

## DELEGATED DECISION OFFICER REPORT

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Planning Development Manager authorisation:	TF	12/09/19
Admin checks / despatch completed	AW	12/9/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	SB	12/09/19

**Application:** 19/01039/OUT **Town / Parish:** Frinton & Walton Town Council

**Applicant:** Mr Huddleston

**Address:** Land at 53 The Street Kirby Le Soken

**Development:** Demolition of existing house and erection of 4no. dwellings.

### 1. Town / Parish Council

Frinton and Walton Town Council Refusal - in agreement of the reasons of Essex County Council Heritage displayed on planning access.

### 2. Consultation Responses

ECC Highways Dept The information that was submitted in association with the application has been fully considered by the Highway Authority. The site is located at the very end of the cul-de-sac. The proposal retains adequate room and provision for off street parking and turning, for the proposed dwelling therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following conditions:

1. Prior to the proposed access being brought into use, vehicular visibility splays as shown detailed in drawing numbered Tdc -0315-1-06 shall be provided on both sides of the centre line of the access and shall be maintained in perpetuity free from obstruction clear to ground.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

2. Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of Highway Boundary, as indicated on block plan drawing no. Tdc-0315-1-06 and provided with an appropriate dropped kerb crossing of the footway/verge.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

3. No unbound material shall be used in the surface treatment of the vehicular access.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

4. Prior to occupation of the dwelling a vehicular turning facility, as indicated on block plan drawing no. Tdc-0315-1-06 of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

5. No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM 1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative 1:

On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Informative 2:

Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

Essex County Council  
Heritage

The application is for the demolition of existing house and erection of 4 no. dwellings.

The above concerns land at 53 The Street. The site lies within the Kirby-le-Soken Conservation Area, within which are located a number of listed buildings and places of special historic interest. It also forms the setting of Norton's Barn, a Grade II listed (HE Ref: 1337137) building.

Whilst the demolition of the existing dwelling located at 53 The Street and its replacement with a more suitable dwelling is not objectionable,

backland development to the amenity land associated with said building is considered to go against the existing pattern of residential development within the conservation area, which presently retains a predominantly linear settlement pattern along The Street. The proposal, therefore, raises in-principle concerns with regard to the erection of new dwellings within the present garden of 53 The Street, as the expansion of modern built form to the south of the conservation area and the creation of a suburban environment therein is at odds with the character and local distinctiveness of the designated heritage asset. Further to this, the scheme is seen to propose the overdevelopment of a plot in an area characterised by "spaciousness and low density" as outlined in the Kirby-le-Soken Conservation Area Management Plan (2009), which is considered to negate said features highlighted in the adopted plan. As the site is adjacent to a historic footpath, the proposed development would be visible from key vantage points and could impact the appreciation and understanding of the historic core of Kirby-le-Soken.

For the above, the scheme is considered to cause "less than substantial harm" to the significance of a designated heritage asset and paragraph 196 of the NPPF is relevant.

### 3. Planning History

00/00022/OUT	Construction of house	Refused	17.03.2000
94/00319/FUL	Roof alterations with dormer to provide bedroom	Approved	22.07.1994
04/01865/FUL	Replace sun room polycarbonate roof with more substantial solid roof	Approved	30.11.2004
15/01644/OUT	Proposed single storey dwelling.	Refused	04.01.2016
17/00347/FUL	Proposed 1.5 storey chalet bungalow with 4 bedrooms.	Approved	28.04.2017
17/01400/FUL	Variation of Condition 2 of 17/00347/FUL design changes to remove conservatory and add a dining room.	Approved	10.10.2017
18/00309/FUL	Proposed 1.5 storey chalet bungalow with 4 bedrooms.	Approved	11.04.2018
19/00856/DISCON	Discharge of conditions 4 (hard and soft landscaping) and 7 (construction method statement) for approval 18/00309/FUL.	Approved	11.07.2019

