

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	15 th May 2020
Planning Development Manager authorisation:	SCE	15.05.2020
Admin checks / despatch completed	CC	15.05.2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CD	15.05.2020

Application: 19/01801/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr L Parker

Address: 26 Frinton Road Kirby Cross Frinton On Sea

Development: New dwelling.

1. Town / Parish Council

Frinton and Walton
Town Council 19.12.2019
REFUSAL - backland development with a dangerous access.

Frinton and Walton
Town Council 17.03.2020
REFUSAL - overdevelopment of the site and concerns raised in regard to the entering and exiting on to the highway in this particular location.

2. Consultation Responses

Essex County Council
Archaeology The Historic Environment Record shows the above application lies close to the historic settlement at Kirby Cross. No other known archaeological sites are recorded in the immediate area and the land lies beyond the historic core as depicted on historic mapping. Due to the location and scale of the proposed development no archaeological recommendations are being made on this application.

UU Open Spaces No contribution is being requested from Open Spaces on this occasion.

ECC Highways Dept The Highway Authority raises an objection to the application (first, second and third submissions).

The proposal fails to provide a vehicular access of sufficient width to enable vehicles to pass unopposed. The proposal is likely to lead to additional vehicles reversing into the highway.

The proposal would lead to intensification of use of the site without adequate turning facilities in the immediacy of a pedestrian crossing facility and the junction of Frinton Road and Bemerton Gardens. The proposal would therefore give rise to additional vehicles reversing into the highway to the detriment of highway safety.

Fourth Submission:-

The parking space sizes they are proposing are well within our parameters (minimum dimensions of 2.9 metres x 5.5 metres). They will need a minimum width of 6 metres behind the spaces to ensure that vehicles can enter and leave the highway in a forward gear. As

the proposed dwelling is one bedroom they have the one parking space requirement.

Building Control and
Access Officer

Access for a fire fighting appliance is required in accordance with
Approved Document B.

3. Planning History

95/00726/FUL	Change of use from Class A1 shop to launderette	Approved	08.08.1995
19/01801/FUL	New dwelling.	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

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

HG1 Housing Provision

HG9 Private Amenity Space

HG13 Backland Residential Development

LP1 Housing Supply

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

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

PPL4 Biodiversity and Geodiversity

Local Planning Guidance

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). 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, whilst housing delivery over the last three years has exceeded requirements, the supply of deliverable housing sites going forward that the Council can demonstrate still 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

This area of Frinton Road comprises a concentrated mix of retail and commercial uses with residential properties around. To both the east and west of the application site on both the north and south sides of the road, development comprises bungalows which have been extended in various ways in addition to two-storey dwellings. To the rear of the site is a new development of bungalows/chalet bungalows (reference 16/01446/DETAIL) which is in the early stages of construction.

No. 26 Frinton Road comprises a commercial premises at ground floor (a laundrette) with residential flat at first floor. The building is the left hand of a pair of early 20th Century buildings and the plot has an area in the region of 500sqm and has a uniform width of 8.6m along its 57.5m depth. Presently there is a detached garage in the rear garden. The building is set back from the rear edge of the pavement by around 5.5m and this provides an informal parking space for the users of the laundrette. There is a 2.6m separation between the flanks of No. 26 and No. 24. Forward of No. 28 is a pedestrian crossing, demarked with tactile paving. The wider area predominantly comprises commercial use at ground floor with residential accommodation above.

Description of Proposal

The application proposes the construction of a detached single-storey bungalow towards the most northerly boundary. The design, scale and external appearance of the dwelling has been amended four times during the determination period and a summary of the evolution of the design is summarised here:-

Drawing	Scale	Roof	Concerns
P01	Two-storey, 3 bedrooms	Gambrel, 6.4m ridge	<ul style="list-style-type: none"> overshadowing and harm the amenities of adjacent occupiers direct overlooking towards adjacent occupiers insufficient private amenity space for both existing and proposed occupiers out of character with established character of dwellings in area backland development Insufficient 'driveway' width for a fire-engine or refuse lorry
P01B	Two-storey, 3 bedrooms	Gambrel, 6.4m ridge	<ul style="list-style-type: none"> overshadowing and harm the amenities of adjacent occupiers direct overlooking towards adjacent occupiers insufficient private amenity space for both existing and proposed occupiers out of character with established character of dwellings in area backland development Insufficient 'driveway' width for a fire-engine or refuse lorry vehicular access of sufficient width to enable vehicles to pass unopposed
P01C	Single-storey, 1 bedroom	Dual-pitched, 3.4m	<ul style="list-style-type: none"> out of character with established character of dwellings in area backland development Insufficient 'driveway' width for a fire-engine or refuse lorry vehicular access of sufficient width to enable vehicles to pass unopposed

P01D	Single-storey, 1 bedroom	Dual-pitched, 3.4m	<ul style="list-style-type: none"> • out of character with established character of dwellings in area • backland development • Insufficient 'driveway' width for a fire-engine or refuse lorry • vehicular access of sufficient width to enable vehicles to pass unopposed
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The application is being determined on the basis of the fourth and final submission; drawing P01D.

