

Public Document Pack

Planning Policy and Local Plan Committee

11 January 2022

**MINUTES OF THE MEETING OF THE PLANNING POLICY AND LOCAL PLAN
COMMITTEE,
HELD ON TUESDAY, 11TH JANUARY, 2022 AT 6.00 PM
IN THE COMMITTEE ROOM, IN THE TOWN HALL, STATION ROAD, CLACTON-ON-
SEA, CO15 1SE**

Present:	Councillors Turner (Chairman), Fairley (Vice-Chairman), Allen, Bush, Chapman BEM, G V Guglielmi, I J Henderson (except items 24 - 28), Newton, Scott and Winfield
Also Present:	Councillors Coley V E Guglielmi and White
In Attendance:	Lisa Hastings (Deputy Chief Executive & Monitoring Officer), Gary Guiver (Acting Director (Planning)), Ian Ford (Committee Services Manager), Will Fuller (Planning Officer), Paul Woods (Planning Officer) and Matt Cattermole (Communications Assistant)

24. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were no apologies for absence or notices of substitution received on this occasion.

25. CHAIRMAN'S OPENING AND INTRODUCTORY REMARKS

The Chairman of the Committee (Councillor Turner) made the following opening remarks:-

“Good evening fellow Councillors; Officers; and members of the public. New Year, new beginnings.

At last, at very long last, we have the finishing line in sight for the major work of this Committee, the Local Plan. This is the 12th meet of this Committee since the start of this Council term in May 2019. We have had in excess of 3,000 pages of reports, none of them easy reading. All requiring thought and study. May I thank all past and present members of this Committee for their contributions, ideas and their diligence. I believe we have produced a robust plan that will serve this District and our Council well. More importantly it is already stopping speculation building and will provide much better and more user friendly homes, which will be cheaper to own and run.”

At the appropriate juncture in the meeting, the Chairman made the following introductory remarks in relation to report item A.1:-

“Thank you all. Now onto the next step – Full Council on the 25th of January for adoption if the Council so wishes. I must now thank our Officers, in particular, Mr Guiver and his team for their unflagging enthusiasm, application, and knowledge accompanied by their ability to keep their noses firmly pinned to the grindstone. Mr Guiver and his team turned around the Planning Inspector’s final letter by checking and accepting the main and minor modifications in 24 hours. That is despite being given three weeks to do so.

Further, I would like us to thank our legal team led by our Deputy Chief Executive, Mrs Lisa Hastings, She has kept us on the straight and narrow and her advice has been invaluable.

Finally, Mr. Ian Ford and his team for taking our minutes accurately, unflappably and making sure we Members have been well-served."

26. MINUTES OF THE LAST MEETING

It was **RESOLVED** that the Minutes of the last meeting of the Committee held on 11 November 2021 be approved as a correct record and be signed by the Chairman.

27. DECLARATIONS OF INTEREST

Councillor Allen indicated that he would declare an interest if there were any discussions that related specifically to the Frinton Conservation Area as he resided within that area and he was also a Ward Member for Frinton.

The Monitor Officer confirmed that this would be accepted for all members of the Committee, who this applied to.

28. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

On this occasion no Councillor had submitted notice of a question pursuant to Council Procedure Rule 38.

29. PUBLIC SPEAKING

Pursuant to the provisions of the Council's public speaking scheme for the Planning Policy & Local Plan Committee, one member of the public had registered to ask at this meeting a question or to make a statement regarding the items contained in the report of the Acting Director (Planning) or the Reference from Council.

Ms Carol Bannister made a statement in relation to item A.1 of the report of the Acting Director (Planning) in which she raised concerns about Local Map B.28 (Weeley). She felt that Weeley Caravan Park was incorrectly labelled and that Oakleigh Caravan Park was not labelled at all. She also stated that Oakleigh Caravan Park Phase 4 did not show an internal road or the traveller site with an additional five pitches.

Later on in the meeting under Minute 30 below the Acting Director (Planning) stated that Officers would look at the matters raised by Ms Bannister and that there was scope to amend the map if that should prove necessary.

