



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT: Raymond Stemp Associates
Unit 5A Wakes Hall Business
Centre
Colchester Road
Wakes Colne
Colchester
CO6 2DY

APPLICANT: Mr Bacon
C/O Agent

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 18/00578/OUT **DATE REGISTERED:** 13th April 2018

Proposed Development and Location of Land:

**Erection of 228 dwellings, nursery and car park.
Land South of Colchester Road Weeley 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. The application site lies outside of the Weeley Settlement Development Boundary as defined within the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

The National Planning Policy Framework 2019 (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 report, 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. There are therefore significant doubts about the validity or extent of any housing supply 'deficit', albeit the tilted balance applies. This minimises the reduction in weight to conflict with Policy QL1, as per the *Hallam Land* judgement, especially in view of the fact that the Council has considerably increased its housing delivery figures in recent years.

Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement

development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.

Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft. Emerging Policy SPL1 of the Publication Draft of the Local Plan 2017 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. This is the emerging policy equivalent to Saved Policy QL1 of the adopted Tendring District Local Plan 2007 which states that development should be focussed towards the larger urban areas. Weeley is identified as a 'Village' within saved Policy QL1 of the adopted Tendring District Local Plan 2007 and is defined as a 'Rural Service Centre' in the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft June 2017. The Publication Draft Local Plan seeks to promote housing development in the District's rural service centres at a level that is fair, achievable and sustainable and that will make a meaningful contribution towards addressing local housing growth proposed for the District. This development when considered in combination with others proposed for development in the Publication Draft Local Plan would bring about an unnecessary and disproportionate level of growth for Weeley that does not reflect its proposed status as a rural service centre within the settlement hierarchy.

The proposal is contrary to the adopted Local Plan and would conflict with the policies of the National Planning Policy Framework. The development would represent an unnecessary and piecemeal intrusion into the countryside that would have an adverse impact on the character of the area. The development would prejudice the effective and coordinated delivery of infrastructure through the plan-led process and would be disproportionate in scale for its location. The economic and social benefits of the proposed housing, new nursery school and new car park have been given due consideration in the overall planning balance, but the adverse effects of the development are considered to significantly and demonstrably outweigh the benefits. The proposal therefore does not constitute sustainable development.

2. Paragraph 111 of the National Planning Policy Framework (2019) states that all developments that generate significant amounts of movement should be supported by a transport statement or transport assessment. Policy TR1 in the adopted Tendring District Local Plan requires Transport Assessments to be submitted for all major development. Policy CP1 in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft similarly requires a Transport Assessment to accompany major development proposals.

This major mixed-use development proposal would generate significant amounts of movement. However, no Transport Assessment has been submitted to allow the local planning authority and the highway authority to properly assess the likely impacts of the proposals on the highway network or to be able to consider what mitigation may be appropriate or necessary. The development is therefore contrary to Policy TR1 of the adopted Local Plan and Policy CP1 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft as well as Paragraph 111 of the NPPF.

3. Paragraph 175 of the National Planning Policy Framework requires local planning authorities, when determining planning applications, to aim to consider if significant harm would result to biodiversity from a development and to assess if that harm can be avoided, mitigated or, as a last resort, compensated for, Councils should refuse planning permission. Policy EN6 in the Tendring District Local Plan 2007 (the

'adopted local plan') and Policy PPL4 in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.

The applicant has submitted an ecological assessment for the site and the wider area. The assessment recommends further surveys be undertaken to assess potential impacts on protected species including, reptiles, nesting birds, bats and dormice. These recommended surveys had not, at the time of the decision, been undertaken or provided.

