

## DELEGATED DECISION OFFICER REPORT

<b>AUTHORISATION</b>	<b>INITIALS</b>	<b>DATE</b>
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**Application:** 21/01719/FUL **Town / Parish:** Tendring Parish Council

**Applicant:** Mr Andrew Hodgson

**Address:** Hillside Cottage Thorpe Road Tendring

**Development:** Proposed change of use of land for the siting of 3 shepherds huts with hot tubs for holiday use, provision of outdoor amenity space including hard and soft landscaping, pond and decking, and formation of vehicular access and parking area (part-retrospective)

### **1. Town / Parish Council**

Tendring Parish  
Council 12.01.2022

Tendring Parish Council objects to this application on a number of grounds, detailed below. In doing so, we make clear that we support the provision of more high quality holiday letting accommodation in our district as there has been a long-term shortage. However, this application will not deliver that and has a number of significant safety and environmental concerns.

Our reasons for objection are as follows:

#### Access to the public highway

A new access has already been made prior to permission being requested. This access is onto a road where the National Speed Limit applies. No traffic or speed survey information has been supplied with the application, nor information on movements of different types of traffic to and from the site. With very limited facilities for guests on site (for example, not full self-catering ability in the huts) it expected occupants will want or need to go to and from the site several times a day, for which the only viable means to do so is by car as there are no footways on the B1035 and no facilities in walking distance bar one restaurant.

A speed survey carried out by Tendring Parish Council in 2019 about 100m further up the B1035, outside Yew tree Farm, showed an 85<sup>th</sup> percentile speed of 48.6mph, which under national safety standards would require a visibility splay of 160m to the nearside of the road from a point 2.4m away from the highway edge. This is not achievable as the applicant does not own the land to the east of the new access, which has a hedge right up to the road.

TDC Planning will recall their Planning Committee's recent decision in case 20/00822/FUL, on a road with an average speed of around 25mph, where a key reason for rejection was that the required visibility splay of 33m was not possible as the obstruction was on land not owned by the applicant. On this current application speeds are

much higher and safety must be paramount.

### Noise and nuisance to neighbours

The application has the car park (already constructed) immediately adjacent to the boundary hedge with the neighbouring property. With the traffic movements implied above, the level of noise nuisance to the neighbouring property from engines, slamming car doors, etc. would be high. TDC Planning will be aware of the ongoing noise issues caused by the continued non-provision of an acoustic fence at a property in Crow Lane, Tendring and the impact that has on neighbours.

There is also the question of general noise on site, particularly into the evenings, as the occupants would be on holiday and, quite rightly, want to have a good time and socialise outside.

### Sewage and waste water drainage

The section on the application form about sewage and waste water handling has not (as far as we can see from the poor copy provided) been answered. The sloping nature of the site would suggest that any sewage handling would need to be done at the eastern end of the site, in the area of the car park, adjacent to the neighbouring property.

This location is within just a few metres of existing run-offs to Tendring Brook, which were installed some years ago to eliminate the historic problem of flooding, which has not been an issue for years now. This would require a full treatment plant to be installed, not just a septic tank. No mention of this has been made in the application or the accompanying planning statement.

Adding to the waste disposal question is the disposal of water used in the wood-heated hot tubs on site. Hot tubs generally contain chemicals to prevent bacterial build-up and these would need regular draining, cleaning and refilling but no mention has been made as to how this water would be safely disposed of without adversely impacting the environment.

### Environmental impact

Tendring Parish Council supports ventures that seek to support the environment and bring holiday guests into closer contact with our lovely countryside. However, we have a number of environmental concerns about this application, over and above those mentioned above.

Key among these is that the fire-heated hot tubs will burn scrap wood from the applicant's own garden products business, which is run from his own home at the western end of the site. This wood will be pressure-treated and so contain chemicals which would make it unsuitable / unsafe to burn, potentially giving off toxic fumes.

### Sustainability

As stated above, the Parish Council generally supports applications that would boost tourism and local jobs in our area. However, we very much doubt that this application would generate the new jobs that the application claims. The site – and the number of occupants – is small and any use of local facilities (which are all several miles away, bar

one restaurant) would be spread across them, which would be extremely unlikely to generate new employment.

