

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	12/02/2020
Planning Development Manager authorisation:	AN	13/02/2020
Admin checks / despatch completed	CC	17/02/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	SB	17/02/2020

Application: 18/02011/FUL **Town / Parish:** Clacton Non Parished

Applicant: Mr Nishel Patel

Address: West Country House Cherry Tree Avenue Clacton On Sea

Development: Proposed erection of 3no. new bungalows.

1. Town / Parish Council

Clacton – non parished.

2. Consultation Responses

ECC Highways Dept

A site visit has been undertaken and the information that was submitted in association with the application has been fully considered by the Highway Authority.

The proposal is off a new private road from a recent application (17/01954/FUL) introduction of 10no.new bungalows. The proposal provides adequate room and provision for off street parking and therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following conditions:

1. Grouping of dwellings served by a common access, to be used where it is required that opposing vehicles are able to turn into and out of the access and pass clear of the limits of the highway)

-Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of Carriageway and provided with an appropriate dropped kerb crossing of the footway/verge.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1

2. Each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles.
Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

3. All single garages should have a minimum internal measurement of 7m 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

4. The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

5. Prior to occupation of the proposed dwelling, 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.

6. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway/carrageway (delete as appropriate).

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway/carrageway (delete as appropriate) is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative 1: Under Building Regulations B5, access for fire tenders is required to a point not further than 45 metres from the entrance to the dwelling. Any road or private drive forming part of such a fire access must be no less than 3.7 metres wide between kerbs (this may be reduced to 3.1 metres for a gateway or similar short narrowing) and should have a minimum centre line bend radius of 6.55 metres. The access way should be capable of carrying a 12.5 tonne vehicle. A cul-de-sac which is more than 20 metres long must have a turning head of a least Size 3.

Informative 2: Under Section 148 of the Highways Act 1980 it is an offence to deposit mud, detritus etc. on the highway. In addition under Section 161 any person, depositing anything on a highway which results in a user of the highway being injured or endangered is guilty of an offence. Therefore the applicant must ensure that no mud or detritus is taken onto the highway, such measures include provision of wheel cleaning facilities and sweeping/cleaning of the highway

Informative 3: Although the existing vehicular access onto Cherry Tree Avenue is not changing it would be appropriate to cut back the vegetation To provide adequate inter-visibility on the south side for vehicles using the main vehicle 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

Informative 4: Any 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.
CO4 9YQ.

3. Planning History

00/02094/FUL	Proposed dwellings	Approved	09.02.2001
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
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
17/01954/OUT	Proposal for 10 no. detached bungalows.	Refused	03.02.2020

4. **Relevant Policies / Government Guidance**

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

HG9 Private Amenity Space

EN1 Landscape Character

EN2 Local Green Gaps

EN3 Coastal Protection Belt

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

COM6 Provision of Recreational Open Space for New Residential Development

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP1 Presumption in Favour of Sustainable Development

SPL1 Managing Growth

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL6 Strategic Green Gaps

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

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 0.31 hectares in size with a road frontage of approximately 25 metres and a site depth of 55.5 metres with the red lined site area connecting to the existing access to the north of the site in a horse-shoe shape.

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 also being approximately 60 back from the highway. 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 full planning permission for the erection of 3 detached bungalows (2 house types) one fronting Cherry Tree Avenue with an easterly orientation and 2 facing north appearing as a continuation of the most recently constructed 4 bungalows.

The dwellings would be served by the existing shared access to the north via the frontages of the 3 existing centrally positioned bungalows.

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.

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 with the rear of the garage serving plot 1 forming the street scene due to the layout of the site and plot.

Although this development represents a minor development proposal, the introduction of dwellings up to the road frontage with Cherry Tree Avenue would harm the open character of this small pocket of development by infilling the space around it. The afore-mentioned planning and appeal decisions relating to this part of the site have concluded that the previous developments would harm the local area and be contrary to the Green Gap.

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.

Officers consider that sufficient space is available on site to provide the development as proposed. The development would achieve an internal layout and separation distances that would not significantly detract from the amenities of nearby properties or the future occupiers of the proposed dwellings; and will provide sufficient garden space in accordance with Saved Policy HG9 of the adopted Tendring District Local Plan (2007).

The separation distance retained between the existing and proposed dwellings 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 additional vehicular traffic associated with the proposed 3 dwellings will 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. 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.

Each dwelling is served by a garage and parking space that accord with the above-mentioned standards.

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 3 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.

On the northern boundary of the application site there is a group of large hedging conifers that make a positive and pleasant contribution to the character and appearance of the area. Their position is such that they will not be affected by the development proposal.

There is a small Hawthorn (*Crataegus monogyna*) on the southern boundary of the land; the amenity value of which could be easily replicated by new planting.

There are no trees on the application site that merit protection by means of a tree preservation order.

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 will necessitate the requirement of the removal of existing hedgerows and overgrown vegetation.

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 and completion of) 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.

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 (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.

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 site 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.

6 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 - Full

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 with the rear of the garage serving plot 1 forming the street scene due to the layout of the site and plot.

The introduction of dwellings up to the road frontage with Cherry Tree Avenue would harm the open character of this small pocket of development by infilling the space around it. The afore-mentioned planning and appeal decisions relating to this part of the site have concluded that the previous developments would harm the local area and be contrary to the Green Gap.

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 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.

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- 4 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.

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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.