

# *Land To The East Of Kirby Road, Great Holland, Essex, CO13 0HL*

Planning Statement

December 2023

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# 1 Introduction

- 1.1 This Planning Statement has been prepared by Jones Lang LaSalle ('JLL') on behalf of Beaumont Retirement Living ('the Applicant') in support of an application for amendments under Section 73 of the Town and Country Planning Act 1990 ('the Act') to planning permission 22/00660/VOC, which relates to the development of the Land to the East of Kirby Road, Great Holland, Essex, CO13 0HL ('the Site').

## The Existing Planning Permission

- 1.2 Planning permission was originally granted on 11<sup>th</sup> June 2019 ('the June 2019 Permission') (ref. 17/01988/FUL) for the comprehensive development of the Site. The description of development was as follows:

*"Construction of 41 dwellings for use by residents over 55 years, including a mix of 1 and 2 bed apartments and 2 bed dwellinghouses, with associated car parking and landscaping."*

- 1.3 Following the grant of the June 2019 Permission, a Section 73 amendment application ('the March 2023 Permission') was submitted and subsequently approved on 17<sup>th</sup> March 2023 (ref. 22/00660/VOC). The March 2023 Permission has the following description of development:

*"Variation of conditions 20 and 22 of application 17/01988/FUL to alter the timing of information to be submitted for Condition 20, and to specify the protection of trees relating to the development of Plots 3, 4 and 5 under Condition 22."*

- 1.4 On 25<sup>th</sup> July 2023, a Section 96a amendment application (ref. 23/00921/NMA) was approved in order to separate garages and houses on plots 3, 4 and 5 to allow access to back gardens directly from the front of the properties.

## The Proposal

- 1.5 The Applicant marketed the Site between October 2021 and July 2022, however the due to insufficient demand for this type of development in the area, the Applicant is seeking to remove the restriction which only allows the residential units to be occupied by over-55s.

- 1.6 Therefore, this Application seeks to remove Condition 2 tied to the March 2023 Permission, which states the following:

*"SPECIFIC RESTRICTION ON DEVELOPMENT: OCCUPATION*

*The residential units hereby approved shall be occupied only by persons aged 55 years or over.*

*Reason - For the avoidance of doubt and to ensure that the development is as applied for."*

- 1.7 This minor-material amendment application ('the S73 application') has been submitted alongside another application under Section 96a of the Act for a non-material amendment to planning permission reference 22/00660/VOC ('the S96a application'), to amend the description of

development to remove the reference to “*residents over 55 years*”. This will ensure that it would not prevent the use of Section 73 of the Act to make amendments to the planning permission.

### The Submission

- 1.8 This Planning Statement should be read and considered in conjunction with the supporting information submitted as part of the Application. In addition to this Statement, the following supporting documents have been submitted:

Application Form and Ownership Certificates;

Site Location Plan;

Transport Statement Addendum, by Clewlow Consulting (dated December 2023); and

Summary of marketing activity letter, by Lamb & Co (dated October 2023).

- 1.9 This Planning Statement provides an overview of the Site, the proposed amendments, and an evaluation of the S73 application against policy and guidance. The document is structured as follows:

Section 1 provides an introduction to the document;

Section 2 describes the Site and the context of the surrounding area;

Section 3 provides a description of the proposed amendments;

Section 4 sets out the relevant national and local planning policies relevant to the planning application;

Section 5 provides an assessment of the proposed amendments against key planning policies; and

Section 6 sets out the overall conclusions.

