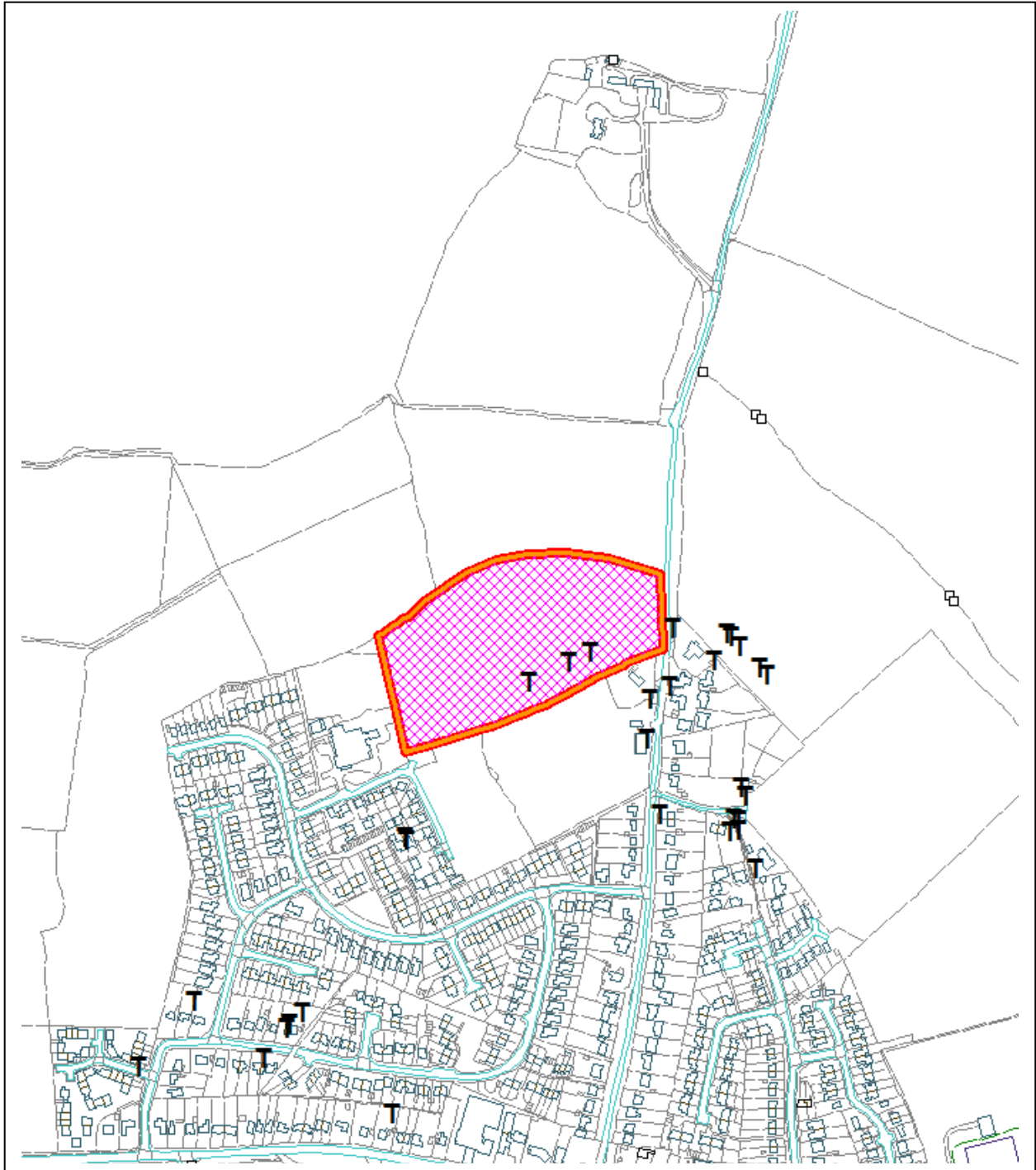


PLANNING COMMITTEE

3<sup>RD</sup> MARCH 2015

REPORT OF THE HEAD OF PLANNING

**A.4 PLANNING APPLICATION - 14/01292/OUT - LAND TO THE WEST OF CHURCH ROAD, ELMSTEAD MARKET, CO7 7AR**



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<b>Application:</b>	14/01292/OUT	<b>Town / Parish:</b> Elmstead Market Parish Council
<b>Applicant:</b>	Knight Developments Ltd - Mr W Anthony	
<b>Address:</b>	Land to The West of Church Road, Elmstead Market, CO7 7AR	
<b>Development:</b>	Outline planning application (all matters reserved) for residential development, a community hall, green infrastructure open space, including land for a sports field and allotments together with new vehicular and pedestrian accesses, parking, servicing, landscaping and utilities infrastructure.	

