

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	13/11/2019
Planning Development Manager authorisation:	TF	13/11/2019
Admin checks / despatch completed	CC	13.11.2019
Technician Final Checks/ Scanned / LC Notified / UU Emails:	KAR	13/11/19

Application: 19/01154/OUT **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr Keith Jeeves

Address: The Rose 63 The Street Kirby Le Soken

Development: Proposed 3no. three bedroom chalet style bungalows.

1. Town / Parish Council

Frinton and Walton Town Council Refusal - overdevelopment of the site. Traffic entering and exiting the site would be hazardous due to the pinch point in the highway at this location.

2. Consultation Responses

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

1. Prior to occupation of the development, the road junction / access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 90 metres to the east and 2.4 metres by 160 metres to the north west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

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.

NOTE: If the aforementioned visibility splays are unachievable due to site or land control constraints the applicant will need to provide evidence by way of a speed survey that a relaxation in these requirements will not create a highway safety issue.

2. Prior to occupation of the development a vehicular turning facility, 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.

3. No unbound material shall be used in the surface treatment of the vehicular access or private drive/ access road.

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

4. 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.

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.

5. Any existing access into the site that is to become redundant shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge / footway / cycleway / kerbing immediately the proposed new access is brought into first beneficial use.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety in accordance with policy DM1.

6. There shall be no discharge of surface water onto the Highway.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety to ensure accordance with policy DM1.

7. All off street car parking shall be in precise accord with the details contained within the current Parking Standards.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8

8. 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 DM1.

9. Cycle / Powered Two-wheeler parking will need to be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.

Reason: To ensure appropriate cycle / powered two-wheeler parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

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: The rural/remote location of the site is such that access to key facilities, public transport, employment and leisure opportunities is limited and for the vast majority of journeys the only practical option would be the car. This should be taken in to consideration by the Planning Authority when assessing the overall sustainability and acceptability of the site.

Informative 2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

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

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

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

3. Planning History

13/00727/FUL	Change of use of land to include 1 no. pitch for a Romani Gypsy family and associated works including 1 no. dayroom, laying of new surfaces, new access and 1 no. septic tank.	Refused	18.11.2013
13/00879/TPO	3 Elder - fell. A-B, cut back hedge to main stem, lay lower branches when possible.	Approved	03.09.2013
14/00707/TPO	Tree C360 - fell heavily decayed and potentially dangerous	Approved	03.07.2014
14/01807/DISCON	Discharge of conditions 06 (vehicular access), 09 (drainage), 10 (vehicular turning facilities), 11 (off street parking), 12 (existing access), 13 (landscaping), 15 (foul and water drainage), 16 (storage of domestic refuse) and 17 (external lighting) of application 13/00727/FUL, approved at appeal APP/P1560/A/14/2215476.	Approved	30.01.2015
15/00445/TPO	Cut roadside hedge down to 2.5 metres	Approved	21.04.2015

15/01937/FUL	Variation of Condition 5 of Appeal Decision APP/P1560/A/14/2215476 to facilitate the siting of one additional 1 No. mobile home and the erection of 1 No. stable building and the installation of hard standing.	Approved	24.03.2016
16/00886/DISCON	Discharge of Conditions 7 (Vehicular Turning Facility), 9 (Landscaping) and 14 (Tree Protection) of planning permission 15/01937/FUL.	Approved	05.07.2016
16/01550/TPO	3 No. Field Maple - reduce by 50%. 2 No. Ash - cut down to 6 ft. (1 dangerous, both to balance)	Approved	25.10.2016
17/30109/PREAPP	Erection of 3 chalet bungalows.	Refused	10.05.2017
18/00587/FUL	Extension of existing day room building by 4 metres.	Approved	25.06.2018
18/01989/TPO	1 No. Ash - reduce crown by 30% and re-balance	Approved	24.12.2018

