

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	NW	17/02/2021
Planning Development Manager authorisation:	TC	17/02/2021
Admin checks / despatch completed	DB	18.02.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	18.02.2021

Application: 20/01106/OUT **Town / Parish:** Brightlingsea Town Council

Applicant: West Folkards Limited

Address: Land to The West of Folkards Lane Brightlingsea

Development: Demolition of stables and erection of 3no. dwellings with access and parking.

1. Town / Parish Council

Brightlingsea Town
Council
15.02.2021

Brightlingsea Town Council makes the following comments:-
- Overdevelopment
- The entrance to Folkards Lane is a very small lane and has serious transport issues

2. Consultation Responses

ECC
Highways
Dept
18.11.2020

No additional
comments
received

The information that was submitted in association with the application has been fully considered by the Highway Authority. It is noted the site has existing planning consent for a new four-bedroom detached house and cart lodge and for equestrian use. It is also noted that the site previously formed part of an equestrian business that offered a ménage, stables and three paddocks to individuals on a leasehold basis. With this in mind it is felt that the traffic use for the new development will certainly be no greater than the existing or previous uses:

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

1. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials

iii. storage of plant and materials used in constructing the development

iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

2. Prior to occupation of the development, the full width of the site frontage shall be provided with a clear to ground parallel visibility band with dimensions of no less than 2.4m depth as measured from and along the nearside edge of the highway. Such vehicular visibility band shall be provided before access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

3. Prior to occupation of the development a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

4. No unbound material shall be used in the surface treatment of the vehicular access or drive throughout.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

5. 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 / Footway / Highway Boundary 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.

6. There shall be no discharge of surface water onto the Highway.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety to ensure accordance with policy DM1.

7. Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity. Any vehicular parking space which is bounded by walls or other construction shall have minimum dimensions of 3.4 metres x 5.5 metres.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

8. The Cycle / Powered Two-wheeler parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.

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

9. 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 free of charge.

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.

10. Prior to the commencement of any work on the site a joint inspection of the route to be used by construction vehicles should be carried out by the applicant and the Highway Authority, to include photographic evidence. The route should then be inspected again, after completion of the development, and any damage to the highway resulting from traffic movements generated by the application site should be repaired to an acceptable standard and at no cost to the Highway Authority.

Reason: To preserve the integrity and fabric of the highway, in the interests of highway safety and in accordance with Policy DM 1.

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: Any passing place should be provided with minimum dimensions of 2.0 metres wide x 7 metres in length (excluding tapers). Details to be agreed in writing with the Local Planning Authority.

2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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 - Development Management Team

Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
CO7 7LT

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

Tree
Landscape
Officer
05.02.2021

& Currently the application site appears to be being used for the grazing or keeping of horses. The site contains several established trees.

In order to show the extent of the constraint that the trees are on the development potential of the land and to determine the impact of the development on the trees the applicant has provided a Tree Survey and Report. The report is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations

The Tree Report contains a Tree Constraints Plan that provides an accurate description of the health and condition of the trees on the land. It shows those trees that will need to be felled in order to facilitate the development proposal and shows the extent of the area around the retained trees that should be protected to ensure that they are not harmed by the development proposal. It shows the Root Protection Areas (RPA's) of the trees and identifies the area of land within which development should not be take place or where specialist construction techniques will be required.

Due to the location of the application site and the extent to which the land, and the trees contained thereon, can be seen from a public place, none of them have such amenity value that they merit protection by means of a tree preservation order.

In terms of the site boundary adjacent to Folkards Lane any planning permission should restrict the height and type of boundary fencing. Fencing should be post and rail or chain-link with new soft landscaping.

Should planning permission be likely to be granted then a condition should be attached to secure details of soft landscaping. Although the site is not heavily overlooked new planting is required to ensure that any development for which planning permission is granted is satisfactorily assimilated into its setting.

Policy Section
09.02.2021

It is noted that the applicant is suggesting that it would be premature, ahead of the Section 2 Local Plan examination and the Inspector's conclusions, for the Council to be able to

categorically confirm that it can demonstrate a five-year supply of deliverable housing land. They suggest that if the Council's housing supply was categorically confirmed, then housing supply would not be a matter for continued discussion in the examination. However, there is a need for planning authorities to maintain and demonstrate an five-year supply of deliverable housing on an ongoing basis, irrespective of the position of its Local Plan. Separately, there is a requirement to demonstrate, through the Local Plan examination process, that a five-year supply can be demonstrated at the point of adoption.

