

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	MP	13/02/24
Team Leader authorisation / sign off:	ML	15/02/2024
Assistant Planner final checks and despatch:	Er	16/02/2024

Application: 23/01694/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr and Mrs Parker - Parkers Farms

Address: Land off Briarfields Kirby Le Soken Frinton On Sea

Development: 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)

1. Town / Parish Council

FRINTON AND WALTON TOWN COUNCIL RECOMMEND REFUSAL as this is agricultural land, is outside of the settlement boundary, and will have a significant effect on the iconic landmark being the grade II listed church.

2. Consultation Responses

Arch. Liaison Off, Essex Police
13.12.2023

The Essex Police Designing Out Crime Office (DOCO) welcomes the opportunity to make comment planning application 23/01694/FUL.

We recognise that communities where safety and security has been addressed and designed in at the earliest planning stages, will enhance the health and wellbeing of its residents. Perception of crime and fear of crime can be an influential factor in determining the synergy and ongoing sustainability of a community.

An integrated approach to crime prevention at an early stage is necessary to all significant components of its design, planning, and layout. Good design and early co-ordination, incorporating 'Crime Prevention Through Environmental Design' (CPTED), can avoid the conflicts that may be expensive or impossible to resolve once the construction is complete. Essex Police would like to see this applicant incorporate CPTED in respect of this development pursuant to the NPPF.

Whilst there are no apparent concerns with the layout of this site, Essex Police would request consultation with the applicant to discuss:

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- the intended security for the dwellings and how the applicant intends to secure the development to keep future users safe whilst also preventing crime and anti-social behaviour.
- The boundary treatment within the proposed site.
- Lighting Considerations - Lighting plays a pivotal role in deterring criminal activity, but also promotes a feeling of safety within that space. When designing both public and private space, (and when applied and designed correctly), lighting can reduce the potential for crime.

The DOCO would wish to seek further clarity regarding the lighting proposals as it is imperative that the lighting provision must provide uniform illumination with due consideration given to the spill of light and ecological considerations.

- Electric vehicle charging points, (EVCP) - we would recommend due consideration is given to the security provision for EVCP. Early consideration will mitigate the opportunities associated with this crime type. We would welcome consultation regarding the infrastructure, proposals, and management of EV charging points.

We recommend that the developer seeks to achieve the Secured by Design (SBD) - Homes 2023 accreditation in respect of all relevant aspects of this proposed development. SBD is the national official police security initiative that works to improve the security of building and their immediate surroundings to provide a safe and secure environment to help reduce the opportunities for crime and minimise the fear of crime, as referenced in the NPPF, 'Promoting Healthy and Safe Communities'. Achieving the award will demonstrate to residents that their security has been considered and incorporated "by design" to the current approved, and therefore proven effective, standard.

We would welcome the opportunity to consult with the developer to provide a safe and secure environment for this development and would invite them to contact us via designingoutcrime@essex.police.uk.

Essex County Council
Heritage
25.01.2024

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. Other designated heritage assets in close proximity which are likely to be affected by the proposal are:

- o Grade II Listed Memorial Plaque and Enclosing Railings, attached to external East wall of chancel below East window Church of St Michael (List UID: 1111501);
- o Grade II Listed Kirby Hall (List UID: 1111502);
- o Grade II Listed Barn approximately 80 metres South West of Kirby Hall (List UID: 1337139).

The current proposal is not dissimilar from the scheme previously submitted under reference 22/01670/FUL and is not considered to overcome the concerns raised previously:

The proposed development is considered to have a detrimental impact on the setting of Kirby Le-Soken Conservation Area, Grade II* Listed St Michael's Church and the above-mentioned designated heritage assets. The surrounding, undeveloped and rural landscape is a defining feature of both the Conservation Area and the Church's setting. It has an important positive contribution to their significance and to a continued understanding, appreciation and experience of the historic settlement around the church, in an isolated and agrarian setting which remains largely unchanged and unspoilt by modern development.

