

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	08/07/2021
Planning Development Manager authorisation:	JJ	08/07/2021
Admin checks / despatch completed	DB	08.07.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	08.07.2021

Application: 21/00348/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr David Barrett

Address: Maltings Lodge Malting Lane Kirby Le Soken

Development: Proposed erection of two detached dwellings (variation of approved planning permission 19/00026/FUL to allow 2 identical plots and the re-siting of Plot 2).

1. Town / Parish Council

Frinton & Walton Town
Council
04.04.2021

REFUSAL - Against backland development and shared drives. Poor access on a narrow/single track lane which is extremely busy as it leads to the local refuse site.

Area prone to flood. Not in keeping within the village location.

2. Consultation Responses

ECC Highways Dept
10.05.2021

No new site visit has been undertaken and the information that was submitted in association with the application has been fully considered by the Highway Authority.

The proposal is located off a private road (Malting Lane) which has existing traffic calming features. The plot retains adequate room and provision for off street parking and turning, for the existing and proposed dwellings via an existing private vehicular access. It is noted that the application seeks to amend the designs of the two proposed dwellings to a pair of identical bungalows. therefore:

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

1: As indicated on drawing no. 20-098-PL-01 B and 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.

2. The single garages should have a minimum internal measurement of 7m x 3m.

Reason: To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety and in accordance with Policy DM8

3. The Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

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

4. 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.

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.

5. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the carriageway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the carriageway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

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: The applicant must ensure that no mud or detritus is taken onto the highway, such measures include provision of wheel cleaning facilities and sweeping/cleaning of the highway. Under Section 148 of the Highways Act 1980 it is an offence to deposit mud, detritus etc. on the highway. In addition, under Section 161 any person, depositing anything on a highway which results in a user of the highway being injured or endangered is guilty of an offence.

2: Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to 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: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

3. Planning History

01/00014/OUT	Proposed dwelling	Refused	20.03.2001
10/01426/OUT	Erection of detached two bedroom bungalow.	Refused	02.03.2011
19/00026/FUL	Proposed erection of two detached dwellings.	Approved	09.07.2019

4. Relevant Policies / Government Guidance

National Planning Policy Framework 2019

National Planning Practice Guidance

Adopted Tendring District Local Plan (2007) (part superseded)

QL11	Environmental Impacts and Compatibility of Uses (superseded in part)
QL12	Planning Obligations
HG3	Residential Development within Defined Settlements
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
HG14	Side Isolation
EN3	Coastal Protection Belt
EN6	Biodiversity
EN6a	Protected Species
EN11A	Protection of International Sites European Sites and RAMSAR Sites
EN13	Backland Residential Development
EN17	Conservation Areas
COM6	Provision of Recreational Open Space for New Residential Development
COM19	Contaminated Land
COM31a	Sewerage and Sewerage Disposal
EN23	Development Within the Proximity of a Listed Building
TR1A	Development Affecting Highways
TR7	Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021)

Relevant Section 1 Policies (adopted)

SP1	Presumption in Favour of Sustainable Development
SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP3	Spatial Strategy for North Essex
SP4	Meeting Housing Needs
SP7	Place Shaping Principles
Relevant Section 2 Policies (emerging)	
SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
HP5	Open Space, Sports and Recreational Facilities
LP4	Housing Layout
LP8	Backland Residential Development
PPL2	Coastal Protection Belt
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL8	Conservation Areas
PPL9	Listed Buildings
CP1	Sustainable Transport and Accessibility

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

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 adopted 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

The application relates to the property known as Maltings Lodge to the eastern side of Malting Lane, Kirby-le-Soken. Maltings Lodge is a 1.5 storey detached dwelling set in a site of approximately 0.36 hectares in size to the rear of a row of dwellings fronting Maltings Lane accessed via a private driveway between numbers 5a and 6. The application site forms part of the curtilage of the host dwelling and is set to grass with a number of established trees along the southern and eastern boundary of the site.

The site lies within the Coastal Protection Belt area of Pennyhole Bay and The Naze. The site lies outside of the Kirby-le-Soken Settlement Development Boundary as defined within the adopted Tendring District Local Plan 2007 but lies within the extended boundary as defined within the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

The southern boundary of the site bounds the Kirby-le-Soken Conservation Area. Nearby listed buildings include Post Office House to the south and The Red Lion Public House to the west.

