford Water Marshes.

One of the key features of the Hamford Coastal Slopes Landscape Character Type (LCT) is the gently sloping land that provides a cohesive visual unit that forms an important setting for the open marshes of Hamford Water permitting panoramic views over Hamford Water to Harwich. The landscape character is considered to be strong and is in good condition. The landscape character is highly sensitive to any change as a result of its visibility and its importance as a setting for Hamford Water. The crest of the coastal slope which forms the skyline from Hamford Water is particularly sensitive.

The overriding strategy for the Hamford Coastal Slopes is to conserve the area as a rural landscape forming a setting for Hamford Water. From the information provided the applicant has not demonstrated that development could take place without causing harm to the recognised features and quality of the local landscape. The development proposal has the potential to have an adverse impact on the landscape character of the area, and the rural and tranquil setting of Hamford Water, by the urbanisation of the open countryside adjoining the existing developed land.

The topography of the land is such that the application site can be seen from a considerable distance from several locations. To show the likely impact of the development on the character of the area the applicant should provide a Landscape and Visual Impact Assessment (LVIA). This should be provided prior to the determination of the application.

With regard to the open space and the provision of the perimeter track for access and recreational purposes; this is considered to be a positive element of the development proposal and the new access points will provide good links to the existing highway infrastructure. However special attention should be given to the extent of the provision of this feature in the south eastern corner of the application site as a similar path exists on the adjacent developed land forming part of the Edenside estate. Care should be taken to avoid a duplication of footpaths for pedestrians, on adjacent developments. This is simply not necessary. An arrangement should be made to integrate the provision of the path to ensure that unnecessary duplication does not occur.

Should planning permission be granted then a detailed soft landscaping plan and specification, including new tree planting, should be secured as a reserved matter.

TDC Housing

There is a high demand for housing in the Kirby-le-Soken area and there are currently 181 households on the housing register seeking a 1 bedroom property, 77 seeking a 2 bedroom property, 41 seeking a 3 bedroom property and 18 seeking a 4 bedroom property.

It is noted that the applicant has accounted for 25% of the properties on the site to be for affordable housing (31 social housing and 31 intermediate). If the applicant can find a registered provider to take on these properties, the Council would be supportive because of the high demand for housing in this area.

If a registered provider cannot be found, the Council would not be in a financial position to purchase this number of units, even at a discounted price. The Council would therefore prefer to be gifted 18 of the properties on the site as an alternative to purchasing up to 62 at a discounted price.

TDC Open Space and Play

There is currently a deficit of 14.12 hectares of equipped play in Frinton, Walton and Kirby. However, there is more than adequate formal open space across the area. Any additional development will increase demand on already stretched play areas. It is noted that open space will be incorporated within the development and the provision of new on-site play areas could be incorporated within the design. With the lack of facilities in the area, a LEAP should be incorporated as one of the two play areas provided. Should the developer wish to transfer the open space and play facilities to the Council upon completion, a commuted sum will be required towards the cost of future maintenance.

ECC Highways

From a highway and transportation perspective, the impact of the proposal is acceptable to the Highway Authority subject to conditions in respect of:

- the approval of a construction management plan including details of when cleaning facilities;
- the dimensions of the junction onto Elm Tree Avenue;
- the dimensions of the junction onto Walton Road;
- provision of new bus stops in Walton Road and Elm Tree Avenue;

- footpaths along Walton Road and Elm Tree Avenue with crossing points; and
- residential travel packs.

ECC Schools

A development of this size can be expected to generate the need for up to 22.5 Early Years and Childcare (EY&C) places, 75 primary school, and 50 secondary school places.

According to the latest information available to Essex County Council early years and childcare team, there is insufficient full day care provision or free entitlement places to meet demand from this proposal. Additional provision will therefore be a needed and a project to expand provision or provide a new facility in the Hamford ward is proposed. An additional 22.5 places would be provided at an estimated cost of £312,255.

This proposed development is located within reasonable travelling distance of Walton-on-the-Naze Primary School, Hamford Primary Academy, Frinton-on-Sea Primary School and Kirby Primary School. These schools combined have a capacity of 926 places but are forecast to have an overall deficit of places by 2019-20. To fund the additional places required as a result of this development, a developer contribution of £912,900 would be required.

This proposed development is located within the priority admissions area for Tendring Technology College. The college has a capacity of 1,980 places. The school is forecast to have a surplus of 32 places by the school year 2019-20 but this is insufficient to accommodate all of the secondary aged pupils that would be generated by this development. The County Council is also aware that of the development proposed for Martello Caravan Park (15/01714/FUL for 216 dwellings [which has since been given a Committee resolution to approve subject to a s106 agreement]). The Martello scheme will use up the surplus places available at Tendring Technology College and as such the costs of providing additional secondary school places should be shared pro-rata between the two sites at a cost of £18,490 per additional place required.

Having reviewed the proximity of the site to the nearest primary and secondary schools, the County Council will not be seeking a school transport contribution however the developer should ensure that safe and direct walking/cycling routes are available to the nearest schools.

NHS England

This development is likely to have an impact on the services of the three GP practices in the locality (Thorpe Surgery – including its branch in Frinton Road, Kirby; Caradoc Surgery in Frinton; and Vicarage Lane Surgery in Walton). These GP practices do not have capacity for the additional growth as a result of this development. Therefore a Health Impact Assessment has been prepared by NHS England to provide the basis for a developer contribution toward capital funding to increase capacity within the GP Catchment Area.

There is a capacity deficit in the catchment practice and a developer contribution of £75,440 is required to mitigate the 'capital cost' to NHS England for the provision of additional healthcare services arising directly as a result of the development proposal. NHS England requests that this sum be secured through a planning obligation linked to any grant of planning permission, in the form of a Section 106 agreement.

**Natural
England**

The application site is in close proximity to the Hamford Water Special Area of Conservation (SAC) and Special Protection Area (SPA) which are European sites. The site is also listed as the Hamford Water Ramsar site and also notified at a national level as the Hamford Water Site of Special Scientific Interest. In considering the European site interest, the Council as a competent authority under the provisions of the Habitats Regulations should have regard for any potential impacts that a plan or project might have (including recreational disturbance).

