



# **TENDRING DISTRICT COUNCIL**

## **Planning Services**

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

**APPLICANT:** Bill Marshall - Wambugu Ltd      **AGENT:**  
 Mount View  
 Fox Street  
 Ardleigh  
 Colchester  
 Essex  
 CO7 7PS

### **TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION NO:** 19/01148/OUT      **DATE REGISTERED:** 10th September 2019

Proposed Development and Location of Land:

**Outline planning application with all matters reserved for the construction of  
 9 no. custom build/self build dwellings, access road and pavement.  
 Land to The North of Mount View Fox Street Ardleigh 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 site lies outside of any Settlement Development Boundary as defined within both the adopted Tendring District 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.

While the NPPF advocates a plan-led approach, it is important to consider whether any circumstances outweigh the conflict. Development should be plan led unless material considerations indicate otherwise and it is accepted that the site is not in a preferred location for growth.

Paragraph 8 of the NPPF sets out the overarching objectives for achieving sustainable development, one being the environmental objective which requires the planning system to contribute to protecting and enhancing our natural, built and historic environment. Furthermore, Paragraph 127 of the NPPF requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes on to say that local distinctiveness should be promoted and reinforced. Saved Policy QL9 and EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape.

Furthermore, Paragraph 184 of the NPPF states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Specifically Paragraph 196 of the NPPF 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.

Although the site could not be described as isolated due to the presence of dwellings around the site, the immediate locality is predominantly characterised by fairly loosely spaced and sporadic residential development. There are some closer knit dwellings fronting Fox Street in a linear arrangement but these do not relate to the character of the application site itself which has no main road frontage and bounds the open countryside. The application site is located within a clear break in built form within an expanse of openness extending into the open agricultural fields beyond. The development would represent an unacceptable incursion into the countryside being uncharacteristic of its surroundings. Any built development in the countryside, by definition, leads to a loss of landscape and an alteration of landscape character. The 'domestication' of the landscape and, despite screen planting, the presence of new built development in it would be evident from the highway. This would cause significant harm to the character and appearance of the rural landscape, in conflict with saved Policy EN1 of the adopted Tendring District Local Plan and draft Policy PPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). As a result of the development the site would be urbanised. Its existing open and undeveloped character to the rear of the linear frontage would be eroded. The development would be harmful to the character and appearance of the area failing to make a positive contribution to the quality of the local environment and failing to protect or enhance local character. Furthermore, the development would set an undesirable precedent for further piecemeal development of the adjoining fields further eroding the rural and landscape.

In addition, the proposed development is located within undeveloped land in the immediate environs of the historic Grade II Listed farmhouse Fen Farm and adjacent

to the historic trackway which leads to it. The proposed development will cause harm to the setting of the farmhouse and the way this is understood, experienced and appreciated. This will cause harm to the setting of what was an isolated structure in an undeveloped location, this will be particularly relevant considering environmental, diurnal and seasonal changes. The development is therefore contrary to paragraph 196 of the NPPF.

Whilst the provision of 9 dwellings would make a modest contribution to the provision of housing in the district, the adverse impacts would significantly and demonstrably harm the character of the area therefore failing the environmental strand of sustainability outweighing any economic and social benefits of the scheme.

- 2 Paragraph 34 of the National Planning Policy Framework 2019 (NPPF) state that Local Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required. Paragraph 63 of the NPPF states provision of affordable housing should be sought for residential developments that are major developments. Within the glossary of the NPPF (2019), major development is defined as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. The size of the site on this application is 1.29 hectares and so the requirement for affordable housing is triggered.

Policy HG4 in the adopted Local Plan requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. Policy LP5 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or Council Housing. The policy does allow flexibility to accept as low as 10% of dwellings on site, with a financial contribution toward the construction or acquisition of property for use as Council Housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement.