## 2 The Site, its Surroundings and Planning History

### The Application Site and its Surroundings

- 2.1 The 0.9ha application Site adjoins the settlement of Kirby Cross. The Site was previously cleared following its prior use as a gas works and is currently being developed into dwellings. The Site is located adjacent to Beaumont Manor Care Home, an elderly care facility (to the east). Kirby Road (B1032) lies directly to the west and the railway line forms the northern boundary.
- 2.2 A private access road (accessed via Kirby Road) lies to the south of the Site, which was created to serve Beaumont Manor Care Home and will also provide access to the Site.
- 2.3 There is an existing substation located to the north-west of the Site, which is excluded from the Site boundary.
- 2.4 The Environment Agency's Flood Map confirms that the Site falls within Flood Zone 1 and as such is not considered to be at risk from flooding.
- 2.5 The Site has a good level of transport accessibility and is located 0.4 miles (circa 7 minutes' walk) from Kirby Cross Railway Station, providing links into London Liverpool Street in under 1 ½ hours.
- 2.6 The Site has good access to strategic roads, with the A133 around 6 miles (circa 12 minutes' drive) away. The Site also has direct access to Kirby Road providing north-south access; and to the north of the Site, Thorpe Road (B1033) provides east-west access.
- 2.7 The nearest dwellings are located just to the north along Kirby Road, on the other side of the railway tracks. The Site is on the edge of the settlement of Kirby Cross / Frinton, which lies to the north of the Site. Kirby Road provides access from the Site to the nearby services and facilities in Kirby.
- 2.8 Kirby Cross Cemetery is located to the west of the Site, separated by Holland Road.
- 2.9 The land to the south and east is predominantly open greenfield, agricultural land. The land slopes away to the south across open fields, providing views into the Site from this direction, although a line of mature trees to the south of the adjoining field provides some additional screening for long views.
- 2.10 Kirby Cross is on the outskirts of the larger town of Frinton-on-Sea and is 15 miles from Colchester.

### Planning History

- 2.11 The Site is currently being developed in line with the March 2023 Permission (ref. 22/00660/VOC), as well as the minor design changes approved under the July 2023 non-material amendment permission (ref. 23/00921/NMA).
- 2.12 A desk-based planning history search of the Council's online statutory records has been undertaken.

2.13 Planning permission was originally granted on 11<sup>th</sup> June 2019 (ref. 17/01988/FUL) for the comprehensive development of the Site to provide 41 dwellings for use by residents over 55 years, including a mix of 1 and 2 bed apartments and 2 bed dwellinghouses, with associated car parking and landscaping. The permission was subsequently amended via planning permission ref. 22/00660/VOC, approved on 17<sup>th</sup> March 2023.

2.14 The Site's planning history is summarised below:

Application Ref.	Description of Development	Decision / Date
11/01473/FUL	<i>Erection of 74 bed high dependency dementia unit and 20 close care dwelling units with associated car parking, amenity space, landscaping and supporting infrastructure.</i>	Approved (13 <sup>th</sup> April 2012)
16/01948/NMA	<i>Minor changes to the cycle and car parking arrangements, to one external balcony and to the internal arrangements of the main care unit.</i>	Approved (26 <sup>th</sup> Jan 2017)
17/00193/ADV	<i>Two brick piers with signage (stainless steel logo and letters on facing brick freestanding panel).</i>	Approved (21 <sup>st</sup> July 2017)
17/01988/FUL	<i>Construction of 41 dwellings for use by residents over 55 years, including a mix of 1 and 2 bed apartments and 2 dwellinghouses, with associated car parking and landscaping.</i>	Approved (11 <sup>th</sup> June 2019)
22/00660/VOC	<i>Variation of conditions 20 and 22 of application 17/01988/FUL to alter the timing of information to be submitted for Condition 20, and to specify the protection of trees relating to the development of Plots 3, 4 and 5 under Condition 22.</i>	Approved (17 <sup>th</sup> March 2023)
23/00921/NMA	<i>Non Material Amendment to application reference 17/01988/FUL, amended through variation of conditions application 22/00660/VOC, in order to separate garages and houses on plots 3, 4 and 5 to allow access to back gardens directly from the front of the properties.</i>	Approved (25 <sup>th</sup> July 2023)

**Table 2.1:** Planning History

### 3 The Proposed Amendments

- 3.1 The proposed amendments relate solely to the removal of Condition 2 tied to the March 2023 Permission (ref: 22/00660/VOC), which states the following:

*“SPECIFIC RESTRICTION ON DEVELOPMENT: OCCUPATION*

*The residential units hereby approved shall be occupied only by persons aged 55 years or over.*

*Reason - For the avoidance of doubt and to ensure that the development is as applied for.”*

- 3.2 Marketing of the Site took place between October 2021 and July 2022, by Lamb & Co on behalf of the Applicant. The Site was offered ‘off-market’ which is normal practice when selling development sites. Lamb & Co approached a total of 17 developers during this period, however, due to insufficient demand for this type of development in the area, the Applicant is seeking to remove the restriction which only allows the residential units to be occupied by over-55s.
- 3.3 No design changes are being proposed as part of this application.
- 3.4 The quantum of housing (including residential floorspace), housing mix, and private amenity space will not change compared to the approved scheme.