The applicant's Habitat Regulations Assessment (HRA) considers that the SPA is sufficiently distant from the development not to attract significant visitors by foot, and while it is considered that a few residents might venture as far as the SPA, it is not considered that these will be in significant numbers, alone or in combination with other developments nearby. It is noted that there are only limited opportunities for parking within the designated site as a whole, and that the site has a natural zoning, with large areas inaccessible even from these access points. The report also states that the combination of 2ha open space, and links to rights of way to the south of the development should accommodate most regular recreational use.

As a result, we are satisfied that the proposed development is not likely to have a significant effect on these designates sites, so long as the green infrastructure proposed in the design (amount to 2ha, 17%), and links to the paths and green corridors to the south, is designed and managed to attract local residents and divert at least a proportion of their open space needs away from the sensitive wildlife interest at Hamford Water.

This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as roosting opportunities for bats or the installation of bird nesting boxes. We have not assessed this application and associated documents for impacts on protected species; you should apply our standing advice to this application as a material consideration in its determination.

**Essex County
Council Flood
Authority**

Having reviewed the Flood Risk Assessment and further information submitted by the applicant in April and May 2016, we do not object to the granting of planning permission subject to conditions relating to the following:

- a detailed surface water drainage scheme;
- a scheme for minimising offsite flooding during construction works;
- a maintenance plan for the surface water drainage scheme; and
- keeping an on-going log of maintenance.

**Essex County
Council
Archaeology**

The Essex Historic Environment Record, Tendring Historic Environment Characterisation Report, and Archeological Desk Based assessment that accompany the application, demonstrate that the proposed development lies within an area of archaeological interest with evidence for below ground archaeological remains including linear cropmarks within the footprint of the development itself, and good potential for other below ground archaeological deposits. Any surviving below ground non-designated heritage assets with archaeological interest would be damaged or destroyed by the proposed development and therefore planning conditions should be imposed on approval of planning permission to secure, prior to commencement of development:

- a programme of trial trenching and a subsequent summary report and mitigation strategy to be submitted for the Council's consideration;
- archaeological fieldwork in any areas of the site considered to contain archaeological deposits;
- a post excavation assessment with the full site archive and report to be deposited at the local museum.

5. Representations

5.1 The Council has received 24 objections to the proposal and one of support from residents including some lengthy and very well articulated letters raising the following concerns:

- There is no need to build any more homes in this locality, as there are already hundreds of existing houses up for sale, many of which are unoccupied;
- There are numerous other sites involving some six to seven hundred homes in the area already proposed or agreed;
- Surely there must be brownfield sites that can be developed before we allow the loss of prime agricultural land;
- The applicants refer to incorrect housing needs figures in their planning statement that do not reflect the Council's agreed (albeit questionable) position of 550 dwellings per annum;
- This field forms part of a designated green belt/green gap separating the village of Kirby le Soken from the built up areas of Frinton and Walton;
- There are sufficient non-green gap sites in the district to fulfil objectively assessed housing requirements in the proposed Local Plan period without the need to erode the gap that currently exists;
- Most residents of Kirby le Soken would wish to retain the integrity of this green belt/green gap;
- The local green gap in the adopted Local Plan seeks to safeguard the identity, character and rural setting of Kirby le Soken (and Great Holland) as free standing villages in the countryside yet this development goes against that principle;
- This is a classic example of urban creep that, if allowed, would contribute to the joining of Frinton and Kirby le Soken;
- The development will be a blot on the landscape;
- This proposal will probably mean another four hundred or so cars which will make already inadequate roads even more congested;
- Thorpe le Soken is always a bottleneck and this will become worse as a result of the development;
- Clacton and Colchester Hospitals and all GP practices and dentists are under severe pressure and are barely coping so the additional residents resulting from the development would make this situation even worse;

- All primary and secondary schools in the area are having difficulties accommodating children;
- Elm Tree Avenue outside Hamford Primary Academy has been described as a dangerous stretch of road in the local newspaper and additional cars resulting from this development will make the situation even worse;
- Walton Road becomes extremely busy during peak periods, and particularly busy during the summer months when holiday makers and day-trippers come to visit Walton on the Naze, this development would make the situation worse;
- There are virtually no prospects for employment in this area;
- Policing in the area is almost non-existent and there are proposals to cut provision, including closing the local Police Station;
- There are proposals to cut fire cover in the area with one of Frinton's two fire engines proposed to be removed from service;
- Views from existing homes over open countryside and the backwaters would be lost to a high density housing estate;
- The development would generate more noise which would carry to existing properties;
- The loss of views for some existing properties would have a detrimental effect on their resale value;
- The development will remove scenic uninterrupted views of the sea, backwaters, fields, trees, uplifting landscape and walks along footpaths;
- The development will urbanise an area that currently has a rural feel;
- There will be a detrimental effect on wildlife and nature conservation;
- The Council and the government has no right to consider any of these proposals until the necessary services and infrastructure have first been put in place;
- Developers and landowners are trying to take advantage of the Council's lack of an agreed Local Plan by putting forward excessive numbers of new homes;
- The 2012 Draft Local Plan sought to limit the amount of dwellings on the site to 100% aspirational, required an additional primary healthcare facility to be put in place before the commencement of development and required the lack of school places to be resolved before the occupation of residential development – this development will address none of these requirements;
- The 2014 revisions to the Draft Local Plan removed some of these requirements and increased the estimated dwellings from 50 to 160 to address objections from the landowner, but naturally the landowner will want to maximise the size of their development and the value of their site, at the expense of the existing community;
- Even in recognition of the lack of a 5 year housing supply, the applicants should stick to the 160 dwellings suggested for the site in the Draft Local Plan;
- The development will not, as the applicants suggest, bring substantial economic benefits to the area by creating jobs but local employment levels are low and there are no new opportunities presented by this development;
- The area has a predominantly older population with no particular industrial or commercial areas in the vicinity so development is likely to increase commuting and lead to further congestion on the roads;
- The area has an older population with many people having retired to the area to be close to the sea and countryside and this is not reflected in the mixed housing development being proposed;
- The local bus system is poor in terms of frequency, timing, early finishing and congested roads;
- The rail infrastructure is inadequate with poor hourly services and high ticket costs;

