

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		AP	25/6/2024
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		ML	26/06/2024
Assistant Planner final checks and despatch:		ER	26/06/2024

Application: 24/00019/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr Carl Chapman - Featherfields

Address: Featherfields Maltings Lane Kirby Le Soken

Development: Proposed change of use from agricultural land to a bird sanctuary and rescue including a maximum of 12 portacabins and aviaries with hardstanding, parking and planting.

1. Town / Parish Council

Frinton and Walton Town Council Recommend refusal on the grounds of poor quality and design of site. The location of steel containers is too near to a Site of Special Scientific Interest and concerns over an element of residential use.

2. Consultation Responses

Environmental Protection 26.05.2024 I can advise that the EP Team have no comments to make on the proposal, at this time. However, the application form does not confirm the mechanism for foul waste disposal. The form indicates a sewerage treatment plant, and a septic tank will be utilised - can the agent please confirm the type of system that will be used, and whether this will be an existing system or a new installation.

Environmental Protection 28.05.2024 I can confirm we are satisfied with the proposal. As such could the standard STP informative be attached to any subsequent approval decision.

ECC Highways Dept 10.06.2024 Please find consultation response below for application 24/00019/FUL, from the Highway Authority.

Please note this supersedes the previous recommendation dated: 13th May 2024 for this application.

The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material and google earth image.

Given the additional information submitted on 15th May 2024, from a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority.

Informative:

1: 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.

Tree & Landscape Officer
07.05.2024

The main body of the application site is set to grass and forms part of the open countryside. The site boundary adjacent to Maltings Lane is demarcated by an established hedgerow that provides a good level of screening. There are no trees or other significant vegetation in the main body of the land.

No trees or other important vegetation will be adversely affected by the proposed development.

In terms of the impact of the proposed development on the local landscape character it should be noted that the application site is situated in Hamford Coastal Slopes Landscape Character Area (LCA). The LCA is defined as 'Gently sloping land encircling and forming part of the setting of the open Marshes of Hamford Water National Nature Reserve. Low, scrubby, and intermittent hedgerows divide regimented fields with scattered farmsteads and manorial halls forming a dispersed settlement pattern'.

Any changes in the landscape on the coastal slopes has the potential to be highly visible from Hamford Water.

The overall strategy for the management of the LCA is to conserve the rural, tranquil character as a setting for Hamford Water by resisting further encroachment of development into the setting of Hamford Water. The guidance also seeks to resist development involving the introduction of urbanising elements such as lit areas or tarmac road.

The low-key nature of the development proposal is noted as is the screening provided by existing vegetation that could be strengthened by additional soft landscaping. The impact of the nearby Civic Amenity Household Recycling Site is also noted as this generates vehicular movements along Maltings Lane.

Notwithstanding the nature of the proposed development and the impact of the adjacent civic amenity site it is considered that the introduction of approximately 12 Portacabins with associated hardstanding and car parking would introduce harmful, incongruous elements into the landscape. It is considered that the proposed development would have a negative impact on the visual qualities of the local environment and degrade the overall landscape character.

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.

Essex County Council
Ecology
17.05.2024

Thank you for consulting Place Services on the above application.

Holding objection due to insufficient ecological information on Mandatory biodiversity net gain

Summary

We have reviewed the documents supplied by the applicant. We note that no ecological information has been submitted in support of this application. Therefore we have reviewed Magic Maps (<https://magic.defra.gov.uk/>), aerial imagery, and Great Crested Newt Risk Zones (Essex) | GCN Risk Zones (Essex) | Natural England Open Data Geoportal (arcgis.com) relating to the likely impacts of development on designated sites, protected & Priority species and habitats and identification of proportionate mitigation.

Upon review of historical imagery, we note that the site previously contained rough grassland. However, it is also noted that the site has been cleared sometime between March 2022 and June 2023. Therefore, it is considered that the development area is no longer likely suitable for common reptile species.

As of April 2024, all planning applications (includes minor applications) are required to deliver a mandatory 10% measurable biodiversity net gain. Biodiversity net gains is a statutory requirement set out under Schedule 7A (Biodiversity Gain in England) of the Town and Country Planning Act 1990. This legislation was inserted into the 1990 Act by Schedule 14 of the Environment Act 2021, and was amended by the Levelling Up and Regeneration Act 2023. The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024 made consequential amendments to other parts of the 1990 Act.