It is standard practice for the Local Plan Inspector to ask that question as part of the examination process and the fact that the question has been asked is not an indication that there is necessarily any doubt over the matter. Indeed, the Council has made very robust submissions to the examination which demonstrate very clearly that the Council is able to demonstrate a five-year supply at April 2020 and is projected to continue to demonstrate a five year supply in April 2021 and April 2022, by which time it is expected that the Section 2 Local Plan will have been adopted. There has only been one hearing statement countering the Council's position and this is from Taylor Wimpey arguing for the inclusion of an additional site in the Local Plan - but the focus of their objection is the deliverability of the Tendring Colchester Borders Garden Community, which is not expected to deliver many homes in the next five years in any event - with the majority of delivery anticipated to be longer-term.

The key decision has been the confirmation of the soundness of 550 dwellings per annum as the housing requirement and the subsequent adoption of the Section 1 Local Plan by the Council which means that it can legitimately measure housing supply against the 550dpa requirement and demonstrate a comfortable five-year supply.

That said, the applicant is right in suggesting that the ability to demonstrate a five-year supply is not, on its own, a reason to refuse all proposals for new residential development outside of settlement development boundaries. Planning applications should be determined in accordance with the Development Plan unless other material considerations indicate otherwise. Therefore there remains a need to consider whether or not there are material considerations that would justify departures from the Local Plan, irrespective of whether or not the Council can demonstrate a five-year supply. However, in the interest of following a plan-led system and seeking to achieve a sustainable pattern of growth, developments outside of the settlement boundary should generally be resisted - unless there are good reasons for a departure.

Building
Control and
Access Officer
08.02.2021

Fire Access should be in accordance with Approved Document B5.
Essex Fire and Rescue also require: Min turning circle between kerbs 17.8m (B5 currently 16.8m) and Minimum carrying capacity 15 tonnes

Environmental Protection
25.01.2021

Wish to submitted the same comments as previously submitted for 20/01106/OUT Land to The West of Folkards Lane, Brightlingsea

I have reviewed the application and recommend the following comments.

Noise Assessment

Due to the site's close proximity to a Boarding Kennels & Cattery, prior to commencement of the development a full Noise Assessment should be submitted to the Local planning authority showing the proposed residential units (with the windows closed) meet the following internal noise levels shall be achieved; 35dB(A) Leq 16 hours 07.00hrs -23.00hrs in Living rooms, while 30dB(A) Leq 8 hours in Bedrooms and no individual noise event to exceed 45dB(A) max (measured with F time weighting) 23.00hrs - 07.00hrs. External noise affecting gardens, balconies or amenity spaces shall not exceed 55dBLAeqt. (BS8233:2014) The scheme of sound insulation shall be submitted to and approved in writing by the Local Planning Authority.

Contaminated Land

Our contaminated land database shows no indication of contamination however an observation strategy is recommended during any groundwork. If any unforeseen contamination is encountered during the development works this should be reported immediately so that appropriate action can be taken.

Construction Method Statement

Prior to the commencement of any demolition or construction works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, Environmental Protection. In order to minimise potential nuisance to nearby existing residents, Environmental Protection ask that the following below is conditioned.

Noise Control

1)The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.

2)No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.

3)The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.

4) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).

5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Environmental Protection prior to the commencement of works.

Emission Control

1) All waste arising from the demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

2) No materials produced as a result of the site development or clearance shall be burned on site.

3) All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.

4) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Dust Control

1) Dust suppression methods to be employed during construction so as to minimize likelihood of nuisance being caused to neighbouring properties. A scheme of measures for the control and suppression of dust emissions shall be submitted.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Environmental Protection. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

UU Open Response from Public Realm
Spaces Open Space & Play
10.02.2021

Application Details

Application No: 20/01106/OUT

Site Address: Land to The West of Folkards Lane Brightlingsea
Essex CO7 0SJ

Description of Development: Demolition of stables and erection
of 5no. dwellings with access and parking

Current Position

There is currently a deficit of -13.68 hectares of play and formal open space in Brightlingsea.

