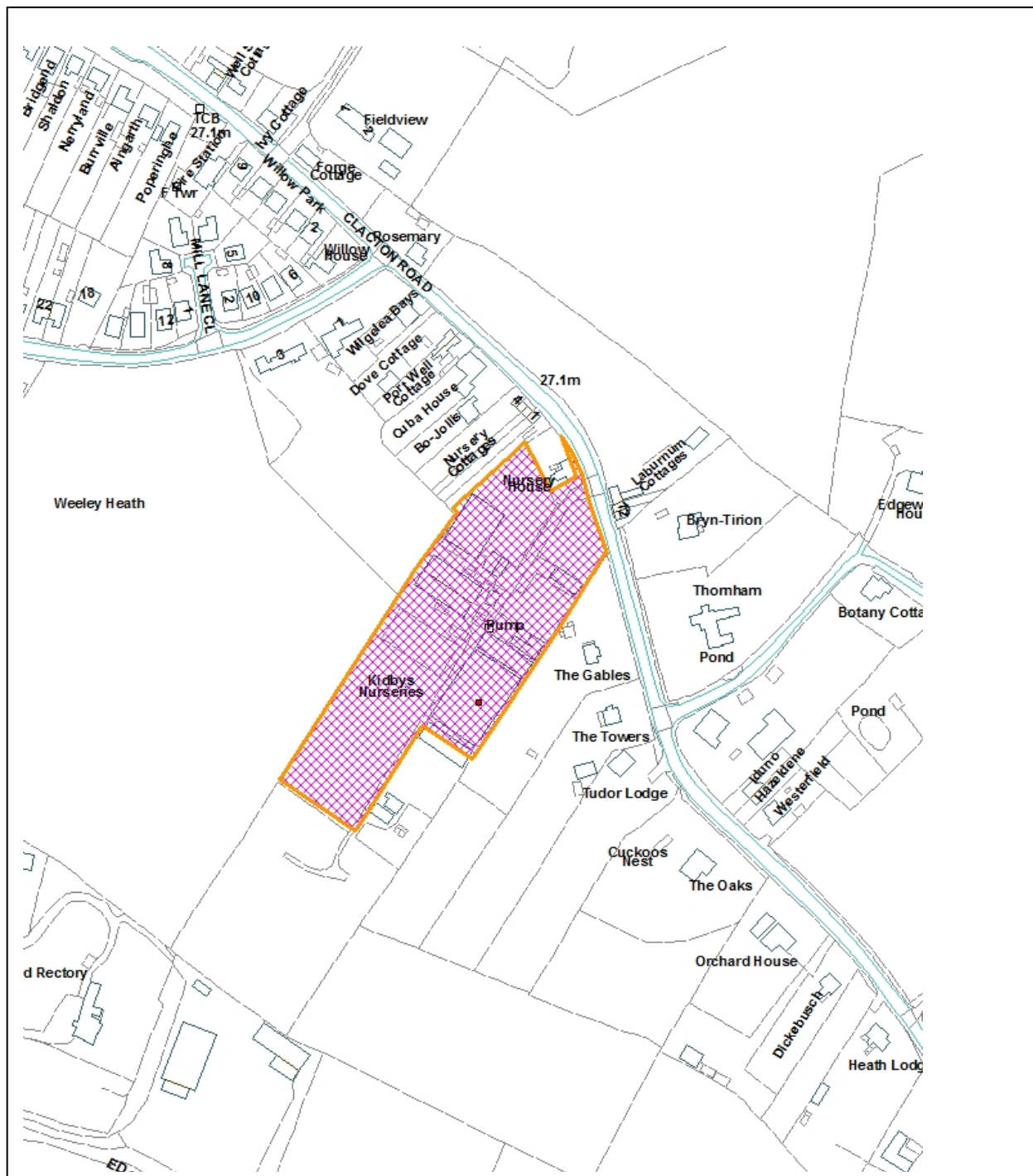


PLANNING COMMITTEE

9 AUGUST 2016

REPORT OF THE HEAD OF PLANNING

**A.5 PLANNING APPLICATION – 16/00677/FUL – KIDBYS NURSERIES, CLACTON ROAD, WEELEY HEATH, CLACTON ON SEA, CO16 9EF**



DO NOT SCALE

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

<b>Application:</b>	16/00677/FUL	<b>Town / Parish:</b> Weeley
<b>Applicant:</b>	Barkley Projects LLP = Mr. K. O'Brien	
<b>Address:</b>	Kidbys Nurseries, Clacton Road, Weeley Heath, Clacton-on-Sea, CO16 9EF	
<b>Development:</b>	Full application for 22 dwellings on former nursery site.	