## 1. Executive Summary

- 1.1 The application site lies outside of the defined settlement development boundary of Elmstead Market as set out in the Tendring District Local Plan (2007), however the site lies within the extended defined settlement boundary of Elmstead Market in the Tendring District Local Plan Proposed Submission Draft (2012) (as amended), as supporting an urban extension to the village and has been specifically identified for residential development under policy KEY2.
- 1.2 Outside of these boundaries Policy QL1 of the Tendring District Local Plan (2007) and Policy SD5 of the Tendring District Local Plan Proposed Submission Draft (2012) (as amended) states that permission is to be refused for new residential development subject to specified exceptions.
- 1.3 Elmstead Market has been identified as one of seven 'Key Rural Service Centres' within the district in Policy SD3 of the draft Local Plan. These are larger villages containing a relatively good range of local services and facilities with potential for limited growth in homes and jobs. For these settlements, the draft Local Plan identifies opportunities for the enhancement of village centres public transport facilities and other community facilities.
- 1.4 The National Planning Policy Framework sets out that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 1.5 It is accepted that the Council cannot demonstrate a deliverable 5 year housing land supply and as a result officers recognise that Tendring District Local Plan (2007) Policy QL1, cannot be considered up-to-date as set out in paragraph 49 of the NPPF and as a result the proposed development cannot be refused solely on the basis that a site is outside the development boundary.
- 1.6 Paragraph 14 of the NPPF sets out that where relevant policies are out-of-date planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 1.7 On this basis and having regard to paragraphs 14 and 49 of the NPPF, the presumption in favour of sustainable development carries significant weight.

- 1.8 Officers conclude that the proposed development would satisfy the 3 dimensions of 'sustainable development' whilst also being able to achieve a development that would comply with Policies QL9, QL10 and QL11 of the Tendring District Local Plan (2007) as well as Policies SD3, SD9 and KEY2 of the Tendring District Local Plan Proposed Submission Draft (2012) (as amended).

**Recommendation: Approve**

That the Head of Planning (or equivalent authorised officer) be authorised to grant outline planning permission for the development subject to:-

- a) Within 6 months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters (where required):
- Affordable Housing (Subject to viability report)
  - Education contribution
  - Highway and Public Transport improvements
  - Public open space contribution
  - Completion and transfer of public open space, allotments and community facilities
- b) Planning conditions in accordance with those set out in (i) below (but with such amendments and additions, if any, to the detailed wording thereof as the Head of Planning (or the equivalent authorised officer) in their discretion considers appropriate).

(i) Conditions:

1. Details of the appearance, access, layout, scale and landscaping (the reserved matters)
2. Application for approval of the reserved matters to be made within three years
3. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters
4. Development to contain up to 20 dwellings
5. Details of materials
6. Hard and soft landscaping
7. All hard and soft landscaping implementation
8. Development constructed in accordance with details contained within the Tree Report
9. Landscaping – Five year clause
10. Landscape/Public open space management plan
11. Ecological mitigation scheme and management plan
12. Details of boundary treatments
13. Details of refuse storage/collection points
14. Archaeology investigative and report works
15. Site lighting strategy
16. Construction Method Statement, including details of hours of operation during construction.
17. Parking in line with adopted Parking Standards
18. Details of a surface water drainage scheme, including surface water swales
19. Footpath works to the north of the site
20. Detailed assessment of ground conditions of the land proposed for new playing field
21. Playing field to be used for outdoor sport and for no other purpose
22. Pitch shall be constructed and laid out in accordance with the standards and methodologies set out in the guidance note Natural Turf for Sport
23. Details of a management and maintenance scheme for the facility
24. Details of a community use scheme to be applied to the playing fields and community