There are two play spaces in Brightlingsea, a Local Area for Play and Skate Park at Promenade Way, Brightlingsea and a Local Equipped Area for Play at Regent Road Recreation Ground, Brightlingsea. This is 0.9 miles from the proposed development.

Recommendation

Due to the overall deficit within Brightlingsea a contribution for open space and play is relevant and justified to the planning application. Any contribution will be used to make improvements/maintenance at Bayards Rec Ground, Regents Road

Waste
Management
27.01.2021

Private drive to be constructed to suitable standard and width to allow access to 26 tonne refuse collection vehicles

3. Planning History

18/30203/PREA PP	Proposed 4 bed detached house & cartlodge.	07.11.2018
19/00179/FUL	Proposed detached four bedroom house and associated cart lodge.	Approved 14.06.2019
20/01106/OUT	Demolition of stables and erection of 3no. dwellings with access and parking.	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

HG1 Housing Provision

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG13 Backland Residential Development

HG14 Side Isolation

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

EN3 Coastal Protection Belt

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

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

LP1 Housing Supply

LP2 Housing Choice

LP4 Housing Layout

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP1 Improving Health and Wellbeing

PPL4 Biodiversity and Geodiversity

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

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. In this latter regard, as of 26th January 2021, 'Section 1' of the emerging Local Plan for Tendring (Tendring District Local Plan 2013-2033 and Beyond Publication Draft) has been adopted and forms part of the 'development plan' for Tendring.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) has been examined by an Independent Planning Inspector who issued his final report and recommended 'main modifications' on 10th December 2020. The Inspector's report confirms that, subject to making his recommended main modifications (including the removal from the plan of two of the three 'Garden Communities' proposed along the A120 i.e. those to the West of Braintree and on the Colchester/Braintree Border), the plan is legally compliant and sound and can proceed to adoption. Notably, the housing and employment targets in the plan have been confirmed as sound, including the housing requirement of 550 dwellings per annum in Tendring.

The Council has now formally adopt Section 1 of the Local Plan, in its modified state, at the meeting of Full Council on 26th January 2021, at which point it became part of the development plan and carries full weight in the determination of planning applications – superseding, in part, some of the more strategic policies in the 2007 adopted plan.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will proceed in early 2021 and two Inspectors have been appointed by the Secretary of State to undertake the examination, with the Council preparing and updating its documents ready for the examination. In time, the Section 2 Local Plan (once examined and adopted in its own right) will join the Section 1 Plan as part of the development plan, superseding in full the 2007 adopted plan.

Where emerging policies are particularly relevant to a planning application and can be given 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 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.

With the adoption of the modified Section 1 of the emerging Local Plan, the Councils 'objectively assessed housing need' of 550 dwellings per annum has been found 'sound' and there is no housing shortfall. The Council is able to report a significant surplus of housing land supply over the 5 year requirement, in the order of 6.5 years.

5. Officer Appraisal (including Site Description and Proposal)

Site Description and Context

The site measures approximately 0.39 hectares in size, and is rectangular in nature. There is an approx. 7m wide x 30m deep entrance strip feeding into an approx. 75 m wide x 50 m deep plot. The site is situated on the western side of Folkards Lane, on land that is outside the settlement boundary of Brightlingsea.

Folkards Lane is part public highway, part private road and the application site is accessed from the private road section of the lane. The lane is populated by a number of properties, including a boarding kennels and a site for the storage of touring caravans.

The application site and land around it is presently paddock land, used previously for grazing private horses. It contains mostly grass land interspersed by trees, none of which are protected. The land is within Flood Zone One. The application site is not within a Conservation Area and there are no heritage assets in the immediate vicinity that might be affected by the proposals.

A post and rail fence borders the site adjacent to Folkards Lane. Vehicular access is obtained via an existing access at the north eastern corner of the site directly from Folkards Lane enclosed by a timber gate. This access will not be used as part of the host proposal. There was a previous approval on part of the site via application 19/00179/FUL, 'Proposed detached four bedroom house and associated cart lodge', where this access was used. The host application seeks approval for a new access some 30m to the south.