Description of Proposal

The application seeks full planning permission for the subdivision of the site and the erection of 2 dwellings to the south of Maltings Lodge

This application seeks a fresh full permission but is essentially a variation to the previously approved scheme under planning application reference 19/00026/FUL to allow 2 identical plots to be built (previously 1 dwelling and 1 bungalow, now 2 bungalows) and the re-siting of Plot 2.

The dwellings are of a traditional appearance using a mixture of brick and render and finishes and plain roof tiles.

Assessment

The main considerations in this instance are;

- Planning and Appeal History;
- Principle of Development;
- Scale, Layout and Appearance (including backland development and impact on heritage assets);
- Coastal Protection Belt;
- Residential Amenities;
- Access and Parking;
- Trees and Landscaping;
- Environmental Protection - Contaminated Land;
- Drainage and Foul Sewerage
- Financial Contribution - Open Space/Play Space;
- Financial Contribution - RAMS;
- Representations; and,
- Other Matters.

Planning and Appeal History

Applications 01/00014/OUT and 10/01426/OUT are worthy of note in this instance. Both sought outline permission for the erection of 1 dwelling. Both were refused due to the location of the site outside of the defined Kirby-le-Soken Settlement Development Boundary, the impact on the Coastal Protection Belt, impact on the character of the area from its siting and potential impact on neighbouring amenities.

These applications both pre-date the National Planning Policy Framework 2019 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. There has been a material change in national and local plan policy since the determination of these applications. The principle of development is considered below setting out this material change in more detail.

Furthermore, as indicated within the application description, this application follows a previous approval for 2 dwellings under planning application reference 19/00026/FUL.

Principle of Development

In line with Section 38(6) of the Planning and Compulsory Purchase Act 2014, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The National Planning Policy Framework 2019 (NPPF) must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Plans and decisions should apply a presumption in favour of sustainable development.

The 'development plan' for Tendring comprises the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Kirby-le-Soken is categorised as a Village within the adopted Local Plan and as a Smaller Rural Settlement with the emerging Local Plan. Each of these smaller rural settlements can achieve a small scale increase in housing stock over the plan period. To allow for this to happen settlement boundaries have been drawn flexibly to accommodate a range of sites both within and on the edge of the villages and this enabling them to be considered for small-scale residential 'infill' developments provided that it does not detrimentally impact the historic or natural environment.

The site lies outside of the Kirby-le-Soken Settlement Development Boundary as defined within the adopted Tendring District Local Plan 2007. However, the extended boundary as defined within the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 now incorporates the application property and application site.

Saved Policy HG3 of the adopted Local Plan deals with residential development within defined settlements stating that, within the defined development boundaries of towns and villages, residential development will be permitted provided it satisfies amenity, design, density, environmental, highway, local housing needs and sustainability criteria, as appropriate, and can take place without material harm to the character of the local area. Proposals for development of infill plots should ensure that the scale, design and intensity of any new building are in harmony with existing surrounding development.

Emerging Policy SPL2 states that within the Settlement Development Boundaries, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local plan policies.

The principle of residential development on this site has therefore been established through the extension of the settlement development boundary and through the granting of earlier application 19/00026/FUL. The detailed considerations relevant to this proposal are set out below.

Scale, Layout and Appearance (including backland development and impact on heritage assets)

Paragraph 117 of the Framework states that planning policies and decisions should 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

Adopted Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Emerging Policies SPL3 and LP4 of Section 2 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout, create a unique sense of place – avoiding the use of ubiquitous standard house types. Paragraph 127 of the Framework requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place. Saved Policy HG14 requires a minimum of 1 metre side isolation between dwellings.

The site cannot be described as physically isolated from existing residential development forming the side garden serving Maltings Lodge and being closely related with dwellings fronting Malting Lane to the north and west and those fronting The Street to the south. Whilst it is recognised that the development would be sited in a "backland" position behind properties fronting Malting Lane, they would be alongside an existing dwelling where backland development has been established. The development does not introduce harmful, out of character, backland development. The site is within the emerging settlement development boundary and is therefore recognised for potential infill development. The position of the dwellings would not encroach into the countryside nor have any wider landscape impact with any views of the properties being alongside, or against a backdrop of existing built form.