- All sewerage for the area is treated at Walton which is already struggling to cope with current demand (transporting excess by road) and in danger of being lost to the eroding coastline;
- The busy small roads in the area would not be suitable for construction traffic and emergency vehicles;
- Connaught Avenue and Frinton Station do not have sufficient parking space to serve an expanding population;
- The increased number of dwellings does not appear to fit in with the local density of housing;
- The green space for the development is alongside Walton Road and is therefore not particularly safe for children playing, and;
- Flooding is becoming a major problem on the road to Kirby and water is still lying on the road, even after periods of dry weather.

5.2 Frinton and Walton Town Council has also objected to the application with the following comments:

- The indicative layout plan does not give enough information to consider such a large application;
- It appears that no notice has been taken of the consultation undertaken;
- We are not against development on this site in principle but the numbers and type of properties is the most important consideration;
- Given that this green gap is one of the finest in Tendring with magnificent views, it was expected that aspirational housing would be provided and certainly not the number of properties that are indicated;
- The proposed site plan shows a gross overdevelopment of the site;
- There is an acute lack of infrastructure within the Town Council area, and;
- The access onto Walton Road which has a 40mph speed limit is considered hazardous and a danger to road users.

5.3 The Kirby-le-Soken Village Preservation Society object with the following concerns:

- The development would have a hugely detrimental affect on the Backwaters SSSI;
- The green gap between Elm Tree Avenue and Kirby-le-Soken will be dramatically reduced;
- This is the most unsuitable place in the whole of Tendring to build these homes;
- This could be the third massive estate of well over 200 homes within a radius of 2 miles (including the Martello development in Walton and the Halstead Road development in Kirby Cross);
- Roads and pathways in the vicinity are narrow and would struggle to cope with a possible additional 500 vehicles from this site alone;
- Traffic movements through the village are at an all time high;
- Current health services are totally inadequate with surgeries unable to recruit new GPs;
- The nearest A&E is in Colchester and the nearest Police Station is in Clacton;
- Street lighting is cut at night;
- Schools are oversubscribed;
- The old sewerage/drainage system is struggling to cope;
- Local employment is mainly in retail, catering and the tourist trade and there is a high reliance on commuting on expensive trains or slow and winding B-roads;
- A lower density development of bungalows could be a better approach and more agreeable to residents.

5.4 The Frinton Residents' Association has objected with the following comments:

- We support many of the local objections made about this application;
- This is a prime location with glorious views over farmland and the backwaters;
- This proposal is a gross over-development of the site;
- The site has been ear-marked for development in the Local Plan, but for aspirational housing that will be in keeping with the quality of this site's position;
- The developer appears to have 'cherry-picked' from the Draft Local Plan rather than comply with all requirements;
- The Draft Local Plan increased the proposed number of dwellings from 50 to 160 in conjunction with the landowner to maintain the quality of dwellings proposed, but this proposal for 250 dwellings rides roughshod over the balanced approach in the Local Plan (which would ensure each dwelling has a plot with good size amenity space, a garage and sufficient off-road parking space and would avoid the need for unenforceable 20mph limits or shared surfaces that do not work);
- The developer invited ideas from the community on how the proposed open space should be used, but the proposal undermines community use with a flood retention pond taking 25% of the space and an access road dividing the land and will not therefore be an effective and usable open space;
- The northern access road was not on the original proposal and apart from undermining the use of the open space area, it exits onto a faster road which would give more problems to the wider community;
- The local areas school and health services need to be addressed before such large developments are started so we can be sure that any agreed contributions are used locally to enhance our local services; and
- The Hamford Primary School causes many problems on Elm Tree Avenue at drop-off and pick-up times and the extra traffic generated by this development will make this situation worse and may just be unsustainable.

5.5 Councillor Robert Bucke (Ward Member for Holland and Kirby) also objects to the application because:

- 250 dwellings would represent massive overdevelopment of the site;
- The site overlooks the Hamford Water SSSI and should provide more open space between dwellings to create a 'feathering' effect as one exits urban Frinton & Walton westwards towards the green gap;
- There should be no vehicular access to the site from Walton Road;
- There is absolutely no evidence that the developers have taken any notice whatsoever of feedback from their own consultation process;
- There are huge local concerns regarding the adequacy of local highways to accommodate another 250-1,000 dwellings in this town council area;
- Highway bottlenecks are clearly evident at Kirby le Soken, Kirby Cross and Thorpe le Soken, not to mention Frinton Gates crossing and mini-roundabouts;
- The Council's own 2013 Infrastructure Report identifies inadequacy of education provision, and local primary schools cannot be expanded (we should ignore this at our peril);
- There is no adequate provision for educating children living at these proposed homes and s106 financial contributions will not deliver school places;
- Essex County Council has no funding for new schools and academies are not controlled by ECC; and

- While individual site development applications are considered and determined on their own merits, there is no overall assessment and coordination of combined effects on local amenities and the economy.

6. Assessment

The Site

- 6.1 The application site comprises a square 11.7 hectare parcel of greenfield agricultural land between the northern edge of Frinton-on-Sea and the rural settlement of Kirby-le-Soken. The site lies south of Walton Road beyond which are the coastal slopes overlooking Hamford Water with views across to Harwich and Felixstowe. The site lies west of Elm Tree Avenue opposite existing residential development and is located a relatively short distance from the Triangle Shopping Centre. The site lies east of Turpins Farm House and its access track, immediately north of Hamford Primary School and the existing residential estate at Edenside and its associated network of green paths.
- 6.2 The topography of the site slopes gently downwards from the existing housing estate to Walton Road and the edge of the steeper coastal slopes. The northern boundary of the site is formed by a strong hedgerow with a lower hedgerow containing a number of mature trees along the eastern boundary along Elm Tree Avenue. A greater number of mature trees are found along the sites western boundary along Turpins Farm House and within the green corridor along the north of the Edenside estate.
- 6.3 The predominant style of property on the adjoining housing estate is of mixed size and type in typical brick-built 1980s/1990s style with some care home/institutional use buildings interspersed with well maintained and attractive open spaces, landscaping and green links. Development to the east on the opposite side of Elm Tree Avenue contains a mix of inter-war and post-war detached and semi-detached properties, Victorian Farm Cottages and more modern estate development backed onto an attractive area of incidental open space and landscaping.

