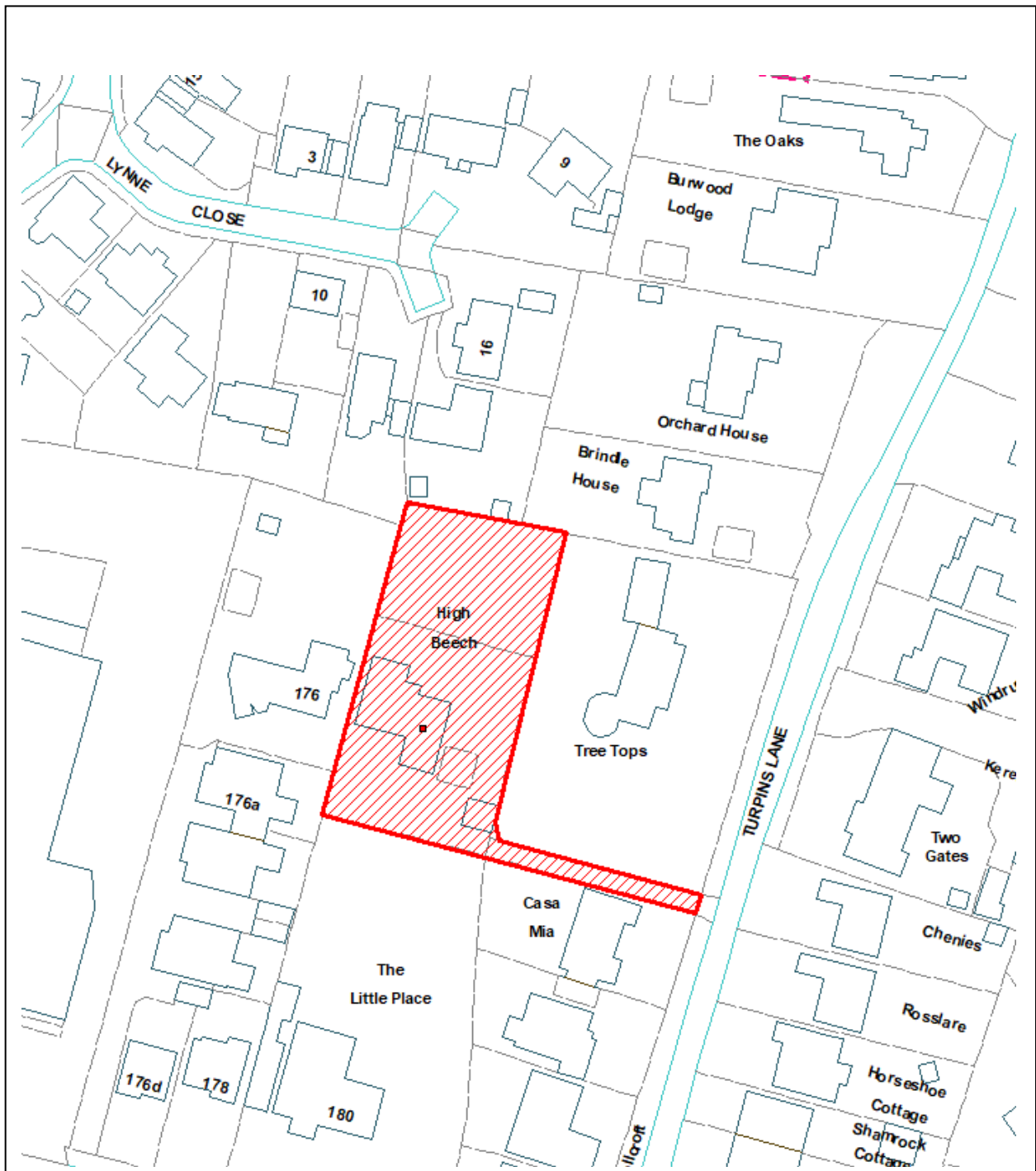


PLANNING COMMITTEE

23RD NOVEMBER 2021

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.2 PLANNING APPLICATION – 21/00738/FUL – HIGH BEECH TURPINS LANE KIRBY CROSS FRINTON ON SEA