We also have concern over the viability of the site if a change of use is granted. As a holiday destination, while the huts themselves are going to be attractive to hirers, the location right next to a busy road is unlikely to encourage relaxation. The Parish Council has a concern that if permission is granted to remove the agricultural status of this land and grant it commercial use, that it might end up being used for other commercial purposes in future without having to go through the full rigour of the planning process.

Finally the site is not on any public transport route and, as previously stated, the only pedestrian access to and from the site is along the verge of the B1035, a road with the National Speed Limit. The application makes significant merit from the hut with facilities for disabled guests but the risks of both pedestrian and wheelchair access along the B1035 are obvious. This makes the use of cars for every movement to and from the site inevitable.

## **2. Consultation Responses**

ECC Highways  
12.01.2022

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated March 2021. The site is situated on a stretch of Thorpe Road that is subject to a de-restricted speed limit. It is noted that the proposal will form a new vehicular access for the site which is part-retrospective and has been partially constructed without prior consent or approval.

**From a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reasons:**

As far as can be determined the applicant has failed to demonstrate adequate visibility splays from the vehicular access in accordance with the speed of the road, to the satisfaction of the Highway Authority. The lack of such visibility would result in an unacceptable degree of hazard to all highway users to the detriment of highway safety.

The proposal would create a new vehicular access onto B1035 Thorpe Road (secondary distributor) which has deficiencies in geometric layout, visibility, and construction, where visibility, from the proposed site access and forward visibility along B1035 Thorpe Road, is not in accordance with current safety standards. The main function of this highway is that of carrying traffic freely and safely between centres of population.

The existence of other vehicular accesses in the vicinity is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the

detriment of highway safety.

As far as can be determined from submitted plans there does not appear to be any dimensions to determine that there is sufficient space within the site to enable the largest type of vehicle visiting the site to turn and approach the highway in a forward gear.

The proposal is therefore contrary policies DM1, DM3 and DM7 contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

**Informatives:**

1. As far as can be determined from the submitted information, the applicant has failed to provide evidence that the visibility splays can be provided and retained free from any obstruction in perpetuity or can be achieved within the limits of public highway and/or land in the control of the applicant.
2. The applicant would need to conduct a speed survey in accordance with CA 185 Vehicle Speed Measurement (Design Manual for Roads and Bridges), to establish the 85th percentile speed of the road and provide visibility splays in accordance with those speeds.
  - Speed surveys should be taken at the extent of the achievable visibility splays in each direction.
  - Visibility splays must be achieved within the limits of public highway and/or land in the control of the applicant.
  - Highway boundary information can be obtained from [highwayrecords@essexhighways.org](mailto:highwayrecords@essexhighways.org)

Clearly if the applicant does commission additional work there is no guarantee that the required standards can be met or that the proposal will be acceptable to the Highway Authority.

3. There is no details on the width of the new vehicular access; a minimum width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary to allow vehicles to enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway would be required.
4. There is no details on the size of the parking bays proposed to determine that these are in accordance with Parking Standards Design and Good Practice September 2009.
5. The (rural/remote) location of the site is such that access to key facilities, public transport, employment, and leisure opportunities is limited and for the vast majority of journeys the only practical option would be the car. This should be taken into consideration by the Planning Authority when assessing the overall sustainability and acceptability of the site.

units, no contribution is being requested from Open Spaces on this occasion.

Tree & Landscape Officer  
22.11.2021

The boundary of the application site with the adjacent highway is demarcated by an established hedgerow comprising of primarily Field Maple and Blackthorn with Elm and Dog Rose also present. The hedgerow also contains a few small Oak and Ash trees. In its current condition the hedgerow provides a good level of screening.

The proposed positions of the Shepherd's Huts is such that they will not adversely affect the viability or retention of the boundary hedgerow or any other important trees on the land.

It was noted that the car park has been created and that its retention will not necessitate the removal of any additional trees unless this is required to create site splays. If this is the case then a condition should be attached to any planning permission that may be granted to secure replacement planting.

