



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT:	Mr Peter Le Grys - Stanfords The Livestock Market Wyncolls Road Colchester CO4 9HU	APPLICANT:	Mr Evershed and Mr Bouchard The Gables and The Towers Clacton Road Weeley Heath Clacton On Sea Essex CO16 9EF
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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 21/00094/OUT **DATE REGISTERED:** 7th January 2021

Proposed Development and Location of Land:

**Proposed development of five detached self build or custom build houses.
Land to The rear of The Gables and The Towers Clacton Road Weeley Heath
Clacton On Sea**

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

- 1 For the purposes of the determination of this application the Council can currently demonstrate that a 5 year housing land supply exists. Therefore, the presumption in favour of sustainable development under paragraph 11d) of the NPPF does not apply in this instance. 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.

Policy QL1 (Spatial Strategy) of the adopted Tendring District Local Plan 2007 sets out the spatial strategy and defines a hierarchy of settlements, seeking to concentrate new development within the larger urban areas of the District; seeking to concentrate development within settlement development boundaries.

Draft policy SPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 also refers to settlement boundaries and indicates that new development should be within these settlement boundaries.

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). Therefore, the application is contrary to the Core Spatial Policy of QL1 of the adopted Tendring District Local Plan 2007 and Draft policy SPL2 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

These policies are 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.

Weeley Heath is classified as a 'Smaller Rural Settlement' in the emerging local plan, primarily due to the lack of job opportunities, local services, facilities and other infrastructure. There is also a reliance on neighbouring towns and villages for work, shopping and other services, often involving car travel. These smaller villages are considered to be the least sustainable locations for growth.

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 as the planned growth for the District to meet housing need has been established. 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 public benefits or other material considerations that might warrant the proposal being considered in an exceptional light.

The development is unnecessary and would represent a completely unjustified intrusion into the countryside, extending and entrenching development outside the existing ribbon developments along Clacton Road to the detriment of the character and visual amenity of the surrounding countryside. The proposal is deemed contrary to the aims of paragraph 11c) of the NPPF and contrary to the development plan Saved Policy QL1 of the adopted Tendring District Local Plan 2007 and emerging Policy SP2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

- 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.

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.

The host site is outside the settlement boundaries contrary to policy HG13 (i). Furthermore, 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 will result in a harmful projection into the countryside. 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, creating a 'hard urban edge'. The development is therefore contrary Saved Policy HG13 (vi).

In totality, in relation to environmental harm, the proposal is considered contrary to Saved Policy HG (i) and (vi) also 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 c) and 170 of the NPPF 2019 in particular.

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

The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zol) of the Colne Estuary SPA and RAMSAR and the Essex Estuaries SAC. Since the development is for 5 dwellings only, the number of additional recreational visitors would be limited and the likely effects on the Colne Estuary from the proposed development alone may not be significant. However, new housing development within the Zol would be likely to increase the number of recreational visitors to the Colne Estuary; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

- 4 Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the Adopted Local Plan 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 PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Paragraph 118 of the National Planning Policy Framework requires that Local Planning Authorities "conserve and enhance biodiversity", whilst paragraph 109 requires Local Planning Authorities to minimise impacts on biodiversity. 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

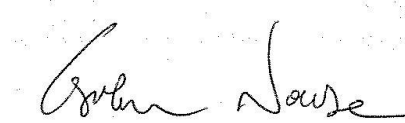
conservation. Planning applications must be supported by adequate information".

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) subsequent species specific surveys.

Given the nature of the site, the absence of Phase 1 habitat survey, means an informed decision on the wellbeing of protected species in this location cannot be made. The application is therefore contrary to Saved Policies EN6 'Biodiversity' and EN6a 'Protected Species' of the Adopted Local Plan and draft Policy PLA4 'Nature Conservation and Geo-Diversity' of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

DATED: 27th May 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:

National Planning Policy Framework 2019

National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

QL1 Spatial Strategy

QL2 Promoting Transport Choice

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

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

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017

SP1 Presumption in Favour of Sustainable Development

SP2 RAMS

SP4 Meeting Housing Needs

SP6 Infrastructure & Connectivity

SP7 Place Shaping Principles

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

LP7 Self-Build and Custom-Built Homes

LP8 Backland Residential Development

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL6 Strategic Green Gaps

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

Local Planning Guidance

Parking Standards Design and Good Practice Guide (2009)

Essex Design Guide (2005)

Positive and Proactive Statement

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

The attached notes explain the rights of appeal.

NOTES FOR GUIDANCE

WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

APPEALS TO THE SECRETARY OF STATE

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

ENFORCEMENT

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

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