

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	14/11/19
Planning Development Manager authorisation:	AN	14/11/19
Admin checks / despatch completed	CC	15/11/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	YAO	15/11/19

**Application:** 19/00726/OUT **Town / Parish:** Frinton & Walton Town Council

**Applicant:** Mr C Anson

**Address:** Land adjacent Larkswood Kirby Road Great Holland

**Development:** Outline planning application with all matters reserved for the development of one dwelling.

### 1. Town / Parish Council

Frinton and Walton Town Council REFUSAL – backland development

### 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 proposal is located within the existing 30-mph speed limit and will be located adjacent to a wide piece of verge. The proposal provides adequate parking and turning 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 occupation of the development, the private access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 70 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the private 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 these visibility splays are unachievable the applicant should submit a speed survey providing evidence that a relaxation in visibility splay requirements is not going to create a highway safety issue.

2. Prior to the first occupation of the dwelling, the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be less than 3.6 metres (4 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the verge.

Reason: To ensure that all vehicular traffic using the junction may do so in a controlled manner and to provide adequate segregated pedestrian access, in the interests of highway safety and in accordance with Policy DM1 and DM6.

3. Prior to occupation of the dwelling 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.

4. 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.

5. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

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

6. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

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:

It is also understood there is common land in the area which can be confirmed by contacting Essex Legal Services at [environmental.teamduty@essex.gov.uk](mailto:environmental.teamduty@essex.gov.uk) or by taking a look on Map Essex.

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.

### **3. Planning History**

17/00667/OUT	Outline planning application with all matters reserved for the development of one dwelling.	Refused (dismissed at appeal)	20.06.2017
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### **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

EN1 Landscape Character

EN2 Local Green Gaps

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

HG1 Housing Provision

HG9 Private Amenity Space

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

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

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, which measures 0.10 hectares, is land to the south-east of Larkwood, Kirby Road, Great Holland, which at the time of the site visit was an open grassed area with mature vegetation to northern and western boundaries. The character of the surrounding area is largely rural, with large areas of open grassed or agricultural land to the east and further west particularly, although there are examples of some residential dwellings to the north and adjacent to the west. The site does not fall within a recognised Settlement Development Boundary, as agreed within the Tendring Local Plan 2007, but does fall within a recognised Local Green Gap.

### Proposal

This application is in outline form with all matters reserved and proposes the erection of one detached dwelling.

## Site History

Under planning reference 17/00667/OUT, planning permission was refused for the same scheme as being proposed within this application. The reason for refusal was the dwelling was located outside of a recognised settlement development boundary at a time when the Council was able to demonstrate a five year housing supply, while the site was also not considered to be socially sustainable.

This decision was also dismissed at appeal (appeal reference APP/P1560/W/17/3191632, dated 17 July 2018), with the Inspector stating "*Therefore I conclude that the proposal would not be supported by local planning policy over the location of new housing. In the consideration of this particular case, the application of local policy would not diverge from the aims of the Framework.*"

## 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 one dwelling would have a minor contribution 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:

The NPPF seeks to support a prosperous rural economy. It promotes sustainable transport and seeks a balance in favour of sustainable transport modes to give people a real choice about how they travel recognising that opportunities to maximise solutions will vary between urban and rural areas. With regard to the social dimension, this means supporting strong, vibrant and healthy communities by supplying the housing required to meet the needs of present and future generations and creating a high quality environment with accessible local services.

Within the previous application on this site (reference 17/00667/OUT), on balance it was considered that the majority of trips, including those for day-to-day needs, would need to be made by car to access essential services and facilities, and therefore it failed to meet the social strand of sustainability.

However since the determination of that application there have been appeal decisions that have confirmed the surrounding area of Great Holland is sustainable. Within the most recent appeal decision (reference APP/P1560/W/19/3228344 - Land east of Pork Lane, Great Holland, dated 23 September 2019), the Inspector stated the following:

*"The village of Great Holland is defined in the Local Plan as a 'smaller village' and as such contains a limited range of services. Nevertheless, there are services here which can be reached by a short walk or bicycle ride, although the lack of a continuous footway may, to a degree, discourage such a journey. These services include a farm shop, public house, community and church halls, a small business park and a children's play area. It is also served by bus services connecting to Clacton-on-Sea, Kirby Cross and Frinton-on-Sea, which contain a full range of services to cater for the day-to-day needs of residents. The bus further provides a connection to train stations in Kirby Cross and Frinton-on-Sea giving access to national rail routes. The travel required to access facilities providing for the day-to-day needs of residents would therefore not be restricted to use of a private car."*

Therefore, despite Great Holland performing poorly within the Established Settlement Hierarchy (2016), which demonstrates it has no primary school, GP Surgery, defined village centre or railway station, the inspectors view is a material consideration and ensures the site meets the social strand of sustainability.

## Environmental Impact

Within the earlier appeal decision at this application site, the Inspector stated *"Although the site contains the foundations of two cottages, which Larkswold replaced in the 1960s, this would now appear a quite arbitrary location for a new dwelling. This is compared to the recent approvals cited outside the SDB for housing at The Veldt, which reflected the adjacent frontage pattern, and Larges Farm, which involved the redevelopment of redundant farm buildings."*

However, importantly the Inspector continued that *"Both of these decisions reflected a period when the Council was unable to demonstrate a five year supply of housing land and its policies were deemed as not up-to-date based on the requirements of paragraph 49 of the Framework. This is currently not the case following the Part 1 Examination of the ELP and the Inspector's findings on Tendring District's objectively assessed housing need. This supports the Council's current position that a 5.45 year housing land supply can now be demonstrated."* Since this appeal decision, as stated above, the Council now does not have a five year supply of housing land and the tilted balance must instead apply.