### 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

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN17 Conservation Areas

EN20 Demolition within Conservation Areas

EN23 Development Within the Proximity of a Listed Building

HG1 Housing Provision

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

LP1 Housing Supply

LP4 Housing Layout

LP8 Backland Residential Development

PPL4 Biodiversity and Geodiversity

PPL8 Conservation Areas

PPL9 Listed Buildings

SPL1 Managing Growth

SPL3 Sustainable Design

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

### **Status of the Local Plan**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) 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 land to the rear of 53 The Street, Kirby-le-Soken, and measures 0.25 hectares. The site itself consists of a dwelling and its rear garden, which extends up to a large arable field lying to the south of The Street. Part of the side garden is currently under development for a bungalow at the time of the site visit. The immediate surrounding area consists of a number of residential dwellings to the north, east and west. Further out the character takes on a more rural feel, with large areas of agricultural and grassed land, particularly to the north, south and west. Adjacent to the west is a Public Right of Way, running north to south.

The site lies outside of the defined Settlement Development Boundary for Kirby-le-Soken in both the Adopted Tendring Local Plan 2007 and the Tendring District Local Plan 2013-2033 and

Beyond Preferred Options Consultation Document (July 2016). The site also lies within the Kirby-Le-Soken Conservation Area.

### Description of Proposal

This application seeks outline planning permission for the erection of four residential dwellings following the demolition of the existing bungalow. Access is to be considered but all other matters, namely appearance, landscaping, layout and scale, would be determined within a future detailed application.

### Site History

Under planning reference 15/01644/OUT, planning permission was refused for one dwelling adjacent to the east of the site due to the harmful impact to the character and appearance of the surrounding area. However, under planning appeal reference APP/P1560/W/16/3151923 this dwelling was allowed, with the Inspector stating "*When considered in the round, the proposed development would contribute significantly to the economic and social dimensions of sustainability. There would be moderate harm in terms of the environmental dimension. However, relative to the scale of the benefits arising, I find that this harm would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.*" At the time of the site visit, clearing works had taken place and it is expected construction will begin shortly.

Under planning reference 15/01566/OUT, planning permission was refused at a site to the east for two dwellings, on the grounds that the proposed development would, by reason of entirely closing a gap between existing sporadic development, adversely impact on the character of the special landscape and detract from the special character and appearance of the adjoining part of Kirby-Le-Soken Conservation Area. However, under planning appeal reference APP/P1560/W/16/3146590 these dwellings were allowed, with the Inspector concluding that "*I do not find that the principle of development here would cause material harm to landscape quality or character, the setting of the CA or the more general character and setting of the village.*"

### Assessment

#### 1. Principle of development

The application site lies outside of a 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.

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.

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. 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.

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.

Therefore, at this present time, it is correct to assess the housing development on its merits against the sustainable development objectives set out within Paragraph 8 of the NPPF. The economic objective, a social objective and an environmental objective are therefore assessed below.

#### Economic:

It is considered that the proposal for four dwellings would contribute economically to the area, for example by providing employment during the construction of the development and from future occupants using the nearby facilities, and so meets the economic arm of sustainable development.

#### Social:

Socially, it is necessary to consider the proximity of the site to important services and facilities such as convenience shopping, education, healthcare, community halls and jobs.

In the Council's 'Establishing a Settlement Hierarchy' Study (April 2016), it identifies Kirby-Le-Soken as a rural settlement with a Primary School and good bus service. The site is located towards the edge of the village of within walking distance of a school, church, public house and bus stops. Overall, it is considered that the application site performs reasonably in terms of the social role within the definition of sustainability.

#### Environmental:

The environmental role is about contributing to protecting and enhancing the natural built and historic environment which is considered below under Impact on Surrounding Area.

#### Impact on Surrounding Area:

The development involves the construction of four detached dwellings in a 'backland' location to the rear of the established residential frontage along The Street. With regards to Policy HG13 of the 2007 Local Plan (and echoed in policy LP8 of the draft Local Plan), it states proposals for the residential development of backland sites must comply with the following criteria:

- i. the site lies within a defined settlement development boundary and does not comprise land allocated or safeguarded for purposes other than a residential use;
- ii. where a proposal includes existing private garden land which would not result in less satisfactory access or off-street parking arrangements, an unacceptable reduction in existing private amenity space or any other unreasonable loss of amenity to existing dwellings;
- iii. a safe and convenient means of vehicular and pedestrian access/egress can be provided that is not likely to cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will be discouraged;
- iv. the proposal does not involve "tandem" development using a shared access;
- v. the site does not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution;

- vi. the site is not on the edge of defined settlements and likely to produce a hard urban edge or other form of development out of character in its particular setting; and
- vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.