The Chairman responded to Ms Bannister as follows:-

"Ms Bannister, thank you as always for your contribution and comments. Always to the point, you keep us on our toes and together with other critical friends, in particular Mr Bill Marshall, we have produced a solid forward looking plan. Thank you again."

30. REPORT OF ACTING DIRECTOR (PLANNING) - A.1 - SECTION 2 LOCAL PLAN: PLANNING INSPECTORS' FINAL REPORT AND PROCESS FOR ADOPTION

The Committee gave consideration to a comprehensive report of the Acting Director (Planning) (A.1) which:-

- a) reported the Local Plan Inspectors' final conclusions on the legal compliance and 'soundness' of Section 2 of the Council's new Local Plan following consultation on their recommended 'Main Modifications' and the subsequent receipt of their final report on 24th November 2021;
- b) reported that, by incorporating the Inspectors' recommended Main Modifications, the Section 2 Local Plan met the tests for legal compliance and soundness - as required for a plan to proceed to formal adoption; and
- c) sought the Committee's agreement that the modified Section 2 Local Plan be now recommended to Full Council for formal adoption.

Key Points

Members were informed that Planning Inspectors Anne Jordan and Jameson Bridgewater had issued their final report on the soundness and legal compliance of Section 2 of the new Tendring Local Plan, following examination hearings in February and March 2021 and having considered the consultation responses on their recommended 'Main Modifications'.

Officers were delighted to report that, with the incorporation of the Inspectors' final list of slightly adjusted Main Modifications, the Section 2 Local Plan was sound, legally compliant and could now be formally adopted by the Council.

The Committee was advised that the final list of modifications had contained no surprises and no significant changes from those considered by the Committee in June 2021 and subsequently published for consultation in July and August 2021. Indeed, the majority of those modifications had been put forward by the Council itself to improve the soundness of the Plan, address previous objections and ensure that the Plan was kept up to date and reflected the latest evidence. The modifications had not been particularly contentious when published for consultation and there had been more representations of support than of objection.

Members were made aware that the receipt of the Inspectors' final report already enabled the Council to give almost full weight to the policies in the new Local Plan in determining planning applications and in contesting appeals.

The Committee was reminded that formal adoption of the modified Section 2 Local Plan would require a decision of Full Council and the Committee was invited to recommend this to Full Council at its scheduled meeting on 25th January 2022.

Members recognised that the adoption of the Section 2 Local Plan would represent a major milestone for Tendring District Council as the new plan would supersede, in full, the previous outdated Local Plan of 2007 and would ensure the Council had a fully up-to-date Local Plan in place to guide development up to 2033.

Councillors G V Guglielmi, Chapman, I J Henderson, Bush and Scott asked questions on the report which were responded to by the Acting Director (Planning). In response to specific comments on the extent to which certain areas were depicted in detail on the local maps accompanying the Local Plan, the Acting Director (Planning) explained that the scale of the maps could be adjusted as appropriate in finalising the plan for its final publication.

With the permission of the Chairman (Councillor Turner), Councillor White, in his capacity as the Chairman of the Planning Committee, addressed the meeting on behalf of that Committee and extended its congratulations to the members of the Planning Policy & Local Plan Committee and to the Acting Director (Planning) and his Team for getting the Local Plan to the 'finishing line'.

Having considered all of the information and advice contained in the Officer report and its appendices:-

It was moved by Councillor Turner, seconded by Councillor Fairley and unanimously:-

RESOLVED that the Planning Policy and Local Plan Committee:

- 1) notes the findings of the Planning Inspectors' 'Report on the Examination of the Tendring District Local Plan 2013-2033 and Beyond Section 2' received on 24th November 2021 (attached as Appendix 1 to the Acting Director (Planning)'s report) and their final 'Schedule of Main Modifications' (attached as Appendix 2 thereto); and
- 2) recommends, subject to the agreement of the Leader of the Council, to Full Council:
 - (i) the formal adoption of the 'modified' Tendring District Local Plan 2013-2033 and Beyond Section 2 (attached as Appendix 3 to the aforesaid report) i.e. incorporating the Inspectors' final Main Modifications, as well as the other 'Additional Modifications' and 'Modifications to Local Plan Maps, in accordance with Section 23(3) of the Planning and Compulsory Purchase Act 2004; and
 - (ii) that authority be delegated to the Acting Director (Planning), in consultation with the Leader of the Council and the Chairman of the Planning Policy and Local Plan Committee, to:
 - (a) make administrative corrections, if necessary, to address any minor typographical, grammatical or factual errors within the documents or maps contained within the adopted Tendring District Local Plan 2013-2033 and Beyond Section 2 (in Appendix 3), in the event that any are discovered before its final publication;
 - (b) agree the insertion of an appropriate 'foreword' into the opening pages of the final published version of the Tendring District Local Plan 2013-2033 Section 2; and
 - (c) agree an appropriate and up-to-date set of photographs of the District for insertion into the final published version of the Tendring District Local Plan 2013-2033 Section 2 to refresh and update those previously included in the version of the Local Plan published for consultation in 2017.

31. REFERENCE FROM COUNCIL - A.2 - MOTION TO COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE 12 - APPLICATION OF ARTICLE 4 DIRECTIONS IN THE DISTRICT OF TENDRING

Members were aware that, at the meeting of the Council held on 30 November 2021 (Minute 90 referred), the following motion had been moved by Councillor Coley,

seconded by Councillor G V Guglielmi and, in accordance with Council Procedure Rule 12.4, had stood referred to the Planning Policy & Local Plan Committee for further consideration:

“In order to preserve Tendring’s uniqueness, heritage, amenity areas and the established areas of industrial and commercial activity:-

This Council requests its Cabinet to explore the option of applying for an Article 4 Direction in respect of appropriate Conservation Areas, Industrial Estates and Commercial and Retail Centres in the District of Tendring.”

On further discussions by Officers with Councillor Coley, it had been determined that the key areas of his concern revolved around the following issues:-

- *“Inappropriate permitted changes of use of property to residential dwellings which can result in an incompatible mix of uses – particularly in predominantly commercial areas and above shops;*
- *Permitted changes of use to residential dwellings that provide substandard levels of private amenity space;*
- *The inability to secure financial contributions from permitted developments for infrastructure such as children’s play areas;*
- *Permitted changes in Conservation Areas that can impact on the character and setting of listed buildings; and*
- *Conversion and redevelopment of agricultural buildings to residential dwellings which have a negative impact on the countryside.”*

In accordance with Council Procedure Rule 12.6 (Referred Motions – Right of Mover to Attend Meeting), Councillor Coley had been notified to attend the meeting to answer any questions and/or points of clarification, if requested.

It was reported that an ‘Article 4 Direction’ was a Direction under Article 4 of the General Permitted Development Order which enabled the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area. An Article 4 Direction could not be used to restrict changes between uses in the same use class of the Use Classes Order, but it could restrict and require planning permission to be sought for certain types of development that would otherwise be permitted.

The National Planning Policy Framework advised that all Article 4 Directions should be applied in a measured and targeted way. They should be based on robust evidence, and applied to the smallest geographical area possible.

Provided that there was clear justification for both its purpose and extent, an Article 4 Direction could:-

- *remove specified permitted development rights related to operational development or change of use; or*
- *remove permitted development rights with temporary or permanent effect.*

Where an Article 4 Direction related to a change from non-residential use to residential use, it had to be limited to situations where an Article 4 Direction was necessary to avoid wholly unacceptable adverse impacts. In other cases, Article 4 Directions should be

limited to situations where it was necessary to protect local amenity or the well-being of the area.