There is a high demand for housing in Ardeigh from households on the housing register and we currently have 109 households on the housing register seeking a 1 bedroom home, 91 seeking a 2 bedroom home, 60 seeking a 3 bedroom home and 24 seeking a 4 bedroom home.

Under the terms of the council's emerging local plan, 30% of homes on eligible sites should be delivered as affordable housing so on this application this would constitute 2.7 homes (3 rounding up). Whilst the council would prefer to see affordable housing delivered on site, it is unclear whether another registered provider would want to take on discounted homes that would be built using off-site modern methods of construction or just the plots themselves. In light of this, whilst the site requires affordable housing to be delivered, this should be delivered as an off-site financial contribution in lieu of on-site provision. The neighbouring site approved under 19/00427/FUL for 4 homes in the same ownership as this current application and is accessed via a private drive within the ownership of the applicant. The affordable housing requirements should take into the account the total number of homes being delivered on the 2 sites. The total number of properties being proposed on the 2 sites is 13 homes. The council's emerging local plan requires 30% of homes on eligible sites to be delivered as affordable housing. 30% of 13 properties equates to 3.9 properties (4 rounding up).

A completed Section 106 agreement to secure the above-mentioned planning obligations has not been provided and the application is therefore contrary to the above policies.

- 3 The proposal is contrary to Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the adopted Tendring District Local Plan 2007 which state that

development proposals will not be granted planning permission unless existing local biodiversity and protected species are protected. A similar approach is taken in draft Policy PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Paragraph 118 of the National Planning Policy Framework requires that Local Planning Authorities "conserve and enhance biodiversity", whilst paragraph 109 requires Local Planning Authorities to minimise impacts on biodiversity. Paragraph 99 of Circular 06/2005 states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision" it goes on to state "The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances". Paragraph 5.3 of government document 'Planning for Biodiversity and Geological Conservation: A Guide To Good Practice', states that "In the development control process, the onus falls on the applicant to provide enough information to enable the Local Planning Authority to assess the impacts on biodiversity and geological conservation. Planning applications must be supported by adequate information". Standing advice from Natural England recommends that an initial scoping or extended Phase 1 habitat survey should be conducted to assess the site and the results of this used to inform (the need for) subsequent species specific surveys. No such information has been provided with this application. Neither is evidence provided to outweigh the need to protect such species in accordance with the tests outlined in Article 16 of the EC Habitats Directive. As such, the proposal is in conflict with the afore-mentioned policies, guidance, directive and the Framework.

As no ecology survey accompanies the application, the Local Planning Authority is unable to say with confidence that the proposal will not have an adverse impact on a species protected by Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981 and would therefore be contrary to saved Policies EN6 and EN6a as well as draft plan Policy PLA4. It would also be contrary to Paragraphs 109 and 118 of the National Planning Policy Framework, which requires that biodiversity should be protected and that significant harm should be avoided. In this case it is unknown whether significant harm will be caused.

**DATED:** 1st November 2019

**SIGNED:**




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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

- QL1 Spatial Strategy
- HG4 Affordable Housing in New Developments
- HG6 Dwelling Size and Type
- HG7 Residential Densities
- HG9 Private Amenity Space
- HG14 Side Isolation
- TR1A Development Affecting Highways
- TR7 Vehicle Parking at New Development
- EN1 Landscape Character
- EN6 Biodiversity
- EN6A Protected Species
- EN11A Protection of International Sites European Sites and RAMSAR Sites
- EN23 Development Within the Proximity of a Listed Building
- COM6 Provision of Recreational Open Space for New Residential Development
- Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)
- SP1 Presumption in Favour of Sustainable Development
- SPL1 Managing Growth
- SPL3 Sustainable Design
- LP1 Housing Supply
- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- LP7 Self-Build and Custom-Built Homes
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- CP1 Sustainable Transport and Accessibility
- CP2 Improving the Transport Network
- HP5 Open Space, Sports & Recreation Facilities
- PPL9 Listed Buildings

Local Planning Guidance

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.
- 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](mailto: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.