

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	29/05/19
Planning Development Manager authorisation:	AN	3/6/19
Admin checks / despatch completed	AW	4/6/19

SB

04/06/19.

Application: 19/00376/FUL **Town / Parish:** Thorpe Le Soken Parish Council

Applicant: Mr Simon Patience / Simon Patience New Homes Ltd

Address: Former Forbourn Motors High Street Thorpe Le Soken

Development: Variation of condition 16 (approved plans) and removal of conditions 2 (materials of shop/office) and 6 (use of shop/office) of approved application 18/01864/FUL for the change of use of unit 3 from residential/commercial use to residential use only.

1. Town / Parish Council

Thorpe Le Soken Parish Council No objection.

2. Consultation Responses

ECC Highways Dept The Highway Authority does not object to the proposals as submitted.

Informative1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 - Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester
CO4 9YQ

3. Planning History

12/00484/OUT	Demolition of garage and erection of 5 flats, 3 houses and 2 bungalows.	Withdrawn	11.07.2012
13/00308/OUT	Demolition of garage, erection of three shops, office (B1), flat, 3 houses and 1 bungalow.	Approved	10.10.2013
14/01587/OUT	Demolition of existing garage workshops and erection of 8 no. mixed residential units.	Refused	22.12.2014

15/00879/OUT	Demolition of existing garage workshops and erection of 8 no. mixed residential units and one shop/office.	Approved	26.08.2015
16/01397/DETAIL	Reserved matters application for the demolition of existing garage workshops and erection of 8 no. mixed residential units and one shop/office.	Approved	31.10.2016
18/00345/DISCON	Discharge of condition 10 (contamination) of planning permission 15/00879/OUT.	Approved	04.05.2018
18/00860/FUL	Amendment to planning permission 15/00879/OUT and 16/01397/DETAIL including the provision of 2 x 3 bed properties, 1 x 1 bed flat above a commercial/office unit on ground floor, amendment to the position of plot 6 and amendment to the parking to plot 4 and 5.	Approved	13.09.2018
18/01782/DISCON	Discharge of Condition 15 (Landscaping) of application 18/00860/FUL.	Approved	31.10.2018
18/01864/FUL	Variation of Condition 4 of approved application 18/00860/FUL to amend wording of condition to: Notwithstanding the provisions of Article 3, Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) order 1995 (or any order revoking or re-enacting that order with or without modifications) the first floor north-east facing bathroom window in plots 4, 5 and 6 shall be glazed in obscure glass before the development hereby permitted is first occupied and shall thereafter be permanently retained in the approved form.	Approved	02.01.2019

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

COM6 Provision of Recreational Open Space for New Residential Development

EN6 Biodiversity

EN6A Protected Species

EN17 Conservation Areas

EN23 Development Within the Proximity of a Listed Building

ER3 Protection of Employment Land

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

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

PPL4 Biodiversity and Geodiversity

PPL8 Conservation Areas

PPL9 Listed Buildings

SP1 Presumption in Favour of Sustainable Development

SP2 Spatial Strategy for North Essex

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) 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 48 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 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. 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 48 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.

In relation to housing supply:

The NPPF 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 an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

5. Officer Appraisal

Site Description

The application site is located within the defined settlement limits of Thorpe le Soken. The site is also located within the Thorpe le Soken Conservation Area. A Grade II listed building, Furze

House, is located directly opposite the site on the High Street. The application site is located on the northern side of the High Street. This is a predominantly residential area, incorporating a mixture of housing styles, with some commercial properties too. The site previously comprised of a frontage forecourt area under a large canopy with car sales, and a part two-storey/part single-storey structure which accommodated a showroom and offices at ground floor, and a 3-bed flat at first floor. These structures have now been demolished and upon undertaking a site visit it is clear the construction works are close to completion.

Description of Proposal

This application seeks planning permission for the variation of condition 16 and removal of conditions 2 and 6 of previous permission 18/01864/FUL. This amendment will result in the change of use of Unit 3 from a mixed residential/commercial use to full residential use.

The current permission allows for the first/second floor to be occupied under a residential use, but is restricted at ground floor to be either an A1, A2 or B1a use.