The potential harm that the Article 4 Direction was intended to address would need to be clearly identified and demonstrated, and there would need to be a particularly strong justification for the withdrawal of permitted development rights relating to:-

- *a wide area (e.g. those covering a large proportion of or the entire area of a local planning authority, National Park or Area of Outstanding National Beauty);*
- *an area extending beyond the essential core of a primary shopping area;*
- *Agriculture and forestry development. Article 4 Directions related to agriculture and forestry would need to demonstrate that permitted development rights posed a serious threat to areas or landscapes of exceptional beauty;*
- *cases where prior approval powers were available to control permitted development; and*
- *the installation of microgeneration equipment.*

The Committee was informed that, at present, the Council had a number of Article 4 Directions in place throughout the District. Those included:-

- *a number of roads in Mistley where rights had been withdrawn for windows, doors, rendering, painting and the erection of porches;*
- *in Jaywick extensions and alterations to houses and alterations to the roof had been withdrawn; and*
- *District-wide rights for the conversion to HMOs had been withdrawn.*

Members were made aware of the other existing protections in the planning system as follows:-

The General Permitted Development Order (GDPO)

It was reported that permitted development rights were a provision of the national planning system that automatically granted consent for certain building works and changes of use to be carried out without the need to apply for planning permission. Permitted development rights were subject to certain conditions, size thresholds and limitations to control impacts and to protect local amenity – but generally allowed many types of development to take place without any control from the local authority.

The GPDO covered a vast variety of land uses and set out the permitted development rights that existed for each. For the purposes of this reference report, Officers had focussed on the permitted development rights most pertinent to the particular concerns identified by Councillor Coley, as follows:-

Commercial Permitted Development

Part 7 of the GPDO provided for non-residential (commercial) extensions and alterations. It allowed, inter alia, without the need for planning permission:

Commercial and business properties (Use Class E)

- *Buildings can be extended by 50% or 100 square metres in floor area*
- *Buildings can be extended up to, but no higher than 4 metres*

- *New development may not include the insertion or alteration of a shopfront*

Industrial building or warehouse (Use class B1 and B8)

- *No more than 200 square metres for a new building within a commercial site*
- *Extensions of no more than 50% or 1000 square metres in floor area*
- *Extensions of no more than 15 metres high*

Restricted Permitted Development within Conservation Areas

Within Conservation Areas (and Areas of Outstanding Natural Beauty) the following additional restrictions applied:-

Residential/householder development in Conservation Areas:

- *No side extensions are permitted*
- *No cladding and pebbledash*
- *No dormers on front and rear (in all other cases front facing dormers are not permitted)*
- *No outbuilding to side*
- *Photovoltaic as far as practical out of sight*
- *Chimneys and vent pipes not permitted if they are on wall or roof fronts a highway and principle or side wall*
- *Satellite dishes and antenna not permitted mounted on chimney wall or roof slope fronting highway*

Commercial and business development in Conservation Areas:

- *Extensions limited to 25% of original building or 50 sq m (half the standard allowance); materials must be similar; and extensions not permitted if within 2m of any boundary.*
- *Click and collect not permitted.*
- *Modification of loading bays not permitted.*
- *Industrial and Warehouse new buildings 100 sq m (half standard allowance).*
- *Extensions 10% of original floorspace or 500 sq m (standard is 50% or 1000 sq m)*
- *Industrial and Warehouse buildings, extensions and alterations must use similar materials.*
- *Waste management facilities – no extensions, alterations or replacement plant or machinery permitted*

From the above, Members recognised that there were already a number of restrictions in place controlling development of a commercial or business use and further restrictions within Conservation Areas. However, concern had been raised about some of the development that had been allowed in Conservation Areas including the inappropriate changes of use of property to residential dwellings which could result in an incompatible mix of uses, particularly in predominantly commercial areas and above shops. Concerns had also been raised over changes of use to residential dwellings that provided sub-standard levels of private amenity space and those changes of agricultural buildings in the countryside which could negatively impact on the character of the area. The inability to secure financial contributions from permitted developments for

infrastructure such as children's play areas was also of concern. As were changes in Conservation Areas that could impact on the character and setting of listed buildings.

Permitted Development Change of Use to Dwellings

It was further reported that the GDPO also allowed (in Part 3) the change of use from specific buildings and uses to residential dwellings without the need for planning permission, but subject to a simpler 'Prior Notification' process. The following were permitted to change to residential dwellings:-

- *Small HMOs*
- *Retail and betting shops*
- *Amusement arcade and casino*
- *Offices*
- *Storage and distribution B1(c)*
- *Agricultural*

Also within the GPDO (Part 20) there was an allowance for new dwelling houses to be constructed above flats without planning permission. It was noted that all of those permitted changes had certain conditions, size thresholds and restrictions attached.