We note that this application was received on the 4th January 2024 and validated on 1st May 2024. Therefore, it is considered that mandatory Biodiversity Net Gain could apply due to validation post 2nd April 2024.

As a result, we are not satisfied that there is sufficient ecological information submitted meet requirements of mandatory biodiversity net gains at application stage.

Therefore, it is recommended that further information in line with the Biodiversity Net Gain Planning Practice Guidance (PPG) which sets out how biodiversity net gains should be applied through the planning process should be submitted prior to determination. At application stage the following should be submitted if statutory biodiversity net gains apply to the development:

- confirmation that the applicant believes that planning permission, if granted, the development would be subject to the biodiversity gain condition; or if the applicant believes that the application would be exempt from mandatory biodiversity net gain and the reason for this exemption.
- the pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate);
- where the applicant proposes to use an earlier date, this proposed earlier date and the reasons for proposing that date;
- the completed metric calculation tool (Small sites metric) showing the calculations of the pre-development biodiversity value of the onsite habitat on the date of application (or proposed earlier date) including the publication date of the biodiversity metric used to calculate that value;
- a statement whether activities have been carried out prior to the date of application (or earlier proposed date), that result in loss of onsite biodiversity value ('degradation'), and where they have:

- a statement to the effect that these activities have been carried out;
- the date immediately before these activities were carried out;
- the pre-development biodiversity value of the onsite habitat on this date;
- the completed metric calculation tool showing the calculations, and
- any available supporting evidence of this;
- a description of any irreplaceable habitat (as set out in column 1 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) on the land to which the application relates, that exists on the date of application, (or an earlier date); and plan(s), drawn to an identified scale and showing the direction of North, showing onsite habitat existing on the date of application (or earlier proposed date), including any irreplaceable habitat (if applicable).

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

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.

ECC SuDS Consultee
29.05.2024

Having reviewed the information that has been provided it is considered that there is little opportunity to deliver new SuDS features, therefore we do not wish to provide formal comment on this application.

However, we have checked, and the site is not situated in a Critical Drainage Area but partly lies within Fluvial Flood Zones 3 and 2. The watercourse adjacent to the northern boundary of the site is a Statutory Main River. Therefore, as there is a fluvial risk, we would suggest that the Environment Agency is consulted upon this application.

We strongly advise that any new hardstanding should be constructed with permeable material. As the site lies partly within Fluvial Flood Zones 3 and 2, we would recommend that the portacabins are raised off the ground and set at least 300mm above existing levels. Whilst not within our direct remit, we would also suggest that an emergency flood plan is produced.

3. Planning History

24/00019/FUL	Proposed change of use from agricultural land to a bird sanctuary and rescue including a maximum of 12 portacabins and aviaries with hardstanding, parking and planting.	Current
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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 Local Plan 2013-33 and Beyond (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 made and the Minerals and Waste Local Plans adopted by Essex County Council.

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>

There are no neighbourhood plans in place for this location.

6. **Relevant Policies / Government Guidance**

National:

National Planning Policy Framework December 2023 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

Local:

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

SP1 Presumption in Favour of Sustainable Development

SP3 Spatial Strategy for North Essex

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

PPL1 Development and Flood Risk

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL10 Renewable Energy Generation and Energy efficiency Measures

CP1 Sustainable Transport and Accessibility

Supplementary Planning Documents

Biodiversity Net Gain Supplementary Planning Document June 2023 (DRAFT)

7. **Officer Appraisal**

Site Context

The application site is located on the western side of Maltings Lane outside of the Kirby Le Soken settlement development boundary. The application site also lies partially within flood zones 2 and 3 and within the Walton Backwaters, Horsey Island & Irlams Beach Coastal Protection Belt.

The application site consists of grassland with mature hedgerow on the boundary with Maltings Lane with the southern boundary also heavily vegetated as it becomes Soken Wood. An existing container and portacabin are already sited within the application area and an existing vehicular access is distinguished by large gates and high fencing.