The changes would see the existing 1 bedroom property convert into a 3 bedroom property. The proposal also results in the following external works:

- an amendment to the front elevation to replace the previously three light shop window and glazed door with a timber door and four pane, two light window; and
- removal of rear elevation door and high level window, to be replaced with a four-panel glazed screen.

History

Planning application 12/00484/OUT was submitted and withdrawn for the erection of 5 flats, 3 houses and 2 bungalows following the demolition of existing workshops. This application was withdrawn as it was contrary to policy ER3 (loss of employment site), as well as design issues, impact on conservation area, and lack of s106 contributions.

Following this withdrawn application, planning permission was granted under 13/00308/OUT for the demolition of the existing structures on the site, and the erection of 3 no. shops, one office (B1), one flat, 3 no. houses and 1 bungalow. This was granted on 10 October 2013.

14/01587/OUT then sought outline permission with access and layout included for the demolition of existing garage workshops and erection of 8 no. mixed residential units. These units include 2 x 2-bed bungalows (plots 7 and 8), 3 x 3-bed dwellings (units 4, 5 and 6), 1 x 2-bed dwelling (plot 2), 1 x 1-bed dwelling (plot 1), and 1 x 1-bed flat (plot 3). Plot 2 also doubles as a live work unit with retail space at ground floor. That application was refused on three grounds: Overlooking from Plot 3, loss of commercial land, and lack of public open space contribution.

15/00879/OUT then approved outline permission for 2 x 2-bed bungalows (plots 7 and 8), 3 x 3-bed dwellings (units 4, 5 and 6), 1 x 2-bed dwelling (plot 2), 1 x 1-bed dwelling (plot 1), and 1 x 1-bed flat (plot 3). Plot 2 also doubles as a live work unit with retail space at ground floor.

16/01397/DETAIL then approved the reserved matters associated with the outline approved in 2015.

Under planning reference 18/01864/FUL, permission was granted for the variation of condition 4 of 18/00860/FUL to amend wording of the condition to: Notwithstanding the provisions of Article 3, Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) order 2015 (or any order revoking or re-enacting that order with or without modifications) the first floor north-east facing bathroom window in plots 4, 5 and 6 shall be glazed in obscure glass before the development hereby permitted is first occupied and shall thereafter be permanently retained in the approved form.

Assessment

1. Principle of Development:

Paragraph 85 of the National Planning Policy Framework (2019) states planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

Policy ER3 of the Adopted Tendring Local Plan 2007 states that land in, or allocated for employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use.

Whilst the existing building is not sited within a protected shopping frontage, it would still result in the loss of a town centre employment use within a town centre location. The proposal will see the change of use of an existing unit approved for either an A1 (shops), A2 (financial and professional services) or B1a (office) use to a C3 residential use.

Information has been supplied which has attempted to demonstrate that a sustained marketing campaign has been undertaken.

A letter from Kemsley LLP, dated 30 January 2019, who summarise the marketing actions to date;

- The site was advertised from 5 January 2018 through to the present day;
- The price was reduced to £150,000 in November 2018 and to £145,000 on the 11 January 2019;
- The marketing particulars have been circulated to their applicant databases with requirements for similar opportunities, totalling approximately 200 companies/individuals;
- A marketing board reading 'FOR SALE/TO LET' was commissioned on 15 January 2018 and installed on the site hoardings shortly after; and
- An advertisement was placed in the Business and Commercial Property section of the Clacton and Frinton Gazette, published 8 February 2018;

The letter also confirms that there have been few enquiries towards the property, with two or three parties having contacted for additional information but has not resulted in interest progressing. Only one party has had a direct interest, which is defined as arranging to inspect the property, discuss the opportunity in more detail or an investor considering the property for a long-term investment. This party was a B1 office occupier but to date this interest has not progressed to any further contact.

Further, feedback received from parties who visited the site was generally negative, with comments regarding the compromised nature of the granted planning consent and the requirement for a commercial unit which was seen as unnecessary given the location and surrounding residential properties.

In conclusion, the letter states interest in the site was negligible and whilst offers were received to purchase the site, these were at a level that was considered unacceptable.

