



## TENDRING DISTRICT COUNCIL

### Planning Services

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

<b>AGENT:</b>	Mr Philip Ashenden - Ashenden Architecture Ltd 14 Deben Mill Business Centre Old Maltings Approach Woodbridge IP12 1EL	<b>APPLICANT:</b>	Mr Ramesh Shah - Tiku Homes Ltd West Country House Cherry Tree Avenue Clacton On Sea Essex CO15 1AR
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#### TOWN AND COUNTRY PLANNING ACT 1990

**APPLICATION NO:** 17/01954/OUT      **DATE REGISTERED:** 10th November 2017

Proposed Development and Location of Land:

**Proposal for 10 no. detached bungalows.  
Land adjacent West Country House Cherry Tree Avenue Clacton On Sea  
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 The site lies outside of the Clacton-on-Sea 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. While the NPPF advocates a plan-led approach, it is important to consider whether any circumstances outweigh the conflict. Development should be plan led unless material considerations indicate otherwise. The proposal would accord with the social and economic dimensions to sustainable development because of its contribution to housing supply and its location adjacent to the urban area where there is good access to services and facilities. However it would not accord with the environmental dimension as set out below.

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. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake.

The proposed development is located within an area designated as a 'Local Green Gap' within the Tendring District Local Plan 2007 and as a 'Strategic Green Gap' in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. Policy EN2 of the adopted Tendring District Local Plan 2007 Local Plan states Local Green Gaps will be kept open, and essentially free of development in order to prevent coalescence of settlements, and to protect their rural setting. It goes on to say that minor development proposals may be permitted if they do no harm, individually or collectively, the purposes of a Local Green Gap or to its open character. Furthermore, paragraphs 6.9 and 6.10 of adopted Policy preamble expand on the purposes of the Local Green Gaps. In particular one of the purposes is to maintain separation between urban areas and free-standing smaller settlements that surround them and by conserving the countryside between residential settlements to preserve the open character of these important breaks between settlements. Draft Policy PPL6 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 echo the aims of the saved policy stating that the council will not permit any development which would result in the joining of settlements or neighbourhoods, or which would erode their separate identities by virtue of their close proximity. Planning permission may be granted where the development would not compromise the open setting between settlements or neighbourhoods.

Cherry Tree Avenue forms the western boundary of the urban area of Clacton-on-Sea. To the west of that road is an open landscape which separates Clacton-on-Sea from Jaywick. The site is to the west of the road and includes a large house and outbuildings together with three bungalows between the house and the road and 4 further bungalows to its southern side. These form a small pocket of development in an otherwise open landscape. There are some trees around the side and rear boundaries of the site and scrub vegetation on the frontage. The frontage of the site is more open and the existing bungalows are well set back from the road. Additional planting could be provided but it is nevertheless likely that parts of the development would be visible across the landscape. The development would also be visible from

Cherry Tree Avenue which includes the introduction of a new access road.

Having regard to the footprint, layout and the density of the existing dwellings within this small pocket of development, the indicative layout plan provided with the application fails to demonstrate that 10 detached bungalows can be achieved on site without appearing cramped and out of character.

The character of the site itself would be altered to a more intensive and urban form of development than currently exists. For these reasons the character of the proposed development would be at odds with the open quality of the landscape. This has an important role in separating the built up areas of the immediate locality and thereby maintaining their separate character. The proposal would not accord with saved policy EN2 of the adopted Local Plan in terms of the Local Green Gap or with saved policies EN1 and QL9 of the adopted Local Plan which require that the settings and character of settlements are conserved.

For these reasons, the proposal would unacceptably harm the character and appearance of the area. Significant weight must be attributed to this harm due to the location of the site within the open landscape and the strategic value of the Green Gap. In applying the tilted planning balance, the adverse impacts identified would significantly and demonstrably outweigh the benefits of the development including taking into account the extent and validity of the housing shortfall and its effect on the weight to be attached to development plan policies.

- 2 The National Planning Policy Framework 2019 in paragraph 127 states that planning should always seek to secure a good standard of amenity for all existing and future occupants. In addition, Policy QL11 of the Tendring District Local Plan (2007) 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. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 supports these objectives. Furthermore, Policy HG9 of the adopted Tendring District Local Plan sets out the minimum standards for private amenity space to serve new dwellings.

