

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	31/01/2020
Planning Development Manager authorisation:	AN	3/2/20
Admin checks / despatch completed	AN	3/2/20
Technician Final Checks/ Scanned / LC Notified / UU Emails:	AP	3/2/2020

Application: 17/01954/OUT **Town / Parish:** Clacton Non Parished

Applicant: Mr Ramesh Shah - Tiku Homes Ltd

Address: West Country House Cherry Tree Avenue Clacton On Sea

Development: Proposal for 10 no. detached bungalows.

1. Town / Parish Council

Clacton – non parished.

2. Consultation Responses

ECC SuDS Consultee
Initial Comments

Thank you for your email received on 16th November which provides this Council with the opportunity to assess and advise on the proposed surface water drainage strategy for the above mentioned planning application.

As the Lead Local Flood Authority (LLFA) this Council provides advice on SuDS schemes for major developments. We have been statutory consultee on surface water since the 15th April 2015.

In providing advice this Council looks to ensure sustainable drainage proposals comply with the required standards as set out in the following documents:

- Non-statutory technical standards for sustainable drainage systems
- Essex County Council's (ECC's) adopted Sustainable Drainage Systems Design Guide
- The CIRIA SuDS Manual (C753)
- BS8582 Code of practice for surface water management for development sites.

Lead Local Flood Authority position

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we wish to issue a holding objection to the granting of planning permission based on the following:

No Surface Water Drainage Strategy submitted

In the absence of a surface water drainage strategy, we object to this application and recommend refusal of planning permission until a satisfactory one has been submitted.

Reason

The application lies within Flood Zone 1 defined by the Technical Guide to the National Planning Policy Framework (NPPF) as having a low probability of flooding. However the proposed scale of development may present risks of flooding on-site or off-site if surface water run-off is not effectively managed. A drainage strategy is vital if the local planning authority is to make informed planning decisions. In the absence of an acceptable strategy, the flood risks resulting from the proposed development are unknown. The absence of this is therefore sufficient reason in itself for a refusal of planning permission.

However, In the event that more information was supplied by the applicants then the County Council may be in a position to withdraw its objection to the proposal once it has considered the additional clarification/details that are required.

Any questions raised within this response should be directed to the applicant and the response should be provided to the LLFA for further consideration. If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us.

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- Sequential Test in relation to fluvial flood risk;
- Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- Safety of the building;
- Flood recovery measures (including flood proofing and other building level resistance and resilience measures);
- Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

Please see Appendix 1 at the end of this letter with more information on the flood risk responsibilities for your council.

INFORMATIVES:

- Essex County Council has a duty to maintain a register and record of assets which have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to suds@essex.gov.uk.
- Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
- Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in the attached standing advice note.
- It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.
- The Ministerial Statement made on 18th December 2014 (ref. HCWS161) states that the final decision regarding the viability and reasonableness of maintenance

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requirements lies with the LPA. It is not within the scope of the LLFA to comment on the overall viability of a scheme as the decision is based on a range of issues which are outside of this authority's area of expertise.

- We will advise on the acceptability of surface water and the information submitted on all planning applications submitted after the 15th of April 2015 based on the key documents listed within this letter.

This includes applications which have been previously submitted as part of an earlier stage of the planning process and granted planning permission based on historic requirements. The Local Planning Authority should use the information submitted within this response in conjunction with any other relevant information submitted as part of this application or as part of preceding applications to make a balanced decision based on the available information.

Whilst we have no further specific comments to make at this stage, attached is a standing advice note explaining the implications of the Flood and Water Management Act (2010) which could be enclosed as an informative along with your response issued at this time.

**ECC SuDS Consultee
Final Comments**

Thank you for your email which provides Essex County Council (ECC) with the opportunity to assess and advise on the proposed surface water drainage strategy for the aforementioned planning application. As the Lead Local Flood Authority (LLFA) this ECC provides advice on SuDS schemes for major developments. ECC have been statutory consultee on surface water since the 15th April 2015.