## 1. **Executive Summary**

- 1.1 This is a full planning application for 22 dwellings on a 1.4 hectare previously developed and now redundant nursery site in Weeley Heath off Clacton Road, the main road passing through the village. As a full application, the Planning Committee is being asked to approve a detailed scheme including detached and semi-detached houses and detached bungalows. The properties would be served by a new access road from Clacton Road with most properties having direct road frontage and, at the end of which, will be a play area and an attenuation basin to deal with surface water flood risk. The properties are proposed to be of traditional style and appropriate for the location.
- 1.2 The site is outside of the settlement development boundary in the adopted Local Plan, but in the new preferred options draft the site has been included. 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'. 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.
- 1.3 Although Weeley Heath is now categorised as a 'smaller rural settlement' in the emerging Local Plan where only small scale developments are envisaged, this proposal is a good opportunity to make efficient use of a redundant brownfield site and, on balance, Officers consider that approval is justified.
- 1.4 The development has attracted very little public interest with a small number of comments in both objection and support. There are no objections from any statutory agencies and no financial contributions have been requested by Essex County Council or the NHS towards education or health provision. The highways arrangements have been amended at the request of the Highway Authority which now supports the scheme subject to conditions.
- 1.5 The development is considered to have limited impacts on the landscape, ecology and the nearest listed building. The most important trees, which are on the boundary of the site, will be retained.
- 1.6 Officers consider that this development complies with the requirements of the National Planning Policy Framework and the recommendation is one of approval subject to a Section 106 agreement to secure affordable housing and open space/play facilities.

### **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;
  - On site or off-site open space/play equipment.

- 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 in her discretion considers appropriate).

#### **(i) Conditions:**

1. Standard 3 year time limit for commencement.
2. Accordance with approved plans.
3. Highways conditions (as recommended by the Highway Authority).
4. Ecological mitigation/enhancement plan.
5. Surface water drainage/foul drainage scheme.
6. SuDS maintenance/monitoring plan.
7. Hard and soft landscaping plan/implementation.
8. Details of lighting, materials and refuse storage/collection points.
9. Broadband connection.
10. Local employment arrangements.
11. Contamination Remediation

- c) That the Head of Planning be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a Section 106 planning obligation.

## **2.0 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. The policy categorises Weeley Heath as a village.

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.

ER3: Protection of Employment Land

Seeks to prevent the unnecessary loss of land in, or last used for employment purposes.

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.

HG14: Side Isolation

Requires a minimum distance between detached properties.

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, or a financial contribution from smaller developments.

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.

EN6: Biodiversity

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

EN6a: Protected Species

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

EN6b: Habitat Creation

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

EN12: Design and Access Statements

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

EN13: Sustainable Drainage Systems

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

EN23: Development within the Proximity of a Listed Building

Guards against developments that would have an adverse impact on the setting of Listed Buildings.

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. Requires that developments affecting an existing public right of way accommodate the definitive alignment of the path or, where necessary, seek a formal diversion.

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: 2013-2033 and Beyond Preferred Options Consultation Document (July 2016).**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 14<sup>th</sup> July 2016, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013 – 2033 and Beyond Preferred Options Consultations Document.

As this plan is currently at an early stage of preparation, some of its policies can only be given limited weight in the determination of planning applications, but the weight to be given to emerging policies will increase as the plan progresses through the later stages of the process. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

Relevant policies include:

SP1: Presumption in Favour of Sustainable Development

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

SPL1: Managing Growth

Identifies Weeley Heath as a smaller rural settlement where smaller scale development is envisaged as part of a sustainable strategy for growth.