## 4 Relevant Planning Policy Framework

4.1 The Application Site is situated under the administrative control of the Tendring District Council. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. As such, the application has been considered against the following policy considerations:

The Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities' Shared Strategic Section 1 (adopted 26<sup>th</sup> January 2021);  
 The Tendring District Local Plan 2013-2033 and Beyond: Section 2 (adopted 25<sup>th</sup> January 2022);  
 and  
 Associated Local Plan Policy Maps.

4.2 The National Planning Policy Framework (NPPF) (2021), National Planning Practice Guidance (NPPG), National Design Guide (2019) and Technical Housing Standards (2015) provide guidance at national level and are important material planning considerations in the determination of planning applications.

### Site Designations

4.3 The Site is included within a designated Settlement Development Boundary in the Local Plan, where development is directed.

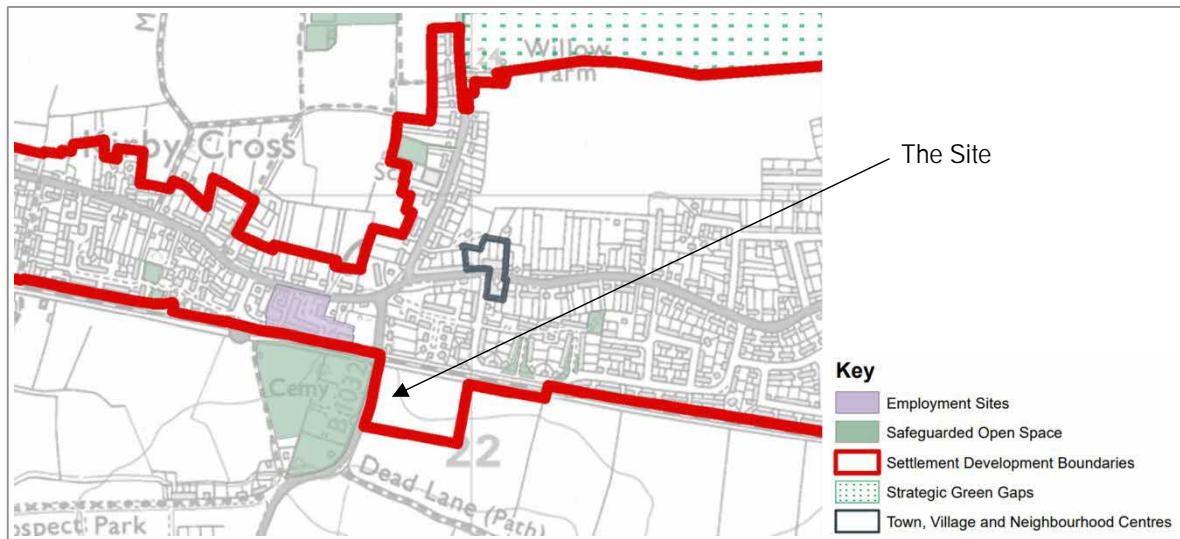


Figure 4.1: Extract from Local Plan Policy Map (Source: tendringdc.uk)

### The National Planning Policy Framework (NPPF) (2021)

4.4 The NPPF was updated in 2021 and sets out the Government's overarching economic, environmental and social planning policies in England and how these are expected to be applied. The NPPF does not change the statutory status of the Development Plan as the starting point for decision making; however, it is a material consideration for Local Planning Authorities (LPAs) in the determination of planning applications.



4.5 **Paragraph 38** of the NPPF encourages local planning authorities to work proactively with applicants to secure developments that will improve the economic, social, and environmental conditions of an area.

4.6 **Paragraph 11** is a key part of the NPPF. It states that:

*“Plans and decisions should apply a presumption in favour of sustainable development.*

*For decision-taking this means:*

*c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

4.7 **Section 5 (Delivering a sufficient supply of homes)** states that it is important that a sufficient amount and variety of land comes forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

4.8 **Section 11 (Making effective use of land)** states that planning policies should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs. Local planning authorities should also promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained, and available sites could be used more effectively.

*National Planning Practice Guidance (NPPG)*

4.9 The National Planning Practice Guidance was published in March 2014 (since revised in 2021) and is a web-based resource for all material relating to planning. The guidance and policies published here form a material consideration for any planning application decision.