4. Relevant Policies / Government Guidance

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

HG1 Housing Provision

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

EN17 Conservation Areas

HG22 Gypsy Caravan Sites

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SPL1 Managing Growth

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP9 Traveller Sites

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL8 Conservation Areas

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Planning Policy for Traveller Sites

Gypsy and Traveller Accommodation Needs Assessments

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 (including Site Description and Proposal)

Site Description

The application site is located at the far western point of Kirby Le Soken, less than a mile from Kirby Cross on the border of Frinton and 2 miles from Walton on the Naze. The site is outside but adjacent to the Kirby Le Soken Settlement Development Boundary and Conservation Area. The site runs parallel with the outer curve of the main road and is bordered by a stream on its western boundary with a row of detached houses to the east. Approximately 50m to the west on the opposite side of the road are more existing houses. Directly opposite; to the west and south are open fields. The garden of the property known as Ivy Cottage borders the eastern boundary. The site is currently in use as a single traveller's pitch which allows for two static caravans, a tourer and associated dayroom and stable buildings. This is served by an existing vehicular access at the site's western end. The rest of the site is predominantly bare ground. The site frontage to The Street is marked by a 1.8m close boarded timber fence with metal access gates.

Description of Proposal

The application seeks outline permission for the erection of 3 no. three bedroom chalet style bungalows.

The application is made in outline form with some matters reserved considering access only (as existing). Scale, layout, appearance and landscaping are reserved for subsequent approval.

Assessment

The main considerations in this instance are;

- Principle of Development;
- Principle of Development - Loss of Traveller Pitch;
- Scale, Layout and Appearance (including Impact on Heritage Asset);;
- Trees and Landscaping;
- Residential Amenities;
- Access, Parking and Highway Safety;
- Financial Contributions - Open Space/Play Space;

- Financial Contributions - RAMS; and,
- Representations.

Principle of Development

The site is currently in use as a single traveller's pitch which allows for two static caravans, a tourer and associated dayroom and stable buildings. This proposal relates to the construction of 3 detached residential properties on the site which are governed by different set of national and local planning policies.

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.

- Assessment of Sustainable Development

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. In this instance, nearby planning permissions and appeal decisions constitute material planning considerations relevant to the assessment of this development which are referred to below, where relevant.

The sustainability of the application site is therefore of particular importance. In assessing sustainability, it is not necessary for the applicant to show why the proposed development could not be located within the development boundary.

In line with Paragraph 8 of the National Planning Policy Framework (2019), achieving sustainable development means meeting an economic objective, a social objective and an environmental objective. These are assessed below.

- Economic

It is considered that the proposal would contribute economically to the area, for example by providing employment during the construction of the property and from future occupants utilising local services, and so meets the economic arm of sustainable development.

- Social

Socially, it is necessary to consider the proximity of the site to destinations such as convenience shopping, education, healthcare, community halls and jobs and if there is safe and practical access so that occupants of the dwellings would not be dependent on their car. Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users.

The emerging Local Plan 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. Kirby-le-Soken is categorised in emerging Policy SPL1 as a 'Smaller Rural Settlement' in recognition of its size and small range of local services. These smaller villages are considered to be the least sustainable locations for growth and there is a concern that encouraging too much development in these areas will only serve to increase the number of people having to rely on cars to go about their everyday lives. Kirby-le-Soken is therefore considered to be one of the least sustainable settlements for growth.

It is accepted that each of these smaller rural settlements can achieve a small scale increase in housing stock over the plan period. To allow for this to happen, Settlement Development Boundaries have been drawn flexibly, where practical, to accommodate a range of sites both within and on the edge of villages and thus enabling them to be considered for small-scale residential 'infill' developments. With this in mind, the draft Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 settlement development boundary has been marginally extended but does not include the application site. The site lies approximately 350 metres from the edge of the defined SDB of Kirby Le Soken and over a 1km to the centre of the village. However, also of particular relevance in this instance is the practicalities of accessing services on foot.