In providing advice this Council, and their appointed consultants, looks to ensure sustainable drainage proposals comply with the required standards as set out in the following documents:

- Non-statutory technical standards for sustainable drainage systems
- Essex County Council's (ECC's) adopted Sustainable Drainage Systems Design Guide
- The CIRIA SuDS Manual (C753)
- BS8582 Code of practice for surface water management for development sites.

Lead Local Flood Authority position

Having reviewed the Flood Risk Assessment & Drainage Strategy and the associated documents which accompanied the planning application, we do not object the granting of outline planning permission based on the following:

Condition 1

No works shall take place until a detailed surface water drainage scheme for this site has been submitted to and approved in writing by the local planning authority based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development.

The scheme should demonstrate compliance with the NSTS and ECC's Sustainable Drainage System design Guide, and should include but not be limited to:

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365. Testing procedure. Please submit infiltration test that satisfy BRE 365 requirements or similar approved.
- Limiting discharge rate from the site to the value of 5l/s as given in the Flood Risk and Drainage Strategy, for the 1 in 1 year and 1 in 100 year rainfall events.
- Provide sufficient surface water storage so that the runoff volume is discharged or infiltrating at a rate that does not adversely affect flood risk and that unless designated to flood that no part of the site floods for a 1 in 30 year event, and 1 in 100 year event in any part of the building, utility plant susceptible to water within the development.
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event. Any storage device should have appropriate half drain times.
- Provide details of pre-and post 100 year, 6 hour runoff volume.

- Provision of 10% urban creep allowance
- Any storage devices should be sized based on corresponding infiltration rates found across the device.
- Final modelling and calculations for all areas of the drainage system.
- Evidence of appropriate level of treatment for all runoff leaving the site, in line with CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation.

Reason

- To prevent flooding by ensuring the satisfactory storage of /disposal of surface water from the site.
- To ensure the effective operating of SuDS feature over the lifetime of the development
- To provide mitigation of any environmental harm which may be caused to the local water environment

Failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

Condition 2

No works shall take place until outstanding information relating to the Maintenance Plan is provided as follows:

- Please provide details of the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.
- Please provide details on how management company services for the maintenance of shared drainage features shall be funded and managed for the lifetime of the development.

Reason

To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

Failure to provide the above required information before commencement of works may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

Condition 3

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason

To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

Condition 4

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority.

The scheme shall subsequently be implemented as approved.

Reason

The National Planning Policy Framework paragraph 163 and 170 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to unacceptable levels of water pollution. Construction may lead to excess water being discharges from the site. If dewatering takes place to allow for construction to takes place below groundwater level, this will cause additional water to be discharged. Furthermore the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and ground water which needs to be agreed before commencement of the development.

Condition 5

The development hereby permitted shall not be commenced until the pipes within the extent of the site, which will be used to convey surface water, are cleared of any blockage and are restored to a fully working condition.

Reason

To ensure an appropriate clearance is carried out of pipes/conveyance routes/storage devices for any blockage caused during construction, and to enable the surface water drainage system is to fully function all the time.

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- Sequential Test in relation to fluvial flood risk;
- Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- Safety of the building;
- Flood recovery measures (including flood proofing and other building level resistance and resilience measures);
- Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, ECC advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

Please see Appendix 1 at the end of this letter with more information on the flood risk responsibilities for your council.

INFORMATIVES:

- Essex County Council has a duty to maintain a register and record of assets which have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to suds@essex.gov.uk

- Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
- Changes to existing watercourses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in the attached standing advice note.
- It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.
- The Ministerial Statement made on 18th December 2014 (ref HCWS161) states that the final decision regarding the viability and reasonableness of maintenance requirements lies with the LPA. It is not within the scope of the LLFA to comment on the overall viability of a scheme as the decision is based on a range of issues which are outside of this authority's area of expertise.
- We will advise on the acceptability of surface water and the information submitted on all planning applications submitted after the 15th of April 2015 based on the key documents listed within this letter. This includes applications which have been previously submitted as part of an earlier stage of the planning process and granted planning permission based on historic requirements. The Local Planning Authority should use the information submitted within this response in conjunction with any other relevant information submitted as part of this application or as part of preceding applications to make a balanced decision based on the available information.