### **3. Planning History**

21/30097/PREAPP	Erection of shepherds huts on wheels	03.09.2021
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### **4. Relevant Policies / Government Guidance**

The following Local and National Planning Policies are most relevant:

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

Tendring District Local Plan 2013-2033 and Beyond (Section 1, adopted on 26 January 2021)

Relevant Section 1 Policies

SP1 Presumption in Favour of Sustainable Development  
SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)  
SP3 Spatial Strategy for North Essex  
SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond (Section 2, adopted on 25 January 2022)

Relevant Section 2 Policies

SPL1 Managing Growth  
SPL2 Settlement Development Boundaries  
SPL3 Sustainable Design  
PP8 Tourism  
PP10 Camping and Touring Caravan Sites  
PP11 Holiday Parks  
PPL1 Development and Flood Risk  
PPL3 The Rural Landscape  
PPL4 Biodiversity and Geodiversity  
PPL5 Water Conservation, Drainage and Sewerage  
PPL9 Listed Buildings  
PPL10 Renewable Energy Generation and Energy Efficiency Measures  
CP1 Sustainable Transport and Accessibility  
CP2 Improving the Transport Network

## Supplementary Planning Documents

Essex County Council Development Management Policies (Highways SPD)  
Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS SPD)

## Local Planning Guidance

Essex County Council Car Parking Standards (Parking Standards)  
Tendring Landscape Character Appraisal (2001)

### **Status of the Local Plan**

Planning law requires that decisions on 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 (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force. There is no neighbourhood plan for Tendring.

## **5. Officer Appraisal**

### **Background**

In the course of dealing with the application it became clear that the application was part-retrospective; access, parking and turning areas and landscaped pitches for the shepherds huts (the huts) had already been formed. Procedurally, with the applicant's agreement, the description was therefore revised.

Because some works have already taken place, the proposal ought to be considered, in part, under Section 73A of the Town and Country Planning Act 1990 for development already carried out. The Planning Practice Guidance (PPG) makes clear it cannot be assumed that planning permission will be granted, and the Local Planning Authority should take care not to fetter its discretion prior to the determination of any application for planning permission - such an application must be considered in the normal way (Paragraph: 012 Reference ID: 17b-012-20140306).

### **Representations**

The application was publicised by way of site notice and immediate neighbours were notified in writing. In response 22 public comments were received; 10 in objection and 12 in support. Comments made may be summarised as follows:

#### *Support:*

- The proposal will encourage tourism and increase spending in the local economy, which is important following the pandemic.
- The huts will be an attractive asset for the area.
- Although the road has a 60mph national speed limit, the entrance is not concealed and there are already neighbouring driveways – signage could be erected.
- A neighbouring farm drives heavy farm machinery along the road and this has not caused problems.
- The proposal will add to wildlife - the applicant has planted over 100 trees and a pond has been created.
- Most opposition is from immediate neighbours.
- The location is suitable.
- The proposal would enhance the character and appearance of the area.

### *Objection:*

- The access is unauthorised and concealed, and hedging and trees were removed in its creation.
- Lack of pedestrian connectivity to local facilities and the road is unlit.
- Traffic speeds are high, the road is busy and the access lacks sufficient visibility - the proposal would be harmful to highway safety.
- The parking area is unauthorised and there is a lack of any ecological appraisal – the site was inhabited by protected species, including Great Crested Newts.
- The proposal would introduce a biosecurity hazard for the adjacent farm.
- Harm to neighbouring residential amenity – noise and disturbance, and air pollution.
- Burning of wood to heat the hot tubs would result in carbon release.
- Drainage proposals are inadequate and present a hazard to the nearby Tendring Brook.
- A legal covenant is in place restricting development.
- While the proposal states it is accessible, the use of gravel paths and stepped access without ramps does not allow for wheelchair access.

The Parish Council's objection is set out in full above. Ward Councillor Peter Harris has requested that the application is referred to the planning committee in the event that approval were to be recommended for the following reasons:

- Unsafe highway access and lack of sufficient visibility splay on a national speed limit road, causing a danger to guests on site and other road users. Also no footpath access to the site.
- Noise nuisance to neighbours.
- Sewage, water and waste disposal arrangements.
- Environmental impact of plans to burn scrap treated timber from the applicant's business to heat the proposed hot tubs, which will give off potentially toxic chemicals.
- Unsustainable location – not on a bus route, no nearby facilities (apart from one restaurant to which there is no footway), no proper onsite self-catering arrangements, all of which will result in vehicle movements to and from the site increasing the danger of the access and noise nuisance to neighbours.