Planning application reference 13/00727/FUL and related appeal reference APP/P1560/A/14/2215476 are of relevance in this instance relating to the same application site. Paragraphs 23 and 24 of the appeal decision deal with pedestrian access to the site. The Inspector recognises the difficulty of the walk along the street and states that the site 'is not a location where walking should be encouraged' and that 'safe vehicular passage to school could be achieved'.

Also of relevance is planning application reference 15/01566/OUT and related appeal reference APP/P1560/W/16/3146590 for development of two dwellings at Land between 45-53 The Street, Kirby le Soken, Essex CO13 0GD (approximately 200 metres to the east of the application site). Within this appeal decision the Inspector concluded at Paragraph 18 that '...the stretch of road from which the site would be accessed is a pinch point leading into and out of the village and negotiating it requires some care' and 'There is also no footway on either side of the road'.

In this regard, there is no access to day to day needs within a safe and practical walking distance. It is highly likely that the occupants of the proposed dwellings would be car dependant failing to promote sustainable modes of transport therefore failing to meet the social strand of sustainable development.

Regardless of the Council's housing land supply position, the application fails to meet the social strand of sustainable development as set out within Paragraph 8 of the NPPF and is contrary to the afore-mentioned local plan policies and the aims of the NPPF as a whole. The development is unnecessary and there are no public benefits that might warrant the proposal being considered in an exceptional light.

- Environment

The environmental role is about contributing to protecting and enhancing the natural and historic environment. This is addressed below under Scale, Layout and Appearance.

Principle of Development - Loss of Traveller Pitch

Paragraph 9 of the Planning Policy for Traveller Sites (PPTS) states: "Local planning authorities should set pitch targets for gypsies and travellers as defined in Annex 1 and plot targets for travelling showpeople as defined in Annex 1 which address the likely permanent and transit site accommodation needs of travellers in their area, working collaboratively with neighbouring local planning authorities". At the time of writing this report, there are 11 established pitches including the application site which exceeds the identified need for the area.

The loss of the site cannot be considered harmful to the Council's traveller pitch provision and there are no policies to safeguard these sites. On this basis, a refusal based on the loss of a traveller pitch relevant.

Scale, Layout and Appearance (including Impact on the Heritage Asset)

Paragraph 8 of the National Planning Policy Framework 2019 (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, saved Policy EN17 of the adopted Tendring District Local Plan (2007) states that development located outside a conservation area will be refused where it would prejudice the setting and surroundings of a conservation area or harm the inward or outward views.

It is acknowledged that the site is currently occupied by a number of structures including static caravans and various associated outbuildings. However, these are low level in nature and therefore largely screened by the boundary vegetation and frontage fencing and do not appear prominent in the landscape. This site forms a key entrance into the village of Kirby Le Soken and its associated conservation area to the east. Directly opposite; to the west and south are open fields. Due to the topography of the surrounding area, the proposal for 3 no. chalet style bungalows as shown on the indicative layout and street scene plan would appear particularly prominent on this edge of settlement location resulting in landscape harm and compromising the setting of the adjacent Kirby Le Soken Conservation Area.

Development on the site should therefore be of single storey height only and interspersed amongst a detailed soft landscaping scheme which would require a larger footprint for each dwelling and a more spacious layout likely to require a reduction in the number of units. The outline application fails to satisfactorily demonstrate that the site can accommodate 3 no. 3 bedroom chalet style dwellings without resulting in landscape harm, harm to the character of the area and harm to the character and appearance of the setting of the adjacent conservation area.

The application therefore fails the environment objective of sustainable development and is considered contrary to the aims of the afore-mentioned national and local plan policies.

Trees and Landscaping

The application site is affected by Tendring District Council Tree Preservation Order 11/40/TPO 'Land South of the Street, Kirby le Soken. At the time it was made the TPO afforded all of the trees on the land formal legal protection as 'woodland' TPO.

However, since the TPO was made, subsequent planning and appeal approvals has resulted in the removal of almost all of the trees on the land. In this respect the TPO no longer serves a useful purpose as there are no remaining trees that merit formal legal protection.