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Application: 21/00738/FUL

Town / Parish: Frinton & Walton Town Council

Applicant: Mr and Mrs Swift

Address: High Beech Turpins Lane Kirby Cross Frinton On Sea CO13 0PB

Development: Erection of 4 no. new bungalows with associated garages and landscaping (following demolition of existing bungalow)

1. **Executive Summary**

- 1.1 The application has been called in by Councillor Anne Davis.
- 1.2 The proposal is for the demolition of the existing dwelling and the construction of four detached bungalows with associated parking and landscaping. It is also proposed to increase the width of the main access way from Turpins Lane. The site is located within the defined Settlement Development Boundary of Frinton-on-Sea and is already considered to be a backland site.
- 1.3 The proposal is considered to be of a size, scale and design in keeping with the overall grain of residential development in the surrounding area. There are no concerns raised regarding the impact on the neighbouring residential properties and subject to conditions is considered to be acceptable in regards to Highways and Parking impacts and would protect the existing TPO tree located adjacent to the proposed accessway.

Recommendation:

That the Head of Planning be authorised to grant planning permission for the development subject to:-

- a) Subject to the conditions stated in section 8.2

2. **Planning Policy**

- 2.1 The following Local and National Planning Policies are relevant to this planning application.

National Planning Policy Framework July 2021 (The Framework)
National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

QL11	Environmental Impacts and Compatibility of Uses (part superseded)
HG3	Residential Development within Defined Settlements
HG6	Dwelling Size and Type
HG9	Private Amenity Space
HG13	Backland Residential Development
HG14	Side Isolation
COM6	Provision of Recreational Open Space for New Residential Development
COM19	Contaminated Land
COM31a	Sewerage and Sewage Disposal
EN6	Biodiversity
EN11A	Protection of International Sites European Sites and RAMSAR Sites

EN13	Sustainable Drainage Systems
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 & Recreation Facilities
LP1	Housing Supply
LP3	Housing Density and Standards
LP4	Housing Layout
LP8	Backland Residential Development
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL10	Renewable Energy Generation
CP1	Sustainable Transport and Accessibility

Supplementary Planning Guidance:

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)
 Essex County Council Development Management Policies 2011
 Essex County Council Parking Standards Design and Good Practice Guide 2009
 Tendring Provision of Open Recreational Open Space for New Development SPD 2008 (Open Space and Play SPD)

Status of the Local Plan

- 2.2 Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (the Framework).
- 2.3 The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26th January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets were found sound and have been fixed, including the housing requirement of 550 dwellings per annum.
- 2.4 Paragraph 48 of the Framework 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 the policies of the Framework. In this

regard 'Proposed Modifications' to the emerging Section 2 of the 2013-33 Local Plan, which contains more specific policies and proposals for Tendring, has been examined and hearing sessions have now closed. The main modifications recommended to make the plan legally compliant and sound were considered at the Council's Planning Policy and Local Plan Committee on 29th June 2021. The Council held a six-week public consultation on the Main Modifications and associated documents which began on 16th July 2021. The consultation closed at 5pm on 31st August 2021 and adoption is expected later this year. Section 2 will then join Section 1 as part of the development plan, superseding in full the 2007 Local Plan. Section 2 of the 2013-33 Local Plan is therefore at a very advanced stage of preparation and should be afforded considerable weight.

- 2.5 In relation to housing supply:
- 2.6 The Framework requires Councils 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, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, the 'tilted balance' at paragraph 11 d) ii) of the Framework is engaged. This requires applications for housing development be granted permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 2.7 Following the adoption of Section 1 of the 2013-33 Local Plan and the Council's 'Objectively Assessed housing Need' of 550 dwellings per annum there is no housing shortfall. The Council is able to report a comfortable surplus of housing land supply over the 5 year requirement. The 'tilted balance' at paragraph 11 d) ii) of the Framework does not therefore apply to applications for housing.

