

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	MP	08/02/24
Team Leader authorisation / sign off:	ML	08/02/2024
Assistant Planner final checks and despatch:	ER	08/02/2024

Application: 23/01221/OUT **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr Sean Spencer - Atlantic Spa Limited

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

Development: 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.

1. Town / Parish Council

FRINTON AND WALTON
TOWN COUNCIL

RECOMMEND REFUSAL on the basis of backland development, inappropriate vehicular access for the number of homes, substandard and dangerous access to main road due to lack of splay.

2. Consultation Responses

Essex County Council
Ecology
08.12.2023

Holding objection due to insufficient ecological information on European Protected Species (Great Crested Newts).

Summary

Further to our comments on 3rd October 2023, we have reviewed the Place Service Response (ACJ Ecology, November 2023) in addition to the Preliminary Ecological Assessment (ACJ Ecology, May 2023), relating to the likely impacts of development on designated sites, protected & Priority species and habitats and identification of proportionate mitigation.

We note that the Place Service Response (ACJ Ecology, November 2023) provides confirmation that trees to be felled have no Bat Roosting Features and therefore no bat roost potential. It is noted that trees with bat roost potential will be retained as a result of the proposals. Furthermore, it is also stated that the buildings onsite have no potential for roosting bats. Therefore, the LPA has certainty of the likely impacts to roosting bats, European Protected Species. In addition, the Place Service Response (ACJ Ecology, November 2023) also explains that suitable foraging and commuting habitat for bats is predominantly within the boundary of the woodland which is to be retained and that the woodland itself contains of limited opportunities for foraging and commuting bats. We support the recommendation for a wildlife sensitive lighting strategy to avoid disturbance of foraging and commuting bats which would be secured by a condition of any consent for discharge at reserved matters stage.

It is also noted that the Place Service Response (ACJ Ecology, November 2023) provides further detailed explanation regarding the lack of suitable habitat for Hazel Dormouse within the onsite woodland, in addition to providing an explanation in regard to sub-optimal habitat present for reptiles. As a result, the LPA has certainty of the likely impacts to these European Protected Species and

protected species respectively and we agree that these species require no further consideration or survey.

Furthermore, the Place Service Response (ACJ Ecology, November 2023), confirms that the woodland onsite is not a Priority Habitat and that "ground truthing" suggests that this is likely a mapping error due to how Priority habitats are identified through aerial photography.

However, we are not satisfied that there is sufficient ecological information available for determination of this application.

The Place Service Response (ACJ Ecology, November 2023) indicates that there is only one waterbody in the near vicinity of the development and that this waterbody is 260m away with a road in between the site and waterbody acting as a barrier to dispersal. Whilst this is the case for this waterbody, we note that a further two waterbodies are present 83m and 134m with suitable connective habitat to the site and no apparent barriers to dispersal exist. Furthermore, the Place Service Response (ACJ Ecology, November 2023), using Natural England's Rapid Risk Assessment Tool for GCN, states that offence is "highly unlikely". However, we note that taking in account these remaining two ponds, and assuming that over 0.01Ha of the 2.2ha site would be lost or damaged, the result of a rapid risk assessment would state "Amber: Offence Likely". Therefore, it is still considered uncertain if whether GCN are present onsite in a terrestrial capacity and, as a result, the LPA still does not have certainty of the likely impacts to these European Protected Species.

To fully assess the impacts of the proposal the LPA needs ecological information for the site, particularly for Great Crested Newts (GCN), a European Protected Species. These surveys are required prior to determination because Government Standing Advice indicates that you should "Survey for great crested newts if there's a pond within 500 metres of the development, even if it only holds water some of the year"

The applicant may be interested to know that Natural England's District Level Licensing for GCN is now available in Essex- see <https://www.gov.uk/government/publications/great-crested-newts-district-level-licensing-schemes> - where sites can be registered to be covered by this strategic mitigation scheme. Guidance for developers and registration forms to join the scheme are available and the LPA will need a Impact Assessment and Conservation Payment Certificate (IACPC) document countersigned by Natural England as evidence of site registration prior to determination where this European Protected Species is likely to be present and affected by development.

This information is required prior to determination because paragraph 99 of the ODPM Circular 06/2005 highlights that: "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."

This information is therefore required to provide the LPA with certainty of impacts on legally protected species and be able to secure appropriate mitigation either by a mitigation licence from Natural England or a condition of any consent. This will enable the LPA to demonstrate compliance with its statutory duties, including its

biodiversity duty under s40 NERC Act 2006 and prevent wildlife crime under s17 Crime and Disorder Act 1998.

Furthermore, we note that the applicant agrees to provide the financial contribution as the site falls within the evidenced recreational Zone of Influence (ZOI) of Essex Coast RAMS. Therefore, given the residential element of this development is relevant, the LPA will need to prepare a project level HRA Appropriate Assessment to secure a per dwelling tariff by a legal agreement for delivery of visitor management measures at the designated Habitats sites. This is necessary to mitigate for predicted recreational impacts in combination with other plans and projects and avoid Adverse Effect on Integrity of the relevant Habitats sites.

This is needed to enable the LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

We look forward to working with the LPA and the applicant to receive the additional information required to support a lawful decision and overcome our holding objection.

UU Open Spaces
27.09.2023

Public Realm Assessment

Play Space - current deficit:

- Deficit of 14.61 hectares of equipped play in Frinton, Walton & Kirby

Formal Play - current deficit:

- Adequate formal open space in the area to cope with some future development

Settlement provision:

- Halstead Road LEAP - 1.4 Miles

Officer Conclusions and Recommendations

Contribution necessary, related, and reasonable?
(to comply with CIL Regs*)

- There is adequate on site open space being provided on site. The closest play area located in Halstead Road has recently been up dated and is adequate to cope with some additional development. Therefore no contribution is being requested on this occasion.

Identified project*:

(In consultation with Town / Parish Council on upcoming projects or needs for maintenance)

- N/a

Housing Services
19.01.2024

I have looked at the application and agree that the development should provide 30% affordable dwellings in accordance with LP5 and based on my calculations and taking into account the whole site that equates to 7.5 dwellings. That should be rounded up to 8 affordable dwellings in total with a mix of 30% shared ownership and 70% affordable rented.

I should point out that the SHMA data is now several years old and as such when it comes to determining the size of the dwellings to be provided as part of the reserved matters application the Housing service will rely on current data from the Housing Register.

Essex County Fire Officer
14.09.2023

Thank you for your letter dated 12/09/2023 enclosing drawings showing details of the above proposal.

The application has been considered and I draw your attention to the following comments:

Access

Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section 13.

Access for Fire Service is considered satisfactory subject to fire brigade access and water supplies for fire fighting being fully compliant with Building Regulations Approved Document B, B5. Your attention is drawn to ADB Volume 1, B5 Section 13.

When referring to ADB Volume 1 Table 13.1, please refer to note 1, (Referring to not all fire appliances are standardised).

