



AGENT: Mr Donald Barber - Fenn
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APPLICANT: Mr Sean Spencer - Atlantic Spa
Limited
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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 23/01221/OUT

DATE REGISTERED: 7th September 2023

Proposed Development and Location of Land:

Outline planning application (Access to be considered) for the erection of up to 20 single storey dwellings with new vehicular access, open space and woodland walk.

Land to The rear of 173 - 203 Thorpe Road Kirby Cross Essex

THE TENDRING DISTRICT COUNCIL AS LOCAL PLANNING AUTHORITY **HEREBY REFUSE OUTLINE PLANNING PERMISSION** in accordance with the application form, supporting documents and plans submitted, for the following reason(s)

- Paragraph 135 of the National Planning Policy Framework (NPPF) (2023) states that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place. Paragraph 180(b) of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Adopted Policy SP3 of Section 1 of the 2013-2033 Local Plan sets out the spatial strategy for North Essex and directs growth towards existing settlements, although adds that development will be accommodated at sites adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.

Adopted Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design, which responds positively to local character and context. Adopted Policy SPL3 Part A (b) requires that development relates well to its site and surroundings, particularly in relation to its siting, height, scale, massing, form, design and materials. Adopted Policy PPL3 confirms 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.

On this occasion whilst the entrance into the site falls within the Settlement Development Boundary for Kirby Cross, the remainder of the application site, notably the area where all 20 dwellings are proposed, falls outside. The proposed development would therefore extend beyond the area planned to provide growth for this settlement.

The application site is a well vegetated parcel of land of rural appearance, also situated within The Clacton and the Sokens Clay Plateau Landscape Character Area

(LCA) on the edge, or just within the urban area forming part of the Frinton, Walton, Kirby Cross and Kirby le Soken conurbation. The development, including the erection of 20 additional dwellings as well as the associated hardstanding to allow for vehicular manoeuvring and parking, would contribute to the gradual erosion of the countryside and have a harmful impact on local landscape character, thereby contrary to the above local and national planning policies.

- 2 Paragraph 135 of the National Planning Policy Framework 2023 (NPPF) requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place.

Adopted Policy SP7 of Section 1 of the 2013-33 Local Plan seeks high standards of urban and architectural design, which responds positively to local character and context. Policies SPL3 and LP4 of Section 2 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout that relates well to its site and surroundings, create a unique sense of place. Policy LP8 (b) states that proposals for the residential development of backland sites must include a safe and convenient means of vehicular and pedestrian access/egress that does not cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene, and long or narrow driveways will not be permitted. Criterion (f) states that proposals must not be out of character with the area or set a harmful precedent for other similar forms of development.

The dwellings will be accessed via an access point from Thorpe Road to the north (in-between Numbers 185 and 187), which will generate a significant number of vehicular movements in comparison to the previously consented scheme for five dwellings. Consequently, given the close proximity of this access road to both Number 185 (1.1 metres) and Number 187 Thorpe Road (0.8 metres), the development will result in significant noise disturbances which in turn will be significantly harmful to existing amenities. Furthermore, there will be additional harm to the occupants of Number 185 Thorpe Road when vehicles enter the site due to vehicular headlights shining directly into a main habitable room.

Furthermore, the long and narrow access to serve this number of dwellings is not in-keeping with the character of the area, and could set a harmful precedent for other similarly poor forms of development. Given this, the development will appear incongruous and out of keeping with the areas existing character, and overall fails to adhere with the above local and national planning policies.

- 3 The National Planning Policy Framework (2023) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

Paragraph 65 of the NPPF (2023) states provision of affordable housing should be sought for residential developments that are major developments. Within the glossary of the NPPF (2023), major development is defined as development where ten or more homes will be provided, or the site has an area of 0.5 hectares or more.

Adopted Local Plan Policy LP5 states that the Council will expect for schemes of 11 or more (net) homes, 30% of new dwellings to be made available to Tendring District Council or an alternative provider to acquire at a discounted value for use as affordable housing. A completed Section 106 has not been provided prior to the application determination date and the application is therefore contrary to the above policies.

Adopted Local Plan Policy HP5 states that all new residential developments of 11 or more dwellings on sites of 1.5 hectares and above will be expected to provide a minimum 10% of the gross site area as open space laid out to meet the Council's specifications. Financial contributions will also be sought through Section 106 legal agreements (or an appropriate alternative mechanism) towards ongoing maintenance. In this case there is likely to be sufficient on-site open space provision to meet the Council's requirements. However, if the open space is to be maintained by the Council then provisions will need to be secured through a Section 106 obligation. Such provisions have not been secured and therefore the proposals are contrary to the above policies.

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

The application scheme proposes a residential on a site that lies within the Zone of Influence (Zol) but is approximately 2.4 kilometres from the Hamford Water Ramsar and SPA. New housing development within the Zol would be likely to increase the number of recreational visitors to these sites and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A completed unilateral undertaking has not been provided to secure this legal obligation. As submitted, there is no certainty that the development would not adversely affect the integrity of European Designated Sites and the application is therefore contrary to Policy PPL4 of the Adopted Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

DATED: 8th February 2024

SIGNED:



John Pateman-Gee
Head of Planning and Building Control

IMPORTANT INFORMATION :-

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

National:

National Planning Policy Framework 2023 (NPPF)
National Planning Practice Guidance (NPPG)

Local:

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 Plan (adopted January 2021):

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs

SP7 Place Shaping Principles

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

- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- HP5 Open Space, Sports & Recreation Facilities
- DI1 Infrastructure Delivery and Impact Mitigation
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- LP8 Backland Residential Development
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL9 Listed Buildings
- PPL10 Renewable Energy Generation
- CP1 Sustainable Transport and Accessibility

Local Planning Guidance:

- Essex County Council Car Parking Standards - Design and Good Practice
- Essex Design Guide

Plans and Supporting Documents

The Local Planning Authority has resolved to refuse the application for the reason(s) set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (accounting for any updated or amended documents):

Drawing Numbers DB22003/001, DB22002/002c, NC23.764-P201 Revision A, NC23.764-P202 Revision A, and the documents titled 'Arboricultural Impact Assessment and Method Statements', 'Landscape and Visual Appraisal', 'Preliminary Ecological Assessment', 'Transport Statement', 'Planning Statement', 'Design & Access Statement', 'Flood Risk Assessments', and the untitled letter received by the Council dated 11th January 2024 from ACJ Ecology.

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

The attached notes explain the rights of appeal.

NOTES FOR GUIDANCE

WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within the set time frame as outlined below:
 - a. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Householder Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - b. If this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - c. If you want to appeal against your local planning authority's decision on a development which is not caught by a. and b. above then you must do so within **6 months** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
- Appeals must be made using the relevant form (as detailed above) which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission for the proposed development or could not have granted it without the conditions imposed having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.