

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	26/11/19
Planning Development Manager authorisation:	AN	2/12/19
Admin checks / despatch completed	AP	9/12/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	ER	9/12/19

Application: 19/01532/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Loyalty Project

Address: Brick Barn Residential Care Home 106 Walton Road Kirby Le Soken

Development: Proposed change of use from care home to HMO.

1. Town / Parish Council

Frinton and Walton Town Council REFUSAL - No evidence that this type of facility is required in this location.

Not in a suitable location in a village setting.

Residents views and objections should be taken in to account.

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 development has access to sustainable modes of transport including both public transport, walking and cycling routes.

It is noted that the number of parking spaces is not changing, plus one disabled parking space is being provided which is enough for the number of units being proposed. In addition, parking is being added for two motorcycles and ten bicycles. therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority.

Informative1: The Cycle / Powered Two-wheeler parking shall 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.

Informative2: 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.

3. Planning History

01/00118/FUL	Side and rear extension	Approved	25.06.2001
19/00834/FUL	Proposed change of use to HMO. (No External Changes)	Withdrawn	

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

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

ER3 Protection of Employment Land

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG10 Conversion to Flats and Bedsits

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

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP11 HMO and Bedsits

PPL4 Biodiversity and Geodiversity

SP1 Presumption in Favour of Sustainable Development

SPL2 Settlement Development Boundaries

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.

5. Officer Appraisal

Site Description

The application site is Brick Barn Residential Care Home, which is located at 106 Walton Road within the parish of Kirby-le-Soken. The site consists of a large two storey property, with two outbuildings to the south and a large grassed area predominantly to the east. The surrounding area is semi-rural, with development in the form of largely residential properties to the west, but large areas of agricultural land further to the north and south. The site falls adjacent to the Settlement Development Boundary for Kirby-le-Soken within the Adopted Local Plan, but falls within in the Emerging Local Plan.

Description of Proposal

This application seeks planning permission for the change of use of the site from its existing C2 residential institution use to C4 houses in multiple occupation use.

With the exception of installing additional bike racks, the proposal does not involve any internal or external amendments.

Assessment

1. Principle of Development

The National Planning Policy Framework (NPPF) states that housing applications should be considered in the context of the presumption in favour of sustainable development and that the

council should deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. It is important to help create mixed and inclusive communities, which offer a choice of housing and lifestyle. It does not accept that different types of housing and tenures make bad neighbours. As such local planning authorities should encourage the development of mixed and balanced communities: they should ensure that new housing developments help to secure a better social mix by avoiding the creation of large areas of housing of similar characteristics.

Given the current shortage of affordable homes in the district, houses in multiple occupation play a key role in providing short term accommodation for sections of society, which the NPPF is supportive of.

Policy HG10 of the Adopted Local Plan 2007 states that proposals for the sub-division of premises into flats and/or bedsits within the defined development boundaries of towns and villages will be permitted provided:-

(i) the existing building, if a dwelling, has a gross floor area, as originally constructed of 110 sqm or more.

The property is currently a C2 residential institution use, and therefore this criteria is not applicable on this occasion.

(ii) it does not involve the sub-division of one or more family dwelling houses within a frontage of entirely single family housing.

The property is currently a C2 residential institution use, and therefore this criteria is not applicable on this occasion.

(iii) it does not involve the total or partial conversion to bedsitting rooms and an intensity of use likely to harm the character or appearance of the dwelling or the locality or the amenities of adjoining residents or occupiers of the building.

A bedsit is defined as a room used for sleeping where some of the basic facilities for food preparation and hygiene are provided within the room, whereas a bedroom in the HMO sense is a room within a building used for sleeping which does not contain any of the basic facilities. The facilities are provided in a separate room and are shared with other occupiers or provided in separate room exclusively for the occupant. In this instance, the layout shows that the basic facilities are provided on a communal basis and therefore the rooms cannot be defined as bedsits. In respect of the amenity level of the rooms provided each room is served by a window providing a good level of light. In terms of size, the rooms are in excess of the minimum bedroom size of 8.5sqm outlined in the Essex County Council Code of Practice for HMOs (2012).