This revised application seeks permission for 2 single storey dwellings of the same design and appearance (replacing a 2 storey dwelling and single storey property previously approved). The amended proposal also includes the repositioning of Plot 2 slightly closer to the rear boundaries of the neighbouring dwellings fronting Maltings Lane. Both dwellings retain 1 metre or more to each boundary and provide an area of rear private amenity space in excess of the minimum standards set out within Saved Policy HG9. To their frontage is ample spacing for parking and turning and the development.

Overall, the scale, appearance and finish of the dwellings are considered acceptable and the development will not be materially harmful to the character or appearance of the area.

Saved Policy EN17 of the adopted Local Plan states that development will be refused where it would prejudice the setting and surroundings of a conservation area or harm inward or outward views. Furthermore, saved Policy EN23 states that development that would adversely affect the setting of a listed building will not be permitted. These sentiments are carried forward within emerging Policies PPL8 and PPL9 of the draft Local Plan. In this instance, the closest dwelling (Plot 2) is located approximately 50 metres from Post Office House to the south west. This distance and the dense mature trees and vegetation along the boundaries ensure that the dwellings will not be seen in conjunction with the listed property resulting in no harm to its setting. The boundary of the conservation area runs along the southern boundary of the site. Again, due to the dense vegetation on the boundaries, inward and outward views will not detract from the character and appearance of the Kirby-le-Soken Conservation Area.

Coastal Protection Belt

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) seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development.

The proposal cannot be considered as having a significant impact upon the Coastal Protection Belt as the proposal is for a minor development of 2 bungalows, in a location set well within land, with built form and dwellings on 3 sides. The site is not open countryside, does not have the appearance of undeveloped coastal land and the development would not have an adverse impact on the character and appearance of the area.

Residential Amenities

Adopted Policy SP7 of the 2013-33 Local Plan, amongst other things, requires that the amenity of existing and future residents is protected. Saved 2007 Local Plan Policy QL11 requires that all new developments should be compatible with adjoining land uses. Paragraph 127 f) of the Framework requires that planning decisions should create places with a high standard of amenity for existing and future users. Saved Policy HG14 requires a minimum of 1 metre side isolation between dwellings.

The Essex Design Guide provides guidance on back to back distances between dwellings to maintain an acceptable degree of privacy. This suggested distance is a minimum spacing of 25m between the rears of the properties. Although this is not the layout in this instance, this provides some indication on appropriate spacing between dwellings to ensure privacy is not compromised.

Officers recognise that the revised application requires careful consideration in respect of the impact on neighbouring amenity as the proposal involves the re-siting of Plot 2 closer to the adjacent properties fronting Malting Lane number 2 and 2A (incorrectly described within paragraph 6.2 of the accompanying Planning Statement as 'no closer to boundaries'). A summary of the revisions and impact is set out below:

Plot 1 (closest to the donor property Maltings Lodge)

- Altered from a 4 bedroom, 2 storey dwelling with detached single garage to a 4 bedroom detached bungalow with attached single garage.
- Larger footprint than originally approved meaning slightly larger depth along the side boundary with the donor property. However, this plot sits adjacent to the double garage serving the donor dwelling and is much lower in height than the approved scheme. The increase in depth is compensated by the lesser height. This plot is slightly closer to the boundary with Maltings Lodge but again the lesser height compensates.
- Larger footprint means that plot 2 has been pushed back into its plot slightly (closer to tree).

Plot 2 (closest to neighbouring properties fronting Malting Lane)

- Altered from a 3 bedroom detached bungalow with detached single garage to 4 bedroom detached bungalow with attached single garage.
- Approved overall height of dwelling = 5.6m sited approximately 5.6m from neighbouring boundaries.

- Overall height of approved garage = 3.5m sited 1m from neighbouring boundaries.
- Overall height of revised dwelling = 5.95m sited approximately 4m from neighbouring boundaries (being 27.5 metres from rear elevation of number 2a and 25.5m from rear elevation of number 2 of Malting Lane).
- Overall height of revised garage (now attached) = 5.3m sited approximately 1 metre from neighbouring boundaries (being 24.5m from rear elevation of number 2a and 22.5m from rear elevation of number 2 Malting Lane).