Proposal

The application seeks permission to change the use of the land to a bird sanctuary. The proposal incorporates one portacabin for use as an office, two containers for storage, three containers will

make up a staff facility, quarantine room and bird assessment room. Six further containers will create aviaries with adjoining enclosures. Five off road car parking spaces are provided with associated hardstanding to the portacabins and containers and providing a surface for the aviary enclosures. New tree planting is also proposed.

The applicant confirms the bird sanctuary would be run by himself and would not be open to the public and anticipates one or two visits per day, plus professionals such as vets. There will be no employees.

Principle of Development

Planning law requires that decisions on planning 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). The 'development plan' for Tendring comprises, the Tendring District Local Plan 2013-2033 and Beyond Section 1 adopted in January 2021 and the Tendring District Local Plan 2013-2033 and Beyond Section 2 adopted in January 2022.

Policy SP3 (Spatial Strategy for North Essex) of adopted Section 1 of the Tendring District Local Plan 2013-2033 and Beyond states, amongst other things, that future growth will be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting.

Growth needs to be carefully managed so as not to lead to unsustainable developments in remote and poorly accessible locations. The settlement hierarchy prioritises locations with access to the strategic road network, public transport and which have the potential to offer the widest range of services. All settlements which may experience growth have a development settlement boundary. Those without a settlement development boundary are considered to be part of the countryside.

The application site is located outside of the settlement development boundary for Kirby Le Soken in the Local Plan. Kirby Le Soken is categorised as a Smaller Rural Settlement as defined in Policy SPL1. It is considered that these smaller rural settlements are the least sustainable and the proposed development would extend far beyond the area planned to provide growth for this settlement.

Due to the location of the application site, outside of the settlement development boundary in the Local Plan and having regard to the spatial strategy and place shaping principles set out in the adopted Local Plan Policy SP3 and Policy SP7 this would not be an appropriate site for development.

The proposal fails to comply with the statutory plan-led approach and conflicts with the Council's strategic approach for growth.

Coastal Protection Belt

As clearly set out on the policies maps all of the application site falls within the defined Coastal Protection Belt (CPB). Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 states:

Within the Coastal Protection Belt, as shown on the Policies Maps and Local Maps, the Council will:

a. protect the open character of the undeveloped coastline and refuse planning permission for development which does not have a compelling functional or operational requirement to be located there; and

b. where development does have a compelling functional or operational requirement to be there, its design should respond appropriately to the landscape and historic character of its context and applicants will be required to demonstrate that any development proposals will be safe over their planned lifetime.

The Council will take an 'adaptive approach' to coastal protection, where required, having regard to

an assessment of the impact of coastal change and consideration of any applicable Shoreline Management Plan.

There is no definition of functional or operational requirement in the LP, but it is reasonable to relate this to the nature of the CPB, that is the proximity to the coast.

The proposal is for change of use of the land to a bird sanctuary with associated development and built form and in turn this would have a demonstrably harmful impact upon the character and undeveloped nature of the Coastal Protection Belt designation. There is no compelling functional or operational requirement for such development to be located close to the coast or otherwise to be within the CPB.

The reasoned justification for the policy states that protection of the CPB is to direct development not needing to be located in the CPB to more sustainable locations. No substantiated evidence has been provided that such development is required within the CPB, as opposed to other, more appropriate, locations. The application proposal would not be in an appropriate location because of the conflict with Policy PPL2 a. and therefore, an assessment against Policy PPL2 b. is not required. The proposal is therefore unacceptable in principle.

Design/Visual and Landscape Impact

Paragraph 131 of the National Planning Policy Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness.

PPL3 seeks to protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance, including to estuaries, rivers and undeveloped coast. The policy goes on to confirm that development proposals should have regard to...the Council's Landscape Character Assessments, as relevant, and should protect and reinforce identified positive landscape qualities.

The proposal lies within the Coastal Protection Belt and within the Hamford Coastal Slopes Landscape Character Area (LCA) as defined and described in The Tendring District Council Landscape Character Assessment. The LCA is defined as gently sloping land encircling and forming part of the setting of the open Marshes of Hamford Water National Nature Reserve. Low, scrubby, and intermittent hedgerows divide regimented fields with scattered farmsteads and manorial halls forming a dispersed settlement pattern. Any changes in the landscape on the coastal slopes has the potential to be highly visible from Hamford Water.

