



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT: Mrs Catherine Pollard - Boyer
 Planning
 15 De Grey Square
 De Grey Road
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APPLICANT: St Osyth Beach Estate Ltd
 C/O Agent

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 19/01201/OUT **DATE REGISTERED:** 9th August 2019

Proposed Development and Location of Land:

**Residential development comprising up to 80 dwellings, approximately 150 sqm retail/pharmacy unit, public open space and associated infrastructure.
 Land East of Bentley Road Weeley Essex**

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 Paragraph 47 of the NPPF requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The site lies outside of the Settlement Development Boundary of both the Saved and Draft Local Plans and is not allocated for development.

Saved Policy QL1 of the Tendring District Local Plan (2007) sets out the spatial strategy and seeks to concentrate most development in the District's larger towns with limited development, consistent with local community needs, in smaller towns and villages. Weeley and Weeley Heath are defined as villages. The policy also seeks to concentrate development within settlement boundaries and states that development outside those boundaries will only be permitted where it is consistent with countryside policies. There is nothing to suggest that the proposals accord with the Plan's countryside policies. As such, they conflict with Policy QL1.

Although the Local Plan was intended to cover the period up to 2011 the policies within it have been saved and are therefore extant. Saved Policy QL1 is broadly consistent with the NPPF in terms of seeking to protect the character and appearance of the countryside and surrounding area. Consequently, Policy QL1, and any conflict with it, can be afforded significant weight. As the site lies outside of the settlement development boundaries and is not allocated for development in either the adopted or emerging Local Plan, it is contrary to local policy. However, where Councils are short of identifying a five-year supply of deliverable housing sites, the National Planning Policy Framework's (NPPF) presumption in favour of sustainable development is engaged and applications must be considered on their merits.

Policy SPL1 of the Emerging Local Plan defines the Plan's settlement hierarchy which seeks to prioritise development in locations with access to the strategic road network, public transport and the widest range of services. Under this hierarchy Weeley is categorised as a third tier Rural Service Centre and Weeley Heath as a Smaller Rural Settlement. The latter are considered to be the least sustainable locations for growth, but can achieve a small scale increase in housing within flexibly drawn settlement

boundaries. The supporting text presumes against developments of more than 10 dwellings in Smaller Rural Settlements unless they have local support.

Policy SPL2 defines settlement boundaries and states that development outside of those boundaries will be considered in relation to the settlement hierarchy and any other relevant policies within the plan. Given the size of the proposed housing development in relation to the scale of housing anticipated in Weeley Heath, it is considered that this element of the proposal conflicts with Policy SPL2.

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.

Officers consider that the emerging Local Plan is progressing well, the core planning principles under paragraph 15 of the National Planning Policy Framework (NPPF) that development should be genuinely plan-led apply and the Council should actively manage patterns of growth is therefore awarded significant weight. With this in mind, it is considered appropriate to seek to protect villages from unfair, disproportionate and potentially unlimited levels of new housing growth.

Major developments - which have planning permission and have recently been built-out or retain extant consents - in Weeley/Weeley Heath include:

- Land South of Thorpe Road, Weeley - 280 dwellings
- Land at Willow Farm, Mill Lane, Weeley Heath - 46 dwellings
- Kidbys Nurseries, Weeley Heath - 22 dwellings

These 348 dwellings already represent a large increase in the housing stock contained within Weeley/Weeley Heath. If added to the permissions already granted, a further 80 dwellings as proposed in this outline application would increase this potential growth even further.

The 80 dwellings proposed within this application is predominately a residential scheme with minor retail element that offers no exceptional economic, social or environmental benefits over and above any of the other schemes with planning permission that might lead the Council to consider the proposal in exceptional light and there is no support from the Parish Council or local residents. As the housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF, it is considered that this is an unnecessary and unwanted development that is contrary to the development plan and would exacerbate the disproportionate level of housing growth either built or subject to extant permissions in the Weeley/Weeley Heath area over recent years.

The proposal is contrary to the adopted Local Plan and would conflict with the policies of the National Planning Policy Framework. The development would represent an unnecessary and piecemeal intrusion into the countryside that would have an adverse impact on the character of the area.