Subject to a number of conditions and restrictions, agricultural buildings and land within their curtilage could be converted to a use falling within Class C3 of the Schedule to the Use Classes Order 1987 (dwelling houses). Those conditions and restrictions were set out in Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

The right allowed for a maximum number for the following types of houses:

- *up to 3 larger homes, to be greater than 100 square metres in floor area, and within an overall floorspace of 465 square metres in total; or*
- *up to 5 smaller homes each no greater than 100 square metres; or*
- *Up to 5 homes comprising a mixture of larger and smaller homes, with neither exceeding the thresholds for each type of home.*

The right required that for larger homes each of the 3 homes had to be larger than 100 square metres in residential use and allowed for up to 1 home of 465 square metres in residential use. For smaller homes the right required that a home could have no more than 100 square metres of floor space in residential use. Development of dwelling houses other than those defined as "larger" or "smaller" was not allowed under Class Q. In calculating the number of new homes allowed under the right any existing homes within the established agricultural unit not granted permission under Class Q were discounted.

Consequences for imposing further Article 4 Directions in the District

As reported above, the use of Article 4 Directions could only be used in very specific circumstances with strong justification. Taking each of the use cases in turn, Officers had the following considerations for Members to take into account:-

Removing Permitted Development Rights for Conversion to Dwellings

Members were made aware that the Government was clear that it intended to significantly boost the supply of new homes in the coming years. A key part of this was to allow changes of use without full planning permission for agricultural buildings and for certain uses.

Officers considered that to restrict conversion of agricultural outbuildings would require an Article 4 Direction to apply across a wide area (covering all land within the District) and that was unlikely to be supported by the Secretary of State. No serious threat to landscape character had been identified and the prior approval regime could control those impacts. Given that a large part of the District and the large part of the country was rural in character and therefore subject to those permitted development rights and that the material harm caused by this form of development was generally low, Officers believed it would be unlikely that the Secretary of State would agree to a direction. Officers did not consider therefore that using Article 4 Directions to control this kind of development would be appropriate.

Similarly, for the other uses which may change to dwellings, no serious justification had been given as to the harm caused and where the specific locations were in the District. In both kinds of conversions, Officers would need more detail to recommend the use of an Article 4 Direction to Members.

Restricting Permitted Development Rights in Conservation Areas

The Committee was advised that within the adopted Heritage Strategy, one its recommendations to preserve the heritage of the District was for Officers to investigate its powers using Article 4 Directions. Moreover, within the Conservation Area Management Plans taken to this Committee in October 2021, there had also been recommendations for Officers to consider the use of Article 4 Directions, specifically to control the inversion of windows and doors and shopfront design.

Officers put forward that they could investigate stricter controls within Conservation Areas using Article 4 Directions and that once each of the Conservation Area Appraisals returned from public consultation, Officers could explore this in more detail. This approach was recommended as it was likely that the boundary of Conservation Areas would change and the boundary for any new Article 4 Direction should reflect the most up-to-date Conservation Area boundary.

Restricting Permitted Development Rights in Town Centres

Members recalled that they had previously considered a report which had highlighted the Government's recent rethink of town centre uses. This involved the implementation of a new 'Class E' planning use class which brought together a number of traditionally town centre uses and also allowed the permitted change of some of those uses to residential. The Government was attempting to provide more flexibility to town centre uses. Officers considered that there was no strong justification to tighten those rights and in any event, this approach would not be supported by the Government.

Further Considerations

Officers felt that all of the above pointed to a wider piece of work to examine how well the Article 4 Directions the Council already had in place were achieving their goals.

Indeed, Government guidance required that Local Planning Authorities monitored Article 4 Directions to make sure the original purpose of the Direction was being achieved.