Views of the village core and of the Church tower from the surrounding rural landscape and agrarian fields of the proposal site, highly contribute to an understanding of Kirby-le-Soken as an isolated settlement. Due to the important contribution made by these open fields and landscape, further development on the open fields surrounding the Conservation Area would considerably detract from the significance of Kirby-le-Soken as an isolated rural development and from the existing isolated and secluded character of the setting of St Michael's Church. The Church was built at the settlement edge and the fact this ecclesiastical landmark serviced both the settlement and wider agricultural landscape is still discernible. The proposed

development would erode this experience and important contribution to significance.

The proposed development would therefore result in less than substantial harm to the significance of Grade II* Listed Church of St Michael and to the Conservation Area 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 our understanding of the significance of the identified heritage assets in their original isolated location.

It is noted that, as assessed in the supporting planning and heritage statement and observed during our site visit, the setting to the west of the Church and of Kirby Le-Soken Conservation Area has already been eroded and urbanised with the construction of the Tamarisk Close and Briarfields developments.

With regards to the development to the west of the Church, permitted under 19/00120/FUL, it should be noted that the principle of development for this site had already been established with outline application 16/00500/OUT for the erection of 4 bungalows and 6 houses. Therefore, while it was assessed that the proposal was resulting in less than substantial harm to the significance of the identified heritage assets, heritage comments only pertained to the appearance of the proposed development. Similarly, heritage comments relating to the scheme approved under reference 23/00620/DETAIL take into account the intervening presence of the previously built development at Tamarisk Close.

The construction of a residential development to the south of St Michael Church would further erode the open and rural setting of the Grade II* listed building and the cumulative effect of the proposal should therefore be taken into account.

With regards to the National Planning Policy Framework (December 2023), the level of harm to the Conservation Area, St Michael's Church and the other identified heritage assets is considered to be at the high end of 'less than substantial'. As such the local planning authority should weigh this harm against any public benefits of the proposal including, where appropriate, securing its optimum viable use as per Paragraph 208.

Moreover, the proposal does not preserve those elements of the setting that make a positive contribution to the identified heritage assets, or which better reveal their significance, as required under Paragraph 212 of the NPPF.

Essex County Council
Archaeology
12.12.2023

The proposed development lies immediately adjacent to the historic core of the village comprising the medieval church/hall complex at Kirby le Soken. St Michaels Church dates to the 14th century and the current hall dates to the 17th century and would likely have replaced earlier manorial buildings. The placename of Kirby originates from two Scandinavian-derived words, 'Kirk' for church and 'by' for village. This suggests the presence of a church in this location during the Danish Viking period, in the 9th or 10th century. Additionally, 'Soken' suggests that the area was once the holding of a Danish Sokeman, further indicating that the settlement may have its origins in this period. Any surviving evidence relating to the early medieval occupation would be of high significance. There have been few archaeological investigations within the settlement, however evidence for prehistoric, Roman and medieval activity has been recovered during recent

archaeological investigations along The Street and further south of the village.

The potential for disturbance to archaeological remains will need to be established through a programme of trial trenching evaluation.

The following recommendations are made in line with the National Planning Policy Framework (Paragraph 205), and Tendring Local Plan policy PPL7:

RECOMMENDATION: Archaeological trial trenching and excavation

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 to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority) which has been approved in writing. 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.

Reason for recommendation

The Essex HER shows that the proposed development is located within an area with potential for below ground archaeological deposits. The development would result in harm to non-designated heritage assets with archaeological interest.

Further Recommendations:

A professional and accredited team of archaeologists should undertake the archaeological work. The archaeological work will comprise initial trial trenching evaluation. 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.

If you have any questions about this advice, please do not hesitate to contact me.

Historic England
08.12.2023

Thank you for your letter of 4 December 2023 regarding the above application for planning permission.

Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application.