Whilst we have no further specific comments to make at this stage, attached is a standing advice note explaining the implications of the Flood and Water Management Act (2010) which could be enclosed as an informative along with your response issued at this time.

Appendix 1 - Flood Risk responsibilities for your Council

The following paragraphs provide guidance to assist you in determining matters which are your responsibility to consider.

- Safety of People (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements)

You need to be satisfied that the proposed procedures will ensure the safety of future occupants of the development. In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise LPAs formally consider the emergency planning and rescue implications of new development in making their decisions.

We do not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals as we do not carry out these roles during a flood.

- Flood recovery measures (including flood proofing and other building level resistance and resilience measures)

We recommend that consideration is given to the use of flood proofing measures to reduce the impact of flooding when it occurs. Both flood resilience and resistance measures can be used for flood proofing. Flood resilient buildings are designed to reduce the consequences of flooding and speed up recovery from the effects of flooding; flood resistant construction can help prevent or minimise the amount of water entering a building. The National Planning Policy Framework confirms that resilient construction is favoured as it can be achieved

more consistently and is less likely to encourage occupants to remain in buildings that could be at risk of rapid inundation.

Flood proofing measures include barriers on ground floor doors, windows and access points and bringing in electrical services into the building at a high level so that plugs are located above possible flood levels. Consultation with your building control department is recommended when determining if flood proofing measures are effective.

Further information can be found in the Department for Communities and Local Government publications 'Preparing for Floods' and 'Improving the flood performance of new buildings'.

- Sustainability of the development

The purpose of the planning system is to contribute to the achievement of sustainable development. The NPPF recognises the key role that the planning system plays in helping to mitigate and adapt to the impacts of climate change, taking full account of flood risk and coastal change; this includes minimising vulnerability and providing resilience to these impacts. In making your decision on this planning application we advise you consider the sustainability of the development over its lifetime.

Anglian Water Services
Ltd

Planning Applications – Suggested Informative Statements and
Conditions Report

ASSETS

Section 1 – Assets Affected

1.1 There are assets owned by Anglian Water or those subject to an adoption agreement within or close to the development boundary that may affect the layout of the site. Anglian Water would ask that the following text be included within your Notice should permission be granted. "Anglian Water has assets close to or crossing this site or there are assets subject to an adoption agreement. Therefore the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991. or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence."

WASTEWATER SERVICES

Section 2 – Wastewater Treatment

2.1 The foul drainage from this development is in the catchment of Jaywick New Water Recycling Centre which currently does not have capacity to treat the flows from the development site. Anglian Water are obligated to accept the foul flows from the development with the benefit of planning consent and would therefore take the necessary steps to ensure that there is sufficient treatment capacity should the planning authority grant planning permission.

Section 3 – Foul Sewerage Network

3.1 The sewerage system at present has available capacity for these flows via a gravity connection. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. We will then advise them of the most suitable point of connection.

Section 4 – Surface Water Disposal

4.1 From the details submitted to support the planning application the proposed method of surface water management does not relate to Anglian Water operated assets. As such, we are unable to provide comments on the suitability of the surface water management. The

Local Planning Authority should seek the advice of the Lead Local Flood Authority or the Internal Drainage Board. The Environment Agency should be consulted if the drainage system directly or indirectly involves the discharge of water into a watercourse.

Should the proposed method of surface water management change to include interaction with Anglian Water operated assets, we would wish to be re-consulted to ensure that an effective surface water drainage strategy is prepared and implemented.

Section 5 – Trade Effluent

5.1 Not applicable

ECC Highways Dept

This Authority has assessed the highway and transportation impact of the proposal and does not wish to raise an objection subject to the following:

All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to The Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate Notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway.

' Prior to occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the 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 access and those in the existing public highway in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

' Prior to occupation of the development, the full width of the site frontage shall be dedicated as highway for a depth of no less than 2m as measured from the nearside edge of the carriageway and provided as a walkable grass verge. This pedestrian refuge shall be retained free of any obstruction at all times.

