



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT: Miss Harriet Wooler -
Bidwells
Bidwells House
Trumpington Road
Cambridge
CB2 9LD

APPLICANT: Bennett Homes
C/o Agent

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 19/01946/OUT **DATE REGISTERED:** 20th December 2019

Proposed Development and Location of Land:

Outline Planning with some matters reserved, except access, for the demolition of existing buildings and the development of up to 100 new homes, public open space, a woodland walk and associated infrastructure. Land South of Clacton Road and East of Rochford Road St Osyth Essex CO16 8PR

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 Paragraph 47 of the NPPF requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The site lies outside of the Settlement Development Boundary of both the Saved and Draft Local Plans and is not allocated for development.

Saved Policy QL1 of the Tendring District Local Plan (2007) sets out the spatial strategy and seeks to concentrate most development in the District's larger towns with limited development, consistent with local community needs, in smaller towns and villages. The policy also seeks to concentrate development within settlement boundaries and states that development outside those boundaries will only be permitted where it is consistent with countryside policies. There is nothing to suggest that the proposals accord with the Plan's countryside policies. As such, they conflict with Policy QL1.

As the site lies outside of the settlement development boundaries and is not allocated for development in either the adopted or emerging Local Plan, it is contrary to local policy. However, where Councils are short of identifying a five-year supply of deliverable housing sites, the National Planning Policy Framework's (NPPF) presumption in favour of sustainable development is engaged and applications must be considered on their merits. In terms of St Osyth this has led to a number of major residential proposals being approved either by the Council or following an appeal over recent years.

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, one of the main concerns raised by the Parish Council and local residents, with respect to this application, is 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'. Furthermore, the village does not have its own railway station and is not located in close proximity to any strategic employment centres.

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 technically falls below 5 years - but this is only because, until the modified Section 1 Local Plan is formally adopted at the end of January 2021, housing supply has to be calculated against a housing need figure derived through the government's 'standard methodology' - a figure that is significantly higher than the 'objectively assessed housing need' of 550 dwellings per annum in the Section 1 Plan and confirmed by the Inspector in his final report to be sound. Because of this technicality, the NPPF still requires 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.

However, because the housing land supply shortfall is relatively modest when applying the standard method prescribed by the NPPF and significant weight can now be given, in the interim, to the sound policies in the modified Section 1 Plan (including the housing requirement of 550 dwellings per annum), the reality is that there is no housing shortfall and, on adoption of the Section 1 Plan, the Council will be able to report a significant surplus of housing land supply over the 5 year requirement, in the order of 6.5 years. Therefore, in weighing the benefits of residential development against the harm, the Inspector's confirmation of 550 dwellings per annum as the actual objectively assessed housing need for Tendring is a significant material consideration which substantially tempers the amount of weight that can reasonably be attributed to the benefit of additional new housing - particularly in the consideration of proposals that fall outside of the settlement development boundaries in either the adopted or the emerging Section 2 Local Plan.

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.

Major developments - which have planning permission and have recently been built-out or retain extant consents - in St Osyth include:

- Westfield, St Osyth - 72 dwellings
- Wellwick, St Osyth - 190 dwellings

These 262 dwellings represent a significant increase in the village's housing stock which, based on the district-wide housing need for the whole of Tendring (contained within the emerging Local Plan) is already disproportionate. If added to the permissions already granted, a further 100 dwellings as proposed in this outline application would increase the potential growth further. As such the settlement is already now expected to accommodate a greater level of housing development than envisaged in the emerging Local Plan.

The 100 dwellings proposed for the application site is a purely residential scheme that 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 and there is no support from the Parish Council or local residents. 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 In terms of the local landscape it should be noted that the northern section of the application site is situated the St Osyth/ Gt Bentley Heaths Landscape Character Area (LCA) with the southern section in the St Osyth Coastal slopes as defined in the Tendring District Council Landscape Character Assessment. The land to the south of the application site forms part of the St Osyth Coastal Ridge LCA which is similar in many ways to the Heathland Plateau but is perhaps less vegetated with fewer trees and countryside hedgerows.

One of the key characteristics of the St Osyth Heaths LCA is; as defined in the document the highly productive plateau of arable fields divided by low gappy hedgerows with occasional hedgerow Oaks. The plateau landscape is particularly sensitive as a result of its open character and low views. Taking into account the urban fringe location of the application site and the localised topography where the land falls down to the St Osyth Drain feeding into St Osyth Creek the site is locally contained.

In order to fully assess the potential impact of the development proposal on the local countryside the applicant has provided a Landscape and Visual Impact Assessment (LVIA). The LVIA establishes the baseline qualities and value of the local landscape and assesses the landscape and visual effects of the proposed development on the local landscape character. It identifies the extent of harm and sets out steps to mitigate and ameliorate the harm. The document identifies several locations (visual receptor viewpoints) from which the application site can be viewed.

In terms of the assessment contained in the LVIA and the conclusion reached it is clear that the development of the land and the resultant change of use will have a significant adverse effect on the landscape and that this will be irreversible. It is also clear that to a lesser extent the development will have adverse effects on visual quality of the local landscape character. The visual harm can, to a reasonable degree, be mitigated by the measures set out in the LVIA.

