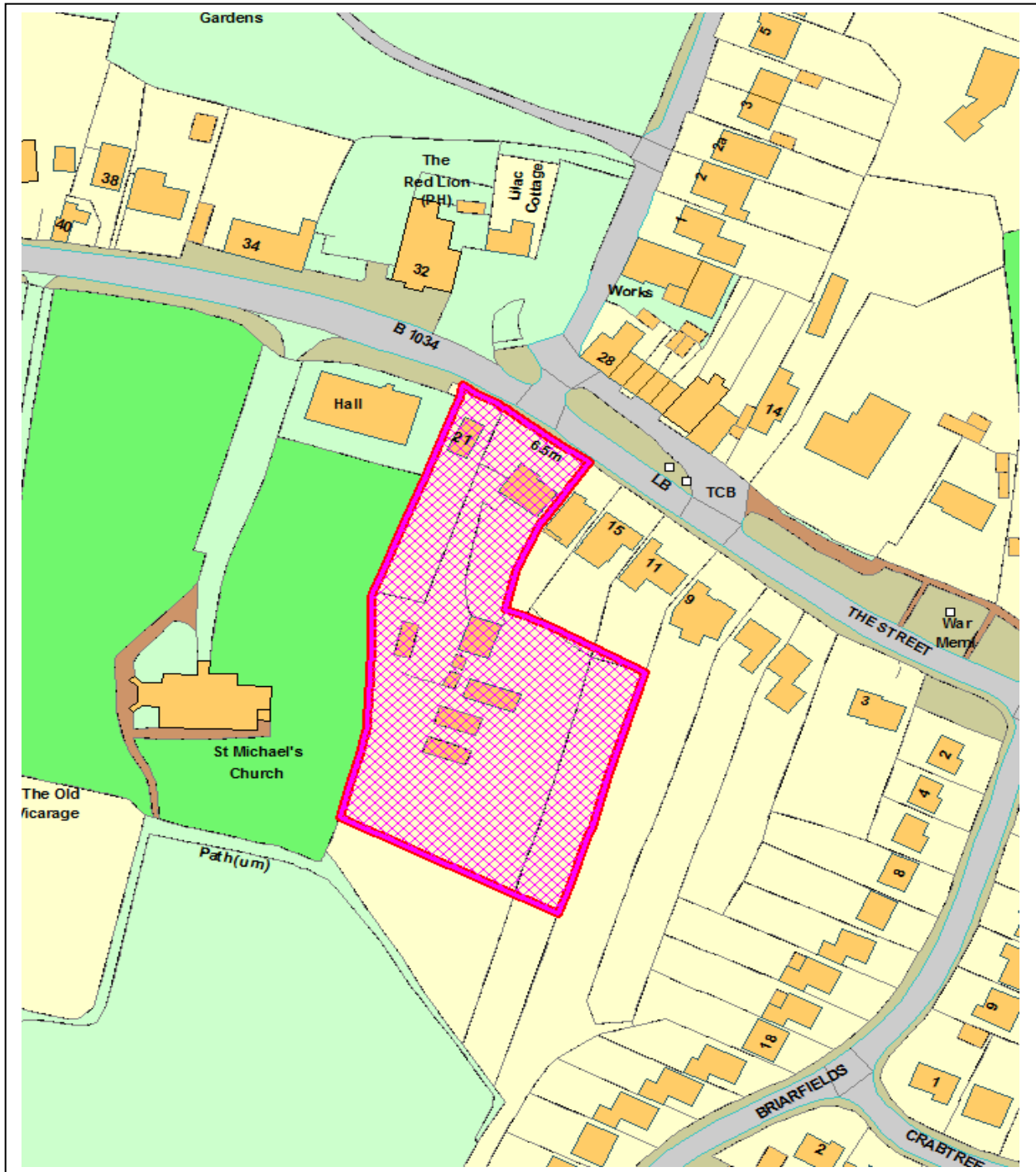


PLANNING COMMITTEE

11 JULY 2017

REPORT OF THE HEAD OF PLANNING

**A.5 PLANNING APPLICATION - 16/00500/OUT - TAMARISK, 19 THE STREET, KIRBY LE SOKEN, FRINTON ON SEA, CO13 0EE**



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<b>Application:</b>	16/00500/OUT	<b>Town / Parish:</b> Frinton & Walton Town Council
<b>Applicant:</b>	Bluerok Ltd	
<b>Address:</b>	Tamarisk, 19 The Street, Kirby Le Soken, Frinton On Sea, CO13 0EE	
<b>Development:</b>	Erection of 3 bungalows and 7 houses, following demolition of No. 21 The Street, and alterations to No. 19 The Street.	