Reason: To provide adequate pedestrian infrastructure in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

' Prior to occupation of the development the vehicular turning facilities, as shown on the submitted plan 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 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

' 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 of the

Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

' Prior to occupation of the development the vehicular access shall be constructed as a shared use route and shall not be less than 5.5 metres in width and shall be provided with an appropriate dropped kerb vehicular crossing of the highway verge

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

NOTE: Footways will not be required as part of the internal layout.

'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 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

'Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

NOTE: All parking facilities shall accord with current policy standards which for this development will be two spaces per unit and 2 visitor parking spaces.

' Any single garages should have a minimum internal measurement of 7m x 3m

' Any double garages should have a minimum internal measurement of 7m x 6m

' Any tandem garages should have minimum internal measurements of 12m x 3m

Reason: To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety and in accordance with Policy DM8 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

' Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

NOTE: All new residential development requires this condition to include travelcards unless no service is provided in the vicinity of the site.

Season tickets for either bus or rail use instead of the above vouchers should only be secured in town centre locations with excellent access to bus/rail routes and where they would represent the best use of developer contributions to mitigate site impact. This will be determined on a site by site basis by the Development Management Officer.

A copy of your recommendations where Residential Travel Information Packs are requested should be sent to the Travel Plan Team.

INF01 Highway Works - All 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.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 ' Essex Highways, Colchester Highways Depot, 653, The Crescent, Colchester Business Park, Colchester CO49YQ

INF02 Cost of Works - The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

INF03 - Site Workers - Steps should be taken to ensure that the Developer provides sufficient turning and off loading facilities for delivery vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

Essex County Council
Archaeology

The above planning application has been identified as having the potential to harm non-designated heritage assets with archaeological interest.

The proposed development lies within a region of high potential for both Palaeolithic archaeological remains and early prehistoric archaeological remains. Sediments from a former river channel laid down by the ancestral Thames before it was diverted have yielded internationally significant Palaeolithic remains and Pleistocene faunal remains within the area. In addition aerial photography has recorded ringditches and possible trackways within close proximity, indicative of potential ritual and settlement activity. The nature of the superficial geology will need to be established in order to ascertain the geoarchaeological potential of the site, this could include a specialist report using existing borehole data. Potential archaeological remains may be impacted or destroyed by the proposed development.

If Tendring District Council is minded to grant planning consent for this application, then the following recommendations are made in line with the Department for Communities and Local Government National Planning Policy Framework:

RECOMMENDATION: A Programme of Archaeological and geoarchaeological evaluation

1. No development or preliminary ground-works can commence until a programme of archaeological and geoarchaeological evaluation has been secured and undertaken in accordance with a Written Scheme

of Investigation, which has been submitted by the applicant, and approved by the planning authority. Following the completion of this initial phase of archaeological work, a summary report will be prepared and a mitigation strategy detailing the approach to further geoarchaeological investigation and/or preservation in situ through re-design of the development, shall be submitted to the local planning authority.

2. No development or preliminary groundwork can commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological and/or geoarchaeological fieldwork, as detailed in the mitigation strategy, which has been signed off by the local planning authority.

3. Following completion of the archaeological and/or geoarchaeological fieldwork, the applicant will submit to the local planning authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the planning authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Further Recommendations:

A brief outlining the level of archaeological and geoarchaeological investigation will be issued from this office on request. The District Council should inform the applicant of the recommendation and its financial implications.

Natural England

No comments received.