SPL2: Settlement Development Boundaries

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

SPL3: Sustainable Design

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

HP4: Open Space, Sports and Recreation Facilities

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.

LP1: Housing Supply

Sets out how the Council will meet objectively assessed housing needs over the next 15-20 years and in which parts of the district.

LP2: Housing Choice

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

LP3: Housing Density and Standards

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.

LP4: Housing Layout

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.

LP5: Affordable and Council Housing

Requires up to 30% of new homes on large development sites to be made available to the Council or a nominated partner, at a discounted price, for use as affordable or council housing.

PP12: 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.

PPL1: 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.



#### PPL3: The Rural 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.

#### PPL4: Biodiversity and Geo-Diversity

Gives protection to internal, European and nationally important wildlife sites and requires existing biodiversity and geodiversity on any site to be protected and enhanced with compensation measures put in place where development will cause harm.

#### PPL5: 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.

#### PPL7: Archaeology

Requires that where development that might affect archaeological remains, studies and works are undertaken to identify, recover and record such remains.

#### PPL9: Listed Buildings

Requires developments affecting listed buildings or their setting to protect their special architectural or historical interest, character, appearance and fabric.

#### CP1: Sustainable Transport and Accessibility

Requires developments to include and encourage opportunities for access to sustainable modes of transport, including walking, cycling and public transport.

#### CP3: Improving the Telecommunications Network

Requires that new developments be served by superfast or ultrafast broadband.

#### **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**

The site has the following planning history:

96/01152/FUL	(Kidby's Nurseries, Clacton Road, Weeley) Erection of 25 metre lattice tower, equipment cabinet, fencing and gates as base station for mobile telephone network	Refused	03.12.1996
97/00032/FUL	Erection of 20 metre high narrow monopole telecommunication tower,	Withdrawn	06.06.1997

equipment cabinet, ancillary  
fencing and gates as base  
station for mobile telephone  
network

15/30078/PREAPP Erection of 24 houses.

#### 4. Consultations

TDC  
Principal Tree &  
Landscape  
Officer

There are no trees in the main body of the application site except for a self sown group of Sycamore and Goat Willow growing through the derelict glasshouse in the area on the plan marked as plots 9, 10 and 11. These trees do not merit retention or protection by means of a Tree preservation Order.

The site layout plan shows 3 large oaks on the western boundary of the application site that feature prominently in the landscape and make a positive contribution to the character and appearance of the local environs.

The trees are mature healthy specimens that make a positive contribution to the character and appearance of the area. The removal of the trees is not directly threatened by the development proposal however steps will need to be taken to ensure that they are not harmed during the construction phase of any development that may be granted permission: Therefore tree preservation order has been made to afford them formal legal protection. The trees are now protected by Tree Preservation Order TPO/16/06 Former Kidbys Nursery, Clacton Rd, Weeley Heath.

It is not considered necessary for the applicant to provide a detailed Tree Survey and Report to establish the extent of the constraint that the trees are on the development potential of the land; however it will be necessary for them to provide information in accordance with BS5837: 2012 Trees in relation to design, demolition and construction; Recommendations to show the Root Protection Areas (RPA's) of retained trees to ensure that they are not harmed by the implementation of any development which may be granted permission.

As the trees are on the western boundary it may also be necessary for the developer to demonstrate that a satisfactory juxtaposition between the trees and the proposed dwellings can be achieved. The applicant will need to show the degree to which the trees have an impact on the private amenity spaces of the proposed dwellings: potential impact issues include - leaf litter, debris, shading and future resident's perceptions of the trees.

The applicant has provided a detailed soft landscaping plan, including tree planting that is sufficient to demonstrate an adequate level of new planting.

TDC Open  
Space and Play

There is currently a deficit of 2.18 hectares of equipped play and formal open space in Weeley. There are two play areas in Weeley, one located along Clacton Road and one off Hilltop Crescent – both of which are classified as Local Equipped Areas for Play (LEAP).

Due to the limited provision in Weeley in terms of both play and formal open space, it would be necessary to increase provision in the area should further development take place. To account for additional need and to prevent the current deficit from going, Weeley Parish Council has plans in place to increase the level of teenage provision at the Clacton Road site.