3. Relevant Planning History

FRW/61/65	Refusal	15 flats. (Plan 6824)
FRW/84/57	Unconditional	(O/L) Erection of 2 det. houses fronting Turpins Lane
FRW/136/63	Refusal	(O/L) Erection of one dwelling. (Plan 6202) APPEAL DISMISSED 28/4/64
FRW/54/68	Unconditional	(O/L) Erection of single storey dwelling house. (Plan 7922)
FRW/54/68/1	Unconditional	Erection of bungalow and 2 garages. (Plan 8043)
FRW/235/72	Unconditional	Ext to bungalow. (Plan 9868)

4. Consultation Responses

Frinton and Walton Town Council 24.05.2021	Objection to development due to backland development, cramped appearance and lack of amenity space, poor access for residents and other vehicles including refuse collection vehicles, lack of parking and impact on openness of streetscene.
ECC Highways Dept 14.07.2021	No objection - Subject to conditions A site visit was undertaken in conjunction with this planning application. The existing access to the host dwelling is a concrete driveway at a width of approximately 2.9 metres, this has been cleared of vegetation and provides a wider access of approximately 5 metres, with an existing pinch point of 3.7 metres adjacent to an established tree near the vehicle access. The verge width at the access is approximately 2.3 metres wide and Turpins Lane is a cul-de-sac classed as a local road in the

County's Route Hierarchy and has an approximate carriageway width of 3.6 metres.

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to conditions and mitigation regarding visibility splays, turning facility, no unbound material, width of private drive, surface water, vehicle and cycle parking, garage sizes, provision of travel packs and the submission of a Construction Management Plan

TDC Environmental
Protection
26.05.2021

No objection subject to conditions regarding contaminated land and the submission of a Construction Method Statement, in order to minimise potential nuisance to nearby existing residents caused by construction works.

TDC UU Open Spaces
09.06.2021

Contribution required

There is currently a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby, with one play area to serve Kirby Cross and Kirby Le Soken located in Halstead Road. This play area has very recently been refurbished. There is still a need to try to reduce the deficit with in the catchment of Frinton, Walton & Kirby. The next closet play area is located at Park Playing Fields, Frinton and is widely used by the whole community, and undoubtedly residents of Kirby will travel to this play area. This play area is in need of renovation to cope with any additional development with in this catchment area.

Due to the significant lack of play facilities in the area it is felt that a contribution towards play is justified and relevant to the planning application improvements to the open space and play area at Park Playing Fields Frinton.

TDC Building Control
14.05.2021

No comments at this stage.

TDC Tree & Landscape
Officer
09.06.2021

No objections subject to conditions to protect the TPO tree on site.

The main body of the application site currently forms part of the residential curtilage of the host property. It is set out and is being used as garden.

The narrow access road serving the application site is within the Root Protection Area (RPA) of a mature Poplar previously situated within the grounds of an adjacent property. The position of the garden boundary fence has been re-positioned and the tree is now within the area of land forming the access to the main body of the application site. The tree is afforded formal legal protection by Tendring District Council Tree Preservation Order (TPO) - 13/06/TPO Tree Tops, Turpins Lane, Frinton on Sea.

Any work to the surface of the access road within the Root Protection Area (RPA) of the Poplar has the potential to cause damage and harm to the tree, therefore any proposed works to improve the surface of the access road should be supported by technical details of the construction method to ensure that the

roots of the preserved tree are not harmed by the development. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations. The use of 'No-Dig' construction techniques with a permeable finish to the surface to allow movement of water and gaseous exchange should be sufficient to avoid causing harm to the tree.

It is considered that the stem of the tree is not at great risk of harm or damage by vehicles using the access road as vehicles will be travelling at low speeds. The RPA of the Poplar should be physically protected for the duration of the construction phase of any consented development. This information should be in accordance with BS5837; 2012 Trees in relation to design, demolition and construction - Recommendations'

The garden of the existing dwelling contains several established shrubs and a few small trees however their position and amenity value is such that they do not merit retention or formal legal protection by means of a TPO.

As the site does not feature in the public realm there is little public benefit to be gained by securing soft landscaping of the site. Nevertheless, it may be desirable to secure details of soft landscaping for the benefit of any future residents of the dwellings.

TDC Waste Management
15.06.2021

No objection - Access road to be wide enough to allow full access to 2.5 meter wide waste collection vehicles. Access road to also be constructed to suitable standard to withstand weight of 26 tonne waste collection vehicles.

5. Representations

5.1 Eight representations have been received following a public consultation which included a site notice posted at the site and neighbouring consultation letters sent out to the adjacent properties.