## 1. Executive Summary

- 1.1 This application has been 'called-in' by Councillor Bucke.
- 1.2 This is a full planning application for a total of 10 additional dwellings located on what is current garden land or land used in association with dwellings fronting The Street. Number 21 the Street will be demolished to facilitate site access and replaced with a semi-detached dwelling. The application is in outline form with appearance, landscaping and scale as reserved matters. Access and layout is committed as part of the current application. Seven two storey dwellings are proposed with three bungalows.
- 1.3 The site is located outside but adjoining the settlement development boundary for Kirby Le Soken and within a Green Gap under the current adopted Local Plan. The site also adjoins St Michaels Church, a grade II\* listed building and the Conservation Area. Within the Tendring District Local Plan 2013-2033 and Beyond Publication Draft, the site is no longer identified as being within a Green Gap and is located within the settlement development boundary, where development would normally be acceptable. Kirby Le Soken is identified as a 'smaller rural settlement' in the emerging Local Plan where small scale developments of upto 10 dwellings would normally be supported.
- 1.4 Although the site adjoins but is outside of the settlement development boundary in the adopted Local Plan, some weight can be given to the fact that the site is within the development boundary of the emerging Local Plan. Consideration however must be given to the impact on existing character, the listed church and on the Conservation Area.
- 1.5 In the absence of objections from statutory consultees the proposed scheme is considered a suitable infill development, is sustainable and will not harm the character of the locality. The application is recommended for approval – as the total number of additional dwellings does not exceed 10 there is no requirement for affordable housing but an open space contribution is sought under a s106 agreement.

### **Recommendation: Approve**

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

- a) Within 6 (six) months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters (where relevant):
  - Contribution towards off-site open space/play equipment.

b) Conditions:

1. Standard conditions for submission of reserved matters and time limit for commencement.
2. Accordance with approved plans.
3. Highways conditions (as recommended by the Highway Authority).
4. Surface water drainage/foul drainage scheme.
5. SuDS maintenance/monitoring plan.
6. Hard and soft landscaping plan/implementation.
7. Tree protection plan
8. Details of lighting, materials and refuse storage/collection points.
9. Broadband connection.
10. Contamination
11. Noise
12. Emission Control
13. Archaeology – Trial Trenching

c) That the Head of Planning be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a s106 planning obligation.

## 2. Planning Policy

### NPPF National Planning Policy Framework National Planning Practice Guidance

- 2.1 The National Planning Policy Framework (March 2012) sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.2 Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The NPPF does not change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan it should be approved and where it does not it should be refused – unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:
  - an economic role;
  - a social role; and,
  - an environmental role.
- 2.3 These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.
- 2.4 Section 6 of the NPPF relates to delivering a wide choice of quality new homes. It requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years worth of deliverable housing land against their projected housing requirements (plus a 5% or 20% buffer to ensure choice and competition in the market for land). If this is not possible,

housing policies are to be considered out of date and the presumption in favour of sustainable development is engaged with applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At present it is considered that the Council can demonstrate a 5 year housing land supply.

- 2.5 Paragraph 187 of the NPPF states *“Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area”*.

Local Plan Policy:

- 2.6 Section 38(6) of the Planning Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the ‘development plan’ unless material considerations indicate otherwise. In the case of Tendring the development plan consist of the following:

**Tendring District Local Plan (Adopted November 2007)** – as ‘saved’ through a Direction from the Secretary of State. Relevant policies include:

QL1: Spatial Strategy: Directs most new development toward urban areas and seeks to concentrate development within settlement development boundaries.

QL2: Promoting Transport Choice: Requires developments to be located and designed to avoid reliance on the use of the private car.

QL3: Minimising and Managing Flood Risk: Seeks to direct development away from land at a high risk of flooding and requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

QL9: Design of New Development: Provides general criteria against which the design of new development will be judged.

QL10: Designing New Development to Meet Functional Needs: Requires development to meet functional requirements relating to access, community safety and infrastructure provision.

QL11: Environmental Impacts: Requires new development to be compatible with its surrounding land uses and to minimise adverse environmental impacts.

QL12: Planning Obligations: States that the Council will use planning obligations to secure infrastructure to make developments acceptable, amongst other things.

HG1: Housing Provision: Sets out the strategy for delivering new homes to meet the need up to 2011 (which is now out of date and needs replacing through the new Local Plan).

HG3: Residential Development Within Defined Settlements: Supports appropriate residential developments within the settlement development boundaries of the district’s towns and villages.

HG3a: Mixed Communities: Promotes a mix of housing types, sizes and tenures to meet the needs of all sectors of housing demand.

HG4: Affordable Housing in New Developments: Seeks up to 40% of dwellings on large housing sites to be secured as affordable housing for people who are unable to afford to buy or rent market housing.

HG6: Dwellings Size and Type: Requires a mix of housing types, sizes and tenures on developments of 10 or more dwellings.