We suggest that you seek the views of your specialist conservation and archaeological advisers. You may also find it helpful to refer to our published advice at <https://historicengland.org.uk/advice/find/>

ECC Highways Dept
12.12.2023

It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

The information submitted with the application has been fully assessed by the Highway Authority and conclusions reached based on a desktop study in conjunction with a previous site visit. The site is situated on Briarfields a local residential road that forms a cul-de-sac. It is noted that the proposal is identical to previous application 22/01670/FUL submitted last year, in relation to nature of the access and to the parking arrangements, as the scheme remains identical to the earlier proposal in highway terms. As before, access into the proposal site will be taken from the western cul-de-sac and will require the demolition of a private double garage to no. 4 The Sparlings. It is noted that no new public roads are to be provided within the site proposal. The proposal conforms to the Essex Planning Officers Association (EPOA) parking standards, which ECC applies to development proposals. The EPOA standards are for one space per one bedroom dwelling and two spaces for two or more-bedroom dwellings, 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. On the removal of the existing private garage and prior to the occupation of the development, the extension of The Sparlings carriageway (width: 5.5 metres) and footway x1 (width; 1.8 metres) shall be extended for a minimum distance of 18 metres to provide access to the proposal site as shown in principle on planning application drawing no. 1367/01 A.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

2. As indicated on drawing no. 1367/01 A and prior to occupation of the development a Size 3 vehicular turning facility, shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

3. Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the private road, shall be provided on both sides of each vehicular access. Such visibility splays shall be retained free of obstruction above 600mm at all times. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety in accordance with policy DM1.

4. Prior to the occupation of the dwellings the internal layout and parking shall be provided in principle with drawing numbers:
o 1367/01 A Proposed block plan

o 1367/08 A Garage and car port floor plans and elevations

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM1.

5. There shall be no discharge of surface water onto the Highway.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety to ensure accordance with policy DM1.

6. Prior to occupation of the development the new vehicular access for No.4 The Sparlings shall be constructed at right angles to the highway boundary and to the carriageway. The width of the access at its junction with the highway shall not be less than 3.6 metres (equivalent to 4 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/ 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.

7. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay and retained free of obstruction above 600mm at all times.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

8. It is noted that the proposed access at The Sparlings crosses public footpath number 22 Frinton and Walton. Prior to occupation of the development a detail outlining a revised crossing point on either side of The Sparlings for public footpath no. 22 (Frinton and Walton_164) to be submitted and agreed in consultation with the Highway Authority.
Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

9. The public's rights and ease of passage over public footpath nos. 21 and 22 (Frinton and Walton_164) shall be maintained free and unobstructed at all times.

Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

10. Prior to occupation of the development, surface improvements to part of Public Right of Way, Footpaths 21 and 22 (Frinton and Walton_164) for the extent of site boundary, to include but not restricted to rolled planings with a timber edge at a width of 2m, details shall be agreed with the Local Planning Authority in conjunction with the Public Rights of Way team, prior to commencement of the development.

Reason: To make adequate provision within the vicinity of the site for the additional pedestrian traffic generated as a result of the proposed development in accordance with policies DM1 and DM11.

11. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council, (to include six one day travel vouchers for use with the relevant local public transport operator).

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

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 A RSA1 for the proposed access and off-site highway improvement scheme to be provided, 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) roadsafety.audit@essexhighways.org
- o The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate
- o Prior to any works taking place in the highway the developer should enter into an S278 agreement or Minor Works Authorisation with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works
- o All highway related details should be agreed with the Highway Authority.

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: It is noted that the proposed access at The Sparlings crosses public footpath no, 22 Frinton and Walton. The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to

be a breach of this legislation. The public's rights and ease of passage over public footpath nos. 21 and 22 Frinton and Walton shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.

4: The area(s) directly adjacent to the Public Right of Way in which the trees are to be planted should not be less than 3 metres wide, exclusive of the footway and the trunks of the trees should be no nearer than 2 metres to the channel line of the public footpath. The same dimensions should be used in situations where the footway is located adjacent to the carriageway.