- hall
25. Contamination investigation
  26. Details of wheel cleaning facility
  27. Prior to commencement of development, details of the following to be submitted and approved:
    - Upgrading of the two bus stops in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction to current Highway Authority specification which may include but shall not be limited to real time passenger information
    - Possible improvements at and in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction
  28. No occupation of the development until the following have been provided or completed:
    - A priority junction off Church Road to include as a minimum 2no. 6 metre kerbed radii, 1no. footway and a 43 x 2.4 x 43 metre visibility splay
    - A minimum 4.8 metre wide carriageway in Church Road between the proposal site access and the private access located immediately south of 43, Church Road
    - Two new sections of minimum 1.5 metre wide footway along Church Road between the proposal site access and the private access located immediately south of 43, Church Road
    - The agreed details for upgrading of the two bus stops in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction
    - The agreed details of improvements at and in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction
  29. Scheme to provide renewable energy and energy and water efficiency technologies to be used.
  30. Layout and Phasing Plan and Programme
- c) That the Head of Planning (or the equivalent authorised officer) be authorised to refuse outline planning permission in the event that such legal agreement has not been completed within the period of 6 months, as the requirements necessary to make the development acceptable in planning terms had not been secured through S106 planning obligation, contrary to saved policies QL2, HG4 (where relevant), COM6, COM26 and QL12 of the Tendring District Local Plan (2007) and draft policies SD7, PEO22, PEO10 and KEY2 of the Tendring District Local Plan Proposed Submission Draft (2012) as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014).

## 2. Planning Policy

### National Policy:

National Planning Policy Framework (2012)

National Planning Practice Guidance (2014)

### Local Plan Policy:

*Tendring District Local Plan 2007*

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9	Design of New Development
QL10	Designing New Development to Meet Functional Needs
QL11	Environmental Impacts and Compatibility of Uses
QL12	Planning Obligations
HG1	Housing Provision
HG3	Residential Development Within Defined Settlements
HG3A	Mixed Communities
HG4	Affordable Housing in New Developments
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
HG14	Side Isolation
COM1	Access for All
COM4	New Community Facilities (Including Built Sports and Recreation Facilities)
COM6	Provision of Recreational Open Space for New Residential Development
COM26	Contributions to Education Provision
COM31A	Sewerage and Sewage Disposal
EN1	Landscape Character
EN4	Protection of the Best and Most Versatile Agricultural Land
EN6	Biodiversity
EN6A	Protected Species
EN13	Sustainable Drainage Systems
EN29	Archaeology
TR1A	Development Affecting Highways
TR1	Transport Assessment
TR3A	Provision for Walking
TR5	Provision for Cycling
TR6	Provision for Public Transport Use

TR7 Vehicle Parking at New Development

*Tendring District Local Plan: Proposed Submission Draft (2012) as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014)*

SD1 Presumption in Favour of Sustainable Development

SD3 Key Rural Service Centres

SD5 Managing Growth

SD7 Securing Facilities and Infrastructure

SD8 Transport and Accessibility

SD9 Design of New Development

SD10 Sustainable Construction

PRO2 Improving the Telecommunications Network

PRO3 Improving Education and Skills

PEO1 Housing Supply

PEO2 Housing Trajectory

PEO3 Housing Density

PEO4 Standards for New Housing

PEO7 Housing Choice

PEO8 Aspirational Housing

PEO9 Family Housing

PEO10 Council Housing

PEO18 Community Facilities

PEO19 Green Infrastructure

PEO20 Playing Pitches and Outdoor Sports Facilities

PEO21 Indoor Sports Facilities

PEO22 Green Infrastructure in New Residential Development

PLA1 Development and Flood Risk

PLA3 Water Conservation, Drainage and Sewerage

PLA4 Nature Conservation and Geo-Diversity

PLA5 The Countryside Landscape

Other guidance:

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

**3. Relevant Planning History**

None

**4. Consultations**

4.1 Elmstead Parish Council raises some concerns regarding traffic movements in Church Road. These concerns are outlined below:

- Considerable investment is required (in the opinion of the PC) in modifications to Church Road, not just at its junction with Colchester Road but in the wider context the PC question if the road is actually fit to handle increased traffic. The PC believe that without careful consideration the volume of additional traffic generated, in tandem with traffic from the new households will not be safety manageable within the existing highway infrastructure.
- The traffic survey by Cannon Consulting Engineers which was undertaken on 20th March 2013. Some of the survey results seem at odds with the PCs experience, for example the survey recorded no more than 3 vehicles queuing to exit Church Road at any time during the survey period, with waiting times no longer than 24 seconds. The PCs view is that this is simply not representative, and at times there can be up to 6-7 cars (max) queued at the Church Road exit.
- Section 3.3.2 of the survey concludes that the proposed development of 20 dwellings may give rise to approx 9 cars outward bound in the morning peak period. This gives the impression that there is little to worry about in terms of increased traffic movements. However, this statement does not take account of the extra traffic using the facilities within the development (village hall, allotments, football pitch) nor the impact of creating an additional route through the site which can be used by parents to access the school at pick up/drop off times, thereby potentially diverting a significant proportion of the school traffic which currently utilises Holly Way, on to Church Road.
- The survey also mentions there is no evidence of an issue with on-street parking which could cause obstructions to Church Road given that most properties have provision for off-street parking. However, cars are often parked on the eastern side of the road approx 20 metres from the junction with Colchester Road causing difficulties for traffic both exiting and entering Church Road. At the cricket ground there is often overspill parking in the road both on match days and at events which at times causes notable obstruction.
- The PC note that at 700 metres from the nearest bus stop the Church Road site is outside the desirable 400 metres for connectivity to public transport.
- In 2014 planning permission was given to convert the pub opposite the Church Road junction (The Kings Arms PH) into a convenience store. The PC are concerned that the conversion of the local pub into a convenience store has now made the proposed highway changes around the approach to the Church Road junction untenable. The

proposed build out of the kerb in front of the former public house is no longer a possibility as the area earmarked will now be used to access the store. This is likely to mean that there is no viable scheme to improve safety around the junction. The PC has asked the developers agent to explore the possibility of a small roundabout or other alternatives.

- The PC's key concern is that the application underplays the impact of traffic movements generated by the development.
- Good planning should not be just a function of accident statistics and one-day surveys but rather a sensible and considered approach to the practical problems the development will cause for residents. Despite a low level of PIAs, any reasonable person understands that using the Church Road/Colchester Road/School Road junction can be a difficult and dangerous manoeuvre. Elmstead residents should not have to trust Lady Luck. The PC expects that any development which significantly increases traffic volumes will be required to explore all possible mitigation measures.
- Footpath that runs from Church Road in a westerly and southern direction to the A120 Elmstead Market bypass – where this footpath (PRoW Footpath No.7) joins onto Church Road, the PC would like to have the land between the end of the footpath No.7 and the existing pavement paved to make a continuous paved area so that people do not have to walk in the road. People do already walk in the road there, but with additional traffic, the PC does not think it would be appropriate to do so.
- The PC would like to record that if the planning application is permitted they would like to be consulted in all reserved matters relating to the following:
  - All footways;
  - Management of construction traffic and parking;
  - Site landscaping;
  - Traffic calming;
  - Church Road junction measures – including modifying for pedestrian safety
  - Street lighting

4.2 TDC Open Spaces and Play – Request Public Open Space Contributions

4.3 TDC Housing – No comments received

4.4 TDC Building Control – Applicant will need to ensure that fire service vehicular access is provided to within 45 metres of any point within the dwellings.

4.5 TDC Public Experience (Environmental Services) – Request a condition to establish whether the site is contaminated in any way.

4.6 ECC Highways Dept – The Highway Authority confirms from a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following requirements:

1. Prior to commencement of the development details of a wheel cleaning facility within the site and adjacent to the egress onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The wheel cleaning facility shall be provided prior to commencement and during construction of the development
2. Prior to commencement of the development details of the following shall be submitted to and approved in writing by the Local Planning Authority:



- a) Upgrading of the two bus stops in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction to current Highway Authority specification which may include but shall not be limited to real time passenger information
- b) Possible improvements at and in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction

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

- a) A priority junction off Church Road to include as a minimum 2no. 6 metre kerbed radii, 1no. footway and a 43 x 2.4 x 43 metre visibility splay
- b) A minimum 4.8 metre wide carriageway in Church Road between the proposal site access and the private access located immediately south of 43, Church Road
- c) Two new sections of minimum 1.5 metre wide footway along Church Road between the proposal site access and the private access located immediately south of 43, Church Road
- d) The agreed details for upgrading of the two bus stops in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction
- e) The agreed details of improvements at and in the vicinity of the Colchester Road/Church Road/Clacton Road/School Road junction
- f) For the residential element of the proposal, Residential Travel Information Packs

- 4.7 ECC Archaeological Services – Request condition requiring a programme of archaeological trial trenching and written scheme of investigation.
- 4.8 ECC Education Services – Request s106 contributions
- 4.9 Environment Agency – Advisory comments and request condition
- 4.10 Natural England – No comments received
- 4.11 Anglian Water Services – Advisory comments. Suggest seek views of the EA and condition agreed surface water strategy
- 4.12 UK Power Networks – No comments received
- 4.13 ECC SUDs Advisory Body – Advisory comments received.
- 4.14 Essex Wildlife Trust – No comments received
- 4.15 Sustrans – This development is close to National Cycle Network Route 51. ECC Highways comments requested junction improvements specifically at Church Rd/Colchester Rd/School Rd. Any improvements to these junctions should specifically provide space for cycles to encourage cycling. Wivenhoe and Wivenhoe Station are only 3 miles and within easy reach by cycle in 20 minutes justifying the improvement of this junction. NCN51 signage along this route has not been maintained by ECC Highways and permanent signs are missing specifically at School Rd/School Lane. Maintenance of NCN 51 is essential if cycling is to be encouraged. A contribution towards establishing a direct cycle route between Elmstead Market and Colchester along the A133 would establish a space for cycle route to Colchester and the University forming a 2.5 mile direct route linking in with existing cycle access improvements around the University.
- 4.16 Sport England – No objection subject to conditions to ensure that the proposed facilities are fit for purpose.

## 5. Representations

5.1 3 letters making observations have been received. The comments made have been summarised below:

- Proposed junction improvements at Church Road/A133 Colchester Road should be re-visited due to new convenience store at Former Kings Arms PH – creating more traffic movements and large delivery vehicles parked on main road frontage.
- Traffic Order should be placed on road in front of new store
- Development should include central pedestrian refuge on the A133 Colchester Road to the west of Oatlands
- Further improvements needed to road/pavement in Church Rd and at its junction with the A133.
- Application, in estimating the additional traffic generated, has overlooked the cars using the playing area and community hall.
- Traffic survey does not concur with the experience of villagers.
- Strong case for a mini roundabout at the main road junction
- Footpath at that junction needs to be reconfigured
- Additional street lighting should be included in Church Road and leading to the community hall.
- Notification of application questioned, site notices etc

5.2 1 letter of support has been received. The comments have been summarised below:

- 20 dwellings is sustainable growth for the village
- Good to have community hall close to existing cricket ground
- Care will be needed for safe access to the main road with increased traffic from Church Road

5.3 1 letter of objection has been received. The comments have been summarised below:

- Highway concerns
- Church Road does not have capacity to handle additional traffic – understated in traffic survey
- Church Road/A133 junction already dangerous for road users and pedestrians
- Proposals to improve junction insufficient due to new Budgen store
- Traffic survey results at odds with resident's experience
- Traffic count in survey does not account for use of the new village hall etc
- Survey mentions no evidence of on-street parking issues on Church Road – this is not true
- Overspill parking on road on match days and events at the cricket ground
- Church Road used by many pedestrians and is narrow which creates potential dangers which will not be alleviated by the proposed new footpath
- Road needs traffic calming measures to ensure traffic speed is controlled
- A better site is available to accommodate all that is being proposed at Charity Field as more centrally located to the village and avoids urban sprawl
- Elmstead parish council development survey found most popular site with local residents was the Charity Field site
- Church Road is a country lane and was not designed to handle increased traffic volumes
- Church Road does not need light pollution from extra street lights
- This is unsuitable development on several hectares of open arable land accessed by an equally unsuitable road
- Application should be rejected and the rural character in the north of the village protected from development which threatens to destroy much of its heritage

## 6. **Assessment**

6.1 The main planning considerations are:

- Site Context;
- Proposal;
- Principle of Development;
- Character and Appearance;
- Neighbouring Amenity;
- Highway and Parking Issues;
- Arboriculture/Landscaping;
- Biodiversity;
- Drainage and Flood Risk;
- Other Material Considerations (Section 106 Obligations); and,
- Other Issues.