3. Planning History

93/01450/OUT	Proposed demolition of 3 dwellings, resiting and replacement of same with 2 bungalows	Refused	22.02.1994
96/00317/FUL	Proposed demolition and replacement of three bungalows together with garages	Approved	23.04.1996
97/00176/FUL	Proposed demolition and replacement of three bungalows and garages at variance to approval TEN/96/317	Approved	11.03.1997
99/01470/FUL	3 bungalows	Refused	24.11.1999
95/00005/TELCO M	ERECTION OF 15M TELECOMMUNICATIONS MAST AND ASSOCIATED EQUIPMENT CABINS	Determination	10.03.1995
00/02094/FUL	Proposed dwellings	Approved	09.02.2001
11/01003/OUT	Demolition of existing house and outbuildings and the construction of eight single storey houses in a courtyard setting.	Refused	25.10.2011

13/00598/OUT	Outline planning application for eight dwellings.	Refused	25.07.2013
13/00956/OUT	Outline planning permission for 7 aspirational type dwellings.	Refused	17.10.2013
14/01500/OUT	Erection of 5 new dwellings.	Refused	22.12.2014
14/30456/PREAPP	Erection of 5 new dwellings.		12.02.2015
16/30060/PREAPP	Erection of 4no. 3 bedroom bungalows and garages.		21.04.2016
16/00731/FUL	Proposed 4 No. detached bungalows and garages.	Approved	09.09.2016
16/01605/DISCON	Discharge of conditions 3 (Access roads), 4 (Materials) and 5 (Hard and Soft Landscaping) of approved planning application 16/00731/FUL.	Approved	28.11.2016
17/00725/FUL	Proposed new access road to serve new development approved under 16/00731/FUL.	Approved	21.07.2017
17/30130/PREAPP	Proposed 9 No. dwellings.	Refused	23.06.2017
17/00948/FUL	Proposed new access road onto Cherry Tree Avenue.	Refused	11.09.2017
18/02011/FUL	Proposed erection of 3no. new bungalows.	Current	

4. Relevant Policies / Government Guidance

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

Tending 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

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 (including Site Description and Proposal)

Site Description

The application relates to the land to the east of West Country House, Cherry Tree Avenue, Clacton on Sea. The site extends approximately 0.56 hectares in size with a road frontage of approximately 110 metres and a site depth of 30 metres increasing to 70 metres to the north of the site.

West Country House is set back from Cherry Tree Avenue by over 130 metres; it is set to the rear of three detached bungalows which front Cherry Tree Avenue but still retain a set back from the road of over 60 metres. There are 4 further bungalows to the south of the existing bungalows with a north facing orientation. The existing private access and driveway to the north serves all these properties.

On the opposite side of the road is a complete residential frontage which marks the edge of the main built-up part of Clacton-on-Sea.

The housing at West Country House is on the side of the road which is otherwise mainly undeveloped. It forms part of a Local Green Gap as designated within the adopted Tendring District Local Plan 2007 and is retained as a Strategic Green Gap in the emerging Tendring District Local Plan 2013 – 2033 and Beyond Publication Draft 2017. The site also lies outside of the defined Clacton on Sea Settlement Development Boundary as defined within both the adopted and emerging Local Plans. The site is also within the Coastal Protection Belt.

Description of Proposal

The application seeks outline consent for the redevelopment of the site for 10 no. detached bungalows.

The application is in outline form considering access only. Scale, appearance, landscaping and layout are all reserved for subsequent consideration.

The indicative layout plan entitled 'Proposed Site Layout and Street Scene' (dated November 2017) shows 6 properties fronting Cherry Tree Avenue with the further 4 properties sited to the rear (some garages and parking also sited to the rear). The dwellings to the rear are to be accessed via a new entrance road off Cherry Tree and a private driveway extending in northerly directly adjacent to the existing dwellings opposite West Country House.

Assessment

The main considerations in this instance are;

- Planning and Appeal history;
- Principle of Development;
- Layout, Scale and Impact (including Impact on Green Gap);
- Residential Amenities;
- Access and Parking;
- Trees and Landscaping;
- Biodiversity;
- Sustainable Urban Drainage;
- Affordable Housing;
- Financial Contribution – Recreational Disturbance;
- Financial Contribution – Open Space and Play Space;
- Archaeology; and,
- Representations.

Planning and Appeal History

The application site and other surrounding land associated with West Country House has been the subject of many planning applications and appeals over recent years and dating back to the 1990s. The decisions and appeal outcomes of particular relevance to the assessment and determination of this application are summarised below.