HG7: Residential Densities: Requires residential developments to achieve an appropriate density. This policy refers to minimum densities from government guidance that have long since been superseded by the NPPF.

HG9: Private Amenity Space: Requires a minimum level of private amenity space (garden space) for new homes depending on how many bedrooms they have.

COM2: Community Safety: Requires developments to contribute toward a safe and secure environment and minimise the opportunities for crime and anti-social behaviour.

COM6: Provision of Recreational Open Space for New Residential Developments: Requires residential developments on sites of 1.5 hectares or more to provide 10% of the site area as public open space.

COM21: Light Pollution: Requires external lighting for new development to avoid unacceptable impacts on the landscape, wildlife or highway and pedestrian safety.

COM23: General Pollution: States that permission will be refused for developments that have a significant adverse effect through the release of pollutants.

COM26: Contributions to Education Provision: Requires residential developments of 12 or more dwellings to make a financial contribution, if necessary, toward the provision of additional school places.

COM29: Utilities: Seeks to ensure that new development on large sites is or can be supported by the necessary infrastructure.

COM31a: Sewerage and Sewage Disposal: Seeks to ensure that new development is able to deal with waste water and effluent.

EN1: Landscape Character: Requires new developments to conserve key features of the landscape that contribute toward local distinctiveness.

EN2: Local Green Gaps  
Seeks to prevent coalescence between settlements.

EN4: Protection of the Best and Most Versatile Agricultural Land: Seeks to ensure that where agricultural land is needed for development, poorer quality land is used as priority over higher quality land.

EN6: Biodiversity: Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

EN6a: Protected Species: Ensures protected species including badgers are not adversely impacted by new development.

EN6b: Habitat Creation: Encourages the creation of new wildlife habitats in new developments, subject to suitable management arrangements and public access.

EN12: Design and Access Statements: Requires Design and Access Statements to be submitted with most planning applications.

EN13: Sustainable Drainage Systems: Requires developments to incorporate sustainable drainage systems to manage surface water run-off.

EN17: Conservation Areas

Requires development within Conservation Areas to preserve or enhance the character or appearance of the Conservation Area.

EN23: Development within the proximity of a Listed Building – seeks to preserve setting and appearance of listed buildings.

EN29: Archaeology: Requires the archaeological value of a location to be assessed, recorded and, if necessary, safeguarded when considering development proposals.

TR1a: Development Affecting Highways: Requires developments affecting highways to aim to reduce and prevent hazards and inconvenience to traffic.

TR3a: Provision for Walking: Seeks to maximise opportunities to link development with existing footpaths and rights of way and provide convenient, safe attractive and direct routes for walking.

TR4: Safeguarding and Improving Public Rights of Way: Encourages opportunities to expand the public right of way network.

TR5: Provision for Cycling: Requires all major developments to provide appropriate facilities for cyclists.

TR6: Provision for Public Transport Use: Requires developments to make provision for bus and/or rail where transport assessment identifies a need.

TR7: Vehicle Parking at New Development: Refers to the adopted Essex County Council parking standards which will be applied to all non-residential development.

### **Tendring District Local Plan 2013-2033 and Beyond: Publication Draft (June 2016)**

Relevant policies include:

SP1: Presumption in Favour of Sustainable Development: Follows the Planning Inspectorate's standard wording to ensure compliance with the NPPF.

SP4: Infrastructure and Connectivity: Requires the provision of infrastructure, services and facilities that are identified to serve the needs arising from new development.

SP5: Place Shaping Principles: Requires the highest standards of built and urban design and sets out the key principles that will apply to all new developments.

SPL1: Managing Growth: Identifies Kirby Le Soken as a 'Smaller Rural Settlement' within a hierarchy of settlements designed to direct future growth to the most sustainable locations.

SPL2: Settlement Development Boundaries: Seeks to direct new development to sites within settlement development boundaries.

SPL3: Sustainable Design: Sets out the criteria against which the design of new development will be judged.

HP1: Improving Health and Wellbeing: Requires a Health Impact Assessment on all development sites deliver 50 or more dwellings and financial contributions towards new or enhanced health facilities where new housing development would result in a shortfall or worsening of health provision.

HP4: Open Space, Sports and Recreation Facilities: Requires new developments to contribute to the district's provision of playing pitches and outdoor sports facilities and also requires larger residential developments to provide land as open space with financial contributions toward off-site provision required from smaller sites.

LP1: Housing Supply: Sets out the broad location of where new housing is proposed to be built to over the next 15-20 years to meet objectively assessed needs. This application site is not included in the emerging Plan for housing.

LP2: Housing Choice: Promotes a range of house size, type and tenure on large housing developments to reflect the projected needs of the housing market.