The indicative layout plan provided with the application fails to demonstrate that 10 detached bungalows can be achieved on site without resulting in a poor standard of amenity for future occupants. The parking provision is poorly located mostly to the rear of properties and cramped between fences and buildings; the private garden areas to the majority of the plots are undersized having regard to the minimum standards set out within Saved Policy HG9 of the adopted Local Plan 2007 with the plots to the north being dominated and overshadowed by retained trees. Finally, the back to back distances and spacing between the dwellings will result in a poor and cramped living environment for future residents.

- 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 used where it is not possible to address unacceptable impacts through a planning condition.

Policy HG4 in the adopted Local Plan requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. Policy LP5 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or Council Housing. The policy does allow flexibility to accept as low as 10% of dwellings on site, with a financial contribution toward the construction or acquisition of property for use as Council Housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement.

As this application is 10 properties, 3 (30%) should be delivered as affordable housing. There are currently 213 households on the housing register seeking a 2 bedroom bungalow and 130 households seeking a 3 bedroom bungalow.

The council would like to see 2 x 2 bed bungalows and 1 x 3 bed bungalow delivered as affordable housing. The council would like the properties to be delivered as council housing.

A completed Section 106 agreement to secure the above-mentioned planning obligation has not been provided prior to the application determination date and the application 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. The contribution is secured by unilateral undertaking.

The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zol) being approximately 4000 metres from the Colne Estuary SPA and Ramsar. New housing development within the Zol would be likely to increase the number of recreational visitors to the Stour and Orwell Estuaries; 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.

5. 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". These sentiments are carried forward within emerging Policy HP5.

In line with the requirements of saved Policy COM6 and emerging Policy HP5, the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space.

There is currently a deficit of 41.08 hectares of play in the Clacton/Holland area.

However, there is adequate formal open space to cope with some additional development. Any further development in Clacton will increase the current play deficit further. To prevent this deficit from growing it would be necessary to provide additional play equipment in the area. Therefore, due to the significant lack of play facilities in the area it is felt a contribution towards play is justified and relevant to the planning application to be used at the nearest play area Marine Parade.

A completed S106 legal agreement to secure the above-mentioned planning obligations has not been provided and the application is therefore contrary to the above-mentioned policies.

- 6 The proposal is contrary to Saved Policies EN6 Biodiversity and EN6a Protected Species of the adopted Tendring District Local Plan 2007 which state that development proposals will not be granted planning permission unless existing local biodiversity and protected species are protected. A similar approach is taken in draft Policy PPL4 Biodiversity and Geodiversity of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Paragraph 170 of the National Planning Policy Framework 2019 require that Local Planning Authorities contribute to and enhance sites of biodiversity or geological value whilst paragraph 174 requires Local Planning Authorities to safeguard components of local wildlife-rich habitats. Paragraph 99 of Circular 06/2005 states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision" it goes on to state "The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances". Paragraph 5.3 of government document 'Planning for Biodiversity and Geological Conservation: A Guide To Good Practice', states that "In the development control process, the onus falls on the applicant to provide enough information to enable the Local Planning Authority to assess the impacts on biodiversity and geological conservation. Planning applications must be supported by adequate information". Standing advice from Natural England recommends that an Preliminary Ecology Appraisal or extended Phase 1 Habitat Survey should be conducted to assess the site and the results of this used to inform (the need for) subsequent species specific surveys. No such information has been provided with this application. Neither is evidence provided to outweigh the need to protect such species in accordance with the tests outlined in Article 16 of the EC Habitats Directive. As such, the proposal is in conflict with the afore-mentioned policies, guidance, directive and the Framework.

As no ecology survey accompanies the application, the Local Planning Authority is unable to say with confidence that the proposal will not have an adverse impact on a species protected by Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981 and would therefore be contrary to the afore-mentioned national and local plan policies.

**DATED:** 3rd February 2020

**SIGNED:**

*Catherine Bicknell*

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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

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

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG13 Backland Residential Development

HG14 Side Isolation

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

EN2 Local Green Gaps

EN3 Coastal Protection Belt

EN6 Biodiversity

EN13 Sustainable Drainage Systems

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)

SP1 Presumption in Favour of Sustainable Development

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
- PPL1 Development and Flood Risk
- PPL2 Coastal Protection Belt
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL6 Strategic Green Gaps
- CP1 Sustainable Transport and Accessibility

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 Agent. 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](mailto: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.