These support comments and objections are considered below.

### The Site

Hillside Cottage is a semi-detached, two-storey dwelling fronting the B1035, with front, side and rear garden areas. The application site is located to the east of the dwelling behind a line of mature conifers, which separate the site from the host dwelling. A mature hedgerow with a number of trees within it forms the southern boundary of the site with the adjacent highway. The land has been fenced off from the rest of the field with round section post-and-rail fencing. At the time of the Council's site visits the pitches for the proposed shepherd's huts had already been created, through sub-division of the site with fencing and gateposts. A timber-edged pathway through the site had been formed with bark chippings and some ornamental planting. At the lower end of the site, adjacent to Brookside Cottage a two-storey red-brick dwelling, a hardstanding had been formed with crushed aggregate. The hardstanding is served by a single-vehicle-width access from the B1035. To the east of the site beyond the adjacent dwelling is Tendring Brook.

### The Proposal

Planning permission is sought for the use of the land for the siting of three shepherds huts (huts) for holiday letting. Two huts would measure 2.7m x 5m in footprint whereas one would be slightly larger, measuring 3m x 6m in floor area, the larger of which is shown with an accessible toilet for wheelchair users. One set of elevations is supplied showing a ridge height of 2.7m. External walls would be of timber cladding, windows and doors would be green plastic and the roofs would be planted with sedum. Each hut is shown as being provided with an outdoor barrel hot tub. The hot tub would be fire heated by the burning of untreated scrap timber from 'Tendring Garden Products Limited'. Exterior lighting is proposed to be low level and solar powered, to light the paths from the

parking area. A 2.4m x 1.8m pond has already been formed and which would include a solar powered pump and light.

The application is supported by the following:

- Plans and elevations, and hut specifications.
- Design and Access Statement.
- Amended Planning Statement & Tourism Appraisal.
- Insect Community Study [for green roofs].

### Principle of Development

Paragraph 6.9.1 of the Section 2 Local Plan states that whilst the thrust of both local and national policy is to direct new jobs to existing built up areas and centres of employment, it is recognised that the District's rural areas and open countryside also make an important contribution to the overall economy of the District, and so the Council should seek to achieve sustainable economic growth of its rural economy.

Paragraph 6.9.2 states it is also acknowledged that the District's rural areas and countryside are used for certain activities that need to take place in these areas, some of which can bring about positive outcomes for the rural economy, and so the Council will support proposals for appropriate development in the countryside that would help strengthen the rural economy, subject to meeting other policies in the Local Plan and national planning policy. [Emphasis added]

Policy PP8 Tourism states that to attract visitors to Tendring District and support economic growth in tourism the Council will generally support proposals that would help to improve the tourism appeal of the District to visitors, subject to other relevant policies in the Local Plan. [Emphasis added]

Paragraph 84 c) of the Framework states that planning policies and decision should enable sustainable rural tourism and leisure developments which respect the character of the countryside.

Subject to a number of exclusions, which do not apply in this case, Section 29 (1) of the Caravan Sites and Control of Development Act 1960 defines a caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. The huts are on wheels and are stated as being movable, and so are likely to fall within this definition. As such, Policy P10 Camping and Touring Caravan Sites is broadly relevant, as is Policy PP11 Holiday Parks.

Policy P10 is permissive of new sites, subject to consideration of flood risk and the requirements of Policy PPL4. Proposals must have the provision of power, water, toilets, washing facilities and waste water disposal. Policy P10 is supportive new caravan sites, where it can be demonstrated by the applicant how the proposal would help strengthen and diversify the Districts tourist economy, and provided that the requirements of Policy PPL4 are met. Under both policies should planning permission be forthcoming, occupancy conditions would be applied to prevent permanent residential occupation.

From the above there is strong policy support in terms of the Local Plan and the Framework for sustainable rural tourism development. The site is not at risk of flooding, and the proposal is therefore acceptable in principle subject to the consideration of other Local Plan policies which follows below.