The site currently forms the side garden serving the donor dwelling and can be used for socialising at any time with associated noise. Additionally there is scope to build large outbuildings under permitted development. The new garden areas will not result in a materially harmful impact upon noise and disturbance. Whilst it is recognised that the development will have a visual impact from rear windows and gardens of the properties fronting Malting Lane, the internal layout, separation distances, scale of the dwellings and window placement will not result in a material loss of light, outlook or privacy that would warrant refusal of planning permission.

The donor dwelling and proposed dwellings are all served by ample private amenity space in excess of the requirements set out in saved Policy HG9 of the adopted Tendring District Local Plan 2007. Officers recognise that retained trees will result in some overshadowing of the garden area of Plot 2, but this will not make the garden unpleasant or unusable and does not warrant refusal of planning permission.

The additional traffic movements from 2 dwellings via an existing access cannot be considered materially harmful in terms of noise and disturbance.

Access and Parking

Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 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.

The Council's Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied on to provide a parking space, should measure 7 metres by 3 metres internally.

The proposal is located off a private road (Malting Lane) which has existing traffic calming features. The plot retains adequate room and provision for off street parking and turning, for the existing and proposed dwellings via an existing private vehicular access.

The development does not create an additional access nor introduce vehicle movements to the site (already occupied by the donor property Maltings Lodge). The development of the site for 2 further dwellings will not intensify the use of the lane or access to a level that could be considered materially harmful to highway safety or amenity. Each property is served by a garage and parking space that accord with standards including a turning space.

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority who raise no objections subject to conditions which will be added where necessary having regard to the conditions imposed on the previous permission and matters already covered by the approved plans conditions.

Trees and Landscaping

The application site forms part of the curtilage of the host dwelling and is set to grass. There are established trees on the boundary of the application site and some within the curtilages of adjacent properties

Trees previously situated in the lawns have been removed prior to the submission of the planning application and are therefore not a constraint on the development potential of the land. It may be necessary for the design of the foundations of the proposed dwellings to take into account the recent removal of the trees if rehydration of the surrounding soil and 'heave' were to be considered an issue.

The Planning Application is supported by a tree survey that has been carried out by Ligna Consultancy and Hayden's Arboricultural Services. The applicant has provided a plan showing the extent of the Root Protection Area (RPA) of each tree overlaid with the proposed development layout. The report identifies the requirement to remove some trees however this will not have an adverse impact on the amenity of the locality.

In terms of the potential impact of the development proposal on the retained trees it appears that that the development of the land can take place without causing harm to them.

It should be noted that the dwelling situated on Plot 2 is close to a tree (T14 Horse Chestnut) situated within the curtilage of an adjacent property. The south western corner of the proposed dwelling being situated within the Root Protection Area (RPA) of the tree. The incursion is minor. In this regard the juxtaposition between the tree and the dwelling is such that construction can take place without causing significant harm to the tree however the tree may cause a degree of light obstruction to the windows on the southern and western elevations of the dwelling.

It is noted that the report identifies the need to raise the crown of T14 to approximately 4m. The removal of encroaching branches (and roots) is permitted by common law and does not fall under the control of planning legislation.

Taking into account the limited extent to which trees on the land, identified for removal, can be seen and enjoyed by the public it is not considered necessary or expedient to make any of the trees on the land the subject of a Tendring District Council Tree Preservation Order.

With regard to soft landscaping the site is secluded and there would be little public benefit gained from new planting although the applicant has identified that new tree planting will take place as part of the development proposal and this is desirable for its own sake.

Environmental Protection - Contaminated Land

Paragraph 170 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by remediating and mitigating contaminated land, where appropriate.

The Council's Environmental Protection Team have provided comments on the application. They raise no objection subject to conditions relating to a contaminated land watching brief, construction activity management and lighting.

Whilst it is recognised that these comments were not provided on the original application, this new application is accompanied by an 'Envirosearch' report that was not provided previously. Conditions are considered necessary to protect the health of site workers and end users.

Drainage and Foul Sewage

Saved Policy COM31a of the adopted Local Plan states that satisfactory provision must be made for the proper disposal of sewage waste and effluent from new development to avoid the risk of environmental problems. These requirements are carried forward through Policy PPL5 of Section 2 of the emerging Local Plan which states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, they will only be permitted where there would be no harm to the environment, having regard to preventing pollution of groundwater and any watercourses and odour.