Under Natural England's standing advice, the local planning authority should be provided with all of the information required to make an informed decision about the impacts of development on ecology before planning permission is granted. In the absence of the recommended additional assessments the Council is unable to make informed assessment of impacts on biodiversity and whether or not the development meets with paragraph 175 of the Framework, Policy EN6 of the adopted Local Plan and Policy PPL4 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

4. The application does not provide sufficient information to satisfy the Council, as competent authority, that the proposed development would not have a detrimental impact on the Hamford Water Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar; Colne Estuary SPA and Ramsar; and Stour Estuary SPA and Ramsar for which it falls within the 'Zone of Influence'. The cumulative impact of the development in combination with other new development in proximity to these European habitat protection areas is likely to be significant and therefore unacceptable and contrary to Paragraph 175 of the National Planning Policy Framework, Policy EN11a in the adopted Local Plan and Policy PPL4 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
5. The National Planning Policy Framework (2019) states that 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 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.

Policy HG4 of the Tendring District Local Plan (2007) requires up to 40% of new dwellings on residential schemes of 5 or more units (in rural areas) to be provided in the form of affordable housing to meet the needs of people on the open market. Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft which is based on more up-to-date evidence of housing need and viability, requires for developments of 10 or more dwellings to be made available to Tendring District Council or 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. A completed Section 106 has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

6. Policy COM26 of the Tendring District Local Plan states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Policy PP12 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft states planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements. A

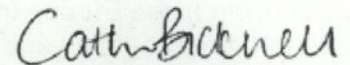
completed Section 106 obligation to secure such requirements has not been provided prior to the application determination date and the application is therefore contrary to the above policies.

Policy HP1 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft states that the Council will seek contributions towards new or enhanced health facilities from developers where new housing development would result in a shortfall or worsening of health provision. NHS England has identified the need for financial contributions towards local health services. A completed Section 106 obligation to secure these contributions has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

Policy COM6 of the Tendring District Local Plan and Policy HP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft seek appropriate levels of both play and formal open space where a local deficit of provision is identified and/or to meet the needs of the development to include arrangements for securing commuted payments toward provision and future maintenance through planning obligations. Whilst the application incorporates both open space and play space, should the developer wish to transfer the ownership of the open space and play facilities to the Council upon completion a commuted sum will be required. A completed Section 106 obligation to secure such requirements has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

DATED: 5th June 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

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3A Mixed Communities

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

- HG7 Residential Densities
 - HG9 Private Amenity Space
 - COM2 Community Safety
 - COM4 New Community Facilities (Including Built Sports and Recreation Facilities)
 - COM6 Provision of Recreational Open Space for New Residential Development
 - COM21 Light Pollution
 - COM23 General Pollution
 - COM26 Contributions to Education Provision
 - COM29 Utilities
 - COM31A Sewerage and Sewage Disposal
 - EN1 Landscape Character
 - EN6 Biodiversity
 - EN6A Protected Species
 - EN6B Habitat Creation
 - EN11A Protection of International Sites European Sites and RAMSAR Sites
 - EN12 Design and Access Statements
 - EN13 Sustainable Drainage Systems
 - EN29 Archaeology
 - TR1A Development Affecting Highways
 - TR3A Provision for Walking
 - TR4 Safeguarding and Improving Public Rights of Way
 - TR5 Provision for Cycling
 - TR6 Provision for Public Transport Use
 - TR7 Vehicle Parking at New Development
- Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)
- SP1 Presumption in Favour of Sustainable Development
 - SP5 Infrastructure & Connectivity
 - SP6 Place Shaping Principles
 - SPL1 Managing Growth
 - SPL2 Settlement Development Boundaries

- SPL3 Sustainable Design
- HP1 Improving Health and Wellbeing
- HP2 Community Facilities
- HP5 Open Space, Sports & Recreation Facilities
- LP1 Housing Supply
- LP2 Housing Choice
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- PP3 Village and Neighbourhood Centres
- PP12 Improving Education and Skills
- PPL1 Development and Flood Risk
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL7 Archaeology
- CP1 Sustainable Transport and Accessibility
- CP3 Improving the Telecommunications Network

Essex Design Guide

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.