(iv) the external appearance as a dwelling house would be maintained and any proposed extension works would not materially harm the character or appearance of the building or locality or the amenity of residents.

There are no external changes proposed as part of this development. Therefore the conversion has a neutral impact upon the character and appearance of the locality.

In terms of local resident's amenity, a standard house would not be occupied by nine residents. However it is noted the internal layout will not alter to that existing, and the use proposed will not result in significant additional noise and disturbance. Further, there are good separation distances to the surrounding neighbouring properties, which further alleviates potential harm to amenities.

(v) highway safety, residential amenity and the character or appearance of the street frontage are not adversely affected by arrangements for off-street parking and vehicular access.

As stated above, there are no external changes proposed to the building or its frontage. It is also acknowledged there is significant areas to the west of the site to accommodate the parking of vehicles. Accordingly Essex Highways Authority do not object.

(vi) there is an appropriate private rear amenity area in accordance with saved policy HG9.

Saved Policy HG9 requires 25 square metres of communal amenity space per flat for the provision of clothes drying facilities, refuse bins and sitting out areas, but does not stipulate a total in respect of HMOs. The submitted plans show there is a significant area to the east of the site allocated for private amenity that measures in excess of 600sqm. There is therefore comfortably sufficient amenity area to adhere to this criterion.

(vii) the layout minimises possible noise disturbance to adjoining residents.

Given that the rooms provided are spacious and well lit, it is considered that residents would occupy the premises in a way which would not impinge upon local resident's amenity. Further, as stated earlier there is good separation distances to nearby neighbouring properties, while the layout will remain the same as existing. The proposal therefore adheres to this criterion.

2. Loss of Employment

Policy ER3 of the Adopted Tendring Local Plan 2007 states that land in, or allocated for employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use.

The proposed planning application would result in the loss of an employment use. The proposal will see the change of use of an existing C2 (Residential Institutions) unit to a C4 houses in multiple occupation use.

Information has been supplied which has attempted to demonstrate that a sustained marketing campaign has been undertaken, as shown below:

- An email from S Chana dated 14 November 2019, which states that despite some viewings of the site, there has been no response or tentative offers. The email states a particular issue is the size of the property, which is of too small a size for this type of operation; a substantially larger property, it is considered, would generate economies of scale and improved returns.
- Further emails from S Chana show that there have been three viewings of the site, dated 5 June 2017, 14 December 2018 and 15 August 2019.
- A letter from Aldridge Care Homes, dated 30 March 2017, which has enclosed a draft copy of the details of the site. Within this includes a brochure showing the site to be for sale at £825,000 and advertised as 'Specialist Care Home Registered for 8 Mental Health, Physical Disabilities & Challenging Behaviour'
- A letter from the agent of the application who summarise the marketing actions to date;
 - A number of residential institutions have had the opportunity to the purchase the site, including residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres; and
 - The price of £825,000 is reasonable given other properties in Walton Road have sold for between £220,000 and £715,000.

It is acknowledged that some information has been provided in an attempt to justify that the site has been unsuccessfully marketed. That notwithstanding, there are a number of concerns with the information submitted.

First, it has not sufficiently been demonstrated that the site has been widely advertised. Evidence has been provided that it was advertised in March 2017 with Aldridge Care Homes. However upon searching this website, the site is listed as a confidential sale, while the company is not local and

are based in Kent. These two factors combine to significantly reduce the sale potential of the site. There is also no evidence the site is advertised elsewhere, particularly at local estate agents, with checks on Rightmove and Zoopla not showing the site advertised. Further, no advertising was observed at the site itself during the Case Officers site visit.

Second, while the information shows that the site has been advertised with Aldridge Care Homes, this is a very specific advertiser and does not attract potential buyers from alternative employment uses. Evidence of a more broad marketing campaign that could appeal to differing employment sectors would be expected.