Paragraph 170 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Furthermore, Paragraph 180 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.

The application states 'unknown' on the accompanying application form in respect of foul sewage disposal. This is the same as the application submitted with application 19/00026/FUL. In line with the above national and local plan policies, additional information was sought from the agent on this point. The agent provided an email stating that a private system is proposed.

Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010. The operation of small sewage discharges such as those from septic tanks or package treatment plants is regulated under the Environmental Permitting Regulations 2016 (EPR).

Having discussed the matter further with the Environment Agency it would appear that there is an existing drainage system within a suitable distance of the dwellings (plan showing connection points scanned to the file). The Environment Agency is very unlikely to support a proliferation of small private treatment works in a built up sewered area, if avoidable. An informative will be added to the decision to strongly encourage the applicant to further investigate connection to the public foul sewer, even if that is via a private sewer.

Officers are therefore satisfied that the site and development can achieve a suitable drainage and foul sewage arrangement that will accord with Saved Policy COM31a of the adopted Local Plan and Draft Policy PPL5 of the emerging Local Plan.

Financial Contribution – Open Space and Play Space

In line with the requirements of saved Policy COM6 of the adopted Local Plan and emerging Policy HP5 of the Publication Draft the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement of a financial contribution toward public open or play space.

There is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby. There is only one play area in Kirby Cross/Kirby Le Soken 0.8 miles from the development site.

As part of planning approval 19/00026/FUL, the Council's Open Space Team did not request a contribution.

Open Space have requested a contribution as part of this application. However, there has been no material change in open space policy circumstances since the previous approval and the number of dwellings proposed has not increased. There is a clear, extant, fall-back position with no requirement for an open space financial contribution. Officers therefore consider it would be unreasonable to insist upon a contribution as part of this application for the same number of dwellings.

Financial Contributions – RAMS

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

The application scheme proposes a residential on a site that lies within the Zone of Influence (Zoi) being approximately 550 metres from Hamford Water SAC. New housing development within the Zoi would be likely to increase the number of recreational visitors to this designated site 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 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 and SP2 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.

Representations

Frinton and Walton Town Council recommend refusal on the following grounds (officer response in italics);

- Not in keeping within the village location.
- Against backland development and shared drives.

The principle of development including 'backland' development is addressed in the main report above.

- Poor access on a narrow/single track lane which is extremely busy as it leads to the local refuse site.

Access and highway safety are addressed in the main report above.

- Area prone to flood.

The site is not within a designated flood zone and consultation with the Environment Agency is not required. The size of the site and scale of development means that consultation with the Lead Flood Authority (SuDS Team) is not required. A condition will be added to ensure any new areas of hardsurfacing are permeable.

2 individual letters of objection have been received. The material planning considerations raised can be summarised as follows (officer response in italics);

- Narrow, busy, private lane.
- Location of refuse site generates substantial volumes traffic.
- Difficulty of access for emergency service and civic amenity vehicles will have difficulty servicing the needs of these.

Accessibility and highway safety have been addressed in the main report above. ECC Highways raise no objection. Furthermore, an informative will be added regarding

- Confusion over site name 'Maltings Lodge' and/or 'land adjacent to Maltings Lodge'.

A red line site plan shows the extent of the application site regardless of any confusion over the name.

- Will encroach into the root protection area and crown of our mature Horse Chestnut tree.

The impact on trees and protected trees is addressed in the main report above.

- Larger than before with an extra bedroom – leading to more cars.

The additional bedroom does not increase the parking provision requirements set out within the Parking Standards 2009. A dwelling accommodating 3 or more bedrooms requires 2 parking spaces (as set out in the main report above).

- Flooding and surface water flooding.

As stated above, the site is not within a designated flood zone and consultation with the Environment Agency is not required. The size of the site and scale of development means that consultation with the Lead Flood Authority (SuDS Team) is not required. A condition will be added to ensure any new areas of hardsurfacing are permeable.

- Concerns for adequate disposal of foul water/sewage.

This is addressed in the main report above.

- Plot 2 moved closer to our boundary having a drastic impact on outlook.
- Tall and imposing structure in close proximity to our boundary.
- The proposed plot is two foot higher than our garden.

The impact on residential amenities is addressed in the main report above.

