



TENDRING DISTRICT COUNCIL

Planning Services

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AGENT: Mr Peter Le Grys - Stanfords
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APPLICANT: R & P Bond
C/o Agent

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 18/00958/OUT **DATE REGISTERED:** 6th March 2019

Proposed Development and Location of Land:

Outline application for development of 7 almshouse type one and two bed dwellings and 6 houses in conjunction with provision of car park for public use.

Land at Warren Farm The Bury St Osyth Clacton On Sea

THE TENDRING DISTRICT COUNCIL AS LOCAL PLANNING AUTHORITY **HEREBY REFUSE OUTLINE PLANNING PERMISSION** in accordance with the application form, supporting documents and plans submitted, for the following reason(s)

- 1 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 8 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.

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

With this in mind, the emerging Local Plan 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. St Osyth is categorised in emerging Policy SPL1, along with six other villages, as a 'Rural Service Centre' in recognition of its size and reasonable range of services and facilities, particularly when compared against many of the District's smaller rural villages. Rural Service Centres are the next most sustainable category of settlement following 'Strategic Urban Settlements' (Clacton-on-Sea; Harwich and Dovercourt; and the proposed Tendring Colchester Borders Garden Settlement) and 'Smaller Urban Settlements' (Frinton; Walton and Kirby Cross; Manningtree; Lawford and Mistley; and Brightlingsea). Therefore, a level of housing development for St Osyth could have the potential to be considered sustainable so long as detailed matters such as infrastructure provision and environmental impacts are considered and addressed.

However concerns have been raised in respect of the total number of new dwellings

that have already gained planning permission on sites around St Osyth over recent years and which have either been built out or remain extant, and the cumulative impact that any additional homes and population over and above this could have on local services, traffic, other infrastructure and the character of the village. Whilst St Osyth is categorised in the emerging Local Plan as a rural service centre where sustainable growth could be supported, this is not a license to allow an unlimited or disproportionate level of growth in the village. The level of growth intended for rural service centres through the policies in the emerging Local Plan, as set out in paragraph 3.2.1.3, is meant to be 'fair, achievable and sustainable'.

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

The 13 dwellings proposed here is a purely residential scheme, and whilst it is acknowledged that the housing is to be provided in conjunction with a new village car parking area, no evidence has been provided to demonstrate that this level of housing is needed to fund the car parking area. Furthermore, no method of linking the provision of the car park with the funds secured by the housing has been completed. Consequently it is considered that this residential development offers no exceptional economic, social or environmental benefits over and above any of the other schemes with planning permission that might lead the Council to consider the proposal in exceptional light.

As the housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF, it is considered that this is an unnecessary and unwanted development that is contrary to the development plan and would exacerbate the disproportionate level of housing growth either built or subject to extant permissions in St Osyth over recent years.

As such therefore it is considered that further development in this location would be contrary to Saved Policy QL1 and Draft Policy SPL2.

- 2 The supporting text to emerging policies SPL1 and SPL2 of the Draft Local Plan advises that outside the Settlement Development Boundaries, new development will be subject to strict control to protect and enhance the character and openness of the countryside. Amongst other things saved policy QL9 of the Local Plan and emerging policy SPL3 of the Draft Local Plan state that new development should make a positive contribution to the quality of the local environment and enhance local character. Saved Policy EN1 of the Local Plan and emerging policy PPL3 of the Draft Local Plan state that the quality of the district's landscape and its rural character will be protected, and where possible enhanced. Development which would significantly harm landscape character or quality will not be approved. Saved Policy EN3 and emerging policy PPL2 concern land designated as Coastal Protection Belts, which this land is. These policies state that new development which does not have a compelling functional need to be located in the Coastal Protection Belt will not be permitted to protect the open character of the undeveloped coastline not only in terms of visual amenity but in terms of access to the natural environment.

Consistent with this paragraph 170 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services.

The site is considered as part of the St Osyth Coastal Slopes Landscape Character (Tending Landscape Character Assessment). While it is relatively featureless, the

flat and exposed nature of the site allows views of the village in its countryside setting, particularly from the surrounding footpaths that run along the eastern side of the site and to the south adjacent to Warren Farm. The site, as a characteristic part of the St Osyth Coastal Slopes, makes an important contribution to the discreet and rural setting of the village. Its openness means that it cannot accommodate development without undue harm to the landscape, making the site fairly susceptible to development. The construction of 13 dwellings in this location would result in the loss of an attractive area of open countryside, adversely affecting the character and setting of the village and diminishing users enjoyment of the surrounding footpath network. This would undermine the distinctive identity of the settlement, would not conserve or enhance the rural character of the landscape and would be in direct conflict with the aims and aspirations of the Coastal Protection Belt to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development that would harm visual amenity and access to the natural environment.

The Tendring Landscape Character Assessment also states that a key characteristic of the St Osyth Coastal Slopes designation is the character and pattern of existing rural lanes and informal tracks which, run up and down the slopes. The assessment goes on to state that these informal lanes should be conserved and that the upgrading of rural lanes and the introduction of urbanising elements such as those proposed as part of this application, including concrete kerbs and lighting will not be appropriate. It is evident therefore that the proposed development would result in a change to the current informal track to a more heavily engineered carriageway including raised kerbs, road markings, signage and potentially lighting. This would have an additional urbanising effect which would be detrimental to the appearance of the surrounding area and contrary to the guidance contained in the landscape character assessment and the aforementioned planning policies.