4.10 The National Design Guide, updated in 2021 is part of the suite of guidance. It solidifies an expectation for high quality buildings and places and sets out how this can be achieved as well as best practices.

**Tendring District Local Plan: Section 1 (2021)**

4.11 Formally adopted on 26<sup>th</sup> January 2021, the ‘Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities’ Shared Strategic Section 1’ is the Spatial Development Strategy for North Essex. The ‘Section 1 Plan’ was prepared jointly by Tendring District Council, Colchester Borough Council and Braintree District Council – the LPAs collectively known as the ‘North Essex Authorities’ (NEAs) to form the first part of each of the authorities’ respective Local Plans.

4.12 Key policies of note are detailed below:

Policy	Description
SP1	Presumption in Favour of Sustainable Development
SP3	Spatial Strategy for North Essex
SP4	Meeting Housing Needs
SP6	Infrastructure and connectivity
SP7	Place Shaping Principles

**Table 4.1:** Tendring District Local Plan: Section 1 (Key Policies)

### Tendring District Local Plan: Section 2 (2022)

4.13 The 'Tendring District Local Plan 2013-2033 and Beyond: Section 2' was adopted 25<sup>th</sup> January 2022. Unlike the Section 1 Plan, the 'Section 2 Plan' is applicable to Tendring District only and sets out a vision for the District and explains how growth will be managed over the plan, ensuring that development is in accordance with national policy.

4.14 Key policies of note are detailed below:

Policy	Description
SPL1	Managing growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
LP1	Housing supply
LP2	Housing choice
LP3	Housing density and standards
LP4	Housing layout
LP5	Affordable housing

**Table 4.2:** Tendring District Local Plan: Section 2 (Key Policies)

## 5 Planning Policy Assessment

- 5.1 This section considers the key issues relating to the proposals in the context of relevant national, regional, and local planning policy, as well as material considerations.
- 5.2 It is important to emphasise that Section 38(6) of the Planning & Compulsory Act 2004 states that applications must be determined in accordance with the relevant Development Plan, unless material considerations indicate otherwise.
- 5.3 This variation of condition application only considers matters where this proposal differs from the consented scheme which remains extant.

### A. The principle of residential use on the application Site

- 5.4 Delivering housing is a strategic priority for the Government and for the County and Local Councils. Accordingly, planning policy is placing evermore emphasis on the need to boost levels of housing. Residential development on this Site therefore continues to comply with national, regional and local pro-growth planning policies. Set out in Policies SP4 and LP1 of the Local Plan, Tendring's target housing supply for the period between 2013-2033 is 11,000 homes (550 new homes per year).
- 5.5 Regarding the development's location, in policy terms, the Local Plan identifies the Site as within the settlement boundary, where there is a general presumption in favour of new development (Policy SPL2). The Site was formerly used as a gas works and has since been cleared, and is considered a previously developed site. The reuse of previously developed sites within settlement boundaries is promoted as the focus for additional growth in the Local Plan (Policy SPL2). Kirby Cross is also identified as a focus for growth (Policy SPL1). Furthermore, the principle of residential development on the Site has already been established through the June 2019 Permission (ref. 17/01988/FUL). The Site is therefore considered to be a highly suitable development location.
- 5.6 Given the above, we are of the view that residential use is still in accordance with the relevant Development Plan.
- 5.7 This brings us onto the over-55 restriction. The Site has been marketed between October 2021 and July 2022 by Lamb & Co who have confirmed that the current site is not viable with the age restriction due to insufficient demand in the area, difficulty obtaining funding and/or increased funding costs. Even a developer specifically operating in over 55s units thought the location was not suitable.
- 5.8 It is clear that despite an extensive marketing campaign, there has been no demand for such units. Given there is no overriding need for this accommodation, the view should be taken that these units will be able to contribute to local housing need without the restriction.
- 5.9 This has also been tested on a number of similar cases on appeal. Notable appeals include the following:
  - APP/X1735/A/04/1146286 - A condition limiting the occupation of sheltered flats to people aged 55 and above, was deleted by an Inspector who considered that it was not necessary. The Council had failed to provide substantial evidence to support the retention of the condition. There were no development plan policies supporting this view and the figures on housing need, did not amount to the kind of substantial evidence required under the terms of costs circular.