5.2 Summary of Matters Raised

- Area not included in Tendring new Local Plan
- Disruption for residents during construction
- Access for waste vehicles is too narrow
- Habitat destroyed and damage to TPO tree
- Increase in cars using the existing narrow Turpins Lane and accessing site causing congestion. No footpaths and very little space to pass other vehicles
- Overdevelopment of site and unsuitable backland development
- Increase in traffic in area and exiting onto B1033
- Detrimental impact on residents of Casa Mia and Tree Tops adjacent to site
- Impacts on local infrastructure
- Suitable boundary treatments required to site to screen the development from neighbouring properties and retain privacy as existing trees/vegetation has been removed
- Vehicle parking within site is inadequate, no provision for visitors parking

5.3 All material planning considerations raised will be taken into account within the following assessment of the proposal.

6. Assessment

Site Context

6.1 The application site is located on the western side of Turpins Lane, and is a backland site, with vehicle access from Turpins Lane, running between the properties 'Tree Tops' and 'Casa Mia'. The site currently comprises of a detached bungalow and detached garage set within a plot of some 0.17 hectares, which is laid out as amenity space for the property.

6.2 The surrounding area is residential in nature with a mix of dwellings of varying styles and designs along Turpins Lane. Turpins Lane is a fairly narrow road, despite comprising of a number of residential properties. Small high density cul-de-sacs comprising primarily of bungalows with modest sized rear gardens are seen within the surrounding area, particularly along Hunt Way, The Warrens, Lynne Close, Village Close and between Nos 176 and 178 Frinton Road which are all in close proximity to the site. To the east of the site along Turpins Lane, more two storey dwellings are present. Overall, the surrounding area is considered to be to be very mixed in terms of designs and styles of dwellings.

6.3 The application site lies within the Defined Settlement Development Boundary of Frinton-on-Sea 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 not located with a Conservation Area and is within Flood Zone 1, which has a low risk of flooding.

Proposal

6.4 The application seeks full planning permission to demolish the existing dwelling and garage and construct 4 detached bungalows along with associated parking and landscaping and to widen the existing access road from Turpins Lane.

Principle of Development

6.5 The development plan for Tendring Council comprises of the adopted Tendring District Local Plan 2007 (part superseded) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 (Section 1 Adopted). The site lies within the Frinton-on-Sea Settlement Development Boundary as established within both the adopted and emerging local plans.

6.6 Saved Policy HG3 and Emerging Policy SPL2 both support new development within defined settlement development boundaries and that has regard to amenity, design, density, environmental and highway safety considerations as appropriate, and can take place without material harm to the character of the local area.

6.7 Specifically saved Policy HG13 and emerging Policy LP8 are relevant due to the nature of the development constituting additional backland development. Saved Policy HG13 states that proposals for the residential development of backland sites will only be approved where it meets specific criteria. Emerging Policy LP8 reflects these considerations. The relevant criteria is as follows:

i. the site lies within a defined settlement development boundary and does not comprise land allocated or safeguarded for purposes other than a residential use;

As previously stated the site is within the defined settlement boundary and comprises of a residential dwelling and amenity area.

ii. where a proposal includes existing private garden land which would not result in less satisfactory access or off-street parking arrangements, an unacceptable reduction in existing private amenity space or any other unreasonable loss of amenity to existing dwellings;

The existing dwelling is to be demolished, therefore the proposal would not result in any loss of amenity. The access to the site is already existing.

iii. a safe and convenient means of vehicular and pedestrian access/egress can be provided that is not likely to cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will be discouraged;

The access road to the site is existing and whilst improvements are proposed it is not considered to impact on privacy or result in undue disturbance.

iv. the proposal does not involve “tandem” development using a shared access;

The proposal does not constitute tandem development as both properties adjacent to the access road have their own separate accesses.

v. the site does not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution;

The site is in an already built up residential area and the proposal is considered to be an efficient use of the site.

vi. the site is not on the edge of defined settlements and likely to produce a hard urban edge or other form of development out of character in its particular setting;

The site is within a defined settlement development boundary and is not considered to be out of character with its current residential setting.

vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.

6.8 Given the overall grain of the surrounding built environment and regard to the siting of the donor dwelling to the rear of existing properties, there is no objection to additional dwellings in this backland location as this would not significantly alter or harm the current pattern of residential development in the locality.