The Proposal

- 6.4 This outline planning application with all matters reserved seeks approval for the principle of erecting up to 250 dwellings, green infrastructure, children's play areas, school drop off and parking facility and other related infrastructure children. It also seeks detailed approval for access from Elm Tree Avenue and Walton Road for which technical drawings have been provided.
- 6.5 Whilst other matters including landscaping, scale, design and layout are reserved for later consideration, a Design and Access Statement and indicative drawings have been submitted which demonstrate, indicatively, how such a development could be achieved within the application site. These show a large area of open space at the northern part of the site, a central boulevard linking the open space to the expanded green corridor to the south, a flood retention pond within the open area to the north, a picking up and dropping-off car park next to the primary school and access points onto Elm Tree Avenue and Walton Road. The indicative scheme also shows footpath/cycleways through the development which connect with the track to the south.

Architectural Drawings

- KA16522 01 Location Plan
- UK15044-01-REV A Illustrative Concept Plan
- 6338-SK-001 Elm Tree Avenue Proposed Site Access and Visibility Splays
- 6338-SK-003 Walton Road Proposed Site Access and Visibility Splays

Reports and Technical Information

- Planning Statement
- Design and Access Statement
- Statement of Community Involvement
- Transport Assessment
- Archaeological Desk Based Assessment
- Flood Risk Assessment
- Habitat Regulations Assessment
- Phase 1 Habitat Survey
- Bat Activity Survey
- Breeding Bird Survey
- Great Crested Newt Survey
- Hedgerow Regulations Assessment
- Tree Report

Main Planning Considerations

6.6 The main planning considerations are:

- The principle of development;
- Local Green Gap;
- Highways, transport and accessibility;
- Landscape, visual impact and trees;
- Flood risk and drainage;
- Ecology;
- Archaeology;
- Education provision;
- Healthcare provision;
- Utilities;
- Open space;
- Council Housing/Affordable Housing;
- Indicative layout and connections;
- Overall planning balance.

Principle of 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 (at the time of writing) 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 has overseen this work and a new draft plan has been approved for Full Council consideration on 5th July 2016. If the Council agrees to the publication of the new plan for consultation, that plan will, on publication, supersede in full the emerging Local Plan referred to above. Publication is currently scheduled for 14th July 2016.
- 6.10 The site is not allocated for housing or mixed use development in the Council's adopted Local Plan and falls outside of the settlement development boundary. It also forms part of the designated Local Green Gap which seeks to maintain physical separation between the edge of the Frinton, Walton and Kirby Cross urban area and the separate stand-alone village of Kirby-le-Soken. In the current emerging Local Plan however, the majority of the site is specifically allocated for residential development and is proposed for inclusion within the settlement development boundary with the equivalent 'Strategic Green Gap' designation being removed. The northern part of the site is designated as proposed public open space. In the original 2012 draft, around half the site was allocated for residential development with an estimated dwelling capacity of 50 dwellings; but through the 2014 focused changes, the area proposed for development was increased to cover around three-quarters of the site and the estimated capacity was revised upwards to 160 dwellings.
- 6.11 In the new version of the Local Plan that will have been the subject to Full Council consideration on 5th July 2016, the whole site is shown to be allocated for residential development and although no indicative dwelling capacity is specified in the plan itself, a report to the Local Plan Committee on 12th April 2016 suggested 250 dwellings, as being proposed in this planning application. The Local Plan Committee did resolve to approve the proposals in the new draft plan but with the condition that the dwelling capacities for individual sites be kept under review with the potential for them to be changed in the future.
- 6.12 Because the site lies outside of the settlement development boundary and falls within the Local Green Gap as defined in the adopted Local Plan, it is technically contrary to local policy. However the adopted plan falls significantly short in identifying sufficient land to meet the 'objectively assessed' future need for housing which is a key requirement of the NPPF. As a result, the Council is also currently unable to identify a five-year supply of deliverable housing sites, plus a 5-20% buffer, as required by paragraph 47 of the NPPF.
- 6.13 Based on the evidence contained within the 'Objectively Assessed Housing Needs Study (July 2015) for Braintree, Chelmsford, Colchester and Tendring, the projected need for housing in Tendring is 550 dwellings per annum. Whilst this figure is still the subject of continued scrutiny by the Local Plan Committee and could change, it currently provides the

most up to date evidence on which to base the calculation of housing land supply. In applying the requirements of NPPF paragraph 47 to this requirement, the Council is currently only able to identify an approximate 3.8 year supply. In line with paragraph 49 of the NPPF, housing policies must therefore be considered 'out-of-date' and the government's 'presumption in favour of sustainable development' is engaged. To comply with national planning policy, the Council would not, at this time, be justified in refusing this planning application purely on the basis that it falls outside of the settlement development boundary of the adopted Local Plan.