To the west beyond the remainder of the paddock land, are the residential dwellings fronting Campervell Close. There are existing dwellings directly opposite (east), there is a gap of approximately 50 metres to the residential dwelling to the south of the site along Folkards Lane. This dwelling was approved under application 17/00696/OUT.

There is a commercial kennels buildings to the north east and Lower Marsh Farm beyond. To the north west of the site are open fields.

The site lies outside of the Brightlingsea 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). The site is also within the Coastal Protection Belt of Brightlingsea Reach and St Osyth Marsh.

Description of Proposal

Demolition of stables and erection of 3no. dwellings with access and parking

The application is in outline form with all matters reserved other than layout and access, meaning that the principle of development, layout and access is under consideration with the details of scale, appearance and landscaping all reserved for subsequent consideration.

Assessment

The main considerations in this instance are;

- 1 Principle of Development
- 2 Layout and Visual Impact inc Coastal Protection Belt
- 3 Residential Amenities
- 4 Access and Parking
- 5 Trees
- 6 Ecology
- 7 Legal Obligations - Open Space Contribution
- 8 Legal Obligations - Recreational Disturbance Contribution
- 9 Other Matters
- 10 Representations.

1. Principle of Development

The site lies outside of any 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 applicant states in their Design Statement a belief that Policy QL1 is 'out of date'. However, the appeal quoted dates back to 2017. The most recent findings (see APP/P1560/W/20/3256190 - 700 St Johns Road and St Johns Nursery site, Earls Hall Drive, for 195 dwellings), in this appeal dated 7th January 2021, the Inspector reasoned:

'for the purposes of the determination of this appeal there is a 5yrHS, I consider Policy QL1 is not out-of-date' (Paragraph 93)... Also, 'the provisions of Policies QL9, QL10, QL11 are generally consistent with the policies contained within the Framework' (Paragraph 94).

Therefore, the principle of housing development being located within settlement boundaries and focused towards larger urban areas remains a core strategic policy requirement. This mantra chimes with Paragraph 117 of the NPPF that seeks to promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.

The adopted local plan classifies the settlement of 'Brightlingsea' as a 'Town' where the re use of previously developed land in the urban area for mixed uses and housing is generally sufficient to meet local community needs. The emerging local plan classifies the area as a 'Smaller Urban Settlement', benefiting from a range of existing infrastructure and facilities. Furthermore, with in applying a sustainable, fair and proportionate approach, such settlements will accommodate the second largest proportion of the Districts housing increases.

However, as established, the host site is outside the adopted and emerging settlement boundaries, in a location designated as 'Countryside'. This designation is heightened by the site being located within the 'Coastal Protection Belt'.

Therefore, there is a fundamental policy objection to this development in this location.

Decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the

Town and Country Planning Act 1990, section 38(6) of the Planning and Compulsory Purchase Act 2004 and Paragraph 47 of the NPPF.

- Material Consideration 1 -Recent approvals in the area

With regards to other material planning considerations the applicant points to the fact that 8 new dwellings have been approved either by the Council or on appeal in Folkards Lane, including one house on the application site in recent years. Included in this number are two applications 17/01086/OUT and 17/0696/OUT both very allowed at appeal despite the Council not being able to demonstrate a 5 year land supply.

Officers accept that Appeal Inspectors have considered development on Folkards Lane to be accessible to local services and have not seen reason to object on Highway Safety grounds. However, there are fundamental differences in the host application to all the other 8 dwellings recently approved on the Lane either by appeal or via Local Authority judgement.

Firstly, the proposed application seeks to back fill an area set back from the Lane frontage, not following the ribbon of street frontage development. This is unlike all the previous 8 approvals on site, thus they are not in any way comparable to what is proposed in this application. The application would fail to respect the established pattern of ribbon development found in this location along the Lane.

Secondly as a result of the depth of the red line area and the site layout proposed, the development would not (see 6.3 of the applicants Planning Statement) be '*surrounded by residential development*' and proposal is '*physically isolated*'. As a result of the proposed layout, the development gives the impression that the site has '*encroached into the surrounding countryside*'. Also, the host site can be described as open countryside giving a very rural appearance. Thus, the '*undeveloped coastal land and the development*' would and does '*have an adverse impact on the character and appearance of the area*'. Officers view this site as isolated ie not connected to any residential neighbouring boundary and amounting to significant harm to the open countryside.