6.9 Furthermore, there can be no objection to the single storey scale of the proposed dwellings having regard to the mixed character of the area which includes both bungalows and two storey dwellings directly adjacent to the site. The single storey scale is an appropriate response to the character of the area will in fact minimise the visual and neighbouring impact of the development.

6.10 Therefore the site is considered to be an appropriate location for backland development. As such the principle of residential development on the site is acceptable subject to the detailed considerations relevant to this proposal which are set out below.

Appearance, Layout and Scale

6.11 The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of

sustainable development, creates better places in which to live and work and helps make development acceptable to communities. (Para 126 NPPF).

- 6.12 Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Emerging Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness. The development should relate well to its site and surroundings particularly in relation to its siting, height, scale, massing, form, design and materials and should respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Saved Policy QL11 supports these considerations.
- 6.13 The proposed development comprises of four detached modest bungalows, which are considered to be of a size, scale and design in keeping with the bungalows to the rear of the site. The external materials are facing brickwork, horizontal boarding, coloured render and clay and blue black slate tiles. The specific details have not been submitted with this application, but can be secured by condition and are considered to harmonise with the mixed palette of external materials and finishes in the surrounding area. The bungalows would be well balanced in terms of symmetry and the hipped-roof design would reduce the bulk and mass of the development in this backland location. The submitted plans demonstrate the layout of the proposed bungalows which allows for a reasonably well-spaced development retaining at least 1 metre distance to both side and rear boundaries when in close proximity to neighbouring dwellings, in line with the standards set out within Saved Policy HG14 of the Tendring District Local Plan.
- 6.14 All new dwellings must also accord with the Technical housing standards – nationally described space standards (2015) which sets out minimum gross internal floor space for new dwellings. A two bedroom, one storey dwelling requires a minimum of 61-70sqm of Gross Internal Floorspace (GIA). There are also requirements for storage and bedroom sizes. From the plans submitted the proposed bungalows meet these requirements. It is also considered that the internal layout is appropriate with all habitable rooms having adequate natural light.
- 6.15 Policy HG9 states that dwellings of two bedrooms or more must have a minimum private amenity space of 75sqm. The submitted plans show in excess of the required amenity space provision for each bungalow.
- 6.16 Therefore, having regard to the above policy considerations, the proposal is considered to be policy compliant in terms of its scale, layout, appearance and design. The proposal would make more efficient use of the site, consistent with Paragraph 124 of the Framework, and, because it would not be at odds with the character and appearance of the area it would accord with the overall thrust of saved Policy HG7 and emerging Policy LP3 in relation to density.

Impact on Residential Amenity

- 6.17 Paragraph 130 of The Framework maintains that policies and decisions should result in new development that creates places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. In addition, Policy QL11 of the saved plan states that amongst other criteria 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.18 The application site is neighboured by a number of residential dwellings on all sides and the existing access runs between Casa Mia and Tree Tops, both of which front Turpins Lane.

- 6.19 The proposed development has been designed to minimise any overlooking or loss of privacy issues, with all main habitable rooms located to the front and rear elevations, therefore separated from the shared boundaries by the rear amenity areas. Any side windows which are close to the shared boundaries serve the bathrooms and en-suites to the bungalows and also comprise of a back door to the kitchen. These windows can be conditioned to be obscure glazed to reduce any overlooking or loss of privacy impacts. Given the current sitting of the existing bungalow, the proposal moves the built form further away from the shared boundary with Nos. 176 and 176a Frinton Road, which are the closest dwellings to the development.
- 6.20 The proposed garages to Plots 3 and 4 are set back within the site and as a result are closer to the rear boundary of No 14 Lynne Close, however the garage building is separated from the main bulk of this dwelling by its amenity area.
- 6.21 Therefore, given the proposed orientation of the bungalows, their single storey nature and the existing residential use of the site it is not considered that this development would impact on the residential amenities of these neighbouring occupiers in any regard.
- 6.22 Garden sizes and internal floorspace would be sufficient to meet the needs of future occupants and provide a good level of amenity. Overall, the proposal would comply with saved Policies HG6 and HG9, emerging Policies LP3 and LP4, and the relevant policies of the Framework.