LP3: Housing Density: Policy requires the density of new housing development to reflect accessibility to local services, minimum floor space requirements, the need for a mix of housing, the character of surrounding development and on-site infrastructure requirements.

LP4: Housing Layout: Policy seeks to ensure large housing developments achieve a layout that, amongst other requirements, promotes health and wellbeing; minimises opportunities for crime and anti-social behaviour; ensures safe movement for large vehicles including emergency services and waste collection; and ensures sufficient off-street parking.

LP5: Affordable and Council Housing: Requires up to 30% of new homes on large development sites to be made available to the Council or a nominated partner, at a discounted price, for use as Affordable Housing or Council Housing.

PP12: Improving Education and Skills: Requires the impacts of development on education provision to be addressed at a developer's costs and also requires applicants to enter into an Employment and Skills Charter or Local Labour Agreement to ensure local contractors are employed to implement the development and that any temporary or permanent employment vacancies (including apprenticeships) are advertised through agreed channels.

PPL1: Development and Flood Risk: Seeks to direct development away from land at a high risk of flooding and requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

PPL3: The Rural Landscape: Requires developments to conserve, where possible, key features that contribute toward the local distinctiveness of the landscape and include suitable measures for landscape conservation and enhancement.

PPL4: Biodiversity and Geodiversity: Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

PPL5: Water Conservation, Drainage and Sewerage: Requires developments to incorporate sustainable drainage systems to manage surface water run-off and ensure that new development is able to deal with waste water and effluent.

PPL7: Archaeology: Where developments might affect archaeological remains, this policy requires proper surveys, investigation and recording to be undertaken.

PPL8: Conservation Areas

Requires that new development within a designated Conservation Area, or which affects its setting, will only be permitted where it has regard to the desirability of preserving or enhancing the special character and appearance of the area.

PPL9: Listed Buildings: Seeks to protect setting of listed buildings.

CP1: Sustainable Transport and Accessibility: Requires the transport implications of development to be considered and appropriately addressed.

CP3: Improving the Telecommunications Network: Requires new development to be served by a superfast broadband (fibre optic) connection installed on an open access basis and that can be directly accessed from the nearest British Telecom exchange and threaded through resistant tubing to enable easy access for future repair, replacement or upgrading.

Other Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

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

The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16<sup>th</sup> June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. As this plan is yet to be examined, its policies cannot carry the full weight of adopted policy. However, because the plan has reached publication stage its policies can carry some weight in the determination of planning applications. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

### **3. Relevant Planning History**

03/00652/OUT	New residential development.	Refused	02.07.2003
04/01127/OUT	Proposed re-development of part of 19 The Street etc. with 9 dwellings, garages, road etc	Refused	01.09.2004
05/02063/FUL	Residential development of eight dwellings	Withdrawn	17.02.2006
06/00732/FUL	Residential development. Demolition of existing property and erection of six dwellings.	Withdrawn	27.06.2006
06/01374/FUL	Demolition of existing dwelling house and erection of replacement dwelling	Withdrawn	19.03.2007



together with seven new dwellings.

14/30020/PREAPP	Erection of 8 units.	Refused	18.03.2014
14/01860/OUT	Erection of 4 no. bungalows / houses.	Refused	26.03.2015
16/00500/OUT	Erection of 3 bungalows and 7 houses, following demolition of No. 21 The Street, and alterations to No. 19 The Street.	Current	

#### **4. Consultations**

##### **Building Control and Access Officer**

Confirmation required that a fire fighting appliance can reach within 45m of all parts of all the dwellings.

##### **Environmental Health**

A full contaminated land survey needs to be carried out and submitted in writing to this authority to protect end users of site.  
A full construction method survey would need to be submitted taking into account the following advice:

##### **Demolition & Construction**

The developer is referred to the advisory notes below for the avoidance of pollution during the demolition & construction phases. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the development.

The following information is intended as guidance for applicants/developers and construction firms. In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Pollution and Environmental Control recommends that the following guidelines are followed. Adherence to this advisory note will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control.

##### **Best Practice for Demolition Sites**

Although the following notes are set out in the style of planning conditions, they are designed to represent the best practice techniques for the site. Therefore, failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974)

Prior to the commencement of any demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Pollution and Environmental Control. In addition to the guidance on working hours, plant specification, and emission controls given above, the following additional notes should be considered when drafting this document: -

##### **Noise Control**

- 1) The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.
- 2) No vehicle connected with the works to arrive on site before 06:30 or leave after 19:30 (except in the case of emergency). Working hours to be restricted between 07:00 and 19:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
- 3) The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:1984.
- 4) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
- 5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.
- 6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.

#### Emission Control

- 1) All waste arising from the demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
- 2) No materials produced as a result of the site development or clearance shall be burned on site. All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.
- 3) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

#### **Tree & Landscape Officer**

The application site is well populated with small trees comprising extensive groups of young Sycamore and Myrobalan Plum. They do not make a significant contribution to the appearance of the area and consequently do not merit protection by means of a tree preservation order.