- Material Consideration 2 – NPPF 2019

Other material planning considerations that could lead Officers to depart from Local Planning Policy would be the National Policy direction in the NPPF 2019.

Due to the 5 year housing figures being sound, the tilted balance of paragraph 11d of the NPPF is not triggered. Indeed, when the Local Plan Policies are deemed in date and the housing figures are above the 5 year supply level, as is the case at Tendring District Council. Paragraph 12 of the NPPF states that presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.

The NPPF outlines several possibilities where housing development in such locations could be considered acceptable. However, the proposal does not fit within the countryside exemption criteria of Paragraphs 77, 78 or 79 of the 2019 NPPF. Paragraph 78 is concerned with 'Sustainable development in rural areas,' providing opportunities for 'villages to grow and thrive'. As established the local settlement is a 'Town' and there are no direct links to Thorrington to the north, thus this exception criteria is not engaged.

At the time of this report, the supply of deliverable housing sites that the Council can demonstrate stands at 6.5 years. Therefore, the Local Plan policies takes primacy over the NPPF Policy directions. As such, 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 'significantly boosting' the supply of housing via Paragraph 59, a brief assessment of the sustainable development criteria of the host site is given.

Assessment of Sustainable Development

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.

- Economic

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

- Social

Officers accept that the site is located in close walking distance to a local shops and services, also there is a bus route nearby. This would make sustainable living arrangements a possibility.

However, 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 such areas from unfair, disproportionate and potentially unlimited levels of new housing growth.

The 3 dwellings proposed here is a purely residential scheme, it is considered that this residential development offers no exceptional social benefits that might lead the Council to consider the proposal in exceptional light.

As the housing land supply figures are in a positive position. It is considered that this is an unnecessary development that is contrary to the aims of Sustainable Development. Adding, to further traffic problems that are experienced locally due to the narrow width of the access road. The host site benefits from a single dwelling being approved via application, 19/00179/FUL. That approval respects the street frontage and fails to significantly erode the open countryside to the rear. Officers do not believe there are overwhelming public benefits to this proposal and any social gains would be very minor.

- Environmental

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

2. Layout and Visual Impact inc Coastal Protection Belt

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 ALP and Policy SPL3 and PPL3 of the ELP seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape.

Furthermore, saved Policy HG13 of the ALP and emerging Policy LP8 of the ELP are of particular relevance in this instance due to the nature of the proposal creating backland development. Saved Policy HG13 states that proposals for the residential development of backland sites will only be approved where it meets specific criteria. Such criteria include, the site being located within the defined settlement development boundary, avoiding long narrow driveways and the development being in keeping with the character of the area.

The site comprises the existing road frontage and a large area of undeveloped land behind. The existing pattern of development along this part of Folkards Lane is one of strong linear pattern, road frontage, ribbon development. The 3 dwellings proposed via a 35m driveway into the site, would create an incongruous and irregular backland arrangement where none currently exists. The existing open, undeveloped and linear character would be eroded. It would be replaced with housing, its access road, hardsurfaced driveways and its associated paraphernalia. Development on the site would result in a fundamental change to the areas character and appearance, setting a harmful precedent for further development of land to the rear and beyond. Thus, the application fails to meet the aims of saved Policy HG13 of the adopted Local Plan and emerging Policy LP8 of the draft Local Plan.

The amended layout in Block plan 1295/sk05 is considered acceptable with regards policies HG7 Residential Densities, HG9 Private Amenity Space and HG14 Side Isolation. All the garden sizes far exceed the minimum requirements.

Whilst the provision of 3 dwellings (net 2) would make a modest contribution to the provision of housing in the district, the planning balance has shifted following the outcome of the inspection of Section 1 of the ELP and there is no longer a necessity to consider these site outside the settlement boundaries of larger urban areas as being sustainable.

There has been a recent appeal decision at 35 Holland Road Little Clacton Clacton On Sea, Appeal Ref: APP/P1560/W/20/3251890 dealing with a similar form of application to what is proposed. Indeed, this was issued when the Local Authority did not have a 5 year housing supply.