Trees and Landscaping/Biodiversity

- 6.23 Saved Policy EN1 of the adopted Local Plan (2007) relates to landscape character and states that development management will seek to conserve features which contribute to local distinctiveness, which includes important hedgerows and trees. A large part of the application site makes up the residential curtilage of the host property. It is set out and is being used as residential amenity space/garden.
- 6.24 The proposed access road serving the application site is now within the Root Protection Area (RPA) of a mature Poplar, which is subject to a TPO (13/06/TPO). Any works to the surface of the access road within the Root Protection Area (RPA) has the potential to cause damage and harm to the tree.
- 6.25 Therefore, before the commencement of any works on site or to improve the surface of the access road, technical details of the construction method proposed to ensure that the roots of the preserved tree are not harmed by the development must be submitted to and agreed in writing by Local Planning Authority. This should also include any necessary future maintenance of the road and its ability to safely accommodate construction vehicles and post construction, waste collection vehicles up to 26 tonnes. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations. It is recommended that the use of ‘No-Dig’ construction techniques with a permeable finish to the surface to allow movement of water and gaseous exchange should be sufficient to avoid causing harm to the tree.
- 6.26 Post construction it is not considered that the stem of the tree is at great risk of harm or damage by vehicles using the access road as it is considered that the vehicles will be travelling at low speeds and movements would be minimal in relation to the dwellings on the site. However, a condition should be attached to any grant of planning permission, to ensure that the Root Protection Area (RPA) of the Poplar is physically protected for the duration of the construction phase of the development. This information should also be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations’
- 6.27 The garden of the existing dwelling is to be cleared to make way for the development and some details of the landscaping is shown on the proposed landscape plan (937 07A), however in light of the specific details required for the access road, tree protection and overall lack of

information regarding the materials proposed for the hard landscaped areas, it is appropriate to add a condition to submit full details of a hard and soft landscaping scheme.

Ecology and Biodiversity Implications

- 6.28 Saved Policy EN6 and emerging Policy PPL4 seek to protect and enhance the local biodiversity and geodiversity. The site is not of any specific designation or is it considered to be within a rural setting. The proposed dwellings would intensify the built form within the site, however is currently used as residential garden. Soft landscaping is proposed and the dwellings would all have rear garden areas, therefore it is not considered that there would be a net loss in Biodiversity.

Highway Safety/Parking

- 6.29 Paragraph 110 of the Framework seeks to ensure that safe and suitable access to a development site can be achieved for all users. Policy SP7 seeks new development to include parking facilities that are well integrated as part of the overall design. The sentiments of these policies are carried forward within emerging Policies SPL3 and CP1. Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new development.
- 6.30 The Local Highway Authority has been consulted on this application and subject to conditions and mitigation regarding visibility splays, turning facility, no unbound material, width of private drive, surface water, vehicle and cycle parking, garage sizes, provision of travel packs and the submission of a Construction Management Plan, the proposal is considered to be acceptable.
- 6.31 The existing access has been widened to some 5m in width, however a pinch point does exist of some 3.7 metres in width adjacent to the Poplar tree. However this is considered to be wide enough to accommodate construction vehicles and refuse collection vehicles.
- 6.32 The Essex County Council Parking Standards 2009 require that dwellings with 2 or more bedrooms be served by a minimum of 2 parking spaces. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied upon to provide a parking space, should measure 7 metres by 3 metres internally. The submitted plans show that each dwelling would be served by a garage and parking space that meets policy requirements. A size 3 turning head is provided to ensure that vehicles entering and leaving the site can do so in a forward gear in the interests of highway safety. Given only the minimum level of parking is proposed, it is considered appropriate to condition the garages to be used for parking purposes only and not converted to habitable accommodation.
- 6.33 Subject to the use of conditions, the proposal would accord with saved Policies TR1, TR3 and TR7, emerging highway related policy requirements, and the Highways and Parking SPDs. The proposal is not therefore considered to result in any unacceptable harm to highway safety or result in residual cumulative impacts on the highway network that would be severe. According to Paragraph 111 of the Framework, planning permission should not therefore be refused on highways grounds.

Legal Obligations - Recreational Impact Mitigation

- 6.34 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.