Due to the lack of provision in the area a contribution is justified and relevant to the planning application and this money would be spent to provide additional teenage play equipment at Clacton Road, Weeley.

ECC Highways	<p>From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to mitigation and conditions relating to the following:</p> <ul style="list-style-type: none"><li>• Accordance with the details shown on the plans;</li><li>• Visibility splays for the site entrance;</li><li>• Details of footways to be approved in writing;</li><li>• Complying with current parking standards;</li><li>• Dimensions of the vehicular turning facility;</li><li>• No unbound materials to be used within 6m of the highway boundary;</li><li>• Dimensions and specification of individual accesses;</li><li>• Visibility splays for each dwelling;</li><li>• Bicycle storage facilities;</li><li>• Construction methods statement;</li><li>• Travel information packs;</li><li>• Boundary hedges to be set back a minimum 1 metre from the highway;</li><li>• Bus stops to be upgraded; and</li><li>• Closure of existing dropped kerb.</li></ul>
ECC Schools	<p>A development of this size can be expected to generate the need for up to 2 Early Years and Childcare (EY&amp;C) places, 6.6 primary school places and 4.4 secondary school places.</p> <p>According to the latest information available to Essex County Council early years and childcare team, there is sufficient provision within the area to accommodate children from this development.</p> <p>This proposed development is located within the priority admissions area for Weeley St. Andrews Church of England Primary School and Tendring Technology College. The County Council will have normally sought a financial contribution from this development towards the creation of additional school places. However, due to the restrictions imposed by the Community Infrastructure Levy Regulations which limit the use of s106 agreements, the County Council will not be requesting a contribution from this development.</p> <p>Having reviewed the proximity of the site to the nearest primary and secondary schools, Essex 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.</p>
Anglian Water	<p><u>Assets affected:</u> There are assets owned by Anglian Water or those subject to an adoption agreement within or close to the development boundary that may affect the layout of the site. This should be flagged up to the developer within the decision notice should permission be granted.</p> <p><u>Wastewater treatment:</u> The foul drainage from this development is in the catchment of Clacton and Holland Recycling Centre that will have available capacity for these flows.</p>

Foul Sewerage Network: The sewerage system at present has available capacity for these flows. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. We will then advise them of the most suitable point of connection.

Surface Water Disposal: The proposed method of surface water management does not relate to Anglian Water operated assets. The advice of the Lead Local Flood Authority or the Internal Drainage Board should be sought.

Natural England      Natural England has no comments to make on this application. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment.

Essex County Council Flood Authority      Having reviewed the Flood Risk Assessment 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.

## **5.      Representations**

- 5.1      The Council has received 4 objections to the proposal along with 2 representations of support.
- 5.2      The objections highlight concerns about:
- the disruption to the area during and after construction;
  - the increase in traffic along the B1441;
  - the site's proximity to the blind bend;
  - the increased risk of surface water flooding;
  - the impact on the character of the area, with the new properties being out of keeping;
  - the number of dwellings proposed;
  - the likelihood of the properties being rented and abused rather than sold and looked after;
  - the overlooking of, and impact on the amenities of existing properties.
- 5.3      One of the objectors suggests that the site should be acquired by the Council through Compulsory Purchase Order and then turned into a children's play area and park.
- 5.4      Supporters of the application say that it will provide an opportunity to bring new people to the village, deliver a new play area and tidy up a currently untidy and unattractive site.

## **6.      Assessment**

## **The Proposal**

- 6.1 The application site comprises just under 1.4 hectares of land at the now redundant Kidbys Nursery site in Clacton Road, Weeley Heath. The Nursery closed in 2012 and the outbuildings and glasshouses occupying the site have deteriorated into a dilapidated state. This is a Full application and the Planning Committee is being asked to approve a detailed scheme including:
- 8 detached 4-bed houses;
  - 6 semi-detached 3-bed houses;
  - 3 detached 3-bed houses
  - 2 semi-detached 2-bed houses;
  - 2 detached 3-bed bungalows; and
  - 1 detached 2-bed house.
- 6.2 The dwellings are arranged in linear form served by a new access road direct from Clacton Road. Submitted documentation includes:

## **Architectural Drawings**

- 04677.00008.16.024.2 Location Plan
- 05677.00003.16.017.3 Illustration of Proposed Layout
- 04677.00008.16.014.4 Illustrative Master Plan
- 5076.001 Proposed Access Arrangements
- 5076.002 Proposed Shared Footway/Cycleway

## **Reports and Technical Information**

- Planning Statement
- Preliminary Ecological Appraisal
- Flood Risk Assessment
- Highways Access Statement
- Phase 1 Desk Study and Phase 2 Investigation Study
- Soft Landscaping Details

## **Main Planning Considerations**

- 6.3 The main planning considerations are:
- The principle of development;
  - Highways, transport and accessibility;
  - Landscape, visual impact and trees;
  - Flood risk and drainage;
  - Ecology;
  - Heritage;
  - Education and health provision;
  - Utilities;
  - Contamination
  - Open space and allotments;
  - Council Housing/Affordable Housing;
  - Indicative layout and connections;
  - Overall planning balance.

## **Principle of development**

- 6.4 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.
- 6.5 The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 14<sup>th</sup> July 2016, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Preferred Options Consultation Document. As this plan is currently at an early stage of preparation, some of its policies can only be given limited weight in the determination of planning applications, but the weight to be given to emerging policies will increase as the plan progresses through the later stages of the process. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in planning decisions. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.
- 6.6 The site is not allocated for housing or mixed use development in the adopted Local Plan and it also falls outside of the 'settlement development boundary'. In the emerging Local Plan however, the settlement development boundary has been extended to include the portion of the application site where built development is proposed.
- 6.7 Because the site lies outside of the settlement development boundary of the adopted Local Plan, it is technically contrary to adopted policy. However the adopted Local 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 – although the housing supply position is gradually improving as the Council has been approving more residential schemes in recent months.
- 6.8 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 lies outside of the settlement development boundary of the adopted Local Plan.
- 6.9 '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.

- 6.10 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, Policy SPL1 in 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.
- 6.11 Weeley Heath is categorised as a 'smaller rural settlement' where the emerging plan envisages a small increase in housing stock over the plan period to 2033. To allow this to happen, settlement development boundaries have been drawn flexibly, where practical, to accommodate a range of sites both within and on the edge of the villages and thus enabling them to be considered for small-scale residential 'infill' developments. The emerging plan provides that larger developments will not be permitted unless there is local support from the Town or Parish Council, an approved Neighbourhood Plan that advocates additional growth or an identified local need for affordable housing that could be addressed through a 'rural exception site' (for which there is a specific policy LP6). Paragraph 2.55 in the emerging plan suggests that developments which exceed 10 dwellings in size will not be permitted without local support from the Town or Parish Council, an approved Neighbourhood Plan that advocates additional growth or an identified local need for affordable housing that could be addressed through a rural exception site.
- 6.12 Whilst the policies in the emerging Local Plan cannot carry the full weight of adopted policy at this early stage in the plan-making process, the approach taken in the settlement hierarchy and the extent of land being allocated for housing demonstrates strong alignment with the core planning principles in the NPPF to meet objectively assessed housing needs and to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and to focus significant development in locations which are or can be made sustainable.
- 6.13 As this site is specifically included within the proposed settlement development boundary and represents a rare area of previously developed brownfield land, Officers consider that an exception to the 10-dwelling limit is justified in this case. This is particularly as another of the core planning principles in the NPPF is to encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value.
- 6.14 On the above reasoning, Officers consider that the development can be supported in principle and it is noted that some of the representations in support of the development indicate a desire to see the site tidied up.

#### **Highways, transport and accessibility**

- 6.15 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 and 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.