The Inspector opined:

'ensuring that new development respects the character and appearance of an area is consistent with the Government's objectives to deliver a sufficient supply of new homes of good design, included in Paragraph 127 of the Framework. I acknowledge that Paragraph 78 of the Framework seeks to provide opportunities for villages to grow and support local services but this has to be balanced against the harm which I find the proposals would incur to the area's character and appearance.'

...the harm arising would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework as a whole. Therefore, the proposal would not represent sustainable development. It would also not accord with the requirements of Saved Policy HG13 of the Local Plan'.

The appeal was dismissed.

- Impact on the Coastal Protection Belt

Further to this 'Countryside' location, the host site is also allocated as being within the 'Coastal Protection Belt' under saved policy EN3 and emerging policy PPL2. 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.

The local policy seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development as well as seeking to improve public access to and enjoyment of the coast in accordance with the National Planning Policy Framework.

Consistent with this, paragraph 170 of the Framework (NPPF) 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 proposal is considered to have a significant impact upon the Coastal Protection Belt. The site is open on two sides. On this basis, the impact will be moderate to high when judged by wider views. The development is outside of the designated flood zone however will significantly harm the landscape character and quality of the undeveloped coastline designation.

Furthermore, the harmful precedent set by allowing the introduction of dwellings in this back land location that could lead to the continuation of development along Folkards Lane which would cumulatively have a very harmful impact upon the character and undeveloped nature of the wider area.

3. 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 supports these objectives.

Officers consider that sufficient space is available on site to provide a development that could achieve internal layout and separation distances that would not detract from the amenities of any nearby dwellings or the future occupiers of the proposed dwellings and would provide private amenity areas in accordance with the standards set out within Saved Policy HG9 of the adopted Local Plan.

The environmental protection department have requested a Noise Assessment due to the site's close proximity to a Boarding Kennels & Cattery. Officers accept this request although note this was not required as part of the previous approval on site for one dwelling and the location of that dwelling was a similar distance apart from the kennels.

4. Access and Parking

Paragraph 108 of the NPPF 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users.

Paragraph 109 of the NPPF 2019 says development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

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 set out the parking requirements for new dwellings.

Officers consider that sufficient space is available on site to provide a development that could achieve parking to serve the new dwellings in line with the requirements the Council's current adopted Parking Standards.

The site's previous use formed part of an equestrian business that offered a menage, stables and three paddocks to individual leaseholds. With this mind Officers conclude that the use for the new development will be no greater than the previous use. This conclusion has been reached also by Essex County Council Highway Authority who raised no objection to the development subject to conditions.

A letter has been received stating the previous use of the site was infrequent and number of car trips was low. However, this misses the point. The operator could have had many visits / visitors to the site to use the facilities. Therefore, the usage is comparable to 3 residential dwellings, in this case a net 2 increase from the previous approval on site.

The applicant has shown a passing area some 30 metres south of the host site entrance. This is given as being within the blue line ownership of the applicant. In reality this forms part of the entrance to a separate field to the west outside the ownership of the applicant. If considered acceptable Officer would have recommended a planning condition ensuring this passing area shown in the blue land is not 'gated off' and remains in use for the purpose of vehicles passing along the land for the lifetime of the development.

In conclusion, although the access is not ideal due to the single lane and narrow nature of the road. Given the above, Officers conclude a safe and suitable access to site is achievable via the proposed access and there is nothing to suggest that the development would result in any significant harm to highway safety subject to conditions.

5. Trees

Policy EN1 of the adopted Local Plan and Policy PPL3 in the emerging Local Plan seek to protect and, wherever possible, enhance the quality of the district's landscape; requiring

developments to conserve natural and man-made features that contribute toward local distinctiveness and, where necessary, requiring suitable measures for landscape conservation and enhancement.

The site contains several established trees. In order to show the extent of the constraint that the trees are on the development potential of the land and to determine the impact of the development on the trees the applicant has provided a Tree Survey and Report. The report is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations.

The Tree Report contains a Tree Constraints Plan that provides an accurate description of the health and condition of the trees on the land. It shows those trees that will need to be felled in order to facilitate the development proposal and shows the extent of the area around the retained trees that should be protected to ensure that they are not harmed by the development proposal. It shows the Root Protection Areas (RPA's) of the trees and identifies the area of land within which development should not be take place or where specialist construction techniques will be required.