- 6.35 This new residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites, but is approximately 1800 metres from Hamford Water SAC, SPA and Ramsar. The Council's Habitats Regulation Assessment has concluded that, with the proposed mitigation (which has been secured by means of an executed Unilateral Undertaking), the project would not have an Adverse Effect on the Integrity of the sites included within the Essex Coast RAMS and therefore the proposal is in accordance with the Essex Coast RAMS SPD.

Legal Obligations - Open Space/Play Space Contribution

- 6.36 Policy COM6 of the adopted Tendring District Local Plan 2007 states that for residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built. These sentiments are carried forward within emerging Policy HP5.
- 6.37 The Council has identified a deficit of -14.12 hectares of equipped play in Frinton, Walton & Kirby. There is currently one play area to serve Kirby Cross and Kirby Le Soken which is located in Halstead Road. Although this play area has very recently been refurbished, there remains a need to reduce the deficit within the catchment area of Frinton, Walton & Kirby. The next closest play area is located at Park Playing Fields in Frinton and is considered to be widely used by the whole community. This play area is in need of renovation in order to deal with the increase use from the additional development in this catchment area. Therefore, a financial contribution is recommended.
- 6.38 Such a contribution meets the tests under Paragraph 57 of the Framework and the necessary Unilateral Undertaking has been completed. The proposal therefore complies with saved Policy COM6 and emerging Policy HP5 along with the Open Space and Play SPD.

Contaminated Land

- 6.39 It has been identified that there may be potential contamination on the site. The applicant is therefore required to undertake a suitable and sufficient site investigation and any necessary risk assessment to ensure proposed site is free from contamination. This can be secured by the standard contaminated land condition added to any grant of planning permission. Subject to the verification report the site would be suitable for the proposed use, and the development would therefore accord with saved Policy COM19 and Paragraph 183 of the Framework.

Environmental Protection

- 6.40 Prior to any commencement of development a Construction Method Statement, in order to minimise potential nuisance to nearby existing residents caused by construction works, should be submitted to and approved in writing by the Local Planning Authority. This should have regard to noise control, vehicle movements and working hours, use of machinery and mobile plant, piling works and both emission and dust control. This can be secured by condition to any grant of planning permission.

Renewable Energy

- 6.41 Emerging Policy PPL10 addresses the renewable energy generation and energy efficiency measures for residential development involving the creation of one or more dwellings. Measures including electric car charging points should be considered. Paragraph 112 e) of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. This can reasonably be dealt with by the use of a planning condition.

7. Conclusion

It is considered that the proposed development is consistent with the National and Local Plan Policies identified above. In the absence of material harm resulting from the proposal the application is recommended for approval.

8. Recommendation

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informative

8.2 Conditions and Reasons

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 strict accordance with the following approved plans:

Drawing No 951/01A – Proposed Site Layout
Drawing No 973/02 – Plot 1 Proposed Elevations and Floorplan
Drawing No 973/03 – Plot 2 Proposed Elevations and Floorplan
Drawing No 973/04 – Plot 3 Proposed Elevations and Floorplan
Drawing No 973/05 – Plot 4 Proposed Elevations and Floorplan
Drawing No 973/06 – Plots 3 & 4 Garage Elevations and Floorplan

Reason: In the interests of proper planning and for the avoidance of doubt.

3. Prior to the commencement of development, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Construction Method Statement shall provide for:

- safe access to/from the site;
- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- wheel washing facilities;
- measures to control the emission of dust and dirt during demolition and construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- details of hours of deliveries relating to the demolition and construction of the development;
- details of hours of site clearance or construction;
- a scheme to control noise and vibration during the demolition and construction phase, including details of any piling operations.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason - In the interests of residential amenity and highway safety and to reduce the likelihood of complaints of statutory nuisance.

4. Prior to the commencement of development hereby permitted, the specific requirements of paragraphs numbered 1 to 3 below must have been undertaken. If unexpected contamination is found after development has commenced, no further development shall be carried out on that part of the site affected by the unexpected contamination until the requirements of paragraph 4 have been complied with in relation to such contamination.

1. Site Characterisation - An investigation and risk assessment, in addition to any assessment provided within the planning application, shall be carried out in accordance with a scheme to assess the nature and extent of any contamination of the site. The investigation and risk assessment shall be undertaken by a competent person and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority. The report shall include:

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments; and

(iii) an appraisal of options for remediation and a proposal with preferred option(s). This appraisal shall be conducted in accordance with the Environment Agency Model Procedures for the Management of Land Contamination (CLR 11).