The submission proposes a detached, single-storey bungalow. The dwelling would be 9m deep by 5.4m wide; it would have a dual pitched roof with a ridge running in a north/south direction and eaves of 2.5m. Following demolition of the existing garage it would be sited around 8m from the rear boundary, 2m from the right hand boundary, 0.9m from the left boundary and around 19m from the rear elevation of the existing building.

Assessment

The main planning considerations are:

- Principle of Development;
- Layout, Scale and Appearance;
- Neighbouring Amenities;
- Highway Considerations;
- Financial Contributions - RAMS;
- Financial Contributions - COM6;
- Representations; and,
- Other Considerations.

1. Principle of Development:

The site is located within the Development Boundary therefore there is no principle objection to the proposal, subject to the detailed considerations discussed below.

2. Layout, Scale and Appearance:

The Government attach great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. One of the core planning principles of The National Planning Policy Framework (NPPF) as stated at paragraph 130 is to always seek to secure high quality design.

Saved Policies QL9, QL10 and QL11 aim to ensure that all new development makes a positive contribution to the quality of the local environment, relates well to its site and surroundings particularly in relation to its form and design and does not have a materially damaging impact on the amenities of occupiers of nearby properties. Emerging Policy SP1 reflects these considerations.

Development in the area is laid out in a very typical linear form, albeit with varying degrees of set-back from the back edge of the pavement; this facilitates off-street parking for the majority of the dwellings in the area. The proposed siting of this dwelling in the rear garden of the host dwelling defines the plot as a backland site.

Typical backland sites include the back gardens of existing dwellings, smallholdings, yards, or small vacant sites. However, clearly this should always be achieved through the development of sites which are well related to existing development and by schemes which would integrate well with their surroundings and it is often difficult to achieve this on backland sites. Such sites also normally have restricted access potential.

In this instance, the location of the proposed dwelling – being located deeply within the plot behind the existing building, in conjunction with the relative intensity of the existing residential use is deemed to undermine the established character of the area. The resulting plot(s) do not accord with the established pattern of site layout in the area and a new dwelling in this location would be incongruous to this. The new plot having an extremely long, narrow access to it and the existing plot are reduced in size significantly. Both the subdivided existing plot and the proposed plot would result in two smaller dwelling plots which appear cramped as a result of the fragmentation of the established garden.

In regards to the size of the proposed dwelling; whilst there are many examples of single storey bungalows in the area (including the new development to the rear), their footprints are considerably larger than that proposed and whilst Nos. 18 and 20 Frinton Road have a similar small footprint, they are both two-storey dwellings. As such the parameters of the dwelling do not accord with any of the dwellings in the area. In regards to the resulting plot sizes; it is acknowledged that the new development to the rear has a number of plots which would be of a comparable size; notwithstanding this – these plots should be viewed in the context that they are part of a much larger estate layout where all of the plots are relative to one another. As such the resulting plot sizes do not accord with those typical to the character of Frinton Road.

3. Amenities of Existing & Future Occupiers:

The NPPF, at paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Saved Plan 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'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The dwelling has fenestration in all four of its elevations and these openings have a maximum height of 2.1m; as such outward-views towards the adjacent dwellings are unlikely to have an impact on their privacy. In regards to inwards views, the dwelling's amenity space would be in the area beyond the north (rear) elevation and the rear boundary and, for the most part out of sight from Nos. 26 and No. 24; Plots 9 and 10 of the new development have an angled relationship with the boundary and, being chalet bungalows, only have rooflights in their rear roofslopes. The siting of the new dwelling, in conjunction with its limited height are such that it would have little impact on either the daylight or amenity experienced by occupiers of nearby properties.

Different dwelling sizes and types provide accommodation for individuals and families with a wide range of expectations and need for private amenity space. "Private amenity space" comprises a private outdoor sitting area not overlooked by adjacent or opposite living rooms or outdoor sitting areas. It will therefore not necessarily always amount to the entire rear garden. Apart from its private recreation function, private amenity space is also important in achieving well laid out development.

Private amenity space shall be provided to new dwellings in accordance with the following standards:- one bedroom house - a minimum of 50 square metres. In regards to flats, the existing flat does not fall in to any of the categories (being part of communal living nor a ground floor flat, nor is it a first floor flat with a balcony). Notwithstanding this, at 66sqm the amenity space available (subject to its boundaries being surrounded by a 1.8m fence) far exceeds that required.

Overall, the proposed dwelling is unlikely to have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties and likely to result in an adequate and likely to secure a good standard of amenity for existing occupants of the flat and future occupants of the proposed dwelling.

4. Highways

Paragraph 108 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan 2007 states that planning permission will only be granted, if amongst other things, access to the site is

practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. These objectives are supported by emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

There must be proper means of access to backland development, which is safe and convenient for both drivers and pedestrians, with a turning area where necessary to avoid the need for vehicles to reverse onto a public highway. Its likely frequency of use by vehicular traffic and the suitability of the access for service vehicles and the emergency services will also be relevant material considerations.