Application 11/01003/OUT sought outline planning permission, with all matters reserved for the demolition of the existing house and outbuilding and the construction of 8 dwellings. The indicative layout showed 8 dwellings in a horse shoe shape to the rear of the site behind the existing bungalows. This application was refused and the subsequently dismissed at appeal on 8th June 2012. The Inspector 'found that the proposal would not comply with development plan policies on the location of development (within a Green Gap and Coastal Protection Belt) and would have a harmful effect on the character of the area.' Within the appeal decision the Inspector states 'however carefully designed and sited, a development of this scale (8 dwellings) would considerably increase

the coverage of built development on the site. This would be obvious in views from Cherry Tree Avenue and the footpath to the north of the site. The development would therefore have a significant urbanising effect on the character of the area and result in the loss of openness'.

Application 13/00598/OUT was a resubmission of the above application and sought outline planning permission with all matters reserved for 8 dwellings; this was refused on 25th July 2013. Shortly after this, on 17th October 2013 outline planning permission was refused for 7 no. detached dwellings to the rear of the site behind the existing bungalows (13/00956/OUT), which also involved the demolition of the existing dwellings. Both of these decisions were appealed and in the decision dated 17th February 2014 the Inspector dismissed both appeals. In the decision the Inspector found the evidence before him inconclusive regarding the housing supply. However, nonetheless, he considered that even if there is no such a supply, harm from both proposals would significantly and demonstrably outweigh the provision of an additional 7 or 8 dwellings. It was also considered that 'the policy approach to conserve Green Gaps forms an important part of the Council's spatial strategy to restrict development in the main to settlements and sites identified through the Development Plan. This is consistent with the Framework which says in paragraph 7 that part of the environmental role is to protect and enhance the natural, built and historic environment'. Within this appeal the appellant argued that Policy EN2 of the Local Plan allows for minor development within the Local Green Gap if it does not harm its open character and that the proposals would be single storey only, would be well screened by boundary tree and hedge planting and would not be prominent in public views. However, the Inspector considered that 'both sites are clearly visible from several public vantage points. These include travelling north along Cherry Tree Avenue, from West Road to the south in views across open land and across similar open land from Clacton Airfield which is also to the south of the sites. Additionally a public footpath passes in close proximity to the north, and extending to the west across the airfield. Both sites would be clearly visible in both directions from users of the footpath. Both proposals would involve a significant increase in built development which would be apparent from the public vantage points referred to despite the single storey nature of the proposed dwellings. The cumulative effect of that together with other domestic paraphernalia associated with residential development would create an urbanising effect which would be out of character with the surrounding open landscape and cause harm to the area. Such harm would be the same for both proposals.'

Following the appeal decision a further application was submitted 14/01500/OUT. This sought planning permission for the erection of 5 new dwellings on land surrounding West Country House and the existing bungalows. The application was in outline form with only access being considered as part of the application. The indicative layout showed two dwellings to the front of existing bungalows and two dwellings to the rear of the existing bungalows and to the front of West Country House and one dwelling to the side of West Country House. This application was refused and dismissed at appeal. This appeal decision dated 27th July 2015 referred to the fact that the Council could not demonstrate a 5 year housing supply. It also states that because Policy EN2 'aims to keep the Green Gap open and related to development generally it is not specifically a policy for housing supply and is not out of date on the basis of the lack of a five year housing land supply'. In dismissing the appeal states that 'the frontage of the site is more open and the existing bungalows are 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, including the upper parts of any two storey houses. The development would also be visible from Cherry Tree Avenue including through the access point. The character of the site itself would be altered to a more intensive and urban form of development that currently exists. 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 settlements and thereby maintaining their separate character'.

The existing 4 bungalows to the south of the existing were approved under delegated powers under planning application reference 16/00731/FUL. Officers concluded that was a significant difference between the proposals that were dismissed at appeal and the proposal, which was for 4 no. detached dwellings situated to the rear of the existing bungalows. It was considered that the location, size and design of these dwellings related to the existing development on site (unlike the previous schemes) and ensured that the area to the front of the site adjacent Cherry Tree Avenue remained undeveloped. This allowed for a development that appears in keeping with the surrounding development; which does not appear at odds with the surrounding landscape, which does not create a form which is significantly urbanising nor undermine the function of the Local Green Gap.