Additional information supplied includes a copy of the advert which shows the site is available to rent for £15,000 per annum or purchase for £145,000, a photograph showing the advert on the site hoardings, a copy of the advert published in the Clacton and Frinton Gazette in February 2018, a schedule of village retailers/occupiers in the local area, and a summary of available retail and office property, freehold and leasehold, across the general Clacton-on-Sea area to include Thorpe-le-Soken and numerous surrounding villages in the Tendring area.

Additional information provided by the agent for the application, dated 29 April 2019, shows that the site is also advertised with Blake & Thickbroom and Palmer & Partners, two local estate agents, with a letter from Blake & Thickbroom confirming there has been no interest in the premises. This was in response to concerns raised that the previous marketing was not located locally enough, but importantly the information does not state the date when the site was first advertised with either of these estate agents.

The agent for the application has also highlighted that subject to meeting the relevant criteria, the site could be converted from retail premises to a residential use under Schedule 2, Part 3, Class M of the General Permitted Development Order. However, while it is acknowledged these provisions do not apply in this case it is worth noting that the scheme would fail to meet the above criterion regardless, given it falls within the Thorpe-le-Soken Conservation Area.

The agent for the application has also referenced a number of appeal decisions, but asked that specific attention be given to appeal reference APP/G2245/W/17/3174744 – 22 High Street, Seal, dated 18th September 2017. While it is noted that this appeal to change the use of an A1 retail unit into a C3 residential use was allowed, from the Inspectors comments it appears the circumstances differ to this application. Importantly, the Inspector notes *'The unit which is the subject of this appeal has been marketed since February 2015 . . . and in a period of twenty four months only two viewings have been carried out,'* which demonstrates a longer marketing campaign. The Inspector also gave weight to the fact there was no parking to the front of the premises, which would both help to attract customers and help with deliveries to the site, and that there were several other retail units in the immediate proximity that could serve the local community. It is further noted that the site was open for business during the marketing period and the main reason for refusal by the Local Planning Authority was that the site was still viable as it was open.

Other appeal decisions referenced (references APP/G5180/W/18/3198180 – 146 Maple Road, Penge and APP/Q5300/W/17/3184319 – Ground Floor, 321 Baker Street, Enfield) relate to a change of use under Schedule 2, Part 3, Class M of the General Permitted Development Order. Given it has already been established that the proposal in question could not be converted under this criteria, these appeals are not relevant to this proposal.

It is acknowledged that significant information has been provided in an attempt to justify that the site has been unsuccessfully marketed. That notwithstanding, there are a number of concerns with the information submitted.

First, the information supplied does not highlight the price the unit was advertised for initially; however the two reduced prices of £150,000 and £145,000 (or £15,000 to rent per annum) are far in excess of what would be expected of a unit of this size in this location. As an example, a retail shop within the High Street in Thorpe-le-Soken of an approximate size is currently available to rent at £6,000 per year. Further, a larger site within the High Street in Walton-on-the-Naze is available to rent for £6,240 per year, and within Appendix 5 of the information supplied by the applicant are other examples of similar sized units at reduced prices; notably 29-31 High Street, Clacton-on-Sea at £11,500 per annum, 74 High Street, Clacton-on-Sea at £89,995 and 204 Frinton Road, Holland-on-Sea at £13,000 per annum.

Second, the site has not been open and available for the large majority of the time being marketed, with the site being covered up for large periods of this time. Upon the site inspection while the hoardings have now been removed, construction works are still ongoing which reduces the attractiveness of the site to potential buyers.

Third, while the revised information shows that the site has been advertised with two local estate agents, no information has been provided to show how long for. The initial letter from Kemsley LLP, dated 30 January 2019 makes no mention of this, and it is therefore reasonable to believe that local marketing has only been forthcoming following initial Officer concerns raised in April 2019. The information supplied therefore highlights that sustained marketing has only been carried out with Kemsley LLP who are based in Chelmsford and are not considered to be local.

Fourth, the submitted information is unclear as to the level of interest in the site. While at numerous points it is highlighted that the site showed very little interest from prospective buyers, the two letters from Kemsley LLP each state *"To conclude, during the course of our marketing of the site interest that we generated was negligible and whilst we did receive offers to purchase these were at a level that was unacceptable to the vendor"*. That offers were received suggests there is a degree of interest in the site being utilised commercially. That notwithstanding it would be expected that a marketing campaign provides full details of prospective buyers and the individual reasons for why the sale did not progress.