- 6.14 '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.
- 6.15 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.
- 6.16 In both adopted and emerging plans, Frinton, Walton and Kirby Cross are together categorised as a 'town' or 'urban settlement' in recognition of their collective size and range of services and facilities and as a location where sustainable development on a larger scale can be achieved. In comparison, 'villages', 'key rural service centres' and 'smaller rural settlements' are considered to offer lesser sustainable locations for major development.
- 6.17 Furthermore, in the current emerging Local Plan (the 2012/14 draft), the application site is the subject of a specific policy (FWK9) which requires any development on the site to:
- contribute financially towards the provision of a purpose-built medical centre, either at the Martello site in Walton or elsewhere in the urban area;
 - take vehicular access from Elm Tree Avenue;
 - provide landscaping to strengthen the edge of the remain Strategic Green Gap to Kirby le Soken;
 - provide a minimum 2 hectares of public open space at the northern end of the development;
 - expand upon and connect with the existing network of footpaths and green corridors that serve the adjoining residential area;
 - create a green corridor through the centre of the development that opens out into the new area of open space affording attractive views over the coastal slopes and Hamford Water, and;
 - provide a safe pedestrian footpath to Hamford Primary School and the Triangle Shopping Centre.

- 6.18 Whilst this policy, as part of a draft plan, only carries limited weight and is not proposed to be carried forward into the new version of the Local Plan, the application has sought to address these requirements as far as is possible.
- 6.19 Officers consider that the principle of this development should be supported based on the significant shortfall of housing land, the requirements of the NPPF, the site's sustainable location and the provisional support for development indicated in both the current and proposed emerging Local Plans with detailed matters of design, layout and landscaping for future consideration.

Local Green Gap

- 6.20 The application site forms part of a 'Local Green Gap' as identified in the Council's adopted Local Plan. The objective of this specific green gap, as set out in the text of the Local Plan, is to safeguard the identity, character and rural setting of Kirby-le-Soken and Great Holland as free standing villages in the countryside and to protect the remaining village character of Kirby Cross and its rural setting.
- 6.21 Policy EN2 of the adopted Local Plan aims to keep Local Green Gaps essentially free of development within the plan period which, for the adopted Local Plan, was up to 2011. However, with the need for additional land for housing to meet longer-term requirements, there is an acceptance that it might not be possible to carry forward Local Green Gaps in all parts of the district into the next version of the Local Plan. So in the current version of the emerging Local Plan, many of the Local Green Gaps, including this one, have been redrawn to allow some development.
- 6.22 In recent months, the Planning Committee has resolved to refuse a number of planning applications for being contrary to adopted Local Green Gap policy including 15/01234/OUT for 240 dwellings off Halstead Road, Kirby Cross; 15/00904/OUT, 16/00208/OUT & 16/00209/OUT for 240, 220 and 276 dwellings (respectively) off Rush Green Road, Clacton; 15/01720/OUT for 175 dwellings off Centenary Way, Clacton; 15/00964/OUT for 71 dwellings off Mayes Lane, Ramsey; and 15/01710/OUT for 110 dwellings off Thorpe Road, Kirby Cross. Two of these sites (namely Rush Green Road and Mayes Lane) are specifically allocated for housing in the emerging Local Plan, as is the application site.
- 6.23 The Council has also now received two appeal decisions for Local Green Gap sites. The first relates to an outline planning application for up to 60 dwellings on land north of Harwich Road, Little Oakley (Ref: 14/00995/OUT) and the second relates to an outline application for up to 75 dwellings on land east of Halstead Road, Kirby-le-Soken (Ref: 15/00928/OUT). Both appeals were dismissed with both Planning Inspectors concluded that the emerging Local Plan should carry only limited weight and that, critically, Policy EN2 in the adopted Local Plan is not a housing policy and should carry 'full weight'. The Inspector stated "*this policy aims to keep Local Green Gaps open and free of development, to prevent the coalescence of settlements and to protect their rural settings. This is compatible with the aim of the Framework, as set out in paragraph 17, to recognise the intrinsic character and beauty of the countryside and to protect valued landscapes. Consequently I have attached full weight to LP Policy EN2 in determining this appeal*".

- 6.24 However, there has since been a decision by the Court of Appeal (Cheshire East Borough Council v Secretary of State for Communities and Local Government & Anr. Case Number: C1/2015/0894) in which three judges overturned an earlier High Court decision which had determined that green gap policies are not housing policies and should not be considered out of date if a Council cannot identify a sufficient supply of housing land. In overturning the High Court's decision, the Court of Appeal judges concluded that the concept of 'policies for the supply of housing' should not be confined to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. They concluded that this concept extends to policies whose effect it is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the green belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development.
- 6.25 Notwithstanding the appeal decisions at Little Oakley and Kirby-le-Soken, the implication of this legal ruling is that the Council cannot simply refuse planning permission for development within Local Green Gaps on the basis that the Local Green Gap policy should carry 'full weight'. Instead, the Council must apply the key test within the NPPF to determine whether or not the adverse impacts of development would significantly and demonstrably outweigh the benefits – weighing up the presence of the Local Green Gap policy in the overall planning balance.
- 6.26 Given the proposed allocation of this site for housing in the emerging Local Plan, the ability to still retain a strong green gap between the development and the edge of Kirby-le-Soken and the opportunity to deliver housing in a highly accessible and sustainable location, Officers consider that the loss of this part of the adopted Local Green Gap would not significantly and demonstrably outweigh the benefits of the development.
- 6.27 Because the weight to be given to the Local Green Gap designation alongside the benefit of the development is a matter of judgement, if the Committee was to take an alternative view to Officers and concludes that the adverse impact of losing the Local Green Gap significantly and demonstrably outweighs all economic, social and environmental benefits of the development, refusal against Policy EN2 of the adopted Local Plan would at least be a legitimate reason for refusal. On this particular occasion, given the highly accessible location of the site aligned with the substantial housing land shortfall, Officers consider that a successful defence of an appeal against refusal would be more difficult here than for some of the other green-gap proposals that have been refused in recent months.

Highways, transport and accessibility

- 6.28 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.

6.29 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 immediately adjoins Hamford Primary School which is a school with space to be expanded; it is within 600 metres (or 1 kilometre at its furthest point) of Tendring Technology College upper-school campus; it is within 400 metres (800 metres at its furthest point) of the Triangle Shopping Centre which contains two supermarkets, a post office, other shops, a community building and the Town Council offices; and is within 600 metres to 1 kilometre of Frinton Park Playing Fields. Frinton Railway Station is just 1 kilometre away and Connaught Avenue shops are within around 1.5 kilometres distance. Bus services (7, 8, 9, 107) can be accessed within walking distance of the site which provide half-hourly buses between Clacton and Walton and a limited service to Colchester. For a greenfield site on the edge of an urban area, this site enjoys a very high level of accessibility to shops, services and facilities compared with many other sites proposed or already approved for development in the district.