Most recently, application 17/00948/FUL was refused for a proposed new access road onto Cherry Tree Avenue. The Inspector concluded (appeal reference APP/P1560/W/18/3197713) 'an estate road engineered to the standards proposed would have an incongruously suburban effect in visual terms, contrasting harmfully with the largely undeveloped, rural side of Cherry Tree Avenue. The access would cleave through the currently undeveloped space which buffers the small amount of residential development visually from the street and this would have an adverse impact on the present character and appearance of this area. For these reasons the new access proposed would conflict with LP Policy EN1 which seeks to protect or enhance the quality of the District's distinctive local character and resist development which would harm this. LP Policy EN2 allows for minor development where this does not harm, either individually or collectively, the purposes of a Local Green Gap or its open character.'

The above-mentioned planning and appeal decision form a material consideration in the determination of this current application and have informed the assessments below.

Principle of Development

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.

- Assessment of Sustainable Development

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.

In line with Paragraph 8 of the National Planning Policy Framework (2019), achieving sustainable development means meeting an economic objective, a social objective and an environmental objective. These are assessed below. The sustainability of the application site is therefore of

particular importance. In assessing sustainability, it is not necessary for the applicant to show why the proposed development could not be located within the development boundary.

- Economic

It is considered that the proposal would contribute economically to the area, for example by providing employment during the construction of the properties and from future occupants utilising local services, and so meets the economic objective of sustainable development.

- Social

Emerging Policy SPL1 of the Publication Draft of the Local Plan 2017 includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations therefore being in line with the aims of the aforementioned paragraph 17 of the NPPF. This is the emerging policy equivalent to Saved Policy QL1 of the adopted Tendring District Local Plan 2007 which states that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. Clacton is identified as a Strategic Urban Settlement in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. These settlements will be the focus for the majority of the district's economic growth through the identification of new employment sites, investment in town centres, tourist attractions and key infrastructure and/or the regeneration of deprived neighbourhoods. Whilst this policy has limit weight at this stage, it goes some way to illustrate the sustainability credentials of the town.

In terms of the social role, the location of the site close to the edge of Clacton where there are a range of services accessible on foot and by regular public transport, the location therefore performs well and meets the social objective of sustainable development.

- Environmental

The environmental role is about contributing to protecting and enhancing the natural and built environment which is considered below under the heading Layout, Scale and Impact.

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.

Layout, Scale and Impact (including Impact on Green Gap)

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.

This is not a minor development. The afore-mentioned planning and appeal decisions relating to this site have concluded that the previous developments would harm the local area and be contrary to the Green Gap.

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.

Residential Amenities

The NPPF, 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.

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. For example, 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 with some being dominated and overshadowed by retained trees, and finally the back to back distances and spacing between the dwellings will result in a poor and cramped living environment for future residents.

The separation distance retained between the existing and proposed dwellings of approximately 20 metres together and the inclusion of an open space/landscaped buffer as shown on the indicative layout ensures that no significant harm to the outlook, daylight, sunlight or privacy of the residents of these existing dwellings will result from the development. The layout plan provided suggests that the vehicular traffic associated with 7 of the 10 dwellings is likely to pass the frontages of the 3

adjacent bungalows. Therefore, it is accepted there will be some impact on the occupiers of the existing bungalows from associated noise and disturbance. However, the existing driveway already runs along the frontage of these dwellings, the new vehicle movements generated are not considered excessive and will be moving slowly with quieter engine noise. For these reasons, together with the separation distance, it is not considered justified to refuse the application on the impact to existing residents.