Essex Fire Service Appliance details:

	Min. Width of Road between kerbs (metres)	Min. width of gateways (metres)	Min. Height clearance (metres)	Min. carrying capacity (tonnes)	Min. Turning Circle (Kerb to Kerb) (metres)	Min. Turning Circle between walls (metres)	Sweep Circle
Pumping Appliance	3.7 m	3.1 m	3.7 m	18 tonnes	17.8 m	19.0 m	19.0 m
High Reach	3.7 m	3.1 m	4.0 m	26 tonnes	17.8 m	20.0 m	

More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.

Building Regulations

It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector.

Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety - Procedural Guidance".

Approved Inspectors will consult with the Authority in accordance with Regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010 (as amended).

Water Supplies

The architect or applicant is reminded that additional water supplies for firefighting may be necessary for this development. The architect or applicant is urged to contact Water Section at Service Headquarters,

Sprinkler Systems

"There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy.

Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk-based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met."

If you have any further queries, then please contact the above Officer quoting our reference number.

ECC SuDS Consultee
20.09.2023

Thank you for your email received on 11/09/2023 which provides this Council with the opportunity to assess and advise on the proposed surface water drainage strategy for the above mentioned planning application.

As the Lead Local Flood Authority (LLFA) this Council provides advice on SuDS schemes for major developments. We have been statutory consultee on surface water since the 15th April 2015.

In providing advice this Council looks to ensure sustainable drainage proposals comply with the required standards as set out in the following documents:

- Non-statutory technical standards for sustainable drainage systems
- Essex County Council's (ECC's) adopted Sustainable Drainage Systems Design Guide
- The CIRIA SuDS Manual (C753)
- BS8582 Code of practice for surface water management for development sites.

Lead Local Flood Authority position

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission based on the following:

Condition 1

No works except demolition shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:

- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 45% climate change event.

- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 45% climate change critical storm event.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation. It should be noted that all outline applications are subject to the most up to date design criteria held by the LLFA.

Reason

- To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
- To ensure the effective operation of SuDS features over the lifetime of the development.
- To provide mitigation of any environmental harm which may be caused to the local water environment.
- Failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

Condition 2

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

Reason

The National Planning Policy Framework paragraph 163 and paragraph 170 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution.

Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore, the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development.

Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating this should be proposed.

Condition 3

Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

Reason

To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

Failure to provide the above required information prior to occupation may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

Condition 4

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason

To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

Any questions raised within this response should be directed to the applicant and the response should be provided to the LLFA for further consideration. If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us.

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- Sequential Test in relation to fluvial flood risk;
- Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- Safety of the building;
- Flood recovery measures (including flood proofing and other building level resistance and resilience measures);
- Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning

authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

Please see Appendix 1 at the end of this letter with more information on the flood risk responsibilities for your council.

INFORMATIVES:

- Essex County Council has a duty to maintain a register and record of assets which have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to suds@essex.gov.uk.
- Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
- Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in the attached standing advice note.
- It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.
- The Ministerial Statement made on 18th December 2014 (ref. HCWS161) states that the final decision regarding the viability and reasonableness of maintenance requirements lies with the LPA. It is not within the scope of the LLFA to comment on the overall viability of a scheme as the decision is based on a range of issues which are outside of this authority's area of expertise.
- We will advise on the acceptability of surface water and the information submitted on all planning applications submitted after the 15th of April 2015 based on the key documents listed within this letter. This includes applications which have been previously submitted as part of an earlier stage of the planning process and granted planning permission based on historic requirements. The Local Planning Authority should use the information submitted within this response in conjunction with any other relevant information submitted as part of this application or as part of preceding applications to make a balanced decision based on the available information.

Anglian Water Services
Ltd
19.09.2023

ASSETS

Section 1 - Assets Affected

There are assets owned by Anglian Water or those subject to an adoption agreement within or close to the development boundary that may affect the layout of the site. Anglian Water would ask that the following text be included within your Notice should permission be granted.

Anglian Water has assets close to or crossing this site or there are assets subject to an adoption agreement. Therefore the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991. or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence.

WASTEWATER SERVICES

Section 2 - Wastewater Treatment

The foul drainage from this development is in the catchment of Walton On The Naze Water Recycling Centre that will have available capacity for these flows

Section 3 - Used Water Network

This response has been based on the following submitted documents: Flood Risk Assessment Due to lack of information we are unable to make an informed assessment. A full assessment cannot be made due to lack of information, the applicant has not identified a connection point into the public network. The strategy states via phase one, Anglian Water require clear documentation of where flows will reach the public network to undertake an assessment. Therefore, the development has the potential to have an unacceptable risk of flooding/or pollution from the network. Anglian Water will need to plan effectively for the proposed development, if permission is granted. We will need to work with the applicant to ensure any infrastructure improvements are delivered in line with the development. We therefore request a condition requiring an on-site drainage strategy

INFORMATIVE - Notification of intention to connect to the public sewer under S106 of the Water Industry Act Approval and consent will be required by Anglian Water, under the Water Industry Act 1991. Contact Development Services Team 0345 606 6087.

INFORMATIVE - Protection of existing assets - A public sewer is shown on record plans within the land identified for the proposed development. It appears that development proposals will affect existing public sewers. It is recommended that the applicant contacts Anglian Water Development Services Team for further advice on this matter. Building over existing public sewers will not be permitted (without agreement) from Anglian Water.

INFORMATIVE - Building near to a public sewer - No building will be permitted within the statutory easement width of 3 metres from the pipeline without agreement from Anglian Water. Please contact Development Services Team on 0345 606 6087.

INFORMATIVE: The developer should note that the site drainage details submitted have not been approved for the purposes of adoption. If the developer wishes to have the sewers included in a sewer adoption agreement with Anglian Water (under Sections 104 of the Water Industry Act 1991), they should contact our Development Services Team on 0345 606 6087 at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with Sewers for Adoption guide for developers, as supplemented by Anglian Water's requirements.

Section 4 - Surface Water Disposal

The preferred method of surface water disposal would be to a sustainable drainage system (SuDS) with connection to sewer seen as the last option. Building Regulations (part H) on Drainage and Waste Disposal for England includes a surface water drainage hierarchy, with infiltration on site as the preferred disposal option, followed by discharge to watercourse and then connection to a sewer.

The applicant has indicated on their application form that their method of surface water drainage is via SuDS. If the developer wishes Anglian Water to be the adopting body for all or part of the proposed SuDS scheme the Design and Construction Guidance must be followed. We

would recommend the applicant contact us at the earliest opportunity to discuss their SuDS design via a Pre-Design Strategic Assessment (PDSA). The Lead Local Flood Authority (LLFA) are a statutory consultee for all major development and should be consulted as early as possible to ensure the proposed drainage system meets with minimum operational standards and is beneficial for all concerned organisations and individuals. We promote the use of SuDS as a sustainable and natural way of controlling surface water run-off. We please find below our SuDS website link for further information. <https://www.anglianwater.co.uk/developers/drainage-services/sustainable-drainage-systems/>

Section 5 - Suggested Planning Conditions

Anglian Water would therefore recommend the following planning condition if the Local Planning Authority is mindful to grant planning approval.

