



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT: Brian White Design
63 Vista Road
Clacton-on-Sea
Essex CO15 6DQ

APPLICANT: Mr and Mrs D Rendell
4 Lancaster Gardens
Clacton On Sea
Essex

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 15/01745/OUT

DATE REGISTERED: 23rd November 2015

Proposed Development and Location of Land:

Change of use of land to residential to incorporate the erection of up to 10 dwellings.

Former Putting Green Garden Road Jaywick Essex

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

- 1 Paragraph 127 of the National Planning Policy Framework 2019 states that planning policies and decisions should ensure that developments, amongst other things, 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience'.

Policy QL11 of the Adopted Tendring District Local Plan (2007) and Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) states 'development will only be permitted if it would not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.'

Whilst the information provided with the application is indicative only (as it is an outline application with all matters reserved) to be in accordance with the Flood Risk Assessment and conditions recommended by the Environment Agency the proposed dwellings are required to be 3 storeys in height. Dwellings of this height would result in a significant adverse impact on the amenities of neighbouring residents, in particular those in Golf Green Road and Garden Road in term of loss of privacy, loss of light and overshadowing, contrary to the above mentioned policies.

The adverse impact is not outweighed by the objectives of Policy QL6 of the Tendring District Local Plan 2007 and Policy PP14 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). Policy QL6 of the Tendring District Local Plan 2007 identifies the site as an Urban Regeneration Area and states that 'permission will be granted for development that reinforces and/or enhances the function, character and appearance of the area and contributes towards regeneration and renewal'. Policy PP14 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) which identified the area as a Priority Area for Regeneration states that 'these areas will be a focus for investment in social, economic and physical infrastructure and initiatives to improve vitality, environmental quality, social inclusion, economic prospects, education, health, community safety, accessibility and green infrastructure'.

- 2 The application site is allocated as Recreational Open Space in the Tendring District Local Plan 2007 and as Safeguarded Local Greenspace in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

Paragraph 97 of the National Planning Policy Framework 2019 states that 'existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a. An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- b. The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c. The development is for an alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use'.

Policy COM7 of the Tendring District Local Plan 2007 states that 'development proposals will not be permitted that would prejudice the use or involve the loss of recreation open space. This includes children's play areas, informal open space and parks and public gardens as defined on the Proposals Maps'.

Policy HP4 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) states that 'development that would result in the loss of the whole or part of areas designated as Safeguarded Local Greenspace, as defined on the Policies Map and Local Maps will not be permitted unless the following criteria are met:

- a. The site is replaced by the provision of new site at least equal in quality and size and accessible to the community, which the existing site serves;
- b. It is demonstrated that there is no longer a demand for the existing site;
- c. The site is not appropriate for other open space functions; and
- d. The development of the site would not result in the loss of an area important to visual amenity'.

The proposed development will result in the loss of protected open space contrary to the above mentioned policies.

- 3 Paragraph 127 of the National Planning Policy Framework states that planning policies and decisions should ensure that developments:
- a) Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
 - b) Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
 - c) Are sympathetic to local character and history, including the surrounding built environmental and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)
 - d) Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
 - e) Optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
 - f) Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Furthermore, Paragraph 30 of the National Planning Policy Framework states that permission should be refused for design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Policy QL9 of the Tendring District Local Plan (2007) states all new development should make a positive contribution to the quality of the local environment and protect

or enhance local character. Planning permission will only be granted where new development relates well to its site and surroundings particularly in relation to its height, scale, massing, and design. Policy QL11 of the Tendring District Local Plan (2007) seeks to ensure that the scale and nature of development is appropriate to the locality. These requirements are also included in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

Whilst the information provided with the application is indicative only (as it is an outline application with all matters reserved) to be in accordance with the Flood Risk Assessment and conditions recommended by the Environment Agency the proposed dwellings are required to be 3 storeys in height. The surrounding area is characterised by dwellings which are predominately single storey and one and half storey in height. The scale of the proposed development would therefore be prominent and out of character with the area, resulting in a detrimental impact on visual amenity, contrary to the above policies.