The conclusion reached in the LVIA states that 'This LVIA confirms that there are no landscape related matters that, in our opinion, constitute reasons to outweigh the presumption in favour of development embedded in the NPPF or which constitute a landscape reason to refuse planning permission. On balance it appears that the LVIA provides a genuine reflection of the impact of the development proposal on the local landscape character.

However notwithstanding the conclusion drawn it is clear that the development proposal, would, if implemented, result in the loss of open countryside that is valuable for its own sake. The development would bring about a permanent change to the local landscape and would contribute to the gradual erosion of the countryside. The development would extend the settlement out further into open countryside and by eroding its rural setting the development would contribute to the further urbanisation of the village. This would undermine the distinctive identity of the settlement and would not conserve or enhance the rural character of the landscape. As such the application is in conflict with saved local plan policy EN1, emerging local plan policy PPL3, as the proposed development would have a harmful impact on the rural landscape setting of the village.

- 3 The National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be 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 COM26 of the Tendring District Local Plan states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Emerging Policy PP12 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) states planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements. Essex County Council Education Services have identified the need for financial contributions toward primary and secondary education provision and school transport. A completed Section 106

obligation to secure these contributions has not been provided prior to the application determination date and the application is therefore contrary to the above policies.

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 and/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 an off-site play contribution and if the on-site open space is to be maintained by the Council then provisions for maintenance will need to be secured through a Section 106 obligation. Without such provisions being secured the proposals are contrary to the above policies.

Saved Policy QL12 state and emerging Policy HP1 state that the Council will work to improve the health and wellbeing of residents in Tendring by seeking mitigation towards new or enhanced health facilities from developers where new housing development would result in a shortfall or worsening of healthcare provision. NHS CCG have confirmed that the local GP practice at Church Square Branch Surgery (and/or including its Main Practice St James Surgery) does not have capacity for the residents resulting from this proposal and request a contribution of £56,444 to enable improvements to capacity.

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. Furthermore, saved Policy TR1a requires new development to be considered in relation to the road hierarchy to reducing and preventing hazards and inconvenience to traffic. ECC-Highways have confirmed the need for a financial contribution of £30,000 towards any future junction improvements to Clacton Road/Pump Hill or Clacton Road/Colchester Road/Mill Street/Spring Road Junctions.

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

- 4 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. 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) 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.

The development is therefore contrary to Paragraph 175 of the National Planning Policy Framework, Policy EN11a in the adopted Local Plan and Policy PPL4 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

- 5 Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the adopted Tendring District Local Plan 2007 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".

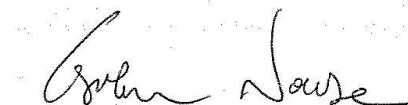
Paragraph 5.3 of government document 'Planning for Biodiversity and Geological Conservation: A Guide To Good Practice', states that "In the development control process, the onus falls on the applicant to provide enough information to enable the Local Planning Authority to assess the impacts on biodiversity and geological conservation. Planning applications must be supported by adequate information". Standing advice from Natural England recommends that an initial scoping 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 carrying out of) subsequent species specific surveys.

The Ecological Walkover Survey (BSG Ecology, October 2020) states that "further surveys will be necessary in the first instance by testing for GCN presence/absence using the environmental DNA (eDNA) method. A positive result will be given if GCN have recently occupied the pond. If the ponds are found to be positive for GCN eDNA, then further survey work will be required. A European Protected Species licence from Natural England will be necessary if adverse impacts to GCN are likely in the absence of mitigation or Reasonable Avoidance Measures."

Additional surveys in respect of GCN are therefore necessary. This information is required, prior to determination, but has not been provided. Therefore, 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 saved Policies EN6 and EN6a as well as draft plan Policy PPL4. It would also be contrary to Paragraphs 170 and 174 of the National Planning Policy Framework, which requires that biodiversity should be protected and that significant harm should be avoided. In this case it is unknown whether significant harm will be caused. As such, the proposal is in conflict with the afore-mentioned policies, guidance, directive and the Framework.

DATED: 22nd January 2021

SIGNED:



Graham Nourse
Assistant Director
Planning Service

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

HG3A Mixed Communities

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

COM22 Noise Pollution

COM23 General Pollution

COM26 Contributions to Education Provision

COM31A Sewerage and Sewage Disposal

EN1 Landscape Character

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

EN23 Development Within the Proximity of a Listed Building

EN29 Archaeology

TR1A Development Affecting Highways

TR3A Provision for Walking

TR4 Safeguarding and Improving Public Rights of Way

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

SP2 Spatial Strategy for North Essex

SP3 Meeting Housing Needs

SP5 Infrastructure & Connectivity

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

HP1 Improving Health and Wellbeing

HP5 Open Space, Sports & Recreation Facilities

PP12 Improving Education and Skills

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

CP2 Improving the Transport Network

PPL7 Archaeology

PPL9 Listed Buildings

CP1 Sustainable Transport and Accessibility

Local Planning Guidance

Tendring Landscape Character Assessment

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the 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 reasons 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.