



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT:	Mr Geoff Armstrong - Armstrong Rigg Planning The Exchange Colworth Science Park Sharnbrook Bedford MK44 1LZ	APPLICANT:	Hopkins Homes Ltd, Jackie Dorrington-Ward, Karen Rose And Peter Rose C/O Agent
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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 18/01994/OUT **DATE REGISTERED:** 30th November 2018

Proposed Development and Location of Land:

Outline planning application for the erection of up to 100 dwellings with associated vehicular access, landscaping, open space, car parking and pedestrian links.

Land South of Harwich Road Mistley 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 proposal seeks outline planning permission for the erection of 100 dwellings and is contrary to the provisions of The National Planning Policy Framework (2019), Saved Policies QL1 and EN1 of the Adopted Tendring District Local Plan (2007) and Emerging Policies SPL1, SPL2, SPL3 and PPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The application site is not allocated for any form of development and falls outside of the defined settlement development boundary in both the adopted and the emerging Local Plan. Saved Policy QL1 sets out a spatial strategy for Tendring that seeks to direct most new development to the larger urban areas, but allows limited development within the smaller towns and villages where accessibility to employment, services, and public transport is maximised. Emerging Policy SPL2 confirms that within settlement development boundaries there will be a general presumption in favour of new development, subject to detailed consideration against other relevant Local Plan policies.

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.

Officers consider that the emerging Local Plan is progressing well, the core planning principles under paragraph 15 of the National Planning Policy Framework (NPPF) that development should be genuinely plan-led apply and the Council should actively manage patterns of growth is therefore awarded significant weight. As such therefore

it is considered that further development in this location would be contrary to Saved Policy QL1 and Draft Policy SPL2.

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 proposal would, if approved and implemented, contribute to the gradual urbanisation of the local landscape character and would appear as an encroachment into the open countryside thereby eroding the open space between the hamlet of Mistley Heath and Mistley and the soft transition from the loose-knit rural character of development in Mistley Heath to the higher density character of built form present in Mistley. Consequently the development would fail to protect the character, openness and landscape quality of the countryside and as a consequence would result in significant harm to the immediate area and the rural setting to Mistley.

Overall 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 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 The proposal seeks outline planning permission for up to 100 dwellings and is contrary to the provisions of The National Planning Policy Framework (2019), Saved Policies COM6, COM26, EN6, EN11a and HG4 of the Adopted Tendring District Local Plan (2007) and Draft Policies LP5, PP12, PPL4 and HP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

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.

Saved 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. Emerging Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017), which is based on more up-to-date evidence of housing need and viability, requires for developments of 11 or more dwellings, the Council expect 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.

Saved Policy COM26 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. Emerging Policy PP12 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.

NHS England have confirmed that the two local GP practices do not have capacity for

the residents resulting from the proposal and request a contribution of £38, 180 to mitigate the impacts of the proposal.

Saved policy COM6 and emerging Policy HP5 state that for residential development on a site of 1.5ha and above, where existing public open space facilities are inadequate, shall provide a financial contribution towards the provision of new or improved off-site facilities to meet the projected needs of the future occupiers of the development. There is a substantial local deficit in equipped play and a financial contribution is therefore required towards improvement of the existing play area at School Lane.

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) 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.

A completed Section 106 obligation to secure the relevant contributions towards education, healthcare, RAMS, public open space and affordable housing has not been provided and is therefore contrary to the above policies.

DATED: 23rd July 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

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
 - COM6 Provision of Recreational Open Space for New Residential Development
 - COM26 Contributions to Education Provision
 - COM31A Sewerage and Sewage Disposal
 - EN1 Landscape Character
 - EN5 Areas of Outstanding Natural Beauty (AONB's)
 - 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
 - EN17 Conservation Areas
 - EN23 Development Within the Proximity of a Listed Building
 - EN29 Archaeology
 - TR1A Development Affecting Highways
 - TR3A Provision for Walking
 - TR4 Safeguarding and Improving Public Rights of Way
 - 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
 - SP2 Spatial Strategy for North Essex
 - SP5 Infrastructure & Connectivity
 - SPL1 Managing Growth
 - SPL2 Settlement Development Boundaries

- SPL3 Sustainable Design
 - LP1 Housing Supply
 - LP2 Housing Choice
 - LP3 Housing Density and Standards
 - LP4 Housing Layout
 - LP5 Affordable and Council Housing
 - HP5 Open Space, Sports & Recreation Facilities
 - 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
 - PPL9 Listed Buildings
 - CP1 Sustainable Transport and Accessibility
 - CP2 Improving the Transport Network
- Local Planning Guidance
- Essex County Council Car Parking Standards - Design and Good Practice
- Essex Design Guide

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 reasons 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.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

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.