2. Submission of Remediation Scheme - A detailed Remediation Scheme to ensure that the site is suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works of remediation to be undertaken, remediation objectives and criteria, timetable of works and related site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the use of the land after remediation.

3. Implementation of Approved Remediation Scheme - The Remediation Scheme required under paragraph 2 above shall be carried out in accordance with its terms prior to the commencement of any works of construction on site unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be notified in writing a minimum of two weeks prior to commencement of the remediation scheme works of the date that the remediation works will commence. Following completion of the measures identified in such approved Remediation Scheme, a verification report to demonstrate the effectiveness of the remediation carried out shall be submitted to the Local Planning Authority.

4. Reporting of Unexpected Contamination - In the event that contamination is found which was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall then be undertaken in accordance with the requirements of paragraph 1 above and, where remediation is necessary, a new Remediation Scheme shall be prepared in accordance with the requirements of paragraph 2 above and submitted to and approved in writing by the Local Planning Authority. Following completion of all necessary measures identified in such Remediation Scheme as may be approved, a verification report shall be submitted to and approved in writing by the Local Planning Authority in accordance with paragraph 3 above. In such circumstances, no further works of development shall be carried out to that part of the site until such time as the requirements of this paragraph have been satisfied.

Reason - To ensure that any risks (to future users of the land and neighbouring land and to controlled waters, property and ecological systems) arising from any land contamination are

minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

5. Prior to the commencement of development hereby approved technical details of the construction method of works to the surface access road proposed and details of the protection measures proposed to physically protect the root protection area of the Poplar tree, subject to TPO - 13/06/TPO Tree Tops, Turpins Lane, Frinton on Sea for the duration of the construction phase must be submitted to and agreed in writing by the Local Planning Authority. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations.

Reason - To ensure that the roots of the preserved tree are not harmed by the development.

6. Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority.

Reason - In the interests of visual amenity, the quality of the development and the character of the area.

7. 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 retention and maintenance of the approved landscaping scheme for a period of five years in the interests of visual amenity, the quality of the development and the character of the area.

8. Prior to above ground works, a scheme for the provision of electric vehicle charging facilities for each dwelling shall have first been submitted to and approved in writing by the local planning authority. Thereafter the charging facilities shall be installed in a working order, prior to first occupation of the respective plot.

Reason: In order to promote sustainable transport.

9. Notwithstanding the provisions of Schedule 2 Part 1 Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extensions, additions, porches or alterations to the dwellings or their roofs shall be carried out and no outbuildings, enclosures, swimming or other pools shall be erected except in complete accordance with details which shall previously have been approved, in writing, by the Local Planning Authority following the submission of a planning application for such development.

Reason - To ensure that sufficient private amenity space for the dwelling is retained in the interests of residential amenities.

10. All new driveways and parking areas 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 or surface within the curtilage of the dwelling.

Reason - In the interests of sustainable development and to ensure that run-off water is avoided to minimise the risk of surface water flooding.

11. There should be no obstruction above ground level within a 2.3 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway either side of the existing vehicle access from Turpins Lane. Such vehicular visibility splays shall be provided before the road junction/access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between users of the access and the public highway in the interests of highway safety

12. Prior to occupation of the development the vehicular turning facility, as shown on Approved Plan: 951/01A 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

13. No unbound material shall be used in the surface treatment of the vehicular access

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance

14. Prior to the occupation of any of the proposed dwellings hereby approved, the proposed private drive shall be constructed to a minimum width of 5.0 metres for at least the first 6 metres from the back the Highway Boundary.

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

15. 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

16. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, and sealed. The vehicle parking area and garages shall be retained in this form at all times and not used for any purpose other than the parking of vehicles that are related to the use of the development.

Reason: To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided

17. All 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

18. The ground floor windows and door on the flank elevations of the dwellings hereby approved, must be obscure glazed to a minimum of Level 4 on the Pilkington scale of privacy or equivalent, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Reason: To protect the residential amenities of the neighbouring occupiers

8.3 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.

Highways Informatives

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

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.

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.

9 Additional Considerations

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and

- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 9.12 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

10 Background Papers

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.