### **Site Context**

- 6.2 The application site is broadly rectangular in shape and is undeveloped agricultural land situated to the west of Church Road. The site is part of a single agricultural field with an existing field access on to Church Road.
- 6.3 The site measures approximately 260 metres by 150 metres, and equates to approx. 3.2 hectares.
- 6.4 The site's southern and western boundaries are bordered in part by a mature hedgerow. Part of the southern boundary is formed by a brick wall which contains the curtilage of The Vicarage, with the remainder formed by several mature trees which are afforded protection. The northern boundary of the site is open forming part of the wider agricultural field beyond. The eastern boundary of the site is open to views from Church Road.
- 6.5 Church Road itself is 30 mph, and is a local link road off the Colchester/Clacton Road crossroad junction. Church Road serves approx 55 detached, mostly two-storey dwellings and bungalows along its length.
- 6.6 A recent development called Church Gardens which contains 6 two-storey dwellings is located off Church Road to the east of the application site (06/00760/FUL refers). Also to the east of the site is a bungalow named 55 Fritton. The Vicarage, a 2-storey dwelling is located to the south-east of the site adjoining the southern boundary.
- 6.7 Church Road also provides access to Holly Way. Beyond the application site to the north, Church Road serves a handful of other properties together with the St Anne and St Lawrence Parish Church.
- 6.8 To the south the site borders Elmstead Cricket Ground and adjoining grassed amenity area. To the west the site borders Elmstead Primary School and its associated playing field. Also located adjacent to the south-west boundary of the site is a car park, which it is understood is controlled by the Parish Council.
- 6.9 The site itself has no noticeable topographical features and has an approx gradual 400mm fall across the land from east to west. There is a public footpath approx 120 metres to the north of the application site which runs west to east.
- 6.10 Overhead power lines sail above the eastern boundary of the application site in line with Church Road.

- 6.11 The application site lies outside of the defined settlement development boundary of Elmstead Market as set out in the Tendring District Local Plan (2007), but within the defined settlement boundary in the Tendring District Local Plan Proposed Submission Draft (2012) (as amended).

### **Proposal**

- 6.12 The application seeks outline consent with all matters reserved for the construction of a residential development (indicative number up to 20 dwellings), a community centre, green infrastructure open space including land for a football pitch and public allotments, together with new vehicular and pedestrian accesses, parking, servicing, landscaping, and utilities infrastructure.
- 6.13 The applicant has indicated that whilst all matters are reserved for later consideration, an indicative layout drawing has been submitted to indicate how development could be achieved within the application site. The indicative drawing shows vehicular access off Church Road, with a 3 metre wide footpath/cycle links to the south-west corner onto Elmcroft (next to the primary school), and new footpath link to the north of the site and to the countryside beyond.
- 6.14 Residential development is located within the northern section of the application site, and the green infrastructure including community hall, full size football pitch, and utilities located within the southern portion of the site. The indicative layout drawing includes the provision of a landscaped buffer zone to the northern boundary of the site, new public footpath alongside part of Church Road adjacent the eastern boundary of the application site, small pumping station (required to enable connection to the existing Anglian Water network within Church Road), and school access to allotments. The indicative drawing also includes the provision of a swale area, surface water catchment garden, and village green. The allotments spaces have the potential for some to have dedicated use by the primary school, with the remainder used by the local community.
- 6.15 The application includes the submission of an indicative layout of the community hall. This includes the provision of a central multi-use hall space, which will be suitable for sports use, including badminton, carpet bowls, aerobics, yoga, dancing etc, youth group including brownies, guides, cubs, scouts etc, entertainment and performances, public meetings, art exhibitions, fairs and charitable events. Parish and community hall offices are also shown as well as ancillary rooms including meeting rooms, storage, kitchen/bar server, and refuse areas. The indicative drawing provided with the application shows this building to be approx 489 sqm in floor space, 150 person capacity, and double storey 5.6m high. The current plans for the community hall have been drawn up