### Highways

The ninth bullet of Policy SP7 requires all new development includes parking facilities that are well integrated as part of the overall design. Policy CP1 states that proposals for new development must be sustainable in terms of transport and accessibility, and therefore should include and encourage opportunities for access to sustainable modes of transport, including walking, cycling and public transport. Policy CP2 states that proposals will not be granted planning permission if



there would be an unacceptable impact on highway safety, or if the residual cumulative impact on the road network would be severe. Part B of Policy SPL3, criterion a), requires that access to the site is practicable and the highway network will, following any required mitigation, be able to safely accommodate the additional traffic the proposal will generate and not lead to a severe traffic impact. Amongst other things, criterion f) requires adequate vehicle and cycle parking.

Paragraph 104 of the Framework states that transport issues should be considered from the earliest stages of development proposals, amongst other things, so that: a) the potential impacts of development on transport networks can be addressed; c) opportunities to promote walking, cycling and public transport use are identified and pursued, and e) parking and other transportation considerations are integral to the design of scheme. Paragraph 110 states that it should be ensured that appropriate opportunities to promote sustainable transport modes can be, or have been taken up. Also, that safe and suitable access to the site can be achieved for all users and that the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance. Paragraph 111 of the Framework makes clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.

Because the site does not benefit from footpaths links to Tendring Village or nearby bus stops, the development would be likely to be predominantly accessed by use of the private car. The location would not therefore sit well with Policy CP1 Sustainable Transport and Accessibility, which requires that proposals for new development must be sustainable in terms of transport and accessibility. However, as Paragraph 105 of the Framework states, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. In view of this and the proposal's small scale, and the limited amount of additional traffic movements that would be generated, the accessibility shortcomings attract limited weight. Nevertheless, this is not a positive aspect of the proposal which would weigh in its favour.

The parking area would be sufficient to meet the parking demands of the proposal and cycle storage could be required by planning condition. In view of its small scale, the proposal would not result in residual cumulative impacts on the road network that would be severe.

Nevertheless, the Local Highway Authority identifies significant shortcomings in terms of a lack of forward visibility, turning space for the largest of vehicles (which might, for example, include delivery vehicles and for septic tank emptying), and insufficient access width to allow vehicles to pass. The B1035 has a national speed limit of 60mph and at the time of the Council's site visits observed traffic speeds were high. The access is concealed by adjacent hedging and no visibility splays are identified within the application. Furthermore, there is no evidence, such as a speed survey, which might indicate that forward visibility is sufficient, and it is not clear that the applicant controls sufficient land in both directions in order to provide sufficient forward visibility. The use of planning conditions to require the provision of visibility splays would not meet the statutory tests as they could not therefore be enforceable.

Due to these factors, the proposal would result in an unacceptable impact on highway safety, contrary to the above policy requirements. While there may be pre-existing residential and other accesses along the road and while there may be local farm traffic using it, these considerations do not overcome the concerns, and neither could signage. Significant weight is given to the identified harm to highway safety and the consequent development plan conflict.

### Drainage

Policy PPL5 requires that all new development must make adequate provision for drainage and sewage treatment and should include sustainable drainage systems (SuDS). Applicants should explain and justify the reasons for not using SuDS if not included in their proposals. Furthermore, proposals for development must demonstrate that adequate provision exists for sewage disposal. Private sewage treatment facilities will not be permitted if there is an accessible public sewer. Where private sewage treatment systems are the only practicable option, 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.

Amongst other things, Paragraph 174 e) of the Framework states that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.

In April 2015 the Development Management Procedure Order Schedule 4 was changed so the Environment Agency is no longer a statutory consultee for non-major development proposing non-mains drainage. This change means it is the local planning authority's responsibility to ensure proposals for non-mains drainage for non-major development complies with the Framework and Planning Practice Guidance, without Environment Agency advice.

Paragraph: 020 Reference ID: 34-020-20140306 of the PPG states, amongst other things, that applications for developments relying on anything other than connection to a public sewage treatment plant will need to be supported by sufficient information to understand the potential implications for the water environment. Septic tanks or 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.