The site also contains a few isolated fruit trees that do not merit protection. The rear garden of 'Tamarisk' contains a good range of plants including an Apple tree, small conifer and a range of shrubs. None of these merit retention or formal legal protection.

The most important trees that could, potentially, be affected by the

development proposals are the single Oak in the south eastern corner of the application site that is covered by Tree Preservation Order TPO/06/17 and the trees situated close to the western boundary and within the grounds of the adjacent St Michaels Church. These are mainly Sycamore, Poplar and Hawthorn.

Although the trees in the church yard are 'offsite' their Root Protection Area's (RPA's) are likely to spread into the application site.

In order to show the extent of the constraint that the trees are on the development potential of the land and to determine the possible impact of the development on the trees, both on the application site and on adjacent land, the applicant should provide a Tree Survey and Report. This information will need to be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations

The Tree Report should contain a Tree Constraints Plan that will show the extent of the area around the trees that should be protected to ensure that the trees are not harmed by the development proposal. This should show the Root Protection Areas (RPA's) of the protected Oak and other trees and identify the area of land within which development should not be take place or where specialist construction techniques will be required

Although at the outline stage it appears from the site layout plan submitted with the application that plot No.7 may have an impact of the Oak covered by TPO/06/17.

Should outline permission be likely to be granted then details of soft landscaping, including new tree planting should be secured as a reserved matter. In addition to the indicative new tree planting shown on the site layout plant it appears that there is sufficient space within the front gardens of plot No.10 and 11 for new tree planting

## **ECC Highways Dept**

All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all purpose access) will be subject to the Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway by the ECC.

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

- 1) Prior to the first occupation of the development, the proposed estate road, at its bellmouth junction with The Street shall be provided with 10.5m. radius kerbs returned to an access road carriageway width of 5.5m. and flanking footways 2m. in width returned around the radius kerbs which shall connect to the existing footways. The new road junction shall be constructed

at least to binder course prior to the commencement of any other development including the delivery of materials.

Reason: To ensure that all vehicular traffic using the junction may do so in a controlled manner and to provide adequate segregated pedestrian access, in the interests of highway safety and in accordance with Policy DM 1 and 6 of the Highway Authority's Development Management Policies February 2011.

- 2) Prior to the proposed access being brought into use, minimum vehicular visibility splays of 60m by 2.4m by 60m as measured along, from and along the nearside edge of the carriageway, shall be provided on both sides of the centre line of the access and shall be maintained in perpetuity free from obstruction clear to ground.

Reason: To ensure adequate intervisibility between drivers of vehicles using the proposed access and those in the adjoining highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

- 3) Each internal estate road junction shall be provided with a clear to ground level visibility splay with dimensions of 25m by 2.4m by 25m on both sides. Such visibility splays shall be provided before the road is first used by vehicular traffic and shall be retained free from obstruction clear to ground.

Reason: To ensure a reasonable degree of intervisibility between drivers of vehicles at and approaching the road junction, in the interests of highway safety and in accordance with Policy DM 1 and 6 of the Highway Authority's Development Management Policies February 2011.

- 4) Prior to commencement of the proposed development, a vehicular turning facility for service and delivery vehicles of at least size 3 dimensions and of a design which shall be approved in writing by the Local Planning Authority, shall be provided within the site and shall be maintained free from obstruction in perpetuity.

Reason: To ensure that vehicles using the site access may enter and leave the highway in a forward gear, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

- 5) Prior to commencement of the proposed development, a vehicular turning facility for motor cars for each dwelling of a design which shall be approved in writing by the Local Planning Authority, shall be provided within the site and shall be maintained free from obstruction in perpetuity.

Reason: To ensure that vehicles using the site access may enter and leave the highway in a forward gear, in the interests

of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

- 6) No unbound materials shall be used in the surface treatment of the proposed vehicular accesses within 6m of the highway boundary or proposed highway boundary or throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

- 7) Prior to the first occupation of each dwelling on the proposed development, the individual proposed vehicular access for that dwelling shall be constructed at right angles to the highway boundary and to a width of 3.7m and each shared vehicular access shall be constructed at right angles to the highway boundary and to a width of 5.5m and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

- 8) The gradient of the proposed vehicular access /garage drive/ hardstanding shall be not steeper than 4% (1 in 25) for at least the first 6m. from the highway boundary and not steeper than 8% (1 in 12.5) thereafter.

Reason: To ensure that vehicles using the access both enter and leave the highway in a controlled manner, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

- 9) All carriageways should be provided at 5.5m between kerbs or 6.0m where vehicular access is taken but without kerbing.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety and in accordance with Policy DM 1 and 6 of the Highway Authority's Development Management Policies February 2011.