It is therefore considered that the information supplied has failed to demonstrate that the site is no longer viable or suitable for any form of employment use.

2. Visual Impacts

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 EN17 states that development within a Conservation Area must preserve or enhance the character or appearance of the Conservation Area. The sentiments of this are carried forward within Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

There are few external changes proposed as part of the development. The front and rear elevations will see an amendment to the layout of the door and windows; however these changes are all minor works expected of such a development. Given the site is on the edge of the Thorpe-le-Soken Conservation Area, the minor changes will preserve its character and appearance.

3. Parking/Amenity

The submitted plans demonstrate off-street parking provision to the rear of the property. The plans show two parking spaces, each measuring 5m x 2.5m. The Adopted Car Parking Standards state spaces should measure a minimum of 5.5m x 2.9m. While the parking provision does not quite meet these minimum standards, it is also noted the adjacent properties within this development have similar parking arrangements, while the site is located in a highly sustainable location within good walking distance to a number of amenities. Therefore, on balance, this harm is not significant enough to warrant a reason for refusal.

Saved Policy HG9 regarding private amenity space stipulates that a property with three bedrooms should be provided with a minimum of 100 square metres of private amenity space for a ground floor flat. Emerging policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) again reflects these requirements.

In this instance, while the proposal accounts for approximately 40sqm of private garden area, it is acknowledged the adjacent units previously considered acceptable had similar private amenity provision, and also served three bedrooms. Given this and the aforementioned highly sustainable location, this identified harm is not sufficient to include as a reason for refusal.

4. Impact to Residential Amenities

Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The area comprises of a mixture of commercial and residential uses, however there are residential properties adjacent to the south, namely Firs Cottage. Given there is an approximate separation distance of 5 metres and no additional overlooking as a result of the proposed changes, there will be a neutral impact to neighbouring amenities.

5. Habitats Regulation Assessment

Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of

Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.

Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be the RAMS level contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on European Designated Sites. The contribution is secured by unilateral undertaking. There is therefore certainty that the development would not adversely affect the integrity of European Designated Sites in accordance with 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.

6. Legal Obligations

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 2.43 hectares of equipped play and formal open space in Thorpe-le-Soken. However, due to the size and type of dwelling it is unlikely that there will be any impact on the current facilities and therefore no contribution is requested on this occasion.

Other Considerations

Thorpe-le-Soken Parish Council have no objections.

There have been no other letters of representation received.

6. Recommendation

Refusal.

7. Reasons for Refusal

- 1 Paragraph 85 of the National Planning Policy Framework (2019) states planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

Policy ER3 of the Adopted Tendring Local Plan 2007 states that land in, or allocated for employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use.

The proposal will result in the loss of a town centre employment use within a town centre location. The proposal will see the change of use of an existing A1/A2/B1a use to a C3 residential use.

The submitted information shows the site has been marketed at prices of £150,000 and £145,000 (or £15,000 to rent per annum), which are far in excess of what would be expected of a unit of this size in this location. As an example, a retail shop within the High Street in Thorpe-le-Soken of an approximate size is currently available to rent at £6,000 per year. A larger site within the High Street in Walton-on-the-Naze is available to rent for £6,240 per year, and within Appendix 5 of the information supplied by the applicant are

other examples of similar sized units at reduced prices; notably 29-31 High Street, Clacton-on-Sea at £11,500 per annum, 74 High Street, Clacton-on-Sea at £89,995 and 204 Frinton Road, Holland-on-Sea at £13,000 per annum. Further, the site has not been open and available for the large majority of the time being marketed, with the site being covered up for large periods of this time, thereby reducing the attractiveness of the site to potential buyers. Moreover, the information supplied does not show that the site has been locally marketed for a sufficient amount of time, while the submitted information also states offers were made to purchase the site but does not disclose any further information, while full details of prospective buyers and the individual reasons for why the sale did not progress have not been provided.

It is therefore considered that the information supplied has failed to demonstrate that the site has been marketed at a realistic asking price and has failed to demonstrate the site is inherently unsuitable or not viable for any form of employment use. The proposal therefore fails to accord with the above national and local policies.

8. Informatives

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.