6.30 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.

6.31 Officers note the many objections from local residents concerned about the potential increase in traffic, particularly movements through the village of Kirby le Soken, however from a technical highways safety and capacity perspective, the Highway Authority has considered the applicant's transport assessment and has resolved to make no objections subject to conditions mainly to ensure the correct junction geometry at the proposed access points onto Elm Tree Avenue and Walton Road.

6.32 From a highways, transport and accessibility perspective, Officers consider that whilst there is some local objection to the proposal, it meets the requirements of the NPPF and the Local Plan and refusal on these grounds would not be justified.

Landscape, visual impact and trees

6.33 The site is located on the edge of the built up area at a position that offers open views to and from Hamford Water and Harwich and Felixstowe beyond. It is an exposed and sensitive site in landscape terms, as rightly pointed out by objectors to the application and the Council's own Trees and Landscapes Officer. Policy FWK9 in the 2012 Draft Local Plan (as amended in 2014) recognises this and requires a central green corridor through the development leading out to a new area of open space designed will retain, maximise and enhance these views both to and from the site.

6.34 Whilst the applicants have not submitted a Landscape and Visual Impact Assessment at this outline stage, the Council's own landscape assessment in support of the emerging Local

Plan that was undertaken in 2009 rates the site as being of moderate adverse landscape sensitivity. It recommended that the effects of development would be reduced if the northernmost (say) third of the area were to remain undeveloped, acknowledging that would still be some adverse effects as a result of extending outside the established urban edge. This assessment informed policies such as FWK9.

- 6.35 At the outline planning stage, the specific design and layout of the properties is yet to be confirmed but the way in which the development relates to the proposed northern open space and the views out over Hamford Water will ultimately be key to the scheme's success. In assessing whether or not development will be acceptable in principle (which the emerging Local Plan suggests it is), Officers turn to the NPPF and the criteria-based policies in the Local Plan relating to landscape impacts.
- 6.36 Paragraph 114 in the NPPF requires Councils to maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast. Paragraph 115 then says that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The application site is not affected by any of these specific designations and even the local designation designed to protect the open character of the coast (the coastal protection belt) does not cover the site itself, although it covers the coastal slopes beyond.
- 6.37 Whilst it is acknowledged that there will be some adverse effects arising from the development, the way in which the scheme is to deliver substantial open space at its northern end in line with the Council's emerging policies will minimise the harm, alongside more detailed design and landscaping considerations to be determined later on. The fact that the site is not within any nationally or locally designated landscape areas (apart from local green gap which has a more specific spatial function as explained earlier in this report) means that development would not be fundamentally against national planning policy.
- 6.38 The key test for the Council is whether or not the adverse impacts would significantly and demonstrably outweigh the benefits of the development and whether the impact could be reduced or mitigated through landscaping and careful design. On the basis that adverse landscape impacts on the immediate area are generally unavoidable when it comes to greenfield settlement expansion, important views from the wider area including Hamford Water can be kept to a minimum in line with the emerging Local Plan policy, and landscaping and good design has the potential to reduce and mitigate most impacts, Officers consider that the adverse impacts would not outweigh the benefits of development and a recommendation of refusal in this instance would not be justified.
- 6.39 Policy QL9 in the adopted Local Plan and Policy SD9 in the emerging Local Plan still requires 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.

- 6.40 The Council's Principal Trees and Landscapes Officer identifies established trees on, or close to, site boundaries that fulfil a valuable screening function and that are important features in the landscape. These will need to be retained all but for short sections that will need to be removed to facilitate access. The applicant's tree survey demonstrates that development can be achieved without the need to remove any trees or other significant vegetation on the land, other than to achieve access.
- 6.41 The most important trees on the site have been served with Tree Preservation Orders to ensure their retention and protection and although the Council's Tree Officer raises a concern about some elements of the indicative layout drawings and the possible impact on the root protection areas of important trees, these should be easy to address at the detailed reserved matters stage and do not represent a reason why development should be refused in principal. Should planning permission be granted, conditions requiring a more detailed landscaping and tree planting plan at reserved matters stage will be imposed.

Flood risk and drainage

- 6.42 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.
- 6.43 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.
- 6.44 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 PLA1 of the adopted and emerging Local Plans (respectively) and therefore addresses the flood risk element of the environmental dimension of sustainable development.

Ecology

- 6.45 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.

- 6.46 Under Regulations 61 and 62 of the Habitats Regulations, local planning authorities as the 'competent authority' must have regard for any potential impact that a plan or project might have on European designated sites. The application site is not, itself, designated as site of international, national or local importance to nature conservation but it does lie within a kilometre of Hamford Water which is designated as a Special Area of Conservation (SAC), Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). Whilst the application site is located some distance, consideration still needs to be given to potential indirect effects on the designated area that might result from the proposed development.
- 6.47 Natural England has written to remind the Council of its statutory duty and to highlight specific concerns about the potential for 'recreational disturbance' to the protected habitat that might arise from the development and the associated increase in population and activity. Recreational disturbance is a significant problem for such habitats and can have a disastrous effect, in particular, on rare populations of breeding and nesting birds. Notable concerns include increased marine activity (boating, jet skiing etc) and people walking their dogs either within or close to the protected areas. Both activities can easily frighten birds that are breeding and nesting and can have an extremely detrimental impact on their numbers.
- 6.48 Importantly, paragraph 119 of the NPPF states very clearly that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. The applicant has undertaken a Habitat Regulation Assessment and Natural England has advised that the assessments provided with the application and the fact that a considerable amount of recreational and informal open space is proposed as part of the development along with connections to existing pedestrian links provides suitable assurances that there would be no detrimental impact on the designated areas (either individually or in combination with other schemes). No further 'appropriate assessment' is therefore required and the presumption in favour of sustainable development can still apply.
- 6.49 The applicant has prepared and submitted a Phase 1 Extended Habitat Survey to assess the ecological value of the site and immediate area itself and the potential impact of the development. Being in predominantly agricultural use, the ecological value of the site was expected to be low. However the potential to support notable and protected species, with the mature trees and hedgerows on the site boundaries was fully investigated and additional species surveys were undertaken. These concluded:
- Great Crested Newt Survey - No Great Crested Newts were found during the survey of the pond at Turpins Farm on 4 separate survey dates, hence 'as far as can be practicably determined, Great Crested Newts and their habitat are not a consideration for the current proposals.
 - Breeding bird survey – potential impacts of the proposed development are not considered to be significant. Where possible hedges should be retained and new landscaping should