The main problems that can arise as a result of backland development include undermining the established character of an area (especially if similar schemes were to be repeated elsewhere in a locality); dwelling plots appearing cramped relative to their surroundings; the fragmentation of established gardens with a loss of mature landscaping; and the infringement of neighbouring residents' amenities. Development behind an established building line can also appear incongruous, particularly with isolated dwellings.

There must also be proper means of access to backland development, which is safe and convenient for both drivers and pedestrians, with a turning area where necessary to avoid the need for vehicles to reverse onto a public highway. A proposed access should avoid excessive disturbance or loss of privacy to neighbouring residents through, for example, an access drive passing unreasonably close to an adjoining dwelling. The likely frequency of use by vehicular traffic and the suitability of the access for service vehicles and the emergency services will also be relevant material considerations.

In respect of the policy criteria noted above the development is considered to meet the requirements as follows;

- (i) - the site is not within the defined settlement boundary in the adopted or emerging local plans, but is not designated for any particular use;
  - (ii) - the development will partly lie on 53 The Street's existing private amenity space, but this property is to be demolished as part of the proposal. Sufficient private amenity for all four dwellings is provided that adheres to the requirements of Policy HG9 of the Adopted Local Plan, while all new dwellings will also have sufficient space for off street parking.
  - (iii) - the proposed access is currently in situ, and lies to the northern section of the site off The Street. Essex County Council Highways do not object to the proposal. In terms of the impact upon residential amenity, the access point will be located approximately 4 metres to the adjacent property currently under construction to the east. While this is in relatively close proximity, the noise disturbances as a result of the comings and goings associated with four dwellings is not considered to be excessive enough to warrant a reason for refusal.
  - (iv) - whilst the access is to be shared, it does not represent a form of tandem development.
  - (v) - the site is of a regular shape and would not compromise a more comprehensive development solution.
  - (vi) - the surrounding area sees development to the north-east and north-west, running along The Street in a linear fashion. Immediately to the south of the site is a large area of open agricultural land, visible from views along Mumfords Lane to the east and partially from views from the west. The development, which would be set beyond this existing pattern of development, would not be in character with this existing development form to the serious visual detriment of the surrounding area.
- It is acknowledged that under planning appeal reference APP/P1560/W/17/3176998, planning permission was allowed for five dwellings to the rear of 64 The Street (located approximately 100m to the north-east). However, the application site for this development was not set as far back as that being proposed, with the development being approximately in line with other existing examples of development behind the roads main frontage, notably Number 72 The Street. Given this, the two sites are not considered to be directly comparable.
- (vii) - there are a number of residential properties located to the north-east and north-west along The Street. However the application site, which falls within the Kirby-le-Soken Conservation Area, is located to the south of this existing pattern of development, and as such would appear out of



character due to its siting behind this existing frontage development. Further, the introduction of built form within this location is considered to set a harmful precedent for future similar forms of development to the east, south and west, which would result in a significant alteration to the existing open landscape.

### 3. Heritage Impact

Paragraph 189 of the National Planning Policy Framework (2019) states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.

Paragraph 196 of the National Planning Policy Framework (2019) states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

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

Policy EN23 of the Adopted Plan states that development within the proximity of a Listed Building that would adversely affect the setting of a Listed Building, including group value and long distance views, will not be permitted. The sentiments of this policy are carried forward within policy PPL9 of the Emerging Plan.

The application site is located within the Kirby-le-Soken Conservation Area, while there is a Grade II Listed Building to the north-east of the site known as 'Norton's Barn'. Accordingly a Heritage Statement has been provided by the agent for the application with the supporting statement.