Due to the location of the application site and the extent to which the land, and the trees contained thereon, can be seen from a public place, none of them have such amenity value that they merit protection by means of a tree preservation order. Although the site is not heavily overlooked, new planting is required to ensure that any development for which planning permission is granted is satisfactorily assimilated into its setting.

In the event of a positive outcome, a condition is recommended to secure details of soft landscaping.

6. Ecology

Policy EN6 of the adopted Local Plan and Policy PPL4 of the emerging Local Plan give special protection to designated sites of international, national or local importance to nature conservation but for non-designated sites still require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.

The site is currently being used for equestrian purposes and is mostly clear of vegetation. The partial removal of some trees and boundary treatment has been undertaken. Although the characteristics of the land does not trigger the requirement for a Phase 1 Habitat Survey, in order to minimise any further potential harm a condition relating to the timing of any future clearance will be controlled by condition.

7. Legal Obligations - Open Space Contribution

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".

There is currently a deficit of -13.68 hectares of play and formal open space in Brightlingsea. There are two play spaces in Brightlingsea, a Local Area for Play and Skate Park at Promenade Way, Brightlingsea and a Local Equipped Area for Play at Regent Road

Recreation Ground, Brightlingsea. This is 0.9 miles from the proposed development. Due to the overall deficit with in Brightlingsea a contribution towards increasing the play facilities is relevant and justified to the planning application and will be used towards providing new play equipment at the nearest play area Bayards Recreation Ground, Regents Road, Brightlingsea.

A completed unilateral undertaking has been provided to secure this legal obligation and to ensure compliance with saved policy COM6.

8. Legal Obligations - Recreational Disturbance Contribution

Following Natural England's advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.

Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be a proportionate financial contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on European Designated Sites.

A completed unilateral undertaking has been provided to secure this legal obligation and to 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.

9. Other matters

Officers consider the refuse collection is adequate. A dust cart could enter the site and via the size 3 turning head, leave in a forward gear.

The site is under the size for an area that requires a sustainable drainage system and the area is not prone to surface water flooding. Therefore, no Suds recommendation are made.

The applicant has questioned the 5 year land supply at TDC. The Policy Officer has commented on this issue and defended the local authorities position on the 5 year land supply. Officers do not believe this is the correct forum to discuss the validity or otherwise of the 5 year land supply position in the district. TDC maintain that there is a 6.5 year supply of Housing in the district unless appeal decisions find otherwise.

10. Representations

Brightlingsea Town Council opposed the application,

- Overdevelopment
- The entrance to Folkards Lane is a very small lane and has serious transport issues

A Total of 18 letters from members of the public have been received, however these are from 6 individuals in total. The main points raised are outlined below:

1. The proposed dwellings are located outside of the defined development boundary as outlined in the Local Plan in a countryside/rural location and is therefore contrary to current planning policy.
2. Having originally served just four dwellings and the boarding kennels, the current developments have seen the traffic increase beyond capacity, far exceeding the original capacity and already falls well beyond recommendations contained within the Essex Design Guide.
3. Folkards Lane is a single carriageway of approximately 2.7m in width with no turning or passing places throughout its entire length. The road lacks the necessary transport infrastructure for the additional housing.
4. Folkards Lane has a very sharp blind bend just beyond the proposed entrance to the new development and with the lane being of substandard construction it is not suitable for the heavy construction vehicles and future traffic this development will bring.
5. The proposed development is on land that has been designated as Equestrian land for the purpose of keeping horses as pets, and has previously been declined for lawful use or development under application no.15/01729/LUEX. The development is disproportionately large and not in keeping with the surrounding dwellings which all face onto the lane and this new development will expand Folkards Lane into Folkards Town.
6. There is scope within the site plans to allow further developments in the future within the area marked as 'Paddocks' should the current application be successful.
7. There are currently no mains services including electricity, water and sewerage available for these dwellings and it will require extra work to install adequate utilities.
8. For the past three years as neighbours to Folkards Lane, we have suffered constant construction noise and disruption due to the planning applications within Folkards Lane
9. Proposed development detrimentally effects the views and peace of the area.
10. How will domestic waste and foul water be dealt with?
11. Will the previously approved dwelling on the site be included in the future making 4 dwellings in total on site?
12. The equestrian use on site was an online Equestrian Tack shop and although stabling was advertised, this was never carried out. The only movement of vehicles would have been once in the morning to put horses out and once in the evening to put them away in their stables. This cannot equate to the amount of movement 3/5 houses will generate. This part of Folkards Lane cannot take any more traffic.