utilise native species wherever possible and allow free movement through the sites new landscape.

- Hedgerow Regulations Assessment - None of the assessed hedgerows are "important" as defined in the Hedgerows Regulations 1997.
- Bat Activity Survey – the survey suggested potential for small scale roosts in the Oak trees within the boundary hedgerows. However this can be mitigated by new native tree planting and bat roosting opportunities in the fabric of the new houses.
- Habitats Regulations Assessment - The Hamford Water SPA, Ramsar Site and SSSI lies 750 metres to the north of the application site. This Natura 2000 site has been designated primarily for its breeding Little Tern and its over-wintering Dark-bellied Brent Goose, Shelduck, Avocet, Ringed Plover, Black-tailed Godwit and Redshank. Within the SPA boundary, is the Hamford Water SAC, designated for its population of Fisher's Estuarine Moth. The proposals include new public open space and links to existing footpaths and greenspace networks. There are good opportunities for accessing natural greenspace in the surrounding area, including two focal points for amenity access to Hamford Water itself. It is therefore considered that the numbers of people from the proposed development adding to existing levels of disturbance will be minimal. It is considered that what disturbance does occur, will not have a lasting effect on populations of Feature Interest species and, therefore, on the condition of the SPA and so there will be no likely significant effect.

Archaeology

- 6.50 The applicants have also considered the archaeological value of the site and there is evidence that some archaeological remains of historical significance could potentially be beneath the soil. In line with the recommendation within the applicants' assessment and the general approach advocated by Essex County Council's Archaeologist, a condition will be applied if the Committee is minded to approve, to ensure trial trenching and recording is undertaken prior to any development to ascertain, in more detail, what archaeological remains might be present.

Education provision

- 6.51 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 which includes education provision. A large number of local residents have expressed concern that local schools will not be able to cope with the expected increase in population arising from the 250 new homes, particularly when considered alongside other proposals for major residential development under consideration in the wider area.
- 6.52 Essex County Council as the Local Education Authority has been consulted on the planning application and has made representations. ECC's initial advice was submitted in response to this application in isolation however the cumulative effect of other potential developments has also been taken into account. ECC has requested a £312,000 contribution towards early years and childcare provision, a £912,000 contribution towards primary provision and a contribution towards secondary provision to be met by this development and the Martello housing scheme in Walton, to be calculated on the basis of just over £18,000 per additional school place required.

6.53 Whilst it is noted that there is some scepticism amongst residents as to how such moneys will be spent and a concern that spaces will not be provided in time for the additional pupils arising from the development, Essex County Council has a responsibility to ensure sufficient places are provided and it is known that Hamford Primary (an academy) can expand to meet primary requirements and Tendring Technology College can expand to meet secondary requirements. The financial contributions being sought are calculated in line with the standard guidance applied by ECC across the county and the applicant has indicated a willingness to make the necessary contributions through a s106 legal agreement. This approach has been accepted by Planning Inspectors on appeal and Officers advise that permission can be granted on this basis.

Health provision

6.54 The requirement of the NPPF to promote the creation of high quality environments with accessible local services that reflect the community's needs also extends to health provision, another matter of considerable concern amongst local residents. Again through Policy QL12 in adopted Local Plan and Policy SD7 in the emerging Local Plan, new development needs to be supported by the necessary infrastructure, including health provision.

6.55 As this the case across most parts of the district, local health services are operating either at, close to or above capacity in catering for the needs of the current population. One of the roles of the Local Plan is to ensure that major residential developments are planned alongside agreed investment in an area's infrastructure to accommodate anticipated increases in population. For health provision, this could mean the expansion of existing facilities or through the provision of new ones. Policy FWK9 which relates specifically to this site, requires the development to contribute toward the provision of the purpose-built medical centre proposed for land at Martello Caravan Park in Walton, or on alternative facility elsewhere in the area.

6.56 Because the Council's Local Plan is out of date and it cannot identify sufficient land to meet projected housing needs, applications must be considered on their merits against the government's presumption in favour of sustainable development and Officers have needed to liaise with NHS England (with a strategic overview of health provision in our area) to calculate what investment will be required to mitigate the impact of this development and others proposed in the Frinton and Walton area. Through adopted Policy QL12 and emerging Policy SD7, the Council can require developers to address infrastructure requirements likely to arise from their developments by either building new facilities or making financial contributions towards the creation of additional capacity. It is noted that there is local scepticism about how this will work in practice, but in the absence of an up to date Local Plan, this is an approach that has been accepted by Planning Inspectors.

6.57 As with highways and education, Officers have considered both the individual impact of this development on health provision as well as the cumulative impact that might arise if the other major developments are to be allowed. In terms of secondary hospital provision, the NHS is responsible for investment that will ensure the growing population is properly served. The Council cannot refuse planning permission for major residential developments in response to local concerns about facilities at Colchester or Clacton hospitals, particularly as house building is a key government objective alongside the modernisation of the NHS.