- 10) All footways should be provided at no less than 2.0m in width.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety and in accordance with Policy DM 1 and 6 of the Highway Authority's Development Management Policies February 2011.

- 11) All off street car parking shall be in precise accord with the details contained within the current Parking Standards.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

- 12) Any garage provided with its vehicular door facing the highway or proposed highway, shall be sited a minimum of 6m from the highway boundary.

Reason: To ensure that the vehicle to be garaged may be left standing clear of the highway whilst the garage door is opened and closed, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

- 13) Prior to commencement of the proposed development, details of the provision for the storage of bicycles for each dwelling, of a design this shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted and shall be maintained free from obstruction at all times for that sole purpose in perpetuity.

Reason: To promote the use of sustainable means of transport in accordance with Policy DM 1 and 9 of the Highway Authority's Development Management Policies February 2011.

- 14) Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council.

- 15) Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies February 2011.

#### Design Informative:

1. There should be no vehicular access over any radius kerbs.
2. The new carriageways should be provided with a centreline bend radius of 13.6m together with adequate forward visibility.
3. Any trees provided within the adoptable highway will attract a commuted sum of no less than £750 per tree.
4. The applicant should be requested to consider the provision and location of street lighting columns, particularly at road junctions, these should be within the adoptable areas.
5. Refuse freighters are unlikely to manoeuvre over Private Drives.
6. Any new access onto The Street should be provided with a 1.5m x 1.5m pedestrian visibility splay to that access

Informative1: 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](mailto:development.management@essexhighways.org) or by post to:

SMO1 ' Essex Highways  
Colchester Highways Depot,  
653 The Crescent,  
Colchester.  
CO4 9YQ.

**Historic England**

Recommend that although there is some modest impact to the Conservation Area and the listed church the layout is designed in a way which seeks to minimise that harm by responding to the character of the place. In this sense the harm would be justified should the principle of development be accepted (NPPF para 132) and the harm weighed against the public benefit in accordance with NPPF para 134.

**ECC SuDS Consultee**

No objection subject to surface water conditions.

**Essex County Council  
Archaeology**

No objection but require a programme of trial trenching secured by condition.

**5. Representations**

- 5.1 Frinton and Walton Town Council recommend refusal as they consider the scheme backland development, overdevelopment, opposite a busy junction and poor visibility splays particularly to the west.
- 5.2 The application has been called into Committee by Cllr Bucke who also submitted an objection to the application. The following comments have been made:
- Outline application only, with no detail.
  - Front elevations are flank walls of proposed dwellings. Poor.
  - Planning statement is inaccurate.
  - Briarfields is NOT a comparable development.
  - Sensitive site, adjacent to Conservation Area.
  - Adjacent to Historic Asset, Norman church and churchyard.
  - Demolition of an affordable home.
  - Opposite busy junction to Malting Lane civic amenity site serving over 20,000 residents.
  - High volume of 4-day vehicle journeys to site.
  - Opposite Red Lion car park, and next to church car park.
  - Very busy road B1034 being one of only two service roads to Frinton and Walton seaside towns.
  - Former brownfield site of local commercial activity. 10 dwellings will create unacceptable high level of residential activity.
  - Constant flooding of The Street at that location through failure of surface water drainage services.
  - Highways dangers arising from poor sightlines to east and west when emerging from the development site.

- Overdevelopment of 'backland' site extending behind existing residential dwellings.
- Encroachment within Local Green gap.

5.3 21 individual objections have been submitted in response to this planning application which include the following concerns:

- Overdevelopment
- Highway dangers
- Poor access
- Impacts on sewage
- Flood risk
- Lack of local infrastructure
- Impact on church and Conservation Area
- Impact on wildlife
- Previous refused applications noted
- Loss of privacy

## **6. Assessment**

6.1 The main planning considerations are:

- The principle of development;
- Proposed layout;
- Residential amenity;
- Highways, transport and accessibility;
- Landscape, visual impact and trees;
- Flood risk and drainage;
- Ecology;
- Heritage;
- Contamination; and,
- Overall planning balance.

### **Principle of Development**

6.2 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2014, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework (NPPF) are a material consideration in this regard.