In relation to non-mains drainage from non-major development the Environment Agency's advice is that to comply with the Framework and PPG on foul drainage matters, an LPA needs to be satisfied that foul drainage can be provided without adverse impact on the environment. This requires ensuring that both those environmental risks outside of the control of the permit and the relevant considerations in the PPG are addressed. The LPA should also be mindful that the developer will need to address foul drainage matters to get their environmental permit and meet building control regulations. Therefore, they should be confident that it is likely that any necessary permits and approvals can be successfully obtained.

The application form states that it is not intended to connect to a mains sewer. Instead, foul sewage will be disposed of by way of a septic tank. No details are supplied of the foul drainage system and no FDA1 Foul drainage assessment form has been received. This makes it more difficult for the Council to be certain any application for an environmental permit would not be refused, or if any concerns of pollution or nuisance may arise. Because a third party dwelling and Tendring Brook are located to the east, the use of planning conditions would be inappropriate in this case. Furthermore, from the foregoing highways considerations, it is not clear that there would be safe access for a vehicle to empty the septic tank which would receive increased flows as a result of the development. For these reasons, there is insufficient information to demonstrate that foul drainage can be satisfactorily addressed, without harm to the water environment or causing pollution. Furthermore, it is not clear how waste water from the hot tubs would be disposed of. As such, the proposal is contrary to Policy PPL5 and Paragraph 174 e) of the Framework.

### Ecology and Biodiversity

Local Plan Policy PPL4 requires that sites designated for their international, European and national importance to nature conservation will be protected from development likely to have an adverse effect on their integrity. The policy states that as a minimum there should be no significant impacts upon any protected species. The preamble to Policy PPL4 states that where a development might harm biodiversity an ecological appraisal will be required to be undertaken, and the potential for harm should be considered and addressed in any application. Local Plan Policy SPL3, Part A criterion d), requires that the design and layout of development maintains or enhances site features, including ecological value.

Paragraph 174 d) of the Framework requires that planning decision should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Paragraph 180 states that when determining applications, local planning authorities should apply the following principles:

- a) *if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) *development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) *development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons<sup>63</sup> and a suitable compensation strategy exists; and*
- d) *development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.*

The RAMS SPD does not apply, because the proposal is akin to holiday caravans and these are excluded under Table 3.2. Nevertheless, it is not clear how the recreational impact on the protected sites covered by RAMS would be mitigated. As 3.11 of the SPD refers, tourist accommodation may be likely to have significant effects and will require to be considered separately. No mitigation proposals have been advanced.

The application is not supported by any ecological appraisal or walkover survey, and taking a proportionate approach to application validation requirements none was requested. Nevertheless, this was raised as a concern under pre-application advice given, and, as a number of objectors point out, in view of the countryside location of the development close to Tendring Brook, even the most basic of preliminary ecological appraisals is required. Some objectors point to the presence of protected species.

There are some positive biodiversity aspects of the proposal; sedum roofs, planting and the creation of a pond. However, in the absence of sufficient evidence, the Council cannot be certain that the proposal would not harm protected species or their habitat. Furthermore, there is no evidence that the recreational pressure of the development on sites protected for their biodiversity importance would be adequately mitigated. As such, the proposal is contrary to Local Plan Policies PPL4, SP3, Part A criterion d), and Section 15 of the National Planning Policy Framework.

#### Living conditions of neighbours

The final bullet of Policy SP7 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking. Policy SPL3, Part B criterion e), requires that buildings and structures are designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents. Part B, criterion f), necessitates provision is made for adequate private amenity space. Part C, criterion a), requires that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

Amongst other things, Framework Paragraph 119 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.

Paragraph 174 provide that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality.

Paragraph 130 f) includes that planning decisions should ensure that developments create 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.

Although the Parish Council is concerned that the proximity to the highway would not result in an attractive setting for holiday makers, the location is otherwise relatively tranquil and future occupants would benefit from sufficient outdoor amenity space. The proposal would not result in undue loss of natural light or be overbearing on any neighbour, and, subject to appropriate screening which could be secured by the use of a planning condition, it would not be unduly harmful to neighbouring privacy.

