



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT: John Putman
The Hollies
4 Station Road
Earsham
Bungay
NR35 2TS

APPLICANT: Michael Rockall - Sole Bay
Developments Limited
Dolphin House
4 Angel Lane
Blythburgh
Halesworth
IP19 9LU

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 19/01081/OUT

DATE REGISTERED: 19th July 2019

Proposed Development and Location of Land:

**Outline application for 81 no. dwellings.
Land to The South of Holland Road Little Clacton Clacton 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 National Planning Policy Framework (2019) states that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

The applicant in support of the planning application submitted a Viability Study that indicated that the scheme could not support the full Section 106 planning obligation contributions. In terms of applying the titled balance to the planning merits of the case, it is considered in this instance that the relative weight that should be given to the need to provide housing in the District is not sufficient to outweigh the low level of contributions that will be provided to mitigate the impacts of the scheme in terms of addressing the additional demands on education and healthcare and the absence of policy compliant affordable housing requirements.

The emerging policy SAMU3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) sets out the specific requirements for the wider mixed use allocation of which this site is a part.

In particular the policy states, amongst other things, that proposals must accord with the following;

- Financial contributions to early years and childcare, primary and secondary education provision, as required by the Local Education Authority primarily through Section 106 Planning Obligations or the Community Infrastructure Levy;
- Financial contributions towards community facilities such as health provision as required by the NHS/CCG either through the Community Infrastructure Levy or Section 106 Planning Obligations; and
- affordable housing as per the Council's requirements.

In this instance it is evident that the development as proposed cannot achieve the required level of s106 contributions or affordable housing provision. As a result the development is contrary to the above-mentioned saved and emerging local plan policies and not in accordance with the specific requirements of the emerging mixed-use allocation.

Policy COM26 of the Tendring District Local Plan states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Policy PP12 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft states planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements. A completed Section 106 obligation has not been completed to secure such requirements has not been provided prior to the application determination date and the application is therefore contrary to the above policies.

Policy HP1 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft states that the Council will seek contributions towards new or enhanced health facilities from developers where new housing development would result in a shortfall or worsening of health provision. NHS England has identified the need for financial contributions towards local health services. A completed Section 106 obligation to secure these contributions has not been completed or secured prior to the application determination date and the application is therefore contrary to the above policy.

Saved Policy HG4 of the Tendring District Local Plan (2007) requires up to 40% of new dwellings on residential schemes of 5 or more units to be provided in the form of affordable housing to meet the needs of people that are unable to access property on the open market. Emerging Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) which is based on more up-to-date evidence of housing need and viability, requires for developments of 11 or more dwellings, the Council expect 30% of new dwellings to be made available to Tendring District Council or an alternative provider to acquire at a proportionate discounted value for use as affordable housing. A completed S106 obligation has not been completed to secure this level of provision prior to the application determination date and the application is therefore contrary to the above policy.

Saved Policy COM6 and emerging Policy HP5 state that for residential development on a site of 1.5ha and above, where existing public open space and/or play equipment are inadequate shall provide appropriate provision on-site or by way of a financial contribution towards the provision of new or improved off-site facilities to meet the projected needs of future occupiers of the development. There is an identified deficit of equipped play and formal open space in Clacton-on-Sea. Due to the limited play provision in Clacton-on-Sea, any further development in the area will increase the current deficit further and put greater demand on already stretched facilities and accordingly an off-site contribution towards enhancements at Fooks Farm play area is requested. There will also be a need to provide on-site open space and if this is to be maintained by the Council then provisions will need to be secured through a Section 106 obligation. Without such provisions being secured the proposals are contrary to the above policies.

A completed Section 106 obligation to secure the relevant contributions towards education, health, open space/play space and affordable housing has not been provided and is therefore contrary to the above policies.

- 2 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) 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.

The development is therefore contrary to Paragraph 175 of the National Planning Policy Framework, Policy EN11a in the adopted Local Plan and Policy PPL4 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

DATED: 18th December 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

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG3A Mixed Communities

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

- HG9 Private Amenity Space
 - HG14 Side Isolation
 - COM1 Access for All
 - COM6 Provision of Recreational Open Space for New Residential Development
 - COM24 Health Care Provision
 - EN1 Landscape Character
 - EN6 Biodiversity
 - EN6A Protected Species
 - EN6B Habitat Creation
 - EN11A Protection of International Sites European Sites and RAMSAR Sites
 - EN11B Protection of National Sites SSSI's, National Nature Reserves, Nature Conservation Review Sites, Geological Conservation Review Sites
 - TR1A Development Affecting Highways
 - TR2 Travel Plans
 - TR3A Provision for Walking
 - TR7 Vehicle Parking at New Development
- Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)
- SP1 Presumption in Favour of Sustainable Development
 - SP2 Spatial Strategy for North Essex
 - SP3 Meeting Housing Needs
 - SP6 Place Shaping Principles
 - SPL1 Managing Growth
 - SPL2 Settlement Development Boundaries
 - SPL3 Sustainable Design
 - HP1 Improving Health and Wellbeing
 - HP2 Community Facilities
 - HP3 Green Infrastructure
 - HP5 Open Space, Sports & Recreation Facilities
 - LP1 Housing Supply
 - LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

Local Planning Guidance

Essex Design Guide

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.