In considering the merits of Councillor Coley's motion, the Committee was aware of Council Procedure Rule 12.5 (Referral of Motions) which stated that:-

"Where a motion has been referred in accordance with Rule 12.4 the Cabinet or any relevant Committee shall (subject to the provisions of Rule 12.6) be required to consider such motion and to advise the Council (by no later than the second Ordinary Meeting of the Council held following the date of Council's referral) of their opinion and reason as to whether such motion should be supported in its original format.*

Prior to making its decision Cabinet or the relevant Committee may following consultation with Officers, require further information to be presented to them for consideration on the implications of the proposed motion. Such a report must be considered in a timely manner.

If the Cabinet or relevant Committee decides to advise the Council of its opinion that such motion in its original format should not be supported, the Cabinet or relevant Committee may, in addition, suggest to the Council that an amended motion be proposed.

Once Cabinet or any relevant Committee has considered the motion it will be referred back to Council with the recommendation. If an amended motion is proposed by Cabinet, or relevant Committee, when presented back to Council, the amended motion will be debated first, in accordance with Rule 16.5 and Rule 16.10 (b)."

** In this instance the relevant Full Council meeting was on 29 March 2022.*

Members were reminded that the making of Article 4 Directions was an Executive function and consequently, the Planning Policy and Local Plan Committee and full Council were limited in being able to make recommendations to Cabinet for its consideration. All decisions made by Tendring District Council must follow the general principles of decision making, as set out in Article 13 of the Council's Constitution:-

"13.02 Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);*
- (b) Due consideration of all the relevant factors and options, taking into account the results of any consultation undertaken and the professional advice of Officers;*
- (c) Respect for human rights, and equality and diversity;*
- (d) A presumption in favour of openness;*
- (e) Clarity of aims and desired outcomes; and*
- (f) Transparency (i.e. explaining what options were considered and giving the reasons for that decision).*

In addition, decision-makers will follow the relevant procedure rules, as set out in Part 5 or Article 7, as appropriate when considering the matter."

The Committee was advised that the full implications of the proposals referred to in the motion were unknown at this stage and would require further research before an informed decision could be made. Alternatively, any recommendation to proceed would be subject to the implications being fully considered by Cabinet prior to approvals, to ensure any action was taken in accordance with the Council's Budget and Policy Framework.

In accordance with Council Procedure Rule 12.6 (Referred Motions – Right of Mover to Attend Meeting), Councillor Coley attended the meeting to answer any questions and/or points of clarification.

At the invitation of the Chairman, Councillor Coley addressed the Committee on the subject matter of this item. In addressing the Committee, Councillor Coley clarified that the conversion of agricultural buildings to residential was not one of his specific concerns and that it had not been his intention, or assertion, that Article 4 Directions be applied on a District-wide 'blanket' basis.

Councillor G V Guglielmi informed the Committee that, given he had seconded Councillor Coley's motion at the full Council meeting, he would remain in the meeting but that he would take no part in the debate on this matter nor would he take part in the voting thereon.

The Chairman (Councillor Turner) read out the following statement:-

"The making of an Article 4 Direction is only justified on a local basis to address locally specific problems and must be justified with evidence. It is not a one-size fits all 'blanket' solution to all general concerns about our national planning system. In the meantime this Committee's work continues with the review of our Conservation Areas (CAs) – we have 15 more to go. The review of CAs provides the perfect opportunity to consider the need for Article 4 Directions on an area-by-area basis. The Committee involves the Parishes and the Members effected as we review their CAs, by asking for their comments. At this stage relevant problems and solutions to local needs can be found. Further, where planning issues arise I am sure that with the Local Plan adopted, the NPPF and building regulations, there will be solutions."

Having duly considered the contents of the detailed reference report and the information and advice contained therein:-

It was then moved by Councillor Turner, seconded by Councillor Scott and:-

RESOLVED that -

- (a) Council be informed that this Committee does not support Councillor Coley's motion; and
- (b) this Committee further recommends instead to Cabinet and Council that a further report on this matter be prepared and brought back to the Planning Policy & Local Plan Committee and that such report focus firstly on the ward of Lawford, Manningtree and Mistle.

The meeting was declared closed at 7.17 pm

Chairman