5: 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.

6: 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 also available.

Tree & Landscape Officer
14.12.2023

The application site is currently in agricultural use and does not contain any trees or other vegetation.

Land adjacent to the application site contains several mature trees and established hedges however considering the scale and layout of the proposed development these are unlikely to be adversely affected by the proposed development. However, should planning permission be likely to be granted then details of the method of tree and hedge root protection should be secured by a planning condition to ensure that retained vegetation is physically protected for the duration of the construction phase of any approved development.

This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations.

With regard to the impact of the development on the local landscape character it is clear that in simple terms the proposed change of use

of the land from agricultural use to residential will have a harmful effect on the local landscape character. The development would, if approved, contribute to the gradual erosion of the countryside and to the degradation of the visual qualities of the local environment.

The proposed dwellings will be clearly visible from adjacent Public Rights of Way and although soft landscaping will, to some degree, mitigate the harm, the development will be prominent in the landscape.

Should planning permission be likely to be granted then a condition should be attached, to any such permission, to secure details of soft landscaping to soften, screen and enhance the appearance of the development.

Environmental Protection
06.12.2023

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

Contaminated Land: Given the sites proximity to historical agricultural land, location to a piece of historical, registered contaminated land, and having consideration for the scale of the 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 DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' 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:
 - Human health,
 - Properly (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Groundwaters and surface waters,
 - Ecological systems
 - 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.

Construction Method Statement: I can confirm we have reviewed the submitted CMS and have no adverse comments to make.

Should you have any queries concerning this, please do not hesitate to contact me.

UU Open Spaces
14.12.2023

Public Realm Assessment

Play Space - current deficit:

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

Open Space- 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*

- The only play area in Kirby has had some recent improvements and is adequate to cope with some additional development.

- The closest open space to the development is located at Kirby playing fields, this is a well used facility and hosts a number of football teams. To cope with any additional development in the area, there needs to be some modifications to the change facilities.

Identified project*:

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

- To cope with any additional development in the area, there needs to be some modifications to the change facilities.

3. Planning History

92/00955/FUL	(Parkers Farm, Walton Road, Thorpe le Soken) Retention of caravan and sheds for agricultural purposes[Renewal of permission TEN/1095/90]	Approved	24.09.1992
03/02400/FUL	Proposed grain store (Kirby Hall Farm)	Approved	05.02.2004
08/01193/LBC	Removal of existing barn roof and replace with new roof covering. Removal of windows at gable ends and restore weatherboarding as original.	Approved	13.11.2008
12/01084/FUL	Replacement of farm buildings with dwelling for farm manager.	Approved	15.10.2013
12/01085/CON	Demolition of farm buildings.	Approved	07.05.2013

14/00521/DISCON	Discharge of condition 04 (external facing and roofing materials), 05 (landscaping), 07 (screen walls and fences) and 10 (parking facility) of planning permission 12/01084/FUL.	Approved	09.05.2014
22/01670/FUL	Proposed erection of 9 no. dwellings comprising of 6x two bed almshouse style bungalows, 1x three bed house, 2x five bed houses and a replacement garage.	Refused	06.04.2023
22/01670/FUL	Proposed erection of 9 no. dwellings comprising of 6x two bed almshouse style bungalows, 1x three bed house, 2x five bed houses and a replacement garage.	Refused	06.04.2023

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
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

7. Officer Appraisal

Site Description

The site, which measures 1.04ha, comprises arable farmland which stands to the immediate south of St Michaels Church, a Grade II* Listed Building, and to the immediate west of a 1970's small housing estate (Briarfields/The Sparlings) on the south side of The Street, within the parish of Kirby-le-Soken. The Old Vicarage stands to the immediate north-west of the site adjacent to the church, whilst Kirby Hall, a Grade II Listed Building stands on the west side of The Old Vicarage to complete a heritage grouping. The site includes for the purposes of the land edged in red a single garage which is situated at a spur at the end of Briarfields/beginning of The Sparlings which is proposed to be demolished and replaced through the submitted proposal.