Third, insufficient evidence has been supplied to show that a sustained marketing campaign has taken place for the six months prior to the submission of the application in October 2019. It is noted a viewing took place in August 2019, but it would be expected that full details are provided to highlight the dates the site has been advertised. All other information provided is from 2017 and therefore out of date. The letter confirming the site was to be advertised in March 2017 equally is a draft copy subject to agreement - evidence should be supplied that confirms in writing that this was indeed actioned.

It is therefore considered that the information supplied has failed to demonstrate that the site is no longer viable or suitable for any form of employment use.

While it is noted that evidence has not been provided to demonstrate the site has been advertised at a reasonable price in comparison to other similar sites, an investigation by the Case Officer has not been able to confirm the price is unreasonable, and therefore this does not form part of the reason for refusal.

3. Habitats Regulation Assessment

Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Hamford Water Ramsar and SPA site, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Other Considerations

Frinton and Walton Town Council recommend refusal as there is no evidence this type of facility is required in this location, it is not a suitable location for this use, and residents views should be taken into consideration.

There have been 10 letters of objection received, with the following concerns:

1. Will devalue property prices;
2. There have been other examples of anti-social behaviour from the previous use;

3. The village has a lack of facilities for future residents and is therefore not a suitable location for the proposed use;
4. The Emerging Local Plan states this use should only be in town centre locations;
5. Was previously poorly run as a care home;
6. Highway safety concerns; and
7. Property is in a poor state of repair.

Answers to the above points are as follows:

1. Not a material planning consideration so cannot be considered;
2. There is no evidence of this, but in any case the proposal is to change the use of the site so it would not be reasonable to object on these grounds;
3. The site falls within a settlement development boundary and has therefore previously been considered an acceptable location for such a development;
4. This is correct, however the Emerging Plan is not adopted and therefore only carries limited weight. Policy HG10 of the Adopted Local Plan is therefore the correct policy to assess such an application against;
5. Not a material planning consideration so cannot be considered;
6. Essex Highways Authority do not object;
7. There is no evidence to suggest this is the case. Upon undertaking a site visit the property does not appear to be in such a state of repair that it could not be capable of the proposed development.

There have also been six letters of support received.

6. Recommendation

Refusal.

7. Reason for Refusal

- 1 Policy ER3 of the Adopted Tendring Local Plan 2007 states that land in, or allocated for employment use will normally be retained for that purpose, and its change of use will only be permitted if the applicant can demonstrate that it is no longer viable or suitable for any form of employment use. Within this, the applicant should either submit evidence of a sustained but ultimately unsuccessful marketing exercise, undertaken at a realistic asking price or demonstrate that the land is inherently unsuitable and/or not viable or suitable for any form of employment use.

The proposed planning application would result in the loss of an employment use. The proposal will see the change of use of an existing C2 (Residential Institutions) unit to a C4 houses in multiple occupation use.

However it has not sufficiently been demonstrated that the site has been widely advertised. Evidence has been provided that it was advertised in March 2017 with Aldridge Care Homes. However upon searching this companies website, the site is listed as a confidential sale, while the company is not local and are based in Kent. These two factors combine to significantly reduce the sale potential of the site. There is also no evidence the site is advertised elsewhere or for any employment use, particularly at local estate agents, with checks on Rightmove and Zoopla not showing the site, while no advertising was observed at the site itself during the Case Officers site visit.

Further, insufficient evidence has been supplied to show that a sustained marketing campaign has taken place for the six months prior to the submission of the application in October 2019. It is noted a viewing took place in August 2019, but full details to highlight the dates the site has been advertised have not been provided. All other information submitted is from 2017.

It is therefore considered that the information supplied has failed to demonstrate that the site is no longer viable or suitable for any form of employment use.

8. Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. Unfortunately, it has not been possible to resolve those matters within the timescale allocated for the determination of this planning application. However, the Local Planning Authority has clearly set out, within its report, the steps necessary to remedy the harm identified within the reasons for refusal - which may lead to the submission of a more acceptable proposal in the future. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.