- 6.58 For local primary healthcare provision however, the Council working with NHS England can, through the planning system, put measures in place to mitigate the impact of population growth arising from major residential developments on local infrastructure. Whilst it is the NHS' responsibility to ensure that health centres and local surgeries are adequately resourced and staffed, the Council can secure either new buildings or financial contributions towards expanding existing buildings to ensure there is at least sufficient space for additional doctors, nurses and other medical professions to provide their services.
- 6.59 NHS England has undertaken a Health Impact Assessment of the development proposal and has identified that the local surgeries will not have the capacity to serve the additional residents that would result from the development. A developer contribution of just over £75,000 is requested to mitigate the capital cost to the NHS for the provision of additional healthcare services. The NHS has plans to build a new surgery in the Elm Tree Avenue area, not far from the development site. The applicant has indicated that they would be willing to either make the requested contribution through a s106 legal agreement.

Utilities

- 6.60 With regard to sewage capacity, Anglian Water has advised that the proposed development site is within the Walton-on-the-Naze Water Recycling Centre (WRC) catchment where capacity will be made available to accommodate the flows from this proposal.

Open Space

- 6.61 Policy COM6 in the adopted Local Plan and Policy PEO22 of the emerging Local Plan require large residential developments to provide at least 10% of land as public open space or otherwise make financial contributions toward off-site provision. Policy FWK9 in the emerging Local Plan contains a specific requirement for strategic open space at the northern part of the site. The amount of open space and its location accords broadly with the expectations of the draft policy.
- 6.62 The Council's Open Spaces team have commented on the application and has requested that the provision of new on-site play areas be incorporated within the design. With the lack of facilities in the area, a LEAP should be incorporated as one of the two play areas provided. Should the developer wish to transfer the open space and play facilities to the Council upon completion, a commuted sum will be required towards the cost of future maintenance. To secure the open spaces in perpetuity, a s106 legal agreement will ensure the transfer of the land to the Council or another suitable body for future maintenance.

Council Housing/Affordable Housing

- 6.63 Policy HG4 in the adopted Local Plan requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. 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.

- 6.64 The Council's Housing Needs team has commented on the application and advised that there is a significant need for affordable housing in the area based on evidence from the local housing resister. It has been suggested that, as an alternative to transferring 25% of properties to the Council (up to 62 dwellings) at a discounted value, the Council would be prepared to accept 18 properties 'gifted' (i.e. transferred to the Council or a nominated partner or trust at zero cost).
- 6.65 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.

Indicative layout

- 6.66 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 250 dwellings, open space, play area and car park can be accommodated on the site in an appropriate manner. The indicative material submitted in support of the application, including the indicative layout and elevation drawings and Design and Access Statement demonstrate that there is a reasonable prospect of an acceptable scheme being achievable on the site.
- 6.67 The suggested layout of the properties comply with general urban design and secured-by-design principles which promote properties being positioned 'front to front' and 'back to back' and show how the dwellings could relate well to neighbouring dwellings, the proposed open space and existing green corridors. The drawings show a scheme showing plots of terraced, semi-detached and detached properties, although at reserved matters stage more detail of property sizes and types will be established.
- 6.68 The density of the residential development would be approximately 21 dwellings per hectare gross and around 27 dwellings per hectare net (deducting the areas of land indicatively shown as open space, green corridors and car parking). The general density of development in the existing Edenside estate is around 21 dwellings per hectare (net) so the proposed development would be at a slightly higher density, although one that is not inappropriate in a highly accessible urban edge location. Officers note that some objectors call for the density and housing numbers to be more in line with the 160 proposed in the emerging Local Plan (2012 draft as amending in 2014) but with this policy only carrying limited weight, it would be difficult to sustain this as a reason for refusal unless a scheme of 250 dwellings was clearly inappropriate for the location.
- 6.69 The drawing shows the proposed parking/dropping-off/picking-up area in an obvious location close to the school and a substantial widening of the existing green corridor at Edenside and a central boulevard through the scheme linking with the proposed strategic open space. These features will ensure compliance with Policy TRA in the adopted Local Plan which encourages opportunities to expand the public right of way network. This aspect of the scheme is also supported by Natural England as a means of providing a recreational alternative to the sensitive Hamford Water.

Overall Planning Balance

- 6.70 Because the Council's Local Plan is out of date and a five-year supply of deliverable housing sites cannot currently be identified, the National Planning Policy Framework (NPPF) requires that development be approved unless the adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the NPPF suggest development should be refused. The NPPF in this regard applies a 'presumption in favour of sustainable development' for which sustainable development addresses economic, social and environmental considerations.
- 6.71 **Economic**: Whilst the scheme is predominantly residential with no commercial premises provided, up to 240 dwellings would generate additional expenditure in the local economy which has to be classed as an economic benefit. There will also be temporary jobs in construction whilst the homes are being built.
- 6.72 **Social**: The provision of up to 135 dwellings toward meeting projected housing need, at a time when the Council is unable to identify a five-year supply, is a significant social benefit which carries a high level of weight in the overall planning balance – particularly as government policy is to boost housing supply. Additional social benefits include the proposed open spaces. The impacts of health and schools provision will be mitigated through financial contributions to be secured through a s106 agreement, if the application is approved. As a site located within reasonable distance of a number of shops, services and facilities, the proposal performs well in respect of social sustainability.
- 6.73 **Environmental**: The environmental impacts of the proposal have required very careful consideration. The site is visually exposed and the landscape and visual impact will be adverse, however not the extent that it would outweigh economic and social benefits – particularly as a good landscaping scheme and strategically located open space will soften and mitigate impacts. The potential for increased recreational disturbance to the Hamford Water has been given careful consideration and it is considered that the impact would be negligible, particularly as new recreational space and connections to the wider pedestrian network will be delivered as part of the development. The ecological impact of development on the site and surrounding area itself has the potential to be positive with recommended mitigation and enhancement measures that should improve conditions for a range of protected species.
- 6.74 In the overall planning balance, Officers consider that the adverse impacts do not significantly and demonstrably outweigh the benefits, the site is proposed for development in the emerging Local Plan and the application is therefore recommended for approval subject to a s106 legal agreement and a range of planning conditions.

Background Papers

None.