Notwithstanding the outcome of this planning application the extant TPO will be 'revoked' in other words cancelled.

The remaining trees on the land are not considered to be a constraint of the development potential of the application site.

If planning permission is likely to be granted then a condition should be attached to secure details of soft landscaping. New planting should soften, screen and enhance the appearance of any development for which planning permission may be granted.

Residential Amenities

The NPPF, in paragraph 127 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) 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'. Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) supports these objectives.

Officers consider that sufficient space is available on site to provide a development that could achieve an internal layout and separation distances that would not detract from the amenities of any nearby dwellings or the future occupiers of the proposed dwellings and would provide private amenity areas to meet the standards set out within Saved Policy HG9 of the adopted Local Plan.

Access, Parking and Highway Safety

Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

The Council's Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces is 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 proposal is to be served by the existing access. The traffic generated by the proposed 3 no. dwellings could not be considered excessive and would be comparable to the existing traffic using the site.

Essex County Council Highway Authority raise no objection subject to conditions. One of the recommended conditions seeks visibility splays with dimensions of 2.4 metres by 90 metres to the east and 2.4 metres by 160 metres to the north-west. Having reviewed the previously approved appeal decision (APP/P1560/A/14/2215476) and plans (Drawing Number 1357/02A dated June 2013) a visibility splay of 2.4 x 172.5 is currently in place for the existing access being in excess of the recommendations made by The Highway Authority. The requirements of highways are met for the proposed development. Practical and safe vehicular access to the site to serve the proposed development is achieved.

Financial Contributions - Open Space/Play Space

Paragraph 54 of 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. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

The Council's Open Space Team has been consulted in accordance with the requirements of Saved Policy COM6 of the adopted Tendring District Local Plan and Draft Policy HP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

There is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby. Any additional development in Kirby will increase demand on already stretched play areas. The nearest play area to the proposed development is Halstead Road, Kirby. The site is well used by the local community and would struggle to cope with any additional usage.

Due to the significant lack of play facilities in the area it is felt that a contribution towards play is justified and relevant to the planning application. Additional play equipment will be installed in Halstead Road play area.

This application is not accompanied by a correctly completed unilateral undertaking for a contribution towards play and formal open space facilities and therefore this scheme does not comply with Policy COM6.

Financial Contributions - RAMS

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. The contribution is secured by unilateral undertaking.

The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zol) being approximately 1100 metres from Hamford Water SAC and SPA. Since the development is for 3 dwellings only, the number of additional recreational visitors would be limited and the likely effects on Hamford Water from the proposed development alone may not be significant. However, new housing development within the Zol would be likely to increase the number of recreational visitors to Hamford Water and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured 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.

Representations

Frinton and Walton Town Council object to the application on the following grounds;

- Overdevelopment of the site.
- Highway safety.
-

2 letters of objection have been received (including one from the Kirby-le-Soken Village Preservation Society).

- Outside development boundary.
- Loss of traveller's site.
- Highway safety.
- Lack of accessible amenities.
- Visually harmful to soft entrance to the village.
- Not large enough for 3 chalet bungalows and parking.

1 letter of support has been received. No reasons were given.

The reasons why the application is unacceptable are all addressed in the main report above, covering the concerns raised by local residents.

Conclusion

For the reasons set out above, the application represents a socially and environmentally unsustainable form of development and fails to secure financial contributions for recreational disturbance mitigation and open space improvements.

6. Recommendation

Refusal - Outline

7. Reasons for Refusal

- 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. In line with Paragraph 8 of the National Planning Policy Framework (2019), achieving sustainable development means meeting an economic objective, a social objective and an environmental objective.

Socially, it is necessary to consider the proximity of the site to destinations such as convenience shopping, education, healthcare, community halls and jobs and if there is safe and practical access so that occupants of the dwellings would not be dependent on their car. Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users.