- APP/A2335/A/09/2116835 – Again, the condition stated that the occupiers of the flats should be at least 55 years old. The Inspector noted that the site was located close to a town centre and was accessible by a choice of means of transport. In his opinion, lifting the condition would not materially increase car use and accordingly would not lead to pressure for on-street car parking or compromise highway safety. Although the intention of the condition had been to allow people over 65 years to occupy the accommodation even if they had younger spouses, the evidence suggested that deleting it entirely would not have any material impact on highway conditions.
- APP/B9506/A/10/2123681 - The Inspector removed a condition restricting the use of flats in Hampshire to elderly persons' accommodation in the absence of any evidence to show a need in the area. The Inspector noted that the Council's main concern was that without such a restriction more people would be likely to occupy the property and there would be increased car ownership and usage. He reasoned, however, that the modest size of the property would limit the number of people likely to occupy it, and that the number of adults at the premises would not be greatly affected by the age restriction. He also pointed out the many people well over 55 years old own a car. He judged that car usage and the associated noise and disturbance would be unlikely to increase to a harmful extent. He also remarked that the Council's observation that car ownership rates were lower in schemes for those over 55 were not quantified or supported by evidence on housing schemes of similar size. In respect of need the Inspector acknowledged local observation that there was some demand in the area for accommodation for the over 55s. He also saw that the site was well located for occupation by the elderly. However, there was no substantial evidence from the Council to support its contention that there was a requirement to retain the age restriction to serve the housing needs of the community.

## B. Traffic, Parking and Servicing

- 5.10 Local Plan Policy CP1 states that that “*proposals for new development must be sustainable in terms of transport and accessibility and therefore should include and encourage opportunities for access to sustainable modes of transport, including walking, cycling and public transport.*”
- 5.11 Policy CP2 of the Local Plan also states that “*proposals for new development which contribute to the provision of a safe and efficient transport network that offers a range of sustainable transport choices will be supported. Major development proposals should include measures to prioritise cycle and pedestrian movements, including access to public transport. [.]. 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.*”
- 5.12 The Site is in a highly accessible location in relation to public transport, around 0.4 miles (circa 7 minute s' walk) from Kirby Cross train station. This is also a well located Site in relation to access to local services and facilities located in Kirby Cross.
- 5.13 The Transport Statement Addendum (dated October 2023) by Clewlow Consulting which accompanies the planning application concludes that proposed amendments as part of this S73 application would have a negligible impact on the local highway network.

- 5.14 Transport Statement Addendum also concludes that the layout of the roads in the development will be such that they would be suitable for adoption in future.
- 5.15 It is concluded that if the restriction upon over 55s is removed, the proposal remains acceptable in transport terms, in accordance with the relevant development plan.

## 6 Conclusion

- 6.1 JLL has been instructed on behalf of Beaumont Retirement Living ('the Applicant') to provide planning consultancy support for an application for amendments under Section 73 of the Town and Country Planning Act 1990 ('the Act') to planning permission 22/00660/VOC, which relates to the development of the Land to the East of Kirby Road Great Holland Essex CO13 0HL ('the Site').
- 6.2 Planning permission was originally granted in June 2019 (ref. 17/01988/FUL) for the comprehensive development of the Site to provide 41 new dwellings which will meet the needs of residents over the age of 55 who wish to live independently and have on-site support. Following the grant of the June 2019 Permission, a Section 73 amendment application was approved in March 2023 (ref. 22/00660/VOC) to alter the timing of information to be submitted for Condition 20, and to specify the protection of trees relating to the development of Plots 3, 4 and 5 under Condition 22.
- 6.3 The Applicant marketed the Site between October 2021 and July 2022, however the due to insufficient demand for this type of development in the area, the Applicant is seeking to remove the restriction which only allows the residential units to be occupied by over-55s.
- 6.4 In summary, this Application seeks to remove Condition 2 tied to the March 2023 Permission (ref: 22/00660/VOC), which states that the residential units shall be occupied only by persons aged 55 years or over.
- 6.5 Residential use on this Site should be supported by policy by virtue of its size, accessibility and location, notwithstanding the overarching need in the Borough.
- 6.6 This planning application has been prepared with full regard to the relevant planning policy framework and identified aspirations for the Site.
- 6.7 We, therefore, submit this application, in the knowledge that the details of the development allow for an exemplary residential scheme which makes more efficient use of land and contributes towards local housing need, affordable housing provision and the wider sustainable development principles.



*Achieve  
Ambitions*

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