The site falls adjacent to, but outside of the Settlement Development Boundary for Kirby-le-Soken within the adopted Local Plan 2013-2033. There is also an area designated as safeguarded open space to the north of the site (essentially the area around the Grade II* listed church mentioned above), with the Kirby-le-Soken Conservation also sited adjacent to the west of the application site.

The site is framed along its western flank boundary with The Vicarage by a mature tree line. Public footpaths Frinton and Walton Nos. 21 and 22 extend along the eastern and western boundaries of the site respectively whereby No.21 then extends through the churchyard to The Street. A new small infill bungalow housing scheme is in the course of being constructed to the immediate north of the site on the east side of the church, which is accessed off The Street.

Description of Proposal

This application seeks full planning permission for the erection of nine dwellings, which would comprise of six almshouse style bungalows served by two bedrooms, one house served by three bedrooms, and two houses served by five bedrooms, as well as a replacement garage.

The development would incorporate a communal green feature which would be formed between the church and six of the dwellings. The remainder of the dwellings would be sited towards the south end of the site which would be served by a new service road with turning head leading from Briarfields/The Sparlings.

The submitted drawings also show that there would be perimeter planting for the scheme as well as internal dividing hedges and a feature tree within the middle of the communal green.

Site History

In April 2023, under reference 22/01670/FUL, planning permission was refused for the same scheme, with concerns raised that the site fell outside of a recognised Settlement Development Boundary, that the development would cause overriding harm to the character and appearance of the rural landscape, and significant harm from a heritage perspective through harm to the setting of the Kirby-le-Soken Conservation Area, the Grade II* Listed St Michael's Church and other designated heritage assets. In addition, a legal agreement to secure a financial contribution towards RAMS was not completed.

This application represents the exact same development as previously determined, with the only notable differences being increased levels of justification and responses to earlier consultee comments to the previous application contained within the supporting Planning Statement. Specifically, it argues that the site is not as prominent as suggested due to the development recently approved on the adjoining land, and also argues that same development (approved under references 19/00120/FUL and 23/00620/FUL) has denigrated the setting of the heritage assets, and that the development would not intervene between the Hall, church and Old Vicarage given these are all located to the west of the application site.

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.

The site lies outside the Settlement Development Boundary (SDB) for Kirby-le-Soken as designated within the adopted Local Plan and adjacent to the Kirby-le-Soken designated conservation area as also shown on the inset map which lies to the immediate north-west of the site. As such, the proposal by reason of the site's location is contrary to Policies SP1, SP3, SPL1 and SPL2 of the adopted Local Plan whereby the proposal fails to meet the sustainability aims and objectives of these policies in terms of achieving sustainable development by directing future housing growth to within the existing settlements. The Council presently has a healthy five year housing land supply resulting from the implementation of larger housing schemes approved for the district prior to the adoption of the current Local Plan whereby the plan policies contained within the current plan relating to housing growth and allocations are up to date.

2. Impact to Landscape Character

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.

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.

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 to the west and the circa 1970's small housing estate to the immediate east (Briarfields/The Sparlings) comprising as it does an agrarian rural landscape with a strong pastoral relationship with the church.

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, as pointed out by the Council's Tree and Landscape officer. The proposed dwellings would also be clearly visible from the adjacent Public Rights of Way which run around the perimeter of the site, and whilst soft landscaping measures as indicated on the proposed site layout would to some degree mitigate against the visual harm caused, the development would still be prominent within the local landscape.

It is considered from this landscape assessment that the development would cause overriding harm to the character and appearance of this localised rural landscape setting in terms of loss the erosion of localised landscape character in favour of housing and also its resulting impact on the settlement's setting which would be contrary to Policies SP7, SPL3 and PPL3 and also contrary to para 180 of the NPPF as it would fail to enhance the natural and local environment and would as a consequence fail to meet the environmental objective of the NPPF in terms of achieving sustainable development.