Other Matters

1 letter of objection suggests that number 8 The Street should be consulted on the application. This property was not consulted on the original application as it does not share a common boundary with the application site (as specified within the Publicity for applications for planning permission criteria of The Town and Country Planning (Development Management Procedure) (England) Order 2015 UK Statutory Instruments 2015 No. 595 Part 3 Article 15). Therefore, there is no requirement to notify number 8 The Street as part of this revised application.

Officers note that the application was originally subject of a committee referral by Councillor Knowles. However, as this application is simply a variation to the previously approved scheme and the principle of development cannot be contested, the committee referral was later withdrawn.

Conclusion

For the reasons set out above, the proposal is considered to represent a sustainable form of development in a location supported by national and local plan policy that will not result in any material environmental or residential harm that warrants refusal of planning permission.

6. Recommendation

Approval - Full

7. Conditions

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plan:

20-098-PL-01B	Proposed Block Plan
20-098-PL-02B	Proposed Floor Plan, Elevations and Roof Plans (Plots 1 and 2)
20-098-PL-03A	Street Scene and Sections

Reason - For the avoidance of doubt and in the interests of proper planning.

- 3 The development hereby approved shall be carried out in strict accordance with the Arboricultural Impact Assessment P1760-AIA01 V1 dated 19/02/2021, Arboricultural Method Statement P1760-AMS01 V1 dated 19/02/2021 and Drawing Number P1760-ASP02 Arboricultural Site Plan (Proposed) V1.

Reason - To ensure that the trees to be retained are protected in the interests of visual amenity and landscape character.

- 4 Prior to occupation of the dwellings hereby approved, the parking, garages and turning area shown on the approved drawings shall be constructed, surfaced and maintained free from obstruction at all times for that sole purpose.

Reason - To ensure adequate parking and turning is provided and retained for the development, in the interests of highway safety.

- 5 Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B, C and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), there shall be no additions or alterations to Plot 2 or its roof, nor shall any buildings, enclosures, swimming or other pool be erected except in accordance with drawings showing the design and siting of such additions and/or building(s) which shall previously have been submitted to and approved, in writing, by the local planning authority.

Reason - In the interests of residential amenities.

- 6 In order to minimise potential nuisance caused by demolition/construction works:

- 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 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.
- No materials produced as a result of the site development or clearance shall be burned on site.

Reason - Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. 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).

- 7 All new parking areas and areas of hardstanding shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area within the site.

Reason - In the interests of sustainable development and to minimise the risk of surface water flooding.

- 8 No above ground works shall be commenced until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and agreed, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development unless otherwise agreed in writing by the Local Planning Authority.

Reason - In the interests of visual amenity as insufficient information has been provided within the application.

- 9 The removal of all vegetation shall only be carried out outside of the bird nesting season (March to August inclusive).

Reason - To ensure the protection of birds potentially nesting on site.

- 10 No above ground works shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the site, which shall include all boundary treatments and any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 - Trees in Relation to Design, Demolition and Construction."

Reason - To ensure that the development is appropriate within its setting.

- 11 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - To ensure the adequate maintenance of the approved landscaping scheme for a period of five years in the interests of the character of the area.

- 12 The single garages should have a minimum internal measurement of 7m x 3m.

Reason - To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety.

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

Reason – For the avoidance of doubt and to ensure appropriate cycle parking is provided in the interest of highway safety and amenity.

- 14 Given the proximity of the site to a registered waste transfer site and potential historical use of nearby land, a Watching Brief shall be undertaken throughout the construction phases of the development hereby approved. In the event of unexpected ground conditions being encountered at any time during construction, all site works at the position of the suspected contamination shall stop and the Local Planning Authority and Environmental Health Department notified. The following minimum requirements for dealing with unexpected ground conditions being encountered during construction shall be adhered to throughout and evidence of each stage reported in writing to the Local Planning Authority and Environmental Health Department for approval.

1. A suitably trained geo-environmental engineer should assess the visual and olfactory observations of the ground and the extent of contamination and the Client and the Local Authority should be informed of the discovery.
2. The suspected contaminated material will be investigated and tested appropriately in accordance with assessed risks. The investigation works will be carried out in the presence of a suitably qualified geo-environmental engineer. The investigation works will involve the collection of solid samples for testing and, using visual and olfactory observations of the ground, delineate the area over which contaminated materials are present.