Nevertheless, the access and parking area have been formed adjacent to a neighbouring cottage and there is little screening from it save for a hedge. The comings and goings of future occupants would have an adverse effect on the aural amenity of existing occupants, including from the closing of car doors. As the Parish Council states, it is likely that holidaymakers would wish to enjoy recreational use of the site, including use of the hot tubs and outdoor activities. It is not considered that this juxtaposition of uses would be acceptable in this case.

Even if an acoustic barrier were to be erected, due to the slope of the land and given the relative serenity of the location, this could not overcome these concerns. Furthermore, it is not clear how smoke from the wood fired hot tubs would be adequately mitigated, so as not to create pollution for the neighbour, especially during summer months when the development would be likely to be occupied and neighbouring windows might be open. As such, it would not be an appropriate location for a tourism development, even on a small scale. The proposal would result in unacceptable harm to the living conditions of neighbours and would therefore conflict with the above policies. Significant weight is given to this harm.

### Character and Appearance

The first bullet of Policy SP7 states that new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 Part B criterion c) states that development must respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Amongst other things, criterion d) of Part B requires that the design and layout of development maintains or enhances important existing site features of landscape value.

Paragraph 7.3.3 of the Section 2 Local Plan states that as a largely rural area, Tendring District's countryside is one of its main assets and maintaining an attractive rural environment is important to the quality of life experienced by both residents and visitors. It can also be an important consideration for the location of some businesses and help to expand the tourist economy and related services.

Policy PPL3 is criteria based, and states that the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance, including to:

- a) *estuaries, rivers and undeveloped coast;*
- b) *skylines and prominent views including ridge-tops and plateau edges;*
- c) *traditional buildings and settlement settings;*
- d) *native hedgerows, trees and woodlands;*
- e) *protected lanes, other rural lanes, bridleways and footpaths; and*
- f) *designated and non-designated heritage assets and historic landscapes including registered parks and gardens.*

In addition, new development within the rural landscape should minimise the impact of light pollution on the site and its surroundings, in order to protect rural amenity and biodiversity.

Paragraph 7.3.2 of the Section 2 Local Plan states that the Landscape Character Assessment (2001) (the LCA) identified 30 areas with different landscape characteristics and highlighted key sensitivities which need to be considered when assessing development proposals in the rural area. Proposals within the rural landscape should have regard to the LCA and protect and re-inforce historic landscape features and important characteristics identified within it.

The site is located within the 6D 'Holland Valley System' landscape character type as defined in the Tendring Landscape Character Assessment (TLCA). Its key characteristics are identified as being Holland Brook and its tributaries, Tendring Brook (which is adjacent to the site) and Weeley Brook, and Picker's Ditch which contrast with the flat landscapes of the Tendring Plateau. As referred to above in relation to Policy PPL3 b), the TLCA states that it is important that development does not harm skylines or prominent views. Overall, the area is described as typically devoid of built development, except for isolated cottages, and is identified as having a strong landscape character with a moderate overall sensitivity.

Against this background, the proposal is relatively small in scale, and the huts would be sited behind a mature roadside hedge. While glimpses of the development would be seen, the visual impact of the proposal in public views from the adjacent highway would not be significant. However, a public right of way runs along Tendring Brook, and then to Beaumont, and the site is elevated. It is therefore likely that the proposal would be seen on the skyline from the public right of way, albeit at some distance. To mitigate against this visual impact a landscaping scheme could be required by planning condition. Proposed lighting would be low level and solar powered, and would not therefore cause undue light pollution.

Noting the screening effect of the roadside hedge, which contains Field Maple and Blackthorn with Elm and Dog Rose, the Council's Landscape Officer raises no landscape objection. However, should visibility splays be required then replacement planting should be required by planning condition. Having regard to these considerations, the proposal would not harm the character and appearance of the area or the landscape character.

### Heritage Assets

There is a duty when considering whether to grant planning permission for development which affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

The site is located approximately 250m from the Grade II listed Hannam's Hall. However, there is an area of intervening woodland and this prevents any significant degree of inter-visibility between the proposal and the listed building. The proposal would not therefore make a negative contribution to the surroundings in which the heritage asset is experienced, nor would it not harm its special architectural or historic interest. As such, there would be no conflict with Policy PPL9 Listed Buildings of the Framework in this regard.