6.3 The 'Development Plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Preferred Options Publication Draft. This version of the emerging Local Plan can be given some weight in the determination of planning applications. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in planning decisions. In



general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

- 6.4 Sustainable Development', as far as the NPPF is concerned, is development that contributes positively to the economy, society and the environment and under the 'presumption in favour of sustainable development', authorities are expected to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted.
- 6.5 One of the NPPF's core planning principles is to "*actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable*". With this in mind, Policy SPL1 in emerging Local Plan includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations.
- 6.6 Kirby Le Soken is categorised as a 'smaller rural settlement' where the emerging plan envisages a small increase in housing stock over the plan period to 2033. To allow this to happen, settlement development boundaries have been drawn flexibly, where practical, to accommodate a range of sensible sites both within and on the edge of the villages defined as small rural settlements and thus enabling them to be considered for small-scale residential 'infill' developments. The emerging plan provides that larger developments will not be permitted unless there is local support from the Town or Parish Council, an approved Neighbourhood Plan that advocates additional growth or an identified local need for affordable housing that could be addressed through a 'rural exception site' (for which there is a specific policy LP6).
- 6.7 Whilst the policies in the emerging Local Plan cannot carry the full weight of adopted policy at this early stage in the plan-making process, the approach taken in the settlement hierarchy and the extent of land being allocated for housing demonstrates strong alignment with the core planning principles in the NPPF to meet objectively assessed housing needs and to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and to focus significant development in locations which are or can be made sustainable.
- 6.8 As this site is located within the settlement development boundary for the village and no longer zoned within the Green Gap area in the emerging local plan, officers consider that the proposed development complies with emerging planning policy.

### **Proposed Layout**

- 6.9 As noted the proposed scheme involves the demolition of 21 The Street to facilitate development – this dwelling and associated land is to be redeveloped as a pair of semi-detached two storey dwellings fronting The Street. The applicant has submitted an indicative elevation which shows the frontage dwellings will be designed to a high standard reflecting the character of the locality and adjoining Conservation Area.
- 6.10 The main access drive is set adjacent to the boundary with the church grounds and leads to the rear of the site where it provides vehicular access to the majority of the proposed

dwellings. Again indicative drawings show that the dwellings will be designed to a high standard with the siting and suggested design respecting the adjoining listed church. The suggested design was noted by Historic England in their positive response.

- 6.11 The site area is 0.54 hectares providing a density of development of 20 dwellings per hectare. In this relatively sensitive location this represents a low density development and is considered appropriate subject to suitable landscaping and tree protection measures.

### **Residential Amenity**

- 6.12 The NPPF, in paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) 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'. Policy SPL3 in the emerging Local Plan supports these objectives and states that 'the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'.
- 6.13 The proposed layout has been carefully considered and although Officers note the concerns raised by adjoining neighbours, it is considered that adequate separation has been provided between proposed and existing dwellings avoiding the creation of adverse impacts. At detail stage the scale, appearance and position of fenestration will be considered but it is clear from the submitted layout plan that this can be achieved without having adverse impacts on existing amenity.
- 6.14 There will be some impact to neighbours during the construction period but conditions would be applied to the development to minimise impacts if the Committee is mindful to approve the application.

### **Highways, transport and accessibility**

- 6.15 Paragraph 32 of the NPPF relates to transport and requires Councils, when making decisions, to take account of whether:
- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
  - safe a suitable access to the site can be achieved for all people; and,
  - improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 6.16 Policy QL2 in the adopted Local Plan and Policy CP1 in the emerging Local Plan seek to ensure that developments maximise the opportunities for access to sustainable transport including walking, cycling and public transport. Although the site is located in one of the district's smaller rural settlements that have limited facilities, the location benefits from an existing bus service giving access to nearby towns – in addition village shops and services are located in close proximity to the site.

- 6.17 As noted the site is served by a single access from The Street with a single feeder road serving the development. The Highway Authority have not raised objection subject to the imposition of a number of detailed planning conditions (see above). Safe access can therefore be gained to the site and highway safety will not be compromised.

### **Landscape, visual impact and trees**

- 6.18 Policy EN1 of the adopted Local Plan and Policy PPL3 in the emerging Local Plan seek to protect and, wherever possible, enhance the quality of the district's landscape; requiring developments to conserve natural and man-made features that contribute toward local distinctiveness and, where necessary, requiring suitable measures for landscape conservation and enhancement. Policy EN2 (Local Green Gaps) seeks to keep identified areas free from development in order to prevent coalescence between settlements and protect the rural setting. As noted this designation has been removed from the application site area in the emerging Local Plan – the site in any event provides little contribution in terms of preventing coalescence. Policies QL9 and SPL3 also require developments to incorporate important existing site features of landscape, ecological or amenity value such as trees, hedges, water features, buffer zones, walls and buildings.
- 6.19 The site is currently used as a mix of garden land with a small amount of commercial activity. Development is not considered to have a significant impact in terms of landscape and public views of the site are to a certain extent restricted. Although a number of trees will be removed to facilitate development these are not protected. Any protected trees will remain and will be protected by requirement of a tree protection plan along with a detailed landscape scheme secured by condition.