The overall strategy for the management of the LCA is to conserve the rural, tranquil character as a setting for Hamford Water by resisting further encroachment of development into the setting of Hamford Water. The guidance also seeks to resist development involving the introduction of urbanising elements such as lit areas or tarmac road.

The portacabins and containers will be set out on the site to allow free movement around them and as result they are spread out across the site. The buildings will be clad in a wood effect weatherboard cladding and although by their nature they are low level, the number of units, totalling 12 will significantly harm the landscape character and quality of the undeveloped coastline.

The Council's Tree and Landscape Officer confirms that the introduction of 12 Portacabins/containers with associated hardstanding and car parking would introduce harmful, incongruous elements into the landscape, contributing to the gradual erosion of the countryside and the rural character of the area.

The scheme would degrade the character of the area and diminish the existing quality of the rural landscape and would therefore not respond positively to local character and context, contrary to policies PPL3, SPL3 and SP7.

Impact upon residential amenity

There are no immediate neighbouring properties that would be impacted by the proposals in terms of outlook or privacy.

The bird sanctuary would not be open to the public and the frequency of visits to the site by the applicant would not have a significant impact on neighbouring amenity.

Access, Parking and Highway Safety

Local Plan Policy SPL3 Part B 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.

The proposal will utilise an existing access to the field and will provide 5 off road car parking spaces. As a result of the proposed use of the site the impact of the proposal is acceptable to Highway Authority.

Flood risk

Paragraph 174 of the NPPF states that applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments (FRA)

Footnote 59 of the NPPF confirms that a site-specific FRA should be provided for all development in Flood Zones 2 and 3. Footnote 60 of the NPPF states that the Sequential and [Exception Tests](#) do not need to be applied to [minor developments](#) and changes of use, except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site.

Policy PPL1 seeks to ensure development is resilient in the event of a flood.

The proposal is for a change of use to a bird sanctuary with associated development partially within Flood Zones 2 and 3. The proposal does not involve a change of use to a caravan, camping or chalet site, or to a mobile home or park home site and therefore the sequential and exception tests are not required, however an FRA has been submitted.

The proposed use of the land is classed as 'less vulnerable' according to Annex 3: Flood risk vulnerability classification of the National Planning Policy Framework.

The Environment Agency confirm that if the site contains a range of Flood Zones as in this case the sequential approach should be applied within the site to direct development to the areas of lowest flood risk. If it isn't possible to locate all development in Flood Zone 1, then the most vulnerable elements should be located in the lowest risk parts of the site.

The application site lies partially in flood zones 2 and 3 with only one portacabin serving the proposed office and the proposed car parking within flood zone 2. The vehicular entrance to the application site lies in both flood zones.

In Flood Zone 2 standing advice for vulnerable developments should be followed for developments (including change of use) that will have a vulnerability classification of 'less vulnerable' and is not a waste treatment site, mineral processing site, water treatment plant, or sewage treatment plant.

In Flood Zone 3, the Environment Agency should be consulted in the case of changes of use where the vulnerability classification will be 'more vulnerable' or 'highly vulnerable' or change from 'water compatible' to 'less vulnerable'.

A FRA has been submitted and is considered appropriate to the scale, nature and location of the development and proportionate to the degree of flood risk however no flood resistance and resilient

measures have been put forward. It therefore considered reasonable and necessary to impose a condition on the grant of planning permission to secure these measures.

Although the proposed development is not for habitable accommodation the requirement for a Flood Warning and Evacuation Plan will also be secured by planning condition on the grant of planning permission.

It is considered that the proposed use which does not include any habitable space and will be used during the day time only is acceptable in this location.

Water Conservation, Drainage and Sewerage

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.

Paragraph: 020 of the National Planning Policy Guidance states that where a connection to a public sewage treatment plant is not feasible a package sewage treatment plant can be considered. The package sewage treatment plant must comply with the Small sewage discharges in England: general binding rules 2015 (GBR), or a permit will be required. Package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010. A completed Foul Drainage Assessment Form 1 (FDA1) form, or equivalent information, should accompany all planning applications where use of a non-mains system is proposed for foul drainage. The operation of small sewage discharges such as those from septic tanks or package treatment plants is regulated under the Environmental Permitting Regulations 2016 (EPR).