3. Heritage Impacts

Paragraph 208 of the NPPF 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 application site adjoins the Kirby-le-Soken Conservation Area and is also within the setting of a number of Listed Buildings. Accordingly, ECC Place Services (Heritage) have been consulted, and have provided the following comments:

"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. Other designated heritage assets in close proximity which are likely to be affected by the proposal are:*

- o Grade II Listed Memorial Plaque and Enclosing Railings, attached to external East wall of chancel below East window Church of St Michael (List UID: 1111501);*
- o Grade II Listed Kirby Hall (List UID: 1111502);*
- o Grade II Listed Barn approximately 80 metres South West of Kirby Hall (List UID: 1337139).*

The current proposal is not dissimilar from the scheme previously submitted under reference 22/01670/FUL and is not considered to overcome the concerns raised previously:

The proposed development is considered to have a detrimental impact on the setting of Kirby Le-Soken Conservation Area, Grade II Listed St Michael's Church and the above-mentioned designated heritage assets. The surrounding, undeveloped and rural landscape is a defining feature of both the Conservation Area and the Church's setting. It has an important positive contribution to their significance and to a continued understanding, appreciation and experience of the historic settlement around the church, in an isolated and agrarian setting which remains largely unchanged and unspoilt by modern development.*

Views of the village core and of the Church tower from the surrounding rural landscape and agrarian fields of the proposal site, highly contribute to an understanding of Kirby-le-Soken as an isolated settlement. Due to the important contribution made by these open fields and landscape, further development on the open fields surrounding the Conservation Area would considerably detract from the significance of Kirby-le-Soken as an isolated rural development and from the existing isolated and secluded character of the setting of St Michael's Church. The Church was built at the settlement edge and the fact this ecclesiastical landmark serviced both the settlement and wider agricultural

landscape is still discernible. The proposed development would erode this experience and important contribution to significance.

The proposed development would therefore result in less than substantial harm to the significance of Grade II Listed Church of St Michael and to the Conservation Area 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 our understanding of the significance of the identified heritage assets in their original isolated location.*

It is noted that, as assessed in the supporting planning and heritage statement and observed during our site visit, the setting to the west of the Church and of Kirby Le-Soken Conservation Area has already been eroded and urbanised with the construction of the Tamarisk Close and Briarfields developments.

With regards to the development to the west of the Church, permitted under 19/00120/FUL, it should be noted that the principle of development for this site had already been established with outline application 16/00500/OUT for the erection of 4 bungalows and 6 houses. Therefore, while it was assessed that the proposal was resulting in less than substantial harm to the significance of the identified heritage assets, heritage comments only pertained to the appearance of the proposed development. Similarly, heritage comments relating to the scheme approved under reference 23/00620/DETAIL take into account the intervening presence of the previously built development at Tamarisk Close.

The construction of a residential development to the south of St Michael Church would further erode the open and rural setting of the Grade II listed building and the cumulative effect of the proposal should therefore be taken into account.*

With regards to the National Planning Policy Framework (December 2023), the level of harm to the Conservation Area, St Michael's Church and the other identified heritage assets is considered to be at the high end of 'less than substantial'. As such the local planning authority should weigh this harm against any public benefits of the proposal including, where appropriate, securing its optimum viable use as per Paragraph 208.

Moreover, the proposal does not preserve those elements of the setting that make a positive contribution to the identified heritage assets, or which better reveal their significance, as required under Paragraph 212 of the NPPF."

Taking the above into consideration, Officers note that due to the permanent change to a currently open and undeveloped parcel of land which is rural in character, a high level of less than substantial harm has been identified in relation to the significance of the Grade II* Listed Church of St Michael and also to the Kirby-le-Soken Conservation Area. It is the responsibility for Officers, in line with paragraph 208 of the NPPF, to weigh up this harm against the public benefits the proposal would generate. On this occasion, the benefits include the addition of nine dwellings as additional market housing for the village. However, given that the site lies outside of a Settlement Development Boundary and the Council has a comfortable five year housing land supply, it is considered that while there are some minor public benefits, this is greatly outweighed by the high level of less than substantial harm identified.