Used Water Sewerage Network (Section 3)

We have no objection subject to the following condition: Condition Prior to the construction above damp proof course, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been carried out in complete accordance with the approved scheme. Reason To prevent environmental and amenity problems arising from flooding

FOR THE ATTENTION OF THE APPLICANT - if Section 3 or Section 4 condition has been recommended above, please see below information:

Next steps

Desktop analysis has suggested that the proposed development will lead to an unacceptable risk of flooding downstream. We therefore highly recommend that you engage with Anglian Water at your earliest convenience to develop in consultation with us a feasible drainage strategy.

If you have not done so already, we recommend that you submit a Pre-planning enquiry with our Pre-Development team. This can be completed online at our website <http://www.anglianwater.co.uk/developers/pre-development.aspx>

Once submitted, we will work with you in developing a feasible mitigation solution.

If a foul or surface water condition is applied by the Local Planning Authority to the Decision Notice, we will require a copy of the following information prior to recommending discharging the condition:

Foul water:

- Feasible drainage strategy agreed with Anglian Water detailing the discharge solution including:
- Development size

- Proposed discharge rate (Should you require a pumped connection, please note that our minimum pumped discharge rate is 3.8l/s)
- Connecting manhole discharge location (No connections can be made into a public rising main)
- Notification of intention to connect to the public sewer under S106 of the Water Industry Act (More information can be found on our website)
- Feasible mitigation strategy in agreement with Anglian Water (if required)

ECC Schools Service

No comments received.

Essex County Council
Heritage
04.10.2023

The proposal site is in close proximity to Grade II Listed White Ladies (List Entry Number: 1111538).

The proposed development is not considered to have a significant impact on the setting of White Ladies, providing that the proposed dwellings are sufficiently set back from the existing footpath in order to retain the existing woodland and mature trees which positively contribute to the way the significance of the designated heritage asset is appreciated and experienced. This would also create a green buffer which would contribute to minimise the visual impact of the development on White Ladies. It is advised that specific heritage viewpoints are included within the LVIA in order to assess the visual impact of the development on the identified heritage asset.

A detailed landscape layout, including information on hardstanding materials and boundary treatment would be required, as well as schedule and specifications of all proposed external materials.

Tree & Landscape Officer
25.10.2023

The application site is well populated with trees of a mixed age range and has a pleasant woodland character. The site is not clearly visible from the highway although the tops of the larger trees can be seen above the rooftops of the houses in Thorpe Road. In this regard the amenity value of the trees on the land is relatively low.

The clearest views of the site are from the Public Right of Way that runs adjacent to the western boundary of the application site (Frinton and Walton Footpath 16). From this viewpoint the trees make a positive contribution to the character and appearance of the locality and their amenity value is commensurately higher.

The site is affected by Tendring District Council Tree Preservation Order 98/00019/TPO ' Land to the rear of 185, Thorpe Road, Kirby Cross. The most important trees on the boundary of the site are afforded formal legal protection by the TPO.

To show the impact of the proposed development on the preserved and other trees on the and the applicant has submitted an Arboricultural Impact Assessment (AIA). The AIA shows the extent of the constraint that existing trees are on the development potential of the land. This information is in accordance with BS5837 2012 Trees in relation to design demolition and construction. Recommendations.

The AIA provides an accurate description of the health, condition, and value of the trees on the land. It identifies those trees that will need to be felled to implement the development proposal. The AIA also shows how retained trees will be physically protected for the duration of the construction phase of any development that may be granted planning permission.

The AIA contains a Tree Protection Plan (TPP) that makes provision for the most important trees on the land.

In terms of the impact of the development on existing trees on the land it is considered that the proposed development makes provision for the trees of highest quality with the greatest amenity value.

Regarding the impact of the development on the local landscape character the application site is situated within The Clacton and the Sokens Clay Plateau Landscape Character Area (LCA) on the edge, or just with the urban area forming part of the Frinton, Walton, Kirby Cross and Kirby le Soken conurbation.

The LCA is typified as a gently undulating agricultural plateau drained by Holland Brook Valley System to the southeast of the district. The LCA in this location has a distinct urban fringe character where linear development fades into the agricultural landscape.

To show the impact of the development proposal on the local landscape character the applicant has provided a Landscape and Visual Assessment.

The LVA is in accordance with industry best practice guidance for landscape and visual impact assessment as set out in 'Guidelines for Landscape and Visual Impact Assessment' (Third Edition) published by the Landscape Institute and the Institute of Environmental Management and Assessment in 2013 (GLVIA3)

The LVA appraises and addresses potential landscape and visual impacts for the proposed development. It reviews how this development might fit into the setting and quantifies the degree of harm that would be caused to the local landscape character and its visual qualities. It describes how the development may affect the character of the countryside and the appearance of the settlement in the landscape.

The conclusion section of the LVA describes the relatively modest and localised harmful landscape and visual effects.

It is noted that effort has been made to retain the best trees spread throughout the site and those growing towards the edges. Also, that mitigation planting is proposed to strengthen boundary planting. The retention of a good spread of trees throughout will help to integrate the properties into the wooded setting. A greater density of trees retained towards the outer edges will help to maintain the outward appearance of a woodland.

Whilst the conclusion section of the LVA goes on to say that 'The proposed development would cause little harm to the character and appearance of the local area.' it is considered that although the site is relatively enclosed, and that additional planting will be carried out to strengthen screening the application would, if approved, significantly alter the character of the locality.

On balance it is considered that the retention of existing trees and additional soft landscaping would assist with the mitigation of adverse impact of the proposed development however the development would if approved contribute to the gradual erosion of the countryside and have a harmful impact on local landscape character. In this regard the

retention of the greatest number of existing trees would help to minimise landscape harm.

Should planning permission be likely to be granted then details of soft landscaping should be secured by a planning condition. Soft landscaping should aim to soften, screen and enhance the appearance of the development. Special attention should be given to planting close to external site boundaries to strengthen and improve screening.

ECC Highways Dept
17.10.2023

The information submitted with the application has been assessed by the Highway Authority and conclusions reached based on a desktop study in conjunction with a site visit. The site is situated on the B1033 Thorpe Road that is subject to a 30-MPH speed limit. The proposal would introduce a new access onto the B1033 Thorpe Road. It is noted that this is similar to a previous planning application: 19/01054/OUT for the proposal site which was granted planning permission in 2019 and the Highway Authority did not raise an objection to. The proposal provides adequate parking within the site which complies with Tendring District Council's adopted parking standards, considering these factors:

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

1. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i. Vehicle routing,
 - ii. the parking of vehicles of site operatives and visitors,
 - iii. loading and unloading of plant and materials,
 - iv. storage of plant and materials used in constructing the development,
 - v. wheel and underbody washing facilities.