Adopted 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.

In relation to non-mains drainage from non-major development the Environment Agency's advice is that to comply with the Framework and PPG on foul drainage matters, a Local Planning Authority (LPA) needs to be satisfied that foul drainage can be provided without adverse impact on the environment. This requires ensuring that both those environmental risks outside of the control of the permit and the relevant considerations in the PPG are addressed. The LPA should also be mindful that the developer will need to address foul drainage matters to get their environmental permit and meet building control regulations. Therefore, they should be confident that it is likely that any necessary permits and approvals can be successfully obtained.

Question 11 of the application form states that it is not intended to connect to a mains sewer. Instead, foul sewage will be disposed of by way of a package treatment plant; the applicant/agent confirmed that a mains connection is not possible.

In considering the acceptability of the proposed non-mains drainage, it is confirmed that there is no mains sewer in proximity to the site. The site is not within close proximity to any watercourse. The site is not located within a Drinking Water Safeguard Zone or Source Protection Zone 1, and the site is sufficiently large enough to accommodate a soakaway. Furthermore, flows from a treatment plant serving one toilet would be low. Taking all these factors into account, and the absence of a mains connection in close proximity to the site, the proposed foul drainage arrangements are considered to be acceptable.

The sites falls within an area of very low risk of surface water flooding and does not fall within a critical drainage area. The proposal is considered a minor development however Essex County Council (sustainable drainage planning advice) have confirmed there is little opportunity to deliver new SuDS features however they make recommendations in respect of the use of permeable materials for hardstanding and raising the portacabins/containers off the ground.

Renewable Energy

Chapter 14 of the National Planning Policy Framework supports the transition to a low carbon future in a changing climate while Policy PPL10 of the Local Plan supports renewable energy generation and energy efficiency measures for residential development.

All development proposals should demonstrate how renewable energy solutions, appropriate to the building, site and location have been included in the scheme and for new buildings, be designed to facilitate the retrofitting of renewable energy installations. The Council is particularly supportive of the use of Solar Panels and will expect them to be incorporated into new development wherever possible and practicable. In this case no renewable energy solutions or energy efficiency measures have been proposed, however it is considered reasonable and necessary to impose an appropriate planning condition on the grant of planning permission to secure the delivery of such measures.

Habitats, Protected Species and Biodiversity Enhancement

This report addresses the distinct legal requirements, ensuring a comprehensive analysis of the ecology and biodiversity impacts of the proposal in line with regulatory standards.

General duty on all authorities

The preamble to Policy PPL4 states that where a development might harm biodiversity an ecological appraisal will be required to be undertaken, and the potential for harm should be considered and addressed in any application. Policy SPL3, Part A criterion d), requires that the design and layout of development maintains or enhances site features, including ecological value.

Given the current condition of the application site, cleared between March 2022 and June 2023 and which previously contained rough grassland, it is considered that the development area is no longer likely suitable for common reptile species.

The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." This includes local authorities, which encompass local planning authorities (LPAs). Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and, after consideration, determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. While the Section doesn't explicitly state that planning decisions must contribute to biodiversity conservation, it's essential to consider the broader context of planning functions within the authority. Typically, LPAs play a crucial role in land use/development decisions, and these can have significant implications for biodiversity. In conclusion for decision making, it is considered that the LPA must be satisfied that the development would conserve and enhance. This development is subject to the general duty outlined above. On that basis a biodiversity enhancement strategy will be secured via condition. Such a strategy may look to include native planting strategies and insect friendly planting, wildlife-friendly infrastructure i.e. nesting boxes, bee bricks and habitat structures.

Therefore, the development with the inclusion of this condition, on balance, and with consideration of the impact of the development and baseline situation on site, does conserve and enhance biodiversity interests.

Biodiversity net gain

Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. The minimum requirement is for a 10% net gain in biodiversity value achieved on a range of development proposals (excluding Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Certificates, householders, self

builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow).

This development is not applicable for Biodiversity Net Gain as it was submitted prior to its implementation in February 2024.

Conclusion

In accordance with the overarching duty outlined above, this development is committed to actively contributing to the conservation and enhancement of biodiversity as set out above and within the planning conditions. In conclusion, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

Other Considerations

Frinton and Walton Town Council object to the planning application due to poor quality and design of site. They consider the location of steel containers is too near to a Site of Special Scientific Interest and concerns over an element of residential use.