### Other Considerations

#### *Energy Efficiency and Renewables*

Paragraph 7.9.3 of the Section 2 Local Plan highlights that in 2019 the Council declared a climate emergency, committing it to the preparation of an action plan with the aim of making its own activities carbon neutral by 2030, and acting as a community leader to encourage communities and developers to reduce carbon emissions and tackling climate change. Policy SPL3 states that all new development should incorporate climate change adaptation measures and technology from the outset including reduction of emissions, renewable and low carbon energy production, passive design, and through green infrastructure techniques, where appropriate.

The proposal would be predominantly of timber construction and the roofs would be planted with sedum. Heating for the hot tubs would be wood fired. Rainwater would be harvested for irrigation purposes, and lighting would be low level and solar powered. In view of the proposal's small scale, these measures are an appropriate and proportionate response to these policy requirements.

#### *Future Use*

While the Parish Council have expressed concern over potential future development, the local planning authority can only have regard to the proposal before it. Any future proposals, such as for any commercial use, would require to be the subject of an application for planning permission. If and when made, any such application would require to be considered on its merits, having regard to the development plan in force at the time of application, national planning policy and guidance.

#### *Farm Biosecurity*

Because the site has its own access and would not cross agricultural land, there is no evidence to suggest that the proposal would be harmful to biosecurity considerations.

#### *Legal Covenant*

While objection to the application suggests that there is a covenant on the land restricting future development, this is a civil and not a planning matter.

#### *Accessibility*

Although one hut would have a wheelchair accessible bathroom, paths leading to the huts and their raised height above ground level means that they would not be easily accessible by wheelchair users. This is not therefore a positive aspect of the development which attracts weight.

#### Planning Balance and Conclusions

The proposal would have an unacceptable impact on highway safety and unacceptable harm has been identified to the living conditions of neighbours, having regard to noise and disturbance and air pollution. The Council cannot be certain that the proposal would not harm the water environment, protected species and their habitat, or sites designated for their biodiversity importance. Both individually and cumulatively significant where is given to these identified harms. The proposal would also not provide for good pedestrian connectivity and this further weighs against approval, albeit to a limited degree.

The proposal would not result in unacceptable harm to the character and appearance of the area and the effect on the wider landscape could be mitigated through the use of planning conditions, for example, to require a landscaping scheme. These are however neutral factors in the planning balance.

In its favour, the proposal would provide some economic benefits through construction and from the subsequent spend of future occupants in the local tourism economy, which would contribute towards meeting the economic objective of the Framework. However, the weight given to these benefits is limited in view of the proposal's small scale.

The limited weight given to the economic benefits would not clearly outweigh the significant weight given to the adverse impacts. The proposal would conflict with the development plan and planning permission should therefore be refused.

## **6. Recommendation**

Refusal – Full

## 7. Reasons for Refusal

1. Due to the location, layout, and siting of the development adjacent to residential property, and the use of wood fired heated hot tubs, the proposal would result in unacceptable noise and disturbance and pollution for existing occupants. The proposal would therefore be contrary to the requirements of Local Plan Policies SP7 and SPL3, Part C criterion a), and Paragraphs 130 f) and 174 of the National Planning Policy Framework.
2. The proposal does not demonstrate that the access has sufficient forward visibility. Furthermore, it does not allow for the two way passing of vehicles which would lead to vehicles waiting on the highway. It has not been demonstrated that turning facilities for the largest vehicles using the site would be adequate. As a result, the proposal would create conditions prejudicial to highway safety, contrary to Local Plan Policy CP2, Policy SPL3, Part B criterion a), and Paragraph 111 of the National Planning Policy Framework.
3. The proposal fails to demonstrate adequate provision for the disposal of sewerage and waste water in order to protect the water environment and prevent pollution. As such, the proposal is contrary to Local Plan Policy PPL5 and Paragraph 174 e) of the National Planning Policy Framework.
4. Insufficient information has been submitted in order to demonstrate that the proposal would not be harmful to protected species, or that the recreational impact on sites protected for their biodiversity importance would be adequately mitigated. Therefore, the proposal is contrary to Local Plan Policy PPL4, SP3, Part A criterion d), and Section 15 of the National Planning Policy Framework.

## 8. Informatives

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