3. The unexpected contaminated material will either be left in situ or be stockpiled (except if suspected to be asbestos) whilst testing is carried out and suitable assessments completed to determine whether the material can be re-used on site or requires disposal as appropriate.
4. The testing suite will be determined by the independent geo-environmental specialist based on visual and olfactory observations.
5. Test results will be compared against current assessment criteria suitable for the future use of the area of the site affected.
6. Where the material is left in situ awaiting results, it will either be reburied or covered with plastic sheeting.
7. Where the potentially contaminated material is to be temporarily stockpiled, it will be placed either on a prepared surface of clay, or on 2000-gauge Visqueen sheeting (or other impermeable surface) and covered to prevent dust and odour emissions.
8. Any areas where unexpected visual or olfactory ground contamination is identified will be surveyed and testing results incorporated into a Verification Report.
9. A photographic record will be made of relevant observations.
10. The results of the investigation and testing of any suspect unexpected contamination will be used to determine the relevant actions. After consultation with the Local Authority, materials should either be: -re-used in areas where test results indicate that it meets compliance targets so it can be re-used without treatment; or - treatment of material on site to meet compliance targets so it can be re-used; or -removal from site to a suitably licensed landfill or permitted treatment facility.
11. A Verification Report will be produced for the work.

Reason - To protect the health of site workers and end users given the proposal and the development sites proximity to an area of potential contamination within 250m and an unknown infill approximately 50m northwest of the proposed site.

8. Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Legal Agreement Informative - Recreational Impact Mitigation

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

Highways Informatives

Informative 1:

Under Building Regulations B5, access for fire tenders is required to a point not further than 45 metres from the entrance to the dwelling. Any road or private drive forming part of such a fire access must be no less than 3.7 metres wide between kerbs (this may be reduced to 3.1 metres for a gateway or similar short narrowing) and should have a minimum centre line bend radius of 6.55 metres. The access way should be capable of carrying a 12.5 tonne vehicle. A cul-de-sac which is more than 20 metres long must have a turning head of a least Size 3.

Informative 2:

Under Section 148 of the Highways Act 1980 it is an offence to deposit mud, detritus etc. on the highway. In addition under Section 161 any person, depositing anything on a highway which results in a user of the highway being injured or endangered is guilty of an offence. Therefore the applicant must ensure that no mud or detritus is taken onto the highway, such measures include provision of wheel cleaning facilities and sweeping/cleaning of the highway

Informative 3:

Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to 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

Informative 4:

Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the carriageway to ensure that appropriate loading / unloading facilities are available to ensure that the carriageway is not obstructed during the construction period in the interest of highway safety.

Informative 5:

On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Building Control Informative

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

Sewer Connection Informative - Environment Agency

There is a public foul sewer operated by Anglian Water within approximately 45metres of the site boundary. It appears from the planning documents that the proposed properties will be built towards the western boundary of the Maltings Lodge site, adjacent to the existing properties along Maltings Road and close to the this sewer. Looking at the location of the existing properties and where the public foul sewer runs, there may well also be other private and potentially newly adopted/now public sewers nearby too.

As the proposal is for 2 dwellings, the Environment Agency would expect connection to a public or private foul sewer if one is available within 60 metres, which appears to be the case, unless reasonable justification is given as to why that would not be feasible.

Regard must be had to the drainage hierarchy in Building Regulations Approved Document H which can be found at:

<https://www.gov.uk/government/publications/drainage-and-waste-disposal-approved-document-h>

There appears to be some sort of ditch or watercourse to the northern boundary of Maltings Lodge. This may actually be a similar distance from the proposed dwellings as the public foul sewer. Connection to the public foul sewer is a far more sustainable and probably more cost effective solution in the long term if possible.

Please note that Maltings Lodge has an environmental permit for a discharge of 1.2M3/d of sewage effluent from a private treatment plant, but it is an existing single dwelling and further from the foul sewer than the proposed dwellings (and the treatment plant is further from other residential properties). The Environment Agency is very unlikely to support a proliferation of small private treatment works in a built up sewered area, if avoidable.

Environmental Protection Informative

Any lighting of the development shall be located, designed and directed or screened so that it does not cause avoidable intrusion to adjacent residential properties/cause unnecessary light pollution outside the site boundary. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers in order to protect the amenity of nearby residential dwellings.

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