The area is predominantly rural in character. However, there are examples of two detached residential properties to the north, with another dwelling having recently been granted planning permission (reference 18/01950/FUL), and numerous semi-detached dwellings to the west. The application site is a grassed amenity area, protected with mature vegetation to the northern, eastern and southern boundaries, which limit views into the site from the surrounding area and as such the site does not form part of open countryside. Therefore the siting of a dwelling on the land would not appear as a prominent intrusion in the open countryside. Instead it would be viewed against the backdrop of existing vegetation and the existing dwellings to the north.

Furthermore, the site falls within a designated Local Green Gap. Policy EN2 the Tendring Local Plan 2007 states, amongst other things, that these areas should essentially be free of development, whilst minor development proposals may be permitted if they do no harm individually, or collectively, to the purposes of a Local Green Gap or to its open character.

There are concerns that the site is situated within the Soken Clay Plateau Landscape Character Area, with one of its key aims being to restrict development along roads between settlements, which could result in the merging of adjacent settlements into one continuous suburb, and as such it could be considered that the proposal would have an adverse impact on the local landscape character. However, whilst it is acknowledged that the proposal results in an intrusion to the existing Local Green Gap and Landscape Character Area, the minor nature of the proposal and that there are examples of other dwellings within the vicinity ensure that the construction of one dwelling will not have a significantly adverse impact to the character of the area, nor would it result in the merging of adjacent settlements, and the harm is therefore not significant enough to result in a reason for refusal.

## 2. Design, Layout and Appearance

Policy QL9 of the Tendring Local Plan 2007 states that all new development should make a positive contribution to the quality of the local environment and protect or enhance local character.

All detailed matters are reserved for later consideration and as such no detailed elevational drawings have been submitted as part of this particular application, although the site will be accessed via a new access point to the west from Kirby Road. Whilst it is acknowledged that the proposal site would be situated approximately 20 metres further back than the adjacent dwellings to the north along this section of Kirby Road, due to only a small number of existing dwellings there is not a strong building line that any future detailed proposal would need to adhere to, whilst the surrounding area is not defined by a particular type of dwelling, with examples of single and two storey dwellings nearby. Further, recent planning permission 18/01950/FUL was granted for one dwelling adjacent to the north that will be approximately in line with any future dwelling. It is therefore considered that the site is capable of accommodating one detached dwelling without resulting in any harm to the character and appearance of the surrounding area.

Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling of one bedroom should be a minimum of 50 square metres, for a dwelling of two bedrooms should be a minimum of 75 square metres and for a dwelling of three bedrooms or more should be a minimum of 100 square metres. The information supplied does not indicate the number of bedrooms but any future detailed application should look to ensure the above standards are adhered to. It is considered there is sufficient space within the application site for this to be achieved.

## 3. Residential 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).

The only adjacent neighbour potentially impacted upon as a result of the proposal is that to the north, known as Larkswood, who is also the applicant. Whilst the application is in outline form with all matters reserved, Officers consider that sufficient space is available on site to provide a

development that, through the submission of a reserved matters application, could achieve an internal layout and separation distances that would not detract from the amenities of nearby properties or the future occupiers of the proposed dwellings.

#### 4. Highway Considerations

Essex County Council as the Highway Authority has been consulted on the application and has stated that they have no objections subject to a number of conditions relating to visibility splays, the width of the vehicular access, the use of no unbound materials, no discharge of surface water, and a vehicular parking and turning facility.

As details of the proposed access are subject to a later reserved matters application, it therefore does not form part of the assessment of this application and recommended conditions relating to this will not be included within any approval decision. However, the information supplied demonstrates that an access point can be provided which is sufficient at this stage.

Furthermore, 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. Due to the size of the site it is considered that the site is capable of accommodating this level of parking.

#### 5. Biodiversity

Upon undertaking a site visit, the Case Officer noted that the site was overgrown and showed potential signs of homing protected species. As such a Phase 1 Habitat Survey was requested. However, the agent for the application then confirmed that the site had unfortunately been cleared, which was confirmed by the Case Officer following a second site visit. As such the previously requested Phase 1 Habitat Survey was no longer required.

#### 6. Legal Obligations

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 and Great Holland, with the nearest play area located on the corner of Pork Lane and Main Road. However due to the size of the development it is unlikely the proposal will impact existing facilities, and therefore no contribution has been requested on this occasion.

#### 7. 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 request for a Unilateral Undertaking agreement was sent to the agent dated 18 June 2019. Following this two extension of time agreements, dated 11 September 2019 and 7 October 2019, were signed by the agent to delay the determination of the application until the Unilateral Undertaking had been completed. However a further extension of time was requested given the



Unilateral Undertaking had still not been completed in time, but this was not agreed by the agent for the application.

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 recommend refusal as they do not support backland development.

In answer to this, the proposal does not represent a form of backland development.

There has been one objection letters received, detailing the following:

1. The site forms part of a valuable green gap; and
2. Development will not make a significant contribution to housing requirements.

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

#### **6. Recommendation**

Refusal.

#### **7. Reason for Refusal**

- 1 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.

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#### **8. Informatives**

Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.