Overall the development would prejudice the effective and coordinated delivery of infrastructure through the plan-led process and would be disproportionate in scale for its location. The economic and social benefits of the proposed housing have been given due consideration in the overall planning balance, but the adverse effects of the development are considered to significantly and demonstrably outweigh the benefits. The proposal therefore does not constitute sustainable development.

2 While it is relatively featureless, the flat, open landscape of the plateau edge allows

views of the village in its countryside setting, particularly from the approach on Bentley Road from the west and from Mill Lane to the south. The site, as a characteristic part of the heathland plateau landscape, makes an important contribution to the rural setting of the village. Its openness means that it cannot accommodate development without undue harm to the landscape, making the site fairly susceptible to development. Although the application includes proposals for extensive planting on the north-western and south-western boundaries, the development of this site with up to 80 dwellings would result in the loss of an attractive area of open countryside, adversely affecting the character and setting of the village. This would undermine the distinctive identity of the settlement and would not conserve or enhance the rural character of the landscape.

Furthermore the application proposals are not supported by a Landscape and Visual Impact Assessment. It is, therefore, difficult to assess the respective landscape and visual effects of the proposals. Although the land is not the subject of specific landscape protection policies and does not fall within a designated strategic gap, guidance in the Council commissioned Tendring District Landscape Assessment indicates that the strategy for this location should be to conserve the low density settlement pattern in rural areas, maintain the distinctive identity of individual settlements and enhance the character of the urban fringe. It does go on to state that there may be some opportunity for development adjacent to existing settlements. However, the scale of the housing element of the proposal would be significant in relation to the adjoining established development and would result in the urbanisation of land which is currently open in character.

The Council, therefore, find in this case that, in conflict with adopted Local Plan Policy EN1 and emerging Policy PPL3 the proposed development would have a moderately harmful impact on the rural landscape setting of the village.

- 3 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. Planning obligations should only be sought where they meet all of 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.

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 10 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 discounted value for use as affordable housing, or as an alternative, the Council will accept a minimum of 10% if new dwellings are to be made available alongside a financial contribution toward the construction or acquisition of property for use as affordable housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement. A completed Section 106 has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

Saved 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. Emerging Policy PP12 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) 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. Essex County Council Education Services have identified the need for financial contributions toward primary and secondary education provision and school transport. A completed Section 106 obligation to secure these contributions has not been provided prior to the application determination date and the application is therefore contrary to the above policies.

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. In this case there is likely to be sufficient on-site open space provision to meet the Council's requirements. However, there will also be a need to provide on-site play provision and if the open space and play provision 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.

Saved Policy QL12 state and emerging Policy HP1 state that the Council will work to improve the health and wellbeing of residents in Tendring by seeking mitigation towards new or enhanced health facilities from developers where new housing development would result in a shortfall or worsening of healthcare provision. NHS CCG have confirmed that the local GP practice at Thorpe-le-Soken Surgery does not have capacity for the residents resulting from this proposal and request a contribution of £45,178 to enable improvements to capacity.

Paragraph 108 of the NPPF 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. Furthermore, saved Policy TR1a requires new development to be considered in relation to the road hierarchy to reducing and preventing hazards and inconvenience to traffic. ECC-Highways have confirmed the need for a financial contribution of £36,995 towards congestion and traffic management improvements on Clacton Road and/or for Bentley Road junction with Clacton Road to protect highway efficiency of movement and safety.

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

- 4 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: 23rd 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

Tendring Landscape Character Assessment

HG1 Housing Provision

HG3A Mixed Communities

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

COM6 Provision of Recreational Open Space for New Residential Development

COM26 Contributions to Education Provision

COM31A Sewerage and Sewage Disposal

EN1 Landscape Character

EN6 Biodiversity

EN6A Protected Species

- 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
- EN29 Archaeology
- TR1A Development Affecting Highways
- TR3A Provision for Walking
- TR4 Safeguarding and Improving Public Rights of Way
- 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
- SP5 Infrastructure & Connectivity
- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- HP1 Improving Health and Wellbeing
- HP5 Open Space, Sports & Recreation Facilities
- PP12 Improving Education and Skills
- PPL1 Development and Flood Risk
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL7 Archaeology
- CP1 Sustainable Transport and Accessibility
- CP2 Improving the Transport Network

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

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 reasons 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.