The emerging Local Plan 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. Kirby-le-Soken is categorised in emerging Policy SPL1 as a 'Smaller Rural Settlement' in recognition of its size and small range of local services. These smaller villages are considered to be the least sustainable locations for growth and there is a concern that encouraging too much development in these areas will only serve to increase the number of people having to rely on cars to go about their everyday lives. Kirby-le-Soken is therefore considered to be one of the least sustainable settlements for growth. The site lies approximately 350 metres from the edge of the defined settlement development boundary of Kirby Le Soken and over a 1km to the centre of the village. However, also of particular relevance in this instance is the practicalities of accessing services on foot.

Planning application reference 13/00727/FUL and related appeal reference APP/P1560/A/14/2215476 are of relevance in this instance relating to the same application site. Paragraphs 23 and 24 of the appeal decision deal with pedestrian access to the site. The Inspector recognises the difficulty of the walk along the street and states that the site 'is not a location where walking should be encouraged' and that 'safe vehicular passage to school could be achieved'.

Also of relevance is planning application reference 15/01566/OUT and related appeal reference APP/P1560/W/16/3146590 for development of two dwellings at Land between 45-53 The Street, Kirby le Soken, Essex CO13 0GD (approximately 200 metres to the east of the application site). Within this appeal decision the Inspector concluded at Paragraph 18 that '...the stretch of road from which the site would be accessed is a pinch point leading into and out of the village and negotiating it requires some care' and 'There is also no footway on either side of the road'.

In this regard, there is no access to day to day needs within a safe and practical walking distance. It is highly likely that the occupants of the proposed dwellings would be car dependant failing to promote sustainable modes of transport therefore failing to meet the social strand of sustainable development. Regardless of the Council's housing land supply position, the application fails to meet the social strand of sustainable development as set out within Paragraph 8 of the NPPF and is contrary to the afore-mentioned local plan policies and the aims of the NPPF as a whole. The development is unnecessary and there are no public benefits that might warrant the proposal being considered in an exceptional light.

- 2 Paragraph 8 of the National Planning Policy Framework 2019 (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, saved Policy EN17 of the adopted Tendring District Local Plan (2007) states that development located outside a conservation area will be refused where it would prejudice the setting and surroundings of a conservation area or harm the inward or outward views.

It is acknowledged that the site is currently occupied by a number of structures including static caravans and various associated outbuildings. However, these are low level in nature and therefore largely screened by the boundary vegetation and frontage fencing and do not appear prominent in the landscape. This site forms a key entrance into the village of Kirby Le Soken and its associated conservation area to the east. Directly opposite; to the west and south are open fields. Due to the topography of the surrounding area, the proposal for 3 no. chalet style bungalows as shown on the indicative layout and street scene plan would appear

particularly prominent on this edge of settlement location resulting in landscape harm and compromising the setting of the adjacent Kirby Le Soken Conservation Area.

The outline application fails to satisfactorily demonstrate that the site can accommodate 3 no. 3 bedroom chalet style dwellings without resulting in landscape harm, harm to the character of the area and harm to the character and appearance of the setting of the adjacent conservation area.

The application therefore fails the environment objective of sustainable development and is considered contrary to the aims of the afore-mentioned national and local plan policies.

- 3 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. The contribution is secured by unilateral undertaking.

The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zoi) being approximately 1100 metres from Hamford Water SAC and SPA. Since the development is for 3 dwellings only, the number of additional recreational visitors would be limited and the likely effects on Hamford Water from the proposed development alone may not be significant. However, new housing development within the Zoi would be likely to increase the number of recreational visitors to Hamford Water and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured 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.

- 4 Paragraph 54 of 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. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby. Any additional development in Kirby will increase demand on already stretched play areas. The nearest play area to the proposed development is Halstead Road, Kirby. The site is well used by the local community and would struggle to cope with any additional usage.

Due to the significant lack of play facilities in the area it is felt that a contribution towards play is justified and relevant to the planning application. Additional play equipment will be installed in Halstead Road play area.

This application is not accompanied by a correctly completed unilateral undertaking for a contribution towards play and formal open space facilities and therefore this scheme does not comply with Policy COM6.

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.