### **Flood risk and drainage**

- 6.20 Paragraph 103 of the NPPF requires Councils, when determining planning applications, to ensure flood risk is not increased elsewhere. Although the site is in Flood Zone 1 (low risk), the NPPF, Policy QL3 in the adopted Local Plan and Policy PPL1 in the emerging Local Plan require any development proposal on sites larger than 1 hectare to be accompanied by a site-specific Flood Risk Assessment (FRA). This is to assess the potential risk of all potential sources of flooding, including surface water flooding, that might arise as a result of development. The applicant has submitted a Flood Risk Assessment which has been considered by Essex County Council as the authority for sustainable drainage. ECC have reviewed the FRA and do not object to the grant of outline planning permission subject to conditions. These relate to the submission and subsequent approval of a detailed Surface Water Drainage Scheme before development can take place, control of surface water during the construction phase, maintenance of the surface water drainage system and retention of annual logs detailing maintenance undertaken in accordance with the maintenance plan.

### **Ecology**

- 6.21 Paragraph 118 of the NPPF requires Councils, when determining planning applications, to aim to conserve and enhance biodiversity. Where significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for, Councils should refuse planning permission. Policy EN6 of the adopted Local Plan and Policy PPL4 of the emerging Local Plan give special protection to designated sites of international, national or local importance

to nature conservation but for non-designated sites still require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.

- 6.22 No objections in terms of wildlife have been received from statutory consultees. Taking into account the nature of the existing site and uses, the development would not have any significant direct or indirect effects on any formally designated wildlife sites.

### **Heritage**

- 6.23 The enduring physical presence of the historic environment contributes significantly to the character and 'sense of place' of rural and urban environments. Some of this resource lies hidden and often unrecognised beneath the ground in the form of archaeological deposits, but other heritage assets are more visible. Policy PPL7 of the draft Local Plan requires archaeological evaluation to be undertaken for schemes affecting sites that do or might contain archaeological remains. Policy PPL8 of the emerging Local Plan requires development within or affecting the setting of a Conservation Area to only be permitted where they have regard to the desirability of preserving or enhancing the special character and appearance of the area.
- 6.24 The NPPF is clear that when determining applications, Local Planning Authorities (LPA's) should require the applicant to describe the significance of a heritage asset affected, including any contribution made by their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
- 6.25 The NPPF further states that where a site includes or has the potential to include heritage assets with archaeological interest, LPA's should require developers to submit an appropriate desk-based assessment and where necessary a field evaluation. In this instance the County Council Historic and Built Environment Manager has requested that if members are minded to approve the application then a condition is applied requiring a programme of trial trenching followed by open area excavation.
- 6.26 As noted the site adjoins the Kirby Le Soken Conservation Area and the listed church to the west of the application site. The Committee will note the comments of Historic England who although acknowledging there will be some impact on the locality it is not so significant that permission should automatically be refused. In this case it is considered that the proposed layout does take into account the adjoining heritage assets and in line with paragraph 132 of the NPPF the impact is not considered significant. The provision of additional housing is therefore considered acceptable.#

### **Contamination**

- 6.27 Policy QL11 requires new developments to take into account the possibility of existing contamination or pollution and any necessary remediation strategies. The Environmental Health team have requested conditions requiring contamination assessment and these would be attached to the Planning Permission.

### **Open Space and Play**

- 6.28 Policy COM6 in the adopted Local Plan and Policy PEO22 of the emerging Local Plan require residential developments of over 1.5 hectares to provide at least 10% of land as public open space or otherwise make financial contributions toward off-site provision. In this case the site is less than 1.5 hectares and it is more appropriate to seek an off-site financial contribution.
- 6.29 The Council's Open Space team has requested that due to a shortfall in open space provision a financial contribution is to be secured by s106 agreement and this money would be spent at the closest play area located at Halstead Road, Kirby.

### **Conclusion**

- 6.30 The proposed development is considered to comply with policy contained within the NPPF, the adopted Local Plan and emerging Local Plan policy contained within the Publication Draft document.
- 6.31 The scheme will result in provision of 10 additional dwellings which will contribute to housing supply and meeting local need within the village.
- 6.32 It is confirmed that safe highway access and egress to and from the site is achievable and that safe access can be provided to facilities within the village. The proposed layout will not adversely impact on adjoining dwellings or property and is a relatively low density development on the edge of the village. Protection of existing trees and the requirement for a detailed landscape to mitigate the impact of the development will be secured by condition.
- 6.33 The impact on adjoining heritage assets has also been taken into account and it is considered that the impact of development is not significant and in any event satisfactory mitigation measures in terms of ensuring high quality design and landscaping can be implemented. Although acknowledging the concerns raised by local residents officers consider that the proposed scheme meets all technical and policy requirements and the application is therefore recommended for approval subject to a s106 legal agreement and a range of planning conditions.

### **Background papers**

None.