- 6.16 Policy QL2 in the adopted Local Plan and Policy CP1 in the emerging Local Plan seek to ensure that developments maximise the opportunities for access to sustainable transport including walking, cycling and public transport. Whilst the site is in one of the district's smaller rural settlements that has limited access to jobs, shops, services and facilities, it is at least served by bus services and footpaths to facilities in nearby Weeley and Little Clacton. The site's limited accessibility has been weighed up against the opportunity to make efficient use of a previously developed brownfield site and, on balance, the principle of development is supported.
- 6.17 The development includes a central spine road that takes access from a junction onto Clacton Road. Having considered the proposal alongside the applicant's highways access, the Highway Authority requested some revisions to the original submitted drawings which have now been made. The Highway Authority now raises no objection to the development subject to a series of detailed conditions.
- 6.18 In conclusion, although the site has limited accessibility to jobs, shops, services and facilities, it has reasonable and safe access, by foot and cycle to public transport and services in neighbouring villages. The benefit of utilising previously developed brownfield land for development, in Officers' consideration, outweighs any concerns over limited accessibility. The access arrangements, having been amended, are agreed by the Highway Authority, the transport impacts of the development are not considered to be severe and, from this perspective, Officers consider the proposal to be acceptable.

### **Landscape, visual impact and trees**

- 6.19 Whilst this is a brownfield site that has in the past, and continues to host a range of buildings, there is still a need to ensure the impact of the new development in this rural area is acceptable in landscape and visual impact terms and properly takes into account trees that might be affected.
- 6.20 Policy EN1 of the adopted Local Plan and Policy PPL3 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 SPL3 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. Officers consider that the site is relatively well contained by the boundaries of adjoining properties and that the height and scale of development proposed would not bring about any concerns regarding landscape and visual impacts.



- 6.21 The Council's Principal Trees and Landscape Officer has assessed the proposal and has observed that no trees or hedges within the main body of the site are worthy of specific protection, but oaks along the site's western boundary have been served with Tree Preservation Orders and will be retained.

#### **Flood risk and drainage**

- 6.22 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 PPL1 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. The applicant has submitted a Flood Risk Assessment which has been considered by Essex County Council as the authority for sustainable drainage. ECC 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.

#### **Ecology**

- 6.23 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 PPL4 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.
- 6.24 The development would not have any significant direct or indirect affects on any formally designated wildlife sites, but the ecological value of the site itself has been given consideration through a preliminary ecological assessment. The assessment identifies that development might affect nesting birds in trees, shrubs, flora and buildings used by nesting birds and it is recommended that works to these features are avoided in the bird nesting period. It was considered unlikely that bats or badgers occupied the site with no indications of activity and no further surveys recommended. Evidence of hedgehogs was found on the site and whilst the development is considered unlikely to have a negative impact on the hedgehog population, mitigation measures are suggested to prevent harm to individual animals during site clearance and works. The site was found to be generally unsuitable for dormouse, reptiles, amphibians and invertebrates and flora of any notable value was identified. Mitigation measures to ensure the development is undertaken at the right times and in a careful and sympathetic way to ensure any ecological impacts are kept to a minimum.

#### **Heritage**

- 6.25 The Planning (Listed Buildings and Conservation Areas) Act 1990 S. 66 imposes a general duty as respects listed buildings in the exercise of planning functions:
- (1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the

Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

- 6.26 Paragraph 128 in the NPPF requires applicants to describe the significance of any heritage asset affected by their development including any contribution made by their setting, with the level of detail being proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance. Paragraph 134 determines that where a development proposal will lead to 'less than substantial harm' to a heritage asset (which could include harm to its setting), this harm should be weighed against the public benefits of the proposal. Policy EN23 in the adopted Local Plan states that development that would adversely affect the setting of a Listing Building, including group value and long distance views will not be permitted. Policy PPL9 in the emerging Local Plan requires development to protect the special architectural or historic interest, character, appearance and fabric of listed buildings and their setting.
- 6.27 For this application, the most significant and most directly affected heritage asset is the listed building of Ferncroft, 3 Mill Lane which is a Grade II listed 17<sup>th</sup>/18<sup>th</sup> Century thatched and weatherboard cottage. The applicants planning statement contains an assessment of the likely impact of the development on the building and observes that, whilst the curtilage of the listed building backs onto and adjoins the site, the listed building itself is some 120-130 metres from the proposed development. With proposed landscaping and the traditional design, Officers concur with the applicant's assessment that the harm to the setting of the listed building will be negligible and easily outweighed by the benefit of the proposed homes. In Officers' view the impact would be 'less than substantial' and in weighing harm against public benefits in line with paragraph 134 of the NPPF, the development would be acceptable in heritage terms.