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

2. No occupation of the development shall take place until the following have been provided or completed:

- a) A priority junction off Thorpe Road to provide access to the proposal site. Junction to include but shall not be limited to minimum 6 metre kerbed radii and/or maximum 8m kerbed radii, a maximum 2-metre-wide footways, around each kerb radii, 6-metre-wide combined pedestrian and vehicular surface, a straight section of carriageway to be provided from the entrance junction for 15 metres. and minimum 54 x 2.4 x 54 metre clear to ground visibility splay.
- b) Double yellow/ or red route waiting restrictions opposite and either side of the junction for a maximum distance of 15 metres.
- c) There shall be no discharge of surface water onto the Highway.
- d) Upgrading of the two nearest bus stops in Thorpe Road, to current Essex County Council specification (details shall be agreed with the Local Planning Authority prior to commencement of the development).
- e) Residential Travel Information Packs.

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM1, DM9 and DM10.

3. The nearest existing vehicle access for no. 185 shall be suitably and permanently closed incorporating the reinstatement to full height of the footway / verge / kerbing immediately the proposed new access is brought into first beneficial use.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety in accordance with policy DM1.

4. Prior to occupation of the development the retained vehicular access for no. 185 shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be less than 4.5 metres (equivalent to 5 drop kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety in accordance with policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Notes:

- o The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate.
- o In making this recommendation the Highway Authority has treated all planning application drawings relating to the internal layout of the proposal site as illustrative only.
- o Prior to any works taking place in the highway the developer should enter into an S278 agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works.
- o All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible)
- o All highway related details should be agreed with the Highway Authority.
- o Street lighting will be provided in accordance with ECC Operational Plan and may require the upgrade of existing street lighting on Thorpe Road.
- o Swept path analysis drawing will need to be provided for refuge and fire tender vehicles accessing the development.
- o The proposed junction layout, carriageway, and footway proposals will require an initial Stage 1 Road Safety Audit, ideally to be carried out by Essex Highways (to avoid the issue of additional items being identified at RSA2 stage which can then delay technical approval)
Email: roadsafety.audit@essexhighways.org

Informative:

1: 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.

2: 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

3: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area, it covers, and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

4: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

5: Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the Essex Climate Action Commission proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the Essex Developers' Group Climate Charter [2022] and to view the advice contained in the Essex Design Guide. Climate Action Advice guides for residents, businesses and schools are available.

Environmental Protection
14.09.2023

With reference to the above application, please see below for comments from the EP Team:

Contaminated Land: Given the proximity of the site to historical agricultural land, and having consideration for the scale of the proposed development, the EP Team are requesting a minimum of a Phase One Contaminated Land Survey be performed, to ensure the land is suitable for the proposed end use - The following works shall be conducted by competent persons and in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and Environment Agencies "Land Contamination Risk Management (LCRM) " and other current guidance deemed authoritative for the purposes. The development hereby permitted shall not commence

until the measures set out in the approved report have been implemented.

A. Site Characterisation

Notwithstanding the details submitted with this application, no development shall commence other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:

- (i) a survey of extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - o Human health,
 - o Properly (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - o Adjoining land,
 - o Groundwaters and surface waters,
 - o Ecological systems
 - o Archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

REASON - To ensure that any risks (to future users of the land and neighbouring land and to controlled waters, property and ecological systems) arising from any land contamination are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Demolition & Construction Method Statement: In order to minimise potential nuisance to nearby existing residents caused by construction and demolition works, Environmental Protection ask that the following is submitted, on any further subsequent planning phase:

Prior to the commencement of any construction or demolition works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Pollution and Environmental Control. This should at minimum include the following where applicable.

o 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 07:30 or leave after 19:00(except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 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.
- 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.

o 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.

3) 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.

4) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. 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).

REASON: to protect the amenity of nearby residential dwellings.

Essex County Council
Ecology
04.01.2024

Thank you for re-consulting Place Services on the above outline application.

No objection subject to securing:

- a) a proportionate financial contribution towards Essex Coast RAMS
- b) biodiversity mitigation and enhancement measures

Summary

Further to our comments on the 8th December 2023, we have reviewed the Great Crested Newt Risk Assessment (ACJ Ecology, December 2023) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures.

The site falls within the evidenced recreational Zone of Influence (ZOI) of Essex Coast RAMS. Given the residential element of this development is relevant, we note the LPA has prepared a project level HRA Appropriate Assessment to secure a per dwelling tariff by a legal agreement for delivery of visitor management measures at the designated sites. This will mitigate for predicted recreational impacts in combination with other plans and projects and avoid Adverse Effect on Integrity of the designated Habitats sites.

We note that Great Crested Newt Risk Assessment (ACJ Ecology, December 2023) provides sufficient reasonable justification to conclude that Great Crested Newts would be unlikely be affected by the proposed development. Furthermore, the Great Crested Newt

Risk Assessment (ACJ Ecology, December 2023) contains a precautionary working method statement to manage any residual risk. As a result, the LPA is considered to have certainty of the likely impacts to Great Crested Newt, a European Protected Species.

The Place Service Response (ACJ Ecology, November 2023) provides confirmation that trees to be felled have no Bat Roosting Features and therefore no bat roost potential. It is noted that trees with bat roost potential will be retained as a result of the proposals. Furthermore, it is also stated that the buildings onsite have no potential for roosting bats. Therefore, the LPA has certainty of the likely impacts to roosting bats, European Protected Species. In addition, the Place Service Response (ACJ Ecology, November 2023) also explains that suitable foraging and commuting habitat for bats is predominantly within the boundary of the woodland which is to be retained and that the woodland itself contains of limited opportunities for foraging and commuting bats. We support the recommendation for a wildlife sensitive lighting strategy to avoid disturbance of foraging and commuting bats which would be secured by a condition of any consent for discharge at reserved matters stage.

It is also noted that the Place Service Response (ACJ Ecology, November 2023) provides further detailed explanation regarding the lack of suitable habitat for Hazel Dormouse within the onsite woodland, in addition to providing an explanation in regard to sub-optimal habitat present for reptiles. As a result, the LPA has certainty of the likely impacts to these European Protected Species and protected species respectively and we agree that these species require no further consideration or survey.

Furthermore, the Place Service Response (ACJ Ecology, November 2023), confirms that the woodland onsite is not a Priority habitat and that "ground truthing" suggests that this is likely a mapping error due to how Priority habitats are identified through aerial photography.

Therefore, we are now satisfied that there is sufficient ecological information available for determination of this application. This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

The mitigation measures identified in the Preliminary Ecological Appraisal (ACJ Ecology, May 2023) and Great Crested Newt Risk Assessment (ACJ Ecology, December 2023) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority species particularly Great Crested Newt and nesting birds.

Furthermore, to mitigate potential impacts to retained and adjacent habitat, especially through dust and pollution events, a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) should be produced and secured by condition of any consent.