Overall the development would result in the urbanisation of the site, including the informal track, and would therefore result in significant harm to the countryside setting of the village, the Coastal Protection Belt designation and for users enjoyment of the adjacent footpath network.

- 3 Paragraph 127 of the National Planning Policy Framework 2019 (NPPF) requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes onto 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.

Furthermore, Paragraphs 184 of the NPPF states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Specifically Paragraph 196 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Additionally, Saved Policy EN23 of the Tendring District Local Plan (2007) and Policy PPL9 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) state that proposals for development that would adversely affect the setting of a listed building will not be permitted.

Policy EN17 of the Adopted Local Plan states that development within a Conservation Area must preserve or enhance the character or appearance of the Conservation Area. The sentiments of this policy are carried forward within Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The principle heritage assets for consideration are:

- The St Osyth Conservation Area;
- Grade I Listed Church of St Peter and St Paul (List Entry ID: 1111513); and
- Grade II Listed Warren Farm House (List Entry ID: 1337161).

The proposed development will cause harm to all three of these heritage assets.

The proposal will have a fundamental change in the immediate setting of the church and result in an adverse change to this aspect of agrarian setting which has been fundamentally unchanged, in terms of land use, for hundreds of years and likely since the church was constructed. Considering this adverse change, and other considerations such as environmental and diurnal changes in the setting, the impact is considerable to this Grade I listed building.

The impact to the Conservation Area is also considered in the same light as outlined above for the church, although with the addition of a direct impact which may arise from the new access road which has potential to have a direct impact on the character and appearance of the conservation area.

The proposed development will also result in considerable change to the historic approach to Grade II listed Warren Farm House. Historic maps show that this track is the historic route to the farmhouse. The proposed development will detract from this route, in terms of the change of land use. This will adversely affect how the farmhouse is appreciated and experienced in its agrarian setting. The farm is historically an isolated farmstead outside of the settlement, this proposal will detract from the experience and understanding of this relationship.

The proposal will cause 'less than substantial harm' to the setting and significance of the three designated heritage assets (one of which is Grade I listed), the benefits of which are considered to be outweighed by the harm identified.

- 4 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Colne Valley SPA and Ramsar site and Essex Estuaries SAC, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. 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 The National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations

should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

Saved Policy HG4 of the Tendring District Local Plan (2007) requires up to 40% of new dwellings on residential schemes of 5 or more units to be provided in the form of affordable housing to meet the needs of people that are unable to access property on the open market. Emerging Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017), which is based on more up-to-date evidence of housing need and viability, requires for developments of 10 or more dwellings, the Council expect 30% of new dwellings to be made available to Tendring District Council or an alternative provider to acquire at a discounted value for use as affordable housing, or as an alternative, the Council will accept a minimum of 10% if new dwellings are to be made available alongside a financial contribution toward the construction or acquisition of property for use as affordable housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement. A completed Section 106 has not been provided prior to the application determination date and the application is therefore contrary to the above policy.

Saved Policy COM6 and emerging Policy HP5 state that for residential development on a site of 1.5ha and above, where existing public open space and/or play equipment are inadequate shall provide appropriate provision on-site or by way of a financial contribution towards the provision of new or improved off-site facilities to meet the projected needs of future occupiers of the development. In this case there is likely to be sufficient on-site open space provision to meet the Council's requirements. However, there will also be a need to provide on-site play provision and if the open space and play provision is to be maintained by the Council then provisions will need to be secured through a Section 106 obligation. Without such provisions being secured the proposals are contrary to the above policies.

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

6 Paragraph 165 of the National Planning Policy Framework (2019) states;

Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should: a) take account of advice from the lead local flood authority; b) have appropriate proposed minimum operational standards; c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and d) where possible, provide multifunctional benefits.

In this instance no drainage information has been provided. The proposed development therefore fails to demonstrate that surface water flooding will not be caused elsewhere as a result of the development and is therefore contrary to the NPPF and saved policy QL3 of the saved Tendring District Local Plan (2007).

DATED: 19th March 2020

SIGNED:



Catherine Bicknell
Head of Planning

IMPORTANT INFORMATION :-

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

COM1 Access for All

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

EN3 Coastal Protection Belt

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN11B Protection of National Sites SSSI's, National Nature Reserves, Nature Conservation Review Sites, Geological Conservation Review Sites

EN17 Conservation Areas

EN23 Development Within the Proximity of a Listed Building

EN30 Historic Towns

TR1A Development Affecting Highways

TR3A Provision for Walking

TR4 Safeguarding and Improving Public Rights of Way

TR7 Vehicle Parking at New Development

TR8 Public Car Parking

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

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP2 Community Facilities

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

PPL1 Development and Flood Risk

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL7 Archaeology

PPL8 Conservation Areas

PPL9 Listed Buildings

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

Tendring Landscape Character Assessment

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

The attached notes explain the rights of appeal.

NOTES FOR GUIDANCE

WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within the set time frame as outlined below:
 - a. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Householder Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - b. If this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - c. If you want to appeal against your local planning authority's decision on a development which is not caught by a. and b. above then you must do so within **6 months** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
- Appeals must be made using the relevant form (as detailed above) which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission for the proposed development or could not have granted it without the conditions imposed having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.

- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.