



TENDRING DISTRICT COUNCIL

Planning Services

Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex CO16 9AJ

AGENT: Tony Collins - Collins & Coward Ltd
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Coggeshall
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CO6 1SH

APPLICANT: Mr R Giddings
Grange Farm
Grange Road
Lawford
Essex
CO11 2ND

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 19/00303/FUL **DATE REGISTERED:** 22nd February 2019

Proposed Development and Location of Land:

**Erection of 2 bungalows and alterations to No. 52 New Road together with access and ancillary works.
Morschach 52 New Road Mistley Manningtree**

THE TENDRING DISTRICT COUNCIL AS LOCAL PLANNING AUTHORITY **HEREBY REFUSE PLANNING PERMISSION** in accordance with the application form, supporting documents and plans submitted for the following reason(s)

- 1 The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. One of the core planning principles of The National Planning Policy Framework (NPPF) as stated at paragraph 124 is to always seek to secure high quality design. The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

Policy HG13 (vii) of the Adopted 2007 Local Plan states that proposals for residential development of 'backland' sites will only be permitted if the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development. These sentiments are echoed within Policy LP8 (f) of Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

Within appeal decision APP/P1560/W/18/3194064 on this site the inspector stated "The proposal may not be entirely visible from New Road . . . but would be readily visible from a number of properties and from the recreation ground . . . irrespective of this, the requirement for development proposals to preserve or enhance the character or appearance of a conservation area applies with equal force whether or not the proposal is prominent or in public view. He went on to further state "There are cul-de-sacs in the wider area but none on this side of New Road, which has a markedly different character than the more modern developments opposite and a strong affinity to the open space of the recreation ground. It provides a sense of openness and spaciousness that positively

contributes to the tranquil and quasi-rural character and appearance of its surroundings." and "not all elements of a conservation area will necessarily contribute to its significance but in this case the site positively contributes to the character and appearance of the MMCA and therefore to its aesthetic significance."

The proposed development, which falls within the Manningtree and Mistley Conservation Area, would face on to the memorial fields open space area and appear cramped against the southern boundary. The character and form of the settlement at this point consists generally of substantial detached and semi-detached dwellings situated on large plots in a frontage form. The proposed development is at considerable variance with this fundamental character and will introduce development within the rear gardens of the frontage properties, adding density to an area typically more open.

The buildings proposed would appear isolated due to the distance back from the road and would be out-of-character with the nearby forward facing houses at the drive entrance, and the general character of the locality. The introduction of built-form so close to the playing fields, including significant levels of hard standing, would be harmful to the relationship between buildings and open spaces.

The proposal is therefore detrimental to the pattern of development within the settlement and its appearance within the Conservation Area, and fails to comply with the above local and national policies.

- 2 Policy EN1 of the Saved Local Plan states the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted. The sentiments of this policy are carried forward within Emerging Local Plan Policy PPL3.

As the application site is situated within the Mistley and Manningtree Conservation Area all trees with a stem diameter greater than 75mm at 1.5m from ground level are afforded formal legal protection. The submitted information shows there is to be a significant incursion into the Root Protection Areas of trees T2, T3, T4 and T5 (as shown on Drawing Number 01), which has the potential to cause harm to trees which are important features within their setting and the conservation area. Moreover, in terms of the relationship between the retained trees and the proposed dwellings, T13 and T14 will be sited in close proximity to the north-eastern side of Unit 2. Taking into account the associated issues with leaves and debris falling from the tree onto the dwelling and in the garden, as well as the obstruction to daylight, a satisfactory juxtaposition between the retained trees and the new dwellings has not been achieved.

The proposal thereby fails to accord with the above local plan policies.

- 3 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Stour and Orwell Estuaries RAMSAR and SPA, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

- 4 Paragraph 54 of the National Planning Policy Framework (2018) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.


Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of -3 hectares of equipped play/formal open space in Mistley. Due to the overall significant lack of both Open Space and Play Areas in the area a contribution is both relevant and justified to this application, with the money to be spent upgrading existing equipment at Welcome Home Field, Mistley.

This application has not come with a correctly completed unilateral undertaking for a contribution towards play and formal open space facilities and therefore this scheme does not comply with Policy COM6.

DATED: 17th April 2019

SIGNED:



Catherine Bicknell
Head of Planning

IMPORTANT INFORMATION :-

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

EN1 Landscape Character

EN2 Local Green Gaps

EN6 Biodiversity

- EN6A Protected Species
 - EN11A Protection of International Sites European Sites and RAMSAR Sites
 - EN17 Conservation Areas
 - EN20 Demolition within Conservation Areas
 - COM6 Provision of Recreational Open Space for New Residential Development
 - HG1 Housing Provision
 - HG3 Residential Development Within Defined Settlements
 - HG6 Dwelling Size and Type
 - HG7 Residential Densities
 - HG9 Private Amenity Space
 - HG13 Backland Residential Development
 - HG14 Side Isolation
 - QL1 Spatial Strategy
 - QL9 Design of New Development
 - QL10 Designing New Development to Meet Functional Needs
 - QL11 Environmental Impacts and Compatibility of Uses
 - TR1A Development Affecting Highways
 - TR7 Vehicle Parking at New Development
- Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)
- CP1 Sustainable Transport and Accessibility
 - HP5 Open Space, Sports & Recreation Facilities
 - LP1 Housing Supply
 - LP2 Housing Choice
 - LP3 Housing Density and Standards
 - LP4 Housing Layout
 - LP8 Backland Residential Development
 - PPL4 Biodiversity and Geodiversity
 - PPL6 Strategic Green Gaps

PPL8 Conservation Areas

SP1 Presumption in Favour of Sustainable Development

SP2 Spatial Strategy for North Essex

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

The attached notes explain the rights of appeal.

NOTES FOR GUIDANCE

WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within the set time frame as outlined below:
 - a. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Householder Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - b. If this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - c. If you want to appeal against your local planning authority's decision on a development which is not caught by a. and b. above then you must do so within **6 months** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
- Appeals must be made using the relevant form (as detailed above) which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission for the proposed development or could not have granted it without the conditions imposed having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by the Secretary of State.

ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.