The material planning considerations raised above are addressed in the main report above.

Concerns over the ownership of the road, status of the road and its upkeep have been raised. Any disputes over the ownership or upkeep are a private matter between the relevant parties and do not constitute a material planning consideration.

Conclusion

For the reasons set out above, the principle of development is unacceptable in this location. The development would result in material harm to the character of the area resulting in no public benefits which outweigh the identified harm.

6. Recommendation

Refusal - Outline

7. Conditions / Reasons for Refusal

- 1 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.

Saved Policy QL1 of the adopted Local Plan remains broadly consistent with the NPPF objective for achieving sustainable development. This is through a plan-led approach that focuses development to locations which are or can be made sustainable, limiting the need to travel and offering a genuine choice of transport modes. This also includes making effective use of land, particularly that which is previously developed, in meeting the need for homes. Those planned for rural areas are responsive to local circumstances and support local needs, whilst recognising the intrinsic character and beauty of the countryside. Emerging Policy SPL1 of the Publication Draft gain traction due to the same consistency with the Framework as found in respect of those in the adopted Local Plan.

As set out above, the policies for the delivery of housing are considered up-to-date and the application must therefore be determined in accordance with Paragraph 11 c) of the NPPF, thus in accordance with the development plan. The application site lies outside of any 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).

Regardless of the proximity of the site in relation to services and amenities, there is no longer a requirement to consider such sites due to their location outside of the defined settlement development boundaries. In applying the NPPF's presumption in favour of sustainable development, the adverse impacts of the proposal both on the character of the locality and on the Council's ability to manage growth through the plan-led approach, are not outweighed by any benefits.

The development is unnecessary and would represent a completely unjustified intrusion into the countryside, extending and entrenching development outside the existing ribbon developments along Folkards Lane to the detriment of the character and visual amenity of the surrounding countryside. There are no public benefits that might warrant the proposal being considered in an exceptional light. The proposal is therefore contrary to the aims of paragraph 11 of the NPPF and contrary to the development plan Saved Policy QL1 and emerging Policy SP1.

2. 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 including rural lanes. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake by not allowing new housing unless it is consistent with countryside policies.

The site is also within the Coastal Protection Belt where Saved Policy EN3 of the Tendring District Local Plan (2007) and Draft Policy PPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). 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. The local policy seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development as well as seeking to improve public access to and enjoyment of the coast in accordance with the National Planning Policy Framework.

Paragraph 170 of the Framework (NPPF) 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.

Policy HG13 of the Tendring District Local Plan (2007) and emerging Policy LP8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) state back land developments must be located within the defined settlement development boundary, be in keeping with the character of the area, avoiding long or narrow driveways.

As a result of the depth of the red line area and the site layout proposed, the development would not be surrounded by residential development and is physically isolated. Consequently, the development gives the impression that the site has significantly encroached into the surrounding countryside having a severely adverse impact on the character and appearance of the countryside land. The development is therefore contrary 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) and paragraphs 127 and 170 of the NPPF 2019 in particular.

The introduction of three residential properties, hardstanding and related domestic paraphernalia in this location, set back from Folkards Lane, outside the existing ribbon of development in the area. Shall demonstrably urbanise the character of this rural countryside setting. The proposal is considered to have no 'compelling functional need' to be located in this area, having a seriously detrimental impact upon the wider rural countryside landscape character and the Coastal Protection Belt. The development is therefore contrary to Policy EN3 of the Tendring District Local Plan (2007) and Draft Policy PPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

The backland siting of the development with the associated 35 m deep driveway, in a locality mainly characterised by linear, road frontage development fails to be in keeping with the character of the area contrary to the aims of saved Policy HG13 of the Tendring District Local Plan (2007) and Draft Policy LP8 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

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.

<p>Are there any letters to be sent to applicant / agent with the decision? If so please specify:</p>	<p>YES</p>	<p>NO</p>
<p>Are there any third parties to be informed of the decision? If so, please specify:</p>	<p>YES</p>	<p>NO</p>