Whilst the demolition of the existing dwelling located at 53 The Street and its replacement with a more suitable dwelling is not objectionable, backland development to the amenity land associated with said building is considered to go against the existing pattern of residential development within the conservation area, which presently retains a predominantly linear settlement pattern along The Street. The proposal, therefore, raises in-principle concerns with regard to the erection of new dwellings within the present garden of 53 The Street, as the expansion of modern built form to the south of the conservation area and the creation of a suburban environment therein is at odds with the character and local distinctiveness of the designated heritage asset. Further to this, the scheme is seen to propose the overdevelopment of a plot in an area characterised by dwellings that are sited on more open and spacious plots of a lower density.

For the above reasons, the scheme is considered to cause less than substantial harm to the significance of a designated heritage asset. While the provision of four dwellings would represent a modest increase to the Council's five year housing supply, the identified less than substantial harm as well as the harmful precedent it would set for future similar forms of development to the east, south and west would outweigh these small benefits.

### 4. Loss of Existing Dwelling

Policy EN20 of the Adopted Local Plan states proposals must retain buildings that make a positive contribution to the character of appearance of a Conservation Area.

Given that the existing dwelling is not considered to be of particularly strong visual merit and has been the subject of a number of alterations, it does not make a positive contribution to the area. Its demolition will therefore not harm the character of appearance of the existing Kirby-le-Soken Conservation Area.

## 5. Design, Layout and Appearance

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).

The application is in outline form and as such detailed elevational drawings have not been provided. Given the site falls within the Kirby-le-Soken Conservation Area, an excellent design would be expected within any future detailed application, including a degree of variety in the design of the dwellings and features such as chimneys, canopy's, window details and a differing use of materials should be included to soften the overall bulk of the development.

An indicative layout to show how the development could look has however been submitted, which shows the dwellings in a mini cul-de-sac design. However as previously acknowledged the surrounding area sees development on larger, more spacious and open plots with lower density. The proposed layout shows the site to be overdeveloped within this context, and would appear out of character to the detriment of the areas existing visual amenity.

The proposed access, which is a consideration of this application, is located to the northern corner of the site, off The Street. While it will be publically visible from the street scene, there are numerous similar examples nearby, and it will therefore not result in any visual detriment.

Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling with one bedroom should be a minimum of 50 square metres, for a dwelling with two bedrooms a minimum of 75 square metres, and for a dwelling with three bedrooms or more should be a minimum of 100 square metres. The submitted plans do not indicate the number of bedrooms, however there is considered to be sufficient private amenity area for all of the proposed dwellings.

## 6. Impact to Neighbouring 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).

While the layout plan provided is indicative only, there is an approximate separation distance of 10 metres to the nearest neighbouring property to the north-east. Given this it is considered that a future detailed scheme could ensure there would not be harmful impacts to either existing neighbouring properties or occupiers of the future dwellings.

## 7. Highways Impacts

Essex Highways Authority have stated they have no objections to the scheme subject to conditions relating to visibility splays, the width of the private drive, the use of no unbound materials, a vehicular turning facility, and the submission of a construction method statement. Had the application been recommended for approval these conditions would have been attached.

The Adopted Parking Standards further require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces are required. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied on to provide a parking space, should measure 7 metres by 3 metres internally. The submitted plans include only an indicative layout, but there is sufficient space to ensure the necessary off street parking requirements are met for all new dwellings

## 8. Tree and Landscape Impacts

The site is currently well populated with established trees and shrubs that collectively contribute positively to the character and appearance of the conservation area. It appears that the development proposal would necessitate the removal of most of the trees on the land.

It is important to note that the site is situated within the Kirby Conservation Area which means that all trees with a stem diameter greater than 75mm at a point 1.5m from ground level are afforded formal legal protection.

The extensive removal of trees and other vegetation would potentially have a detrimental impact on the public realm and the appearance of the conservation area. Consideration should therefore be given to producing an alternative layout that makes provision for the retention and protection of the trees on the land with the greatest visual amenity value

In order to show the likely impact of the development proposal on the trees on the land and to show the extent to which the trees are a constraint on the development potential of the land, the agent for the application was requested to provide an Arboricultural Impact Assessment. In this instance no such assessment has been provided, and it has therefore not been demonstrated that the development can take place without causing harm to trees on site.