It is noted for this application affecting a Grade II* Listed Building that Historic England upon consultation have confirmed they do not wish to offer any advice to the submitted proposal and also state in their response that they suggest that the Local Planning Authority seeks the views of its own specialist conservation and archaeological advisers.

Within the supporting Statement, concern is raised with regards to the determination of the previous application on this site in comparison to the decisions on the adjoining land (references 19/00120/FUL and 23/00620/FUL), however these specific points are addressed within the comments from ECC Place Services (Heritage) above.

4. Design and Layout

Paragraph 135 of the 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.

Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context, and to protect the district's landscape and the quality of existing places and their environs. Policy SPL3 and LP4 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 which create a unique sense of place.

The proposed development would take the form of a low density, high quality 'bespoke' housing scheme which would incorporate a communal horseshoe green feature to the front of the site and include two identical terraces of 6 no. single storey dwellings positioned around the southern end of the green in a style to replicate traditional almshouses. The remaining three dwellings would be in the form of 2-storey detached dwellings positioned behind the 'almshouses' also designed in traditional style whereby Plot 4 would be in the style of a manor house and Plots 8 and 9 would have an interesting design mix combining a 1½ storey cottage frontage, but with a more austere 2-storey rear elevation. All of the dwellings would have traditional finishes as would the serving garaging and car ports.

No design or layout objections are raised per se to the design approach of the proposed scheme on site whereby the dwellings shown would exhibit individual architectural quality, subject to the use of high quality materials and other detail such as detailed landscaped planting and thereby having the potential to promote a sense of local distinctiveness and unique sense of place for its occupiers. Additionally, the indicated layout of the development would meet housing density and private amenity standards under Policies LP3 and LP4. However, the design merits of the proposed scheme do not overcome the objections raised in principle against the submitted proposal as highlighted above in this report when assessed against the wider objectives of these local plan policies and against other relevant local plan policies.

5. Impact to Trees

The Council's Tree and Landscape Officer has been consulted on the application, and has provided the following comments in relation to the impact of the development onto existing trees:

"The application site is currently in agricultural use and does not contain any trees or other vegetation.

Land adjacent to the application site contains several mature trees and established hedges however considering the scale and layout of the proposed development these are unlikely to be adversely affected by the proposed development. However, should planning permission be likely to be granted then details of the method of tree and hedge root protection should be secured by a planning condition to ensure that retained vegetation is physically protected for the duration of the construction phase of any approved development.

This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction ' Recommendations."

Therefore, subject to a condition relating to tree protection methods, there are no objections raised in this regard.

6. Highway Safety

Paragraph 114 of the National Planning Policy Framework 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 Local Plan Policy CP2 states proposals will not be granted planning permission if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe.

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, although recommend conditions relating to the extension of the carriageway, a vehicular turning facility, pedestrian visibility splays, no discharge of surface water, the width of the access, boundary planting being set back, the public footpath, and the submission of a Residential Travel Information Pack.

Furthermore, the Council's Adopted Parking Standards require that for a dwelling with two or more bedrooms that a minimum of two parking spaces are required. Parking spaces should measure a minimum of 5.5m x 2.9 metres or, if being relied upon as a parking space, garages should have minimum internal measurements of 7m x 3m. The submitted plans show that parking would be in the form of garaged hardstanding and communal car port spaces, whilst a replacement single garage would be provided for Number 4 The Sparlings to compensate for the existing garage proposed to be demolished as part of this application. Officers are content that this provision is acceptable when assessed against the above standards.

7 Flooding Issues

The site is located within Flood Zone 1 according to the Government's Flood Risk Map for Planning meaning that the site is at the lowest risk of fluvial flooding. As such, it is not necessary for the proposed application to be accompanied by a Flood Risk Assessment (FRA). The Flood Risk Map also shows that the site is at a low risk of surface water flooding (Policy PPL1).