The adverse impact is not outweighed by the objectives of Policy QL6 of the Tendring District Local Plan 2007 and Policy PP14 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). Policy QL6 of the Tendring District Local Plan 2007 identifies the site as an Urban Regeneration Area and states that 'permission will be granted for development that reinforces and/or enhances the function, character and appearance of the area and contributes towards regeneration and renewal'. Policy PP14 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) which identified the area as a Priority Area for Regeneration states that 'these areas will be a focus for investment in social, economic and physical infrastructure and initiatives to improve vitality, environmental quality, social inclusion, economic prospects, education, health, community safety, accessibility and green infrastructure'.

- 4 The National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

In July 2018 the NPPF amended the definition of major development to include development of 10 or more dwellings and therefore under paragraph 63 of The National Planning Policy Framework a contribution should be sought as part of this proposal, as the most recent guidance overrides the thresholds set out in the following policies. Policy HG4 of the Tendring District Local Plan 2007 requires up to 40% of new dwellings on residential schemes of 5 or more units to be provided in the form of affordable housing to meet the needs of people that are unable to access property on the open market. Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) which is based on more up-to-date evidence of housing need and viability, requires for development of 11 or more, 30% of new dwellings to be made available to Tendring District Council or an alternative provider to acquire at a discounted value for use as affordable housing, or as an alternative, the Council will accept a minimum of 10% if new dwellings are to be made available alongside a financial contribution toward the construction or acquisition of property for use as affordable housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement.

Policy COM6 of the Tendring District Local Plan 2007 states that 'for residential development below 1.5 hectares in size, where existing open space facilities are inadequate to meet the projected needs of the future occupiers of the development, a financial contribution shall be made to the provision of new or improved off-site facilities in scale and kind to meet these needs'. There is currently a deficit of play space in the area. The nearest play area to the proposed development is located at

Crossways, Jaywick. Due to the proximity to the site it is highly likely that the biggest impact would be felt at this play area. Therefore to ensure the facilities are able to cope with the additional usage it would be necessary to improve the level of provision, by the provision of a financial contribution.

Although the applicant has indicated they are willing to meet the above requirements a completed Section 106 to secure the above mentioned planning obligations has not been provided prior to the determination of the application and the application is therefore contrary to the above policies.

- 5 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 Estuary SPA and Ramsar site, 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.

DATED: 29th April 2019

SIGNED:

Catherine Bicknell

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

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL6 Urban Regeneration Areas

- QL9 Design of New Development
 - QL10 Designing New Development to Meet Functional Needs
 - QL11 Environmental Impacts and Compatibility of Uses
 - QL12 Planning Obligations
 - HG3 Residential Development Within Defined Settlements
 - HG3A Mixed Communities
 - HG4 Affordable Housing in New Developments
 - HG6 Dwelling Size and Type
 - HG7 Residential Densities
 - HG9 Private Amenity Space
 - HG14 Side Isolation
 - COM6 Provision of Recreational Open Space for New Residential Development
 - COM7 Protection of Existing Recreational Open Space Including Children's Play Areas and Pitch and Non-Pitch Sports Facilities
 - EN6 Biodiversity
 - EN6A Protected Species
 - EN11A Protection of International Sites European Sites and RAMSAR Sites
 - EN11B Protection of National Sites SSSI's, National Nature Reserves, Nature Conservation Review Sites, Geological Conservation Review Sites
 - TR1A Development Affecting Highways
 - TR3A Provision for Walking
 - TR7 Vehicle Parking at New Development
 - CL15a Jaywick Regeneration
- Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)
- SPL1 Managing Growth
 - SPL2 Settlement Development Boundaries
 - SPL3 Sustainable Design
 - HP4 Safeguarded Local Greenspace
 - HP5 Open Space, Sports & Recreation Facilities
 - LP1 Housing Supply

- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- PP14 Priority Areas for Regeneration
- PPL1 Development and Flood Risk
- PPL4 Biodiversity and Geodiversity
- CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Provision of Recreational Open Space for New Development

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 clearly setting these out in the reason(s) for refusal. Furthermore, Members of the planning committee which took the decision to refuse planning permission have been asked to consider whether there are opportunities to amend the development to address this harm. Where a potential way forward has been identified, this has been communicated to the Applicant. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.

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.