



AGENT: Mr Peter Le Grys - Stanfords
The Livestock Market
Wyncolls Road
Colchester
Essex
CO4 9HU

APPLICANT: Mr and Mrs Parker - Parkers
Farms
Parkers Nurseries
Frinton Road
Thorpe Le Soken
Essex

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 23/01694/FUL

DATE REGISTERED: 29th November 2023

Proposed Development and Location of Land:

**Proposed nine dwellings comprising 6 No. two bed almshouse style bungalows, 1 No. three bed house and 2 No. five bed houses and a replacement garage. (re submission of 22/01670/FUL)
Land off Briarfields Kirby Le Soken Frinton On Sea Essex**

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

- 1 Paragraph 180(b) of the NPPF (2023) states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Adopted Policy PPL3 states that the Council will not grant planning permission for development if it would cause overriding harm to traditional buildings and settlement settings, native hedgerows, trees and woodlands, designated and non-designated heritage assets and historic landscapes.

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.

On this occasion the site falls adjacent to, but outside of, the Settlement Development Boundary for Kirby-le-Soken. The proposed development would therefore extend beyond the area planned to provide growth for this settlement. The site is currently framed by the prominent positioning of St Michael's Church which serves as a transition link between The Street to the north and wider arable land to the south and by established hedgerow vegetation to the eastern and western flank boundaries. As such, the site currently forms a pleasant green gap between Kirby Hall and Briarfields/The Sparlings. The proposed introduction of housing on this greenfield site through the change of use of the land from agricultural use to residential use would result in the loss of agricultural land and an erosion of the localised landscape character and the degradation of the visual qualities of

the countryside. Whilst soft landscaping measures for the development would to some degree mitigate against this visual harm, the development would still be prominent within the local landscape.

Accordingly, the proposed development would cause overriding harm to the character and appearance of this rural landscape setting in terms of the erosion of localised landscape character in favour of housing and also its resulting impact on the settlement's setting which would fail to enhance the natural and local environment, thereby contrary to the listed local and national planning policies.

- 2 Paragraph 205 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Furthermore, Paragraph 208 states that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Policy PPL8 states that new development within a designated Conservation Area, or which affects its setting, will only be permitted where it has regard to the desirability of preserving or enhancing the special character and appearance of the area. Policy PPL9 adds 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.

The proposal site is adjoining the boundary of Kirby Le-Soken Conservation Area and is located within the setting of Grade II* Listed Church of St Michael. The development would result in a detrimental impact to the setting of these heritage assets due to the permanent change of use of their historic immediate setting to the south of the churchyard, which is still open and undeveloped and rural in character and contributes to the understanding of the significance of the identified heritage assets in their original isolated location. The level of harm identified is at the high end of less than substantial, and on this occasion the modest public benefits of nine market dwellings in a location outside of a recognised Settlement Development Boundary at a time when the Council can demonstrate a sufficient five year housing land supply do not outweigh this level of harm. The proposal is therefore contrary to the above local and national planning policies.

- 3 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) being approximately being approximately 542 metres away from Hamford Water SPA, SAC and RAMSAR. 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 unilateral undertaking has not been prepared to secure this legal obligation. As such, it has not been shown that the development would ensure that the development would not

adversely affect the integrity of European Designated Sites in accordance with Section 1, Policy SP2 and Section 2, Policy PPL4 of the Tendring District Local Plan 2013-2033 and Beyond and Regulation 63 of the Conservation of Habitat and Species Regulations 2017 and is therefore contrary to these plan policies.

DATED: 16th February 2024

SIGNED:



John Pateman-Gee
Head of Planning and Building Control

IMPORTANT INFORMATION :-

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

National:

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

Local:

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

SP1 Presumption in Favour of Sustainable Development
SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP3 Spatial Strategy for North Essex
SP4 Meeting Housing Needs
SP6 Infrastructure and Connectivity
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
LP1 Housing Supply
LP2 Housing Choice
LP3 Housing Density and Standards
LP4 Housing Layout
PPL1 Development and Flood Risk
PPL3 The Rural Landscape
PPL4 Biodiversity and Geodiversity
PPL5 Water Conservation, Drainage and Sewerage
PPL7 Archaeology
PPL8 Conservation Areas
PPL9 Listed Buildings
PPL10 Renewable Energy Generation
CP1 Sustainable Transport and Accessibility
CP2 Improving the Transport Network
DI1 Infrastructure Delivery and Impact Mitigation

Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

Other

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

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 1367/01A, 1367/02, 1367/03, 1367/04, 1367/05, 1367/06, 1367/07, 1367/08A, 1367/09, the documents titled 'Construction Method Statement', 'Water, energy and resource efficiency measures', 'Electric Vehicle Charging', 'Planning and Heritage Statement' and the untitled Site Location Plan received 30th November 2023.

Positive and Proactive Statement

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

The attached notes explain the rights of appeal.

NOTES FOR GUIDANCE

WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

APPEALS TO THE SECRETARY OF STATE

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

ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.

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