Access and Parking

Paragraph 108 of the National Planning Policy Framework 2019 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 and the design and layout of the development provides safe and convenient access for people. The sentiments of this policy are carried forward within draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Furthermore, the Essex County Council Parking Standards 2009 state that for 3 bedroom properties; 2 off-street parking spaces are provided, together with 0.25 a space per dwelling for visitor parking. Each parking space should measure 5.5 metres by 2.9 metres and if relying on a garage as a parking space this should measure 7 metres by 3 metres internally.

Essex County Council Highway Authority raise no objection to the application subject to conditions. This means that The Highway Authority are satisfied that the proposed access can accommodate 10 dwellings and that sufficient parking and turning can be achieved within the site to serve the dwellings.

Therefore, a refusal based on highway safety would not be justified in this instance.

Trees and Landscaping

Saved Policy EN1 relates to landscape character and states, inter alia, that development control will seek in particular to conserve features which contribute to local distinctiveness, which includes important hedgerows and trees. The application site does not contain any significant trees or other vegetation in the main body of the land. On or close to the northern boundary there are a row of established conifers that are a dominant and significant feature in the street scene. Whilst the trees are prominent features in their setting they do not merit protection by means of a Tree Preservation Order (TPO) as they are, in essence, an overgrown hedge.

The development would benefit from soft landscaping to both soften and screen its appearance.

The site layout plan shows indicative soft landscaping and further details should be secured by a condition attached to any planning permission that may be granted. However, the addition of soft landscaping would not overcome the identified harm to the character, landscape and Local Green gap.

Biodiversity

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.

Sustainable Urban Drainage

Due to the major scale of the proposed development, a sustainable drainage system (SuDS) for managing surface water runoff is required to accompany the application in line with saved Policy EN13 of the adopted Tendring District Local Plan 2007 and draft Policy PPL5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Initially the application was not accompanied by the required SuDS proposal and the Lead Local Flood Authority (LLFA) raised an objection. Following extensive communication between the Agent and the LLFA, an appropriate SuDS scheme has been provided and the LLFA raise no objection to the application subject to conditions.

Affordable Housing

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.

Financial Contribution – Recreational Disturbance

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.

Financial Contribution – Open Space and Play Space

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.

Archaeology

The planning application has been identified as having the potential to harm non-designated heritage assets with archaeological interest.

The proposed development lies within a region of high potential for both Palaeolithic archaeological remains and early prehistoric archaeological remains. Sediments from a former river channel laid down by the ancestral Thames before it was diverted have yielded internationally significant Palaeolithic remains and Pleistocene faunal remains within the area. In addition aerial photography has recorded ringditches and possible trackways within close proximity, indicative of potential ritual and settlement activity. The nature of the superficial geology will need to be established in order to ascertain the geoarchaeological potential of the site, this could include a specialist report using existing borehole data. Potential archaeological remains may be impacted or destroyed by the proposed development. The necessary recommendations and conditions would be necessary in the event of the development being approved.

Representations

The site lies within the non parished area of Clacton on Sea.

Councillor Griffiths he submitted a request for the application to be referred to Planning Committee for determination should officers be recommending approval.

7 individual letters of representation have been received. The concerns raised can be summarised as follows;

- 5 year housing land supply achieved.
- Contrary to Local Green Gap Policy.
- Urbanising impact.
- Out of character creating an estate.
- No affordable housing.
- Loss of outlook.
- Loss of greenery and natural privacy.
- Noise and disturbance from construction.
- Harm to landscape and semi-rural character.
- Will set a harmful precedent for further development.

The merits of the development are set out in the main report above and the justifiable reasons for refusal addressed.

In relation to noise and disturbance during construction, this is an inevitable and short term impact of the development process and cannot constitute a reason for refusal.

Conclusion

For the reasons set out above, the development is considered to represent an unsustainable form of development contrary to the aims of national and local plan policies for the delivery of new housing due the demonstrable harm caused to the character of the area and designated Green Gap. The application is not accompanied by the necessary legal agreement to secure the required financial contributions which also form reasons for refusal.

6. Recommendation

Refusal - Outline

7. Reasons for Refusal

- 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 (Zoi) being approximately 4000 metres from the Colne Estuary SPA and Ramsar. New housing development within the Zoi 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.

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 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.