8. 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.

8. Residential Amenities

The nearest residential properties most likely to be impacted by the proposed development are those sited along The Sparlings/Briarfields to the east, most notably Numbers 4, 26 and 28. However, it is noted that the submitted layout shows good separation distances to each of these properties and accordingly the development would not appear significantly imposing or result in a loss of daylight/sunlight. In addition, no overlooking concerns are raised. The development would also see additional vehicular movements via the access adjacent to Numbers 4 and 28, however there is good separation distance between the access and the properties themselves, and the number of comings and goings associated with nine dwellings is, on balance, not considered to be significant enough to generate noise disturbances that would warrant recommending a reason for refusal.

9. Foul 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 be 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 the application form 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.

10. 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, and accordingly the submission is accompanied by a document outlining water, energy and resource efficiency measures, as well as electric vehicle charging. The details contained within are considered sufficient to adhere to the above policy requirements and it is therefore not necessary to include a condition requesting such details at a later stage on this occasion.

11. Open Space and RAMS

(i) Open Space

Paragraph 55 of 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. 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 currently a deficit of 14.61 hectares of equipped play in Frinton, Walton and Kirby but adequate open space. They further advise that the closest open space to the proposed development is located at Kirby playing fields which is a well-used facility and hosts a number of football teams and recommend that in order to cope with any additional development in the area that there needs to be some modifications to the existing change facilities and that a financial contribution is requested because of this additional recreational demand. However, on this occasion, whilst these comments are noted it has not been specifically identified what any financial contribution would be used

towards, and therefore the request does not currently meet the statutory tests under Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) or the NPPF tests. Therefore, at this time, the Council cannot reasonably ask for a financial contribution under Policy DI1 due to the lack of clear justification.

(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) 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.

Other Considerations

Frinton and Walton Town Council recommend refusal on the grounds that the site is agricultural land outside of a recognised Settlement Development Boundary and will have a significant impact on the Grade II Listed church. In answer to this, these points are addressed within the main body of the report above.

There has been a total of 21 objections received, with the following concerns raised:

1. Harm to heritage assets;
2. Highway safety concerns;
3. Insufficient parking provision;
4. Site outside of a settlement boundary;
5. Adverse impact to rural character of the area;
6. Flooding issues;
7. Impact to conservation area; and
8. Negative impacts to wildlife.

In response to this, points 1, 2, 3, 4, 5, 6 and 7 are addressed within the main body of the report above. In answer to point 8, the site is an open parcel of land that is unlikely to accommodate protected species, and as such it would not be reasonable to request the submission of a Preliminary Ecological Assessment on this occasion.

Conclusion

The application is a resubmission of planning reference 22/01670/FUL and is for the erection of nine dwellings and a replacement garage. Officers conclude that the development is of an acceptable design and would not significantly impact upon neighbouring amenities. Furthermore, ECC Highways have raised no objections and there is sufficient parking provision.

However, the application site falls adjacent to, but outside of, the Settlement Development Boundary for Kirby-le-Soken within the adopted Local Plan 2013-2033, and on this occasion also results in overriding harm to the character and appearance of the rural landscape. In addition, a high level of

less than substantial harm has been raised in relation to the impacts of the development to the significance of the Kirby-le-Soken Conservation Area and Grade II* Listed Building, and the low level of public benefits are not considered to outweigh this harm.

For the above reasons, as well as the lack of a completed legal agreement to secure a financial contribution towards RAMS, the proposal is not considered to comply with local and national planning policies and is therefore recommended for refusal.

8. Recommendation

Refusal.

9. Reasons for Refusal

- 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 (Zol) being approximately being approximately 542 metres away from Hamford Water SPA, SAC and RAMSAR. New housing development within the Zol would be likely to increase the number of recreational visitors to these sites and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A 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.

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 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.

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