



TENDRING DISTRICT COUNCIL

Planning Services

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

APPLICANT: Mr Keith Jeeves
The Rose
63 The Street
Kirby Le Soken
Frinton On Sea
Essex
CO13 0EG

AGENT:

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 19/01154/OUT

DATE REGISTERED: 14th August 2019

Proposed Development and Location of Land:

**Proposed 3no. three bedroom chalet style bungalows.
The Rose 63 The Street Kirby Le Soken Frinton On Sea**

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. 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.

DATED: 13th November 2019

SIGNED:



Catherine Bicknell
Head of Planning

IMPORTANT INFORMATION :-

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

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

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

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) 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.