The site layout shows provision for three parking spaces – two for the proposed dwelling and one for the existing flat. It is not clear how the parking bay for the flat would be accessed as its location is within their garden, which is assumed will have perimeter fencing around it. Notwithstanding this, the existing flat currently has no parking at all so the provision of a parking space is deemed an improvement over the existing circumstances. The proposed dwelling has one bedroom and requirements for this are for only one space; two are proposed and therefore the parking provision exceeds the minimum requirement. Adequate space exists 'behind' the parking spaces in order that vehicles can turn around within the site so that they can enter/exit in a forward gear.

5. Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

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 a new dwelling on a site that lies within the Zone of Influence (Zoi) being approximately 1,810m from Hamford Water Special Protection Area. Since the development is for 1 dwelling only, the number of additional recreational visitors would be limited and the likely effects on Hamford Water from the proposed development alone may not be significant. However, new housing development within the Zoi would be likely to increase the number of recreational visitors to Hamford Water; 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 unilateral undertaking has been prepared to secure this legal obligation. This will ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with 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.

6. Public Open 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. The outcome of the consultation is that no contribution is being requested from Open Spaces on this occasion.

Representations

Frinton & Walton Town Council responded to two of the consultations with their concerns regarding the proposal being an overdevelopment of the site, a form of backland development and having a dangerous access.

Other Material Considerations

During the determination of the application the Agent put forward a number of examples where the Local Planning Authority have approved backland developments. A summary of these applications, their addresses and the weight attributed to the context of the applications is given here:-

19/01162/FUL	Land to The rear of 56 - 66 Frinton Road	Very large site; no similarity to the site context. 400m away
19/00118/OUT	87 Thorpe Road, Kirby Cross	Original dwelling being demolished; 24m separation to LH neighbour, intervening garage to RH neighbour. 740m away
18/01919/OUT	Rear of 161 - 163 Thorpe Road, Kirby Cross	Not yet determined
19/01815/FUL	rear of 6 Orchard Close, Clacton On Sea	Larger plot; space within the sub-divided plot to enter/exit in forward gear. 4 miles away
19/01266/FUL	10 Connaught Gardens East, Clacton On Sea	Not yet determined
19/01760/OUT	Land adjacent Larkwood, Kirby Road	Larger plot; space within the sub-divided plot to enter/exit in forward gear, very unlikely to impact neighbours. 1 mile away
19/01255/FUL	Land adjacent Paddocks, Weeley	Larger plot; space within the sub-divided plot to enter/exit in forward gear. 4.8miles away
19/00791/DETAIL	Land East of School Road, Elmstead	Not yet determined
17/00027/OUT	Avonleigh House, Clacton Road, Elmstead	Larger plot; space within the sub-divided plot to enter/exit in forward gear. More than 10 miles away
15/00675/OUT	Land off Clacton Road, Elmstead	Larger plot; space within the sub-divided plot to enter/exit in forward gear. More than 10 miles away
19/00698/FUL	Thorpe House, 149 Harwich Road, Little Clacton	Larger plot; space within the sub-divided plot to enter/exit in forward gear. More than 4 miles away

Conclusion

The proposal, by reason of being a backland form of development which is out of character with established scale of built form and established streetscene of Frinton Road warrants refusal of planning permission.

6. Recommendation

Refusal - Full

7. Conditions / Reasons for Refusal

Paragraphs 127 and 170 of the NPPF state that developments should add to the overall quality of the area, be visually attractive as a result of good architecture and be sympathetic to local character, including the surrounding built environment.

Saved Policies QL9, QL10 and QL11 of the adopted Tendring District Local Plan (2007) seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward within Policy SPL3 of the emerging Local Plan. Saved Policy HG13 (Backland Residential Development) of the adopted Tendring District Local Plan (2007) requires that the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.

Development in the area is laid out in a very typical linear form, albeit with varying degrees of set-back from the back edge of the pavement; this facilitates off-street parking for the majority of the dwellings in the area. The proposed siting of this dwelling in the rear garden of the host dwelling defines the plot as a backland site. In this instance, the location of the proposed dwelling – being located deeply within the plot behind the existing building, in conjunction with the relative intensity of the existing residential use is deemed to undermine the established character of the area. The resulting plot(s) do not accord with the established pattern of site layout in the area and a new dwelling in this location would be incongruous to this. The new plot having an extremely long, narrow access to it and the existing plot reduced in size significantly. Both the subdivided existing plot and the proposed plot would result in two smaller dwelling plots which appear cramped as a result of the fragmentation of the established garden.

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Overall the development does not add to the overall quality of the area, be visually attractive as a result of good architecture or be sympathetic to local character, including the surrounding built environment. Further, it does not make a positive contribution to the quality of the local environment and character, by being well designed, nor does it relate satisfactorily to its setting and is therefore contrary to the aforementioned national and local planning policies.

8. Informatives

Positive and Proactive Statements

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.

Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

The Highway Authority observes that there are 3 No. Personal Injury Collisions recorded in the vicinity of the proposed development site.

Access for a fire fighting appliance is required in accordance with Approved Document B. At 2.4m wide, the width of the access is significantly narrower than the minimum required under Building Regulations Approved Document B.

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision?		NO