#### 9. Public Right of Way

Policy TR4 of the Adopted Local Plan states that where development affects an existing public right of way, planning permission will be refused unless the development can accommodate the definitive alignment of the path. A formal diversion providing a safe, attractive and convenient alternative may be considered where appropriate. Where opportunities exist the improvement of existing routes and the creation of additional links in the network of public rights of way and cycle tracks will be sought.

It is noted there is a Public Right of Way (PROW) adjacent to the west of the site, running north to south. However, while there will be some harm to views looking south to north, this will be against the context of existing residential development. Given this and that the PROW will not be altered, there is not significant identifiable harm that would warrant a reason for refusal.

#### 10. Habitats Regulation Assessment

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 Hamford Water Ramsar and SPA 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.

#### Other Considerations

Frinton and Walton Town Council have recommended refusal on the grounds that the development represents a form of backland development that goes against the existing pattern of development within the Conservation Area and would cause less than substantial harm to the designated heritage asset.

In answer to this, this has been addressed within the main body of the report above.

There have been two letters of objection received, with the following concerns:

1. Overdevelopment;
2. Harm to Kirby-le-Soken Conservation Area;
3. Removal of trees; and
4. Highway safety.

In answer to this, all of these points have been addressed within the main body of the report above.

## **6. Recommendation**

Refusal.

## **7. Reasons for Refusal**

- 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).

The surrounding area sees development to the north-east and north-west, running along The Street in a linear fashion. Immediately to the south of the site is a large area of open agricultural land, visible from views along Mumfords Lane to the east and partially from views from the west. The application site, which falls within the Kirby-le-Soken Conservation Area, is located to the south of this existing pattern of development, and as such would appear out of character due to its siting behind this existing frontage development. Further, the introduction of built form within this location is considered to set a harmful precedent for future similar forms of development to the east, south and west, which would result in a significant alteration to the existing open landscape.

The proposal therefore fails to accord with the above national and local policies.

- 2 Paragraph 196 of the National Planning Policy Framework (2019) states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

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

The application site is located within the Kirby-le-Soken Conservation Area.

Whilst the demolition of the existing dwelling located at 53 The Street and its replacement with a more suitable dwelling is not objectionable, backland development to the amenity land associated with said building is considered to go against the existing pattern of residential development within the conservation area, which presently retains a predominantly linear settlement pattern along The Street. The proposal, therefore, raises in-principle concerns with regard to the erection of new dwellings within the present garden of 53 The Street, as the expansion of modern built form to the south of the conservation area and the creation of a suburban environment therein is at odds with the character and local distinctiveness of the designated heritage asset. Further to this, the scheme is seen to propose the overdevelopment of a plot in an area characterised by dwellings that are sited on more open and spacious plots of a lower density.

For the above reasons, the scheme is considered to cause less than substantial harm to the significance of a designated heritage asset. While the provision of four dwellings would represent a modest increase to the Council's five year housing supply, the identified less than substantial harm as well as the harmful precedent it would set for future similar forms of development to the east, south and west would outweigh these small benefits.

- 3 Saved Policy EN1 of the Tendring District Local Plan (2007) relates to landscape character and states, inter alia, that development control will seek in particular to conserve features which contribute to local distinctiveness, which includes important hedgerows and trees. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) states at Part A (d) that the design and layout of the development should maintain or enhance important existing site features of the landscape value.

The site is currently well populated with established trees and shrubs that collectively contribute positively to the character and appearance of the conservation area. As the site is situated within the Kirby Conservation Area, all trees with a stem diameter greater than 75mm at a point 1.5m from ground level are afforded formal legal protection. It appears that the development proposal would necessitate the removal of most of the trees on the land.

In order to show the likely impact of the development proposal on the trees on the land and to show the extent to which the trees are a constraint on the development potential of the land, an Arboricultural Impact Assessment should be submitted. In this instance no such assessment has been provided, and it has therefore not been demonstrated that the development can take place without causing harm to trees on site. As such the application is contrary to the afore-mentioned local plan policies.

- 4 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 Hamford Water Ramsar and SPA 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.

## 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.