These concerns are addressed within the report.

One letter objects to the proposal and raises the following concerns:

- a. It could set a precedent encouraging people to buy agricultural land and try and get planning permission for various uses
- b. It is an unsecure area with valuable birds
- c. Removable temporary construction site metal fencing has been put around the site

Officer comments:

- a. *Each planning application will be considered on its own merits*
- b. *This is not a material planning consideration*
- c. *Any development considered unlawful should be reported to the Council's Planning Enforcement team*

11 letters of support have been received.

8. Recommendation

Refusal - Full

9. Reasons for Refusal

- 1 Policy SP3 (Spatial Strategy for North Essex) of adopted Section 1 of the Tendring District Local Plan 2013-2033 and Beyond states, amongst other things, that future growth will be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting.

Growth needs to be carefully managed so as not to lead to unsustainable developments in remote and poorly accessible locations. The settlement hierarchy prioritises locations with access to the strategic road network, public transport and which have the potential to offer the widest range of services. All settlements which may experience growth have a development settlement boundary. Those without a settlement development boundary are considered to be part of the countryside.

The application site is located outside of the settlement development boundary for Kirby Le Soken in the Local Plan. Kirby Le Soken is categorised as a Smaller Rural Settlement as defined in Policy SPL1. It is considered that these smaller rural settlements are the least sustainable and the proposed development would extend far beyond the area planned to provide growth for this settlement.

Due to the location of the application site, outside of the settlement development boundary in the Local Plan and having regard to the spatial strategy and place shaping principles set

out in the adopted Local Plan Policy SP3 and Policy SP7 this would not be an appropriate site for development.

The proposal fails to comply with the statutory plan-led approach and conflicts with the Council's strategic approach for growth.

- 2 The site lies within the Walton Backwaters, Horsey Island & Irlams Beach Coastal Protection Belt as defined within the adopted Tendring District Local Plan 2013-2033 and Beyond (TDLP).

TDLP Policy PPL2 states that within the Coastal Protection Belt, the Council will protect the open character of the undeveloped coastline and refuse planning permission for development which does not have a compelling functional or operational requirement to be located there.

The proposal would have a demonstrably harmful impact upon the character and undeveloped nature of the Coastal Protection Belt designation. Moreover, there is no compelling functional or operational requirement for the development to be located within the Coastal Protection Belt and the proposed development is therefore contrary to Policy PPL2 a.

- 3 The proposal lies within the Hamford Coastal Slopes Landscape Character Area (LCA) as defined and described in The Tendring District Council Landscape Character Assessment. The LCA is defined as gently sloping land encircling and forming part of the setting of the open Marshes of Hamford Water National Nature Reserve. Low, scrubby, and intermittent hedgerows divide regimented fields with scattered farmsteads and manorial halls forming a dispersed settlement pattern. Any changes in the landscape on the coastal slopes has the potential to be highly visible from Hamford Water.

The introduction of 12 Portacabins/containers with associated hardstanding and car parking would introduce harmful, incongruous elements into the landscape, contributing to the gradual erosion of the countryside and the rural character of the area and causing significant harm to the character and appearance of the undeveloped coastline.

The scheme would degrade the character of the area and diminish the existing quality of the rural landscape and would therefore not respond positively to local character and context, contrary to policies PPL3, SPL3 and SP7.

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 Number: 0159-A-001 Revision status: 00

Drawing Number: 0159-A-200 Revision: 01

Drawing Number: 0159-A-004 Revision status: 00

Drawing Number: 0159-A-202 Revision: 01

Drawing Number: 0159-A-201 Revision: 01

Drawing Number: 0159-A-003 Revision status: 00
 Drawing Number: 0159-A-203 Revision: 01
 Drawing Number: 0159-A-005 Revision status: 00
 Flood Risk Assessment dated March 2024
 Letter dated 15 May 2024 from the applicant to Essex Highways as statement of use
 Email dated 20 May 2024 confirming proposed use of a sewage treatment plant.

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.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

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
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

12. Notification of Decision

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
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Are there any third parties to be informed of the decision? If so, please specify:	YES	NO
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