### **Contamination**

- 6.28 Policy QL11 requires new developments to take into account the possibility of existing contamination or pollution and any necessary remediation strategies. The applicant has submitted a Phase 1 desk Study and Risk Assessment and a Phase 2 Ground Investigation Study. The reports conclude that no risks have been identified to end users or other identified receptors. However the presence of concrete hardstanding and existing below ground pipes may contain contamination sources not located within the testing phase. On this basis it is recommended that a contamination condition is attached to the planning permission requiring a full remediation strategy to be submitted and agreed by the local authority prior to commencement of development.

### **Education and Health provision**

- 6.29 Policy QL12 in the adopted Local Plan and Policies HP1, HP2 and PP12 in the emerging Local Plan require that new development is supported by the necessary infrastructure which includes education and health provision. For this proposal, Essex County Council as the Local Education Authority has advised that it will not be seeking any financial contributions towards any additional school places or school transport – mainly due to the restrictions imposed by the government which prevent 5 or more financial contributions being secured towards the same infrastructure improvement. NHS England has not requested any financial contributions towards health provision and only tend to make such requests on schemes of 50 or more dwellings.

### **Utilities**

- 6.30 Anglian Water notes the requirement for the development to take into account any of their existing assets which may be located in or near to the development site. They also note that the drainage from the development is in the catchment of Clacton Holland Water Recycling Centre that has available capacity for proposed flows as does the foul sewerage network.

### **Open Space and Play**

- 6.31 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. The proposed layout indicates a small area of play space located to the south west corner of the site, to be enclosed with child proof fencing.
- 6.32 The Council's open spaces team has requested that due to a shortfall in open space provision a financial contribution is secured by s106 agreement and this money would be spent to provide additional teenage play equipment at Clacton Road, Weeley.

### **Council Housing/Affordable Housing**

- 6.33 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 LP5 in the emerging Local Plan, which is based on more up to date evidence on housing need and viability, requires 30% of new dwellings on large sites to be made available to the Council or a nominated partner to acquire at a discounted value for use as affordable or 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 affordable or council housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement.
- 6.34 If the Committee is minded to approve this application, Officers will negotiate and agree an appropriate level of affordable or Council Housing to be secured through a Section 106 legal agreement.

### **Detailed Design and Layout**

- 6.35 The proposed development is served by a single access road leading directly from Clacton Road. A turning head is provided to the end of the road and a small play area and attenuation pond are provided to the south west corner of the site. The site already benefits from mature planting to the east and west boundaries. As noted a number of existing trees to the west boundary are now subject of a Tree Preservation Order.
- 6.36 The proposed housing mix provides for a mix of 2, 3 and 4 bed houses and bungalows, including some semi-detached properties. Parking space and garaging is provided for each dwelling. Garden sizes are again mixed in size but provide adequate amenity land for each dwelling.

- 6.37 Detailed design is traditional in nature, incorporating facing brick and tile finishing. Details of materials will be secured by condition.
- 6.38 Neighbour comments regarding potential overlooking are noted however the layout has been designed in a manner which minimises any impact on adjoining property. Plots 5 and 6 are sited nearest to the east boundary but window positions are deliberately placed to minimise direct overlooking. It is considered that the layout and design does not have an adverse impact on neighbouring dwellings.

### **Overall Planning Balance**

- 6.39 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.
- 6.40 Economic: Whilst the development would replace a site with a commercial use, that use has been redundant for nearly three years with no reasonable prospect of returning. Whilst the scheme is 100% residential, the 22 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.
- 6.41 Social: The provision of 22 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.
- 6.42 Environmental: The environmental impacts of the proposal will be positive. The site would be tidied and will enhance the appearance of the area with minimal impact upon ecology, the landscape and the setting of the nearby listed building. The re-use of a brownfield site is also a significant environmental benefit.
- 6.43 In the overall planning balance, Officers consider that none of the limited adverse impacts would significantly and demonstrably outweigh the benefits and the application is therefore recommended for approval subject to a Section 106 legal agreement and a range of planning conditions.

### **Background papers**

None.