We also support the proposed reasonable biodiversity enhancements, which are been recommended to secure net gains for biodiversity, as outlined under Paragraph 180d of the National Planning Policy Framework (December 2023). The reasonable biodiversity enhancement measures should be outlined within a Biodiversity

Enhancement Strategy and should be secured by a condition of any consent.

In addition, it is likely bats could be foraging/commuting within and around the site. Therefore, if any external lighting is to be proposed, it is advised that a sensitive lighting scheme is developed to minimise any impacts. This should summarise the following measures will be implemented:

- o Light levels should be as low as possible as required to fulfil the lighting need.
- o Warm White lights should be used at <2700k. This is necessary as lighting which emit an ultraviolet component or that have a blue spectral content have a high attraction effect on insects. This may lead in a reduction in prey availability for some light sensitive bat species.
- o The provision of motion sensors or timers to avoid the amount of 'lit-time' of the proposed lighting.
- o Lights should be designed to prevent horizontal spill e.g. cowls, hoods, reflector skirts or shields.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013.

We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

Recommended conditions

1. COCURRENT WITH RESERVED MATTERS ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (ACJ Ecology, May 2023) and Great Crested Newt Risk Assessment (ACJ Ecology, December 2023) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details."

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

2. COCURRENT WITH RESERVED MATTERS PRIOR TO COMMENCEMENT: CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY

"A construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority.

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority"

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).

3. COCURRENT WITH RESERVED MATTERS PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

"A Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter."

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the NPPF 2023 and s40 of the NERC Act 2006 (Priority habitats & species).

And if any external lighting is proposed;

4. COCURRENT WITH RESERVED MATTERS PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

"A lighting design scheme for biodiversity in accordance with GN:08/23 Bats and Artificial External Lighting (Institute of Lighting Professionals) shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority."

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

Essex County Council
Archaeology
04.10.2023

The above 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, has been identified as having the potential to harm non-designated heritage assets with archaeological interest.

The Essex Historic Environment Record indicates the potential for below ground archaeological deposits in this area and an archaeological evaluation within the adjacent site has confirmed prehistoric and postmedieval activity within the area. A pit, gully and ditches dated to the Bronze Age were revealed within trial trenches directly east of the above site, projection of these ditches suggest they would continue into the development site within the eastern field and may be associated with further Bronze Age activity.

In the wider area cropmark evidence for ring ditches, enclosures and linear features suggest settlement and activity from prehistoric times, the site is located to the south of the historic settlement, identified as Upper Street on the Chapman and Andre map of 1777. The linear settlement was concentrated along Thorpe Road with a lesser populated settlement at Kirby Cross. Industrial evidence associated with the settlement was revealed at the adjacent site and further evidence relating to the medieval and postmedieval development of the village may survive within the development area.

The following recommendations are made in line with the National Planning Policy Framework (Para 194):

RECOMMENDATION: A Programme of Archaeological evaluation

1. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which

has been submitted by the applicant, and approved in writing by the local planning authority.

2. No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in 1 above.

3. The applicant will submit a final archaeological report or (if appropriate) a Post Excavation Assessment report and an Updated Project Design which has been approved in writing by the Local Planning Authority. This shall be done within 6 months of the date of completion of the archaeological fieldwork unless otherwise agreed in advance in writing by the Local Planning Authority. This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Further Recommendations:

A professional team of archaeologists should undertake the archaeological work. A brief outlining the level of archaeological investigation will be issued from this office on request. Tendring District Council should inform the applicant of the recommendation and its financial implications.

3. Planning History

99/01009/FUL	Change of use to residential care home for 6 adults with physical and learning disabilities and single storey rear extension	Refused	01.09.1999
03/01345/FUL	Proposed granny annexe	Approved	06.08.2003
19/01054/OUT	Erection 5no. detached dwellings.	Approved	04.12.2019
22/01508/DETAIL	Reserved matters application for the erection of 5no. detached dwellings, considering details of appearance, landscaping, layout and scale, pursuant to outline planning consent 19/01054/OUT.	Approved	17.11.2022
23/00234/DISCON	Discharge of condition 5 (Construction method statement) of application 19/01054/OUT.	Approved	07.03.2023
23/00290/DISCON	Discharge of condition 6 (Soft Landscaping) of application 22/01508/DETAIL.	Approved	27.03.2023
23/00301/NMA	Non Material Amendment to application reference 22/01508/DETAIL for change of facing brick from Saracen to Mardale Antique, change of roofing tile from Sandtoft 20/20 to Redland Grovebury/Rustic Red on plots 1, 3 and 5 and Redland concrete duo plain Rustic Brown to plots 2 and 4. Alterations to w/c window sizes and adjustments to utility door location.	Approved	30.03.2023

4. 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), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

5. Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

6. Relevant Policies / Government Guidance

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

7. Officer Appraisal

Site Description

The application site, which measures 2.98 hectares, is land sited to the rear of Numbers 173 through to 203 Thorpe Road and falls within the parish of Kirby Cross. The front (northern) section of the site is currently under construction following the recent granting of planning permissions 19/01054/OUT and 22/01508/DETAIL (for five bungalows), with the remainder of the site more heavily vegetated to the rear (southern) section of the site.

The character of the area is relatively urbanised, with residential development running east to west along this section of Thorpe Road. To the east of the site is 'The Laurels', a large residential development that has recently been fully constructed. The land further to the north, south and west is far more rural in character, with large areas of grassed land.

The front, northern, section of the site falls within the Settlement Development Boundary for Kirby Cross within the adopted Local Plan, however the majority of the site to the southern section falls outside. There are three Grade II Listed Buildings located to the north along Thorpe Road. To the west of the site lies a Public Right of Way.

Description of Proposal

This application seeks outline planning permission for the erection of 20 dwellings, all of which would be single storey.

The only matter that is to be considered within this application is access, with the remaining reserved matters, namely appearance, landscaping, layout and scale to be considered at a future detailed application.

Site History

In December 2019 under reference 19/01054/OUT, outline planning permission was granted for the erection of five dwellings on the northern section of the current application site. A subsequent Reserved Matters application (reference 22/01508/DETAIL) was approved in November 2022, and the development has since started construction.

Assessment

1. Principle of Development

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.

On this occasion whilst the entrance into the site and the adjoining development approved within 19/01054/OUT and 22/01508/DETAIL falls within the Settlement Development Boundary for Kirby Cross, the remainder of the application site, and 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, and as described in more detail below will also result in harm to the character of the area. The principle of development is therefore not acceptable in this location.

2. Backland Development

Paragraph 135 of the National Planning Policy Framework 2023 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. Furthermore, Adopted Policy LP4 states the design and layout of new residential developments is expected to provide for amenity space of a size and configuration that meets the needs and expectations of residents, and which is commensurate to the size of the dwelling and character of the area.

The development will result in the creation of 20 dwellings located to the rear of Numbers 173 - 203 Thorpe Road, and therefore Officers consider that it constitutes a form of backland development.

The main problems that can arise as a result of backland development include undermining the established character of an area (especially if similar schemes were to be repeated elsewhere in a locality); dwelling plots appearing cramped relative to their surroundings; the fragmentation of established gardens with a loss of mature landscaping; and the infringement of neighbouring residents' amenities. Development behind an established building line can also appear incongruous, particularly with isolated dwellings. There must also be proper means of access to backland development, which is safe and convenient for both drivers and pedestrians, with a turning area where necessary to avoid the need for vehicles to reverse onto a public highway. A proposed access should avoid excessive disturbance or loss of privacy to neighbouring residents through, for example, an access drive passing unreasonably close to an adjoining dwelling. The likely frequency of use by vehicular traffic and the suitability of the access for service vehicles and the emergency services will also be relevant material considerations.

Of particular relevance in this instance is also Policy LP8 of the adopted Local Plan, which states that proposals for the residential development of backland sites must comply with the following criteria (officer assessment in italics):

a) where the development would involve the net loss of private amenity space serving an existing dwelling, that dwelling must be left with a sufficient area of private amenity space having regard to the standards in this Local Plan;

As stated above, to comply with adopted Policy LP4, the design and layout of new residential developments is expected to provide for amenity space of a size and configuration that meets the needs and expectations of residents, and which is commensurate to the size of the dwelling and character of the area. Whilst the layout shown is indicative only, it demonstrates that there is space to allow for sufficient private amenity space for all 20 dwellings as well as all existing properties to the north, and therefore complies with this criterion (and Policy LP4). Matters relating to impact on the character of the area are covered below.

b) a safe and convenient means of vehicular and pedestrian access/egress must be provided that does not cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will not be permitted;

The dwellings will be accessed via an access point from Thorpe Road to the north (in-between Numbers 185 and 187), which will be both long and narrow, and also increases the likelihood of vehicles generating higher speed. However, given the same access road has previously been allowed for the adjacent five dwellings it would not be reasonable to object on this basis. That said, Officers have concerns that the number of vehicular movements associated with 25 dwellings (including the permission previously granted) will be significant in comparison to the previously approved scheme. 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. The access would not, however, cause undue visual harm to the street scene and this element does not form part of the concerns raised. This criterion is therefore not met.

c) the proposal must avoid "tandem" development using a shared access;

Whilst the proposal utilises a shared access, it does not represent a form of tandem development, and therefore this criterion is met.

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

The site is not considered to comprise an irregular and awkward shape and will not prejudice a more appropriate comprehensive development solution, and therefore this criterion is met.

e) the site must not be on the edge of defined settlements where likely to produce a hard urban edge or other form of development out of character in its particular setting; and

The site is adjacent to the defined settlement for Kirby Cross, however, would be sited on the edge of the overall settlement and will naturally result in a significant increase to the built form along the southern boundary. However, Officers equally acknowledge that a development for 110 dwellings has recently finished construction on the site adjacent to the east, and therefore from wider views from the south the development would be seen within that context. That said, whilst the retention of existing trees supplemented with additional soft landscaping would assist with the mitigation of the adverse impact of the proposed development, the overall development, which includes 20 additional dwellings as well as the associated hardstanding for vehicular manoeuvring and parking, would contribute to the gradual erosion of the countryside and have a harmful impact on local landscape character. This criterion is therefore not met.

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

This section of Thorpe Road previously had a distinct character of residential development running east to west, however it is noted that this character has been altered with the 110 dwelling development adjacent to the east that runs to the rear of the Thorpe Road building line, as well as the five dwellings allowed on the site immediately adjacent to the north. Additionally, smaller developments to the rear of the building line have been granted planning permission to the rear of properties along the northern section of Thorpe Road. That notwithstanding, 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. This criterion is therefore not met.

3. Impact to Character of Area

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 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.

Regarding the impact of the development on the local landscape character, the application site is 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 LCA is typified as a gently undulating agricultural plateau drained by Holland

Brook Valley System to the southeast of the district. The LCA in this location has a distinct urban fringe character where linear development fades into the agricultural landscape.

To show the impact of the development proposal on the local landscape character the submission is accompanied by a Landscape and Visual Assessment (LVA), which is in accordance with industry best practice guidance for landscape and visual impact assessment as set out in 'Guidelines for Landscape and Visual Impact Assessment' (Third Edition) published by the Landscape Institute and the Institute of Environmental Management and Assessment in 2013 (GLVIA3)

The LVA appraises and addresses potential landscape and visual impacts for the proposed development, and reviews how this development might fit into the setting and quantifies the degree of harm that would be caused to the local landscape character and its visual qualities. It describes how the development may affect the character of the countryside and the appearance of the settlement in the landscape. The conclusion section of the LVA describes the relatively modest and localised harmful landscape and visual effects.

It is noted that effort has been made to retain the best trees spread throughout the site and those growing towards the edges. Also, mitigation planting is proposed to strengthen boundary planting. The retention of a good spread of trees throughout will help to integrate the properties into the wooded setting. A greater density of trees retained towards the outer edges will help to maintain the outward appearance of a woodland.

However, whilst the conclusion section of the LVA states "The proposed development would cause little harm to the character and appearance of the local area", it is considered that although the site is relatively enclosed, and that additional planting will be carried out to strengthen screening, the proposal would significantly alter the character of the locality.

The retention of existing trees and additional soft landscaping would assist with the mitigation of adverse impact of the proposed development, however the development, including 20 additional dwellings as well as the associated hardstanding 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.

Officers note that in retaining a greater number of existing trees and providing a detailed soft landscaping scheme at Reserved Matters stage it would be possible to reduce some level of the identified harm. However, on this occasion this would only result in a minor reduction to this harm, and not to the extent that it would overcome the identified concerns.

In response to this, the agent for the application has outlined that a development contributing to the gradual erosion of the countryside would apply equally to the development of any green field site that is beyond the existing developed extent of a settlement, however the degree of impact will differ depending on the circumstances. On this occasion, they have argued, there is not a significant level of harm given the retention of existing woodland cover and the enhancement to the density of perimeter vegetation as outlined in the submitted landscape strategy. In response to this, in assessing the impacts above consideration has been given to the retention of existing trees and additional soft landscaping.

4. Layout, Scale and Appearance

Paragraph 135 of the National Planning Policy Framework (NPPF) (2023) 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.

It is acknowledged that this application is in outline form, with only access a matter to be considered at this time. That said, an indicative layout has been provided, and it is a key consideration for Officers to determine whether a suitable design could be brought forward within a future Reserved Matters application.

With respect to the proposed scale, it is noted the dwellings are all to be single storey. The permission granted for five dwellings immediately adjacent to the north were all single storey and the dwellings along Thorpe Road to the north are a mixture of single and two storey; against this context the proposed scale is not considered to be harmful. In terms of the appearance of the dwellings, no details are provided, however within any future detailed application Officers would expect these to be in-keeping with the existing nearby development.

The proposed layout shows there to be three dwellings to the north-west of the site, seven dwellings to the west/south-west, four dwellings to the south, five dwellings to the south-east, and one dwelling to the north-east, and includes a mixture of detached, semi-detached and terraced properties. However, Officers are concerned that the layout appears ad-hoc, with no defined pattern or character; for example some plots are detached whilst others are more densely populated, with some dwellings set back further than others. Consequently, it provides for a poorly designed and confused layout that lacks any continuity, and also fails to relate to the five dwellings approved under planning permissions 19/01054/OUT and 22/01508/DETAIL. However, despite this Officers consider the site to be of a sufficient size to accommodate all of the dwellings, and the layout is a matter reserved for a future planning application, and therefore it would not be reasonable to object at this stage.

5. Affordable Housing

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 for affordable housing.

The proposal is for a total of 20 dwellings, which alone would trigger the requirement for affordable housing provision. However, due regard must also be had for planning permissions 19/01054/OUT and 22/01508/DETAIL, which are sited immediately to the north of the proposed development, utilising the same access and have the same applicant. Officers consider that there is therefore a clear link between the two sites, and the level of affordable housing provision should be 30% of the combined development, therefore eight dwellings (rounded up from 7.5).

The submission initially indicated that the development would include for a total of seven affordable housing units. The Council's Housing Department, following consultation, have confirmed that, in considering this development with the development adjacent, there should be a total of eight Affordable Housing units (rounded up from 7.5), of which there should be a mix of 30% shared ownership and 70% affordable rented. Following this, the agent for the application has provided an amended indicative layout plan that shows eight affordable housing units.

However, on this occasion, a Section 106 legal agreement has not been secured for these affordable housing units, and therefore the Local Planning Authority does not have certainty that the development would provide the necessary affordable housing provision, contrary to the above policies.

6. Impact to Neighbouring Amenities

Paragraph 135 of the National Planning Policy Framework (2023) confirms planning policies and decisions should 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.

Policy SP7 of Section 1 of the 2013-33 Local Plan requires that the amenity of existing and future residents is protected. Section 2 Policy SPL 3 (Part C) seeks to ensure that development will not

have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

Notwithstanding the impacts to Numbers 185 and 187 with respect to the noise disturbances discussed above, it is considered that the proposed dwellings will be sited a sufficient distance apart from these, and all other properties along Thorpe Road, to ensure the development will not appear oppressive or result in overlooking concerns. Similarly, there would be no significant loss of daylight/sunlight as a result of the proposal.

The dwellings adjacent to the north currently under construction are more closely related, however the indicative layout shows that it is achievable to provide for 20 dwellings in this location whilst retaining sufficient separation distances, thereby ensuring no loss of light or the development appearing oppressive.

Overall, notwithstanding the previous harm identified through noise disturbances, whilst this would be a matter to assess fully within any future Reserved Matters application, Officers are content that a development can be achieved without causing significant harm to existing amenities of neighbouring properties.

7. Impact to Trees

The Council's Tree and Landscapes Officer has been consulted and has stated the following:

"The application site is well populated with trees of a mixed age range and has a pleasant woodland character. The site is not clearly visible from the highway although the tops of the larger trees can be seen above the rooftops of the houses in Thorpe Road. In this regard the amenity value of the trees on the land is relatively low.

The clearest views of the site are from the Public Right of Way that runs adjacent to the western boundary of the application site (Frinton and Walton Footpath 16). From this viewpoint the trees make a positive contribution to the character and appearance of the locality and their amenity value is commensurately higher.

The site is affected by Tendring District Council Tree Preservation Order 98/00019/TPO ' Land to the rear of 185, Thorpe Road, Kirby Cross. The most important trees on the boundary of the site are afforded formal legal protection by the TPO.

To show the impact of the proposed development on the preserved and other trees on the and the applicant has submitted an Arboricultural Impact Assessment (AIA). The AIA shows the extent of the constraint that existing trees are on the development potential of the land. This information is in accordance with BS5837 2012 Trees in relation to design demolition and construction. Recommendations.

The AIA provides an accurate description of the health, condition, and value of the trees on the land. It identifies those trees that will need to be felled to implement the development proposal. The AIA also shows how retained trees will be physically protected for the duration of the construction phase of any development that may be granted planning permission.

The AIA contains a Tree Protection Plan (TPP) that makes provision for the most important trees on the land.

In terms of the impact of the development on existing trees on the land it is considered that the proposed development makes provision for the trees of highest quality with the greatest amenity value."

Given the above comments, no objections are raised by Officers in regard to the impacts of the development to existing trees on site.

8. Highway Safety

Paragraph 114 of the National Planning Policy Framework (2023) seeks to ensure that safe and suitable access to a development site can be achieved for all users. Paragraph 115 of the Framework states that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy SPL3 (Part B) of the Adopted Local Plan seeks to ensure that access to a new development site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate, and provision is made for adequate vehicle and cycle parking.

Adopted Policy CP1 (Sustainable Transport and Accessibility) states 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.

Essex Highways Authority have been consulted on the application, and have confirmed that from a highway and transportation perspective the impact of the proposal is acceptable, however this is subject to conditions relating to a Construction Management Plan, footways, the closure of the existing vehicular access, the access width, residential travel information packs, and no discharge of surface water, the introduction of a future waiting restriction scheme opposite and either side of the junction into the site as well as the upgrading of the two nearest bus stops in Thorpe Road.

Furthermore, the Essex County Council Parking Standards set out the parking requirements for new development and confirm that for residential properties of two bedrooms or more there should be provision for two parking spaces measuring a minimum of 5.5 metres x 2.9 metres or, if being used as one of the parking spaces, a garage should measure a minimum of 7 metres x 3 metres. The proposal is in outline form, with only an indicative layout shown at this stage. That said, this indicative layout shows that there would be sufficient space for the necessary parking requirements within any future Reserved Matters application.

9. Heritage Impacts

Adopted Policy PPL9 states that proposals for new development affecting a listed building or its setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric, and where a proposal will cause harm to a listed building, the relevant paragraphs of the NPPF should be applied dependent on the level of harm caused.

There are Grade II Listed Buildings located to the north and north-west of the application site, and as such ECC Place Services (Heritage) have been consulted, and they have provided the following comments:

"The proposal site is in close proximity to Grade II Listed White Ladies (List Entry Number: 1111538).

The proposed development is not considered to have a significant impact on the setting of White Ladies, providing that the proposed dwellings are sufficiently set back from the existing footpath in order to retain the existing woodland and mature trees which positively contribute to the way the significance of the designated heritage asset is appreciated and experienced. This would also create a green buffer which would contribute to minimise the visual impact of the development on White Ladies. It is advised that specific heritage viewpoints are included within the LVIA in order to assess the visual impact of the development on the identified heritage asset.

A detailed landscape layout, including information on hardstanding materials and boundary treatment would be required, as well as schedule and specifications of all proposed external materials."

Given the above, no objections are raised with regards to the impacts to the Listed Buildings, however this would be assessed further in the event a future Reserved Matters planning application is submitted at a later date.

10. Open Space

Adopted 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.

The application site measures 2.98ha and is for in excess of 11 dwellings, and therefore at least 10% of the site must be allocated for Open Space. It is acknowledged that the Site Layout Plan shown is indicative only, however Officers note it does include a small section of the site allocated for Open Space provision. That said Officers consider that the site is of a sufficient size that it could accommodate the necessary provision within any future Reserved Matters application.

However, on this occasion, a Section 106 legal agreement has not been secured for the Open Space provision, and therefore the Local Planning Authority does not have certainty that the development would provide the necessary provision, contrary to the above policies.

11. Protected Species

Paragraph 180 of the Framework states planning decisions should contribute to and enhance the natural and local environment, by minimising impacts and providing net gains for biodiversity. Paragraph 186(a) of the NPPF confirms that in assessing planning applications where significant harm to biodiversity as a result of a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.

Adopted Policy SP7 requires that all new development should incorporate biodiversity creation and enhancement measures. Adopted Policy SPL3 Part A(d) includes that the design and layout of development should maintain or enhance ecological value.

Adopted Policy PPL4 states that proposals for new development should be supported by an appropriate ecological assessment, and where new development would harm biodiversity or geodiversity, planning permission will only be granted in exceptional circumstances, where the benefits of the development demonstrably outweigh the harm caused and where adequate mitigation or, as a last resort, compensation measures are included, to ensure a net gain, in biodiversity.

ECC Place Services (Ecology), upon consultation, initially confirmed that they raised a holding objection on the grounds that the submitted Preliminary Ecological Appraisal identified some moderate features could support roosting bats, foraging and commuting, but further surveys had not been provided, and as a number of trees are to be removed to facilitate the development, further information demonstrating the location and level of bat roost potential of any specific trees to be removed should be provided. In addition, further surveys were required to ascertain the impacts to Great Crested Newts, Hazel Dormice and Reptiles.

To address this, the agent for the application has since submitted additional surveys and following re-consultation ECC Ecology have confirmed they have removed their initial holding objection, subject to conditions relating to mitigation measures being adhered to, and the submission of a Biodiversity Enhancement Strategy and Construction Environmental Management Plan.

12. Drainage

Paragraph 180 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of water pollution. Furthermore, Paragraph 191 of the Framework states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on the natural environment.

Policy PPL5 of Section 2 of the adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Private sewage treatment facilities will not permitted

if there is an accessible public foul sewer. Where private sewage treatment facilities are the only practical option for sewage disposal, 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.

The agent for the application has confirmed via an email that the development would be connected to the existing public foul sewer. This is in accordance with the above policy requirements and is therefore considered to be acceptable in the event of an approval.

13. Renewable Energy

Paragraph 116 of the Framework states that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles (ULEV) in safe, accessible and convenient locations. However, recent UK Government announcements that ULEV charging points will become mandatory for new development have yet to be published.

Policies PPL10 and SPL3, together, require consideration be given to renewable energy generation and conservation measures. Proposals for new development of any type should consider the potential for a range of renewable energy generation solutions, appropriate to the building(s), site and its location, and be designed to facilitate the retro-fitting of renewable energy installations.

The proposal includes for a development that has the potential to incorporate renewable energy features. There are no details that accompany the planning application that demonstrate the water, energy and resource efficiency measures that the scheme will incorporate, and a condition requesting details of this is recommended.

14. Financial Contributions - Open Space and RAMS

(i) Open Space

Paragraph 55 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 57 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

Section 2 Policy HP5 states that the Council will work with partners and sports providers across the district to maintain, expand and improve the quality and accessibility of public open space, sports and recreational facilities of different types and will aim to achieve and exceed standards set out in the Council's 2017 Open Spaces Strategy or any future update. Financial contributions will also be sought through s106 legal agreements (or an appropriate alternative mechanism) towards ongoing maintenance.

In line with the requirements of Section 2 Policy HP5 the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space. The outcome of the consultation is that there is a deficit of 14.61 hectares of equipped play in the Frinton, Walton and Kirby area and adequate formal play provision, however no contribution is being requested on this occasion.

(ii) Habitat Regulations Assessment

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 (Zoi) but is approximately 2.4 kilometres from the Hamford Water Ramsar and SPA. New housing

development within the ZOI 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.

Other Considerations

Frinton and Walton Town Council recommend refusal for the following reasons:

1. Proposal is a form of backland development;
2. Inappropriate vehicular access for number of dwellings proposed; and
3. Insufficient visibility splays

There have also been six letters of objection received, outlining the following concerns:

1. Harm to wildlife;
2. Impact to highway network;
3. Insufficient local infrastructure;
4. Impact to local footpath;
5. Harm to trees;
6. Noise impacts; and
7. Not in-keeping with existing character.

In answer to this, all of the above points raised bar Points 3 and 4 are addressed within the main body of the report. In answer to Point 3 while the development would result in a degree of impact to local infrastructure, ECC Schools have not provided any comments to the application and Officers do not consider the impacts from 20 dwellings would be so great that it would significantly alter local infrastructure. In answer to Point 4, the indicative layout does not show any of the proposed properties in close proximity to this.

Planning Balance and Conclusion

The proposal would see the erection of 20 dwellings on land sited to the rear of Numbers 173 through to 203 Thorpe Road. Such a proposal would increase housing provision in the District, whilst also providing an additional eight Affordable Housing units. ECC Highways have raised no objections and Officers are content there is sufficient space on site for the necessary vehicular parking. In addition, ECC Heritage raise no objections with regards to impacts to the setting of nearby Grade II Listed Buildings, and the impact to existing trees is considered acceptable. Furthermore, following the submission of additional information, ECC Ecology also do not object subject to conditions.

The above notwithstanding, the application site falls adjacent to, but outside of, the Settlement Development Boundary for Kirby Cross within the adopted Local Plan, and the Council can demonstrate a sufficient five year housing land supply. Furthermore, the proposal represents a form of backland development that will generate significant disturbances to Numbers 185 and 187 Thorpe Road through the vehicular movements associated with such a development. Moreover, whilst it is noted there is a development adjacent to the east for 110 dwellings now fully constructed, the proposal is considered to be harmful to the areas existing character by contributing to the gradual erosion of the countryside.

In addition to the above, a Section 106 legal agreement has not been agreed that would secure affordable housing and RAMS.

Taking all of the above into consideration, Officers consider that the identified harm far outweighs the benefits of the scheme, and accordingly do not consider the proposal is in accordance with local and national planning policies. The application is therefore recommended for refusal.

8. Recommendation

Refusal.

9. Reasons for Refusal

- 1 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 (Zoi) but is approximately 2.4 kilometres from the Hamford Water Ramsar and SPA. New housing development within the Zoi 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.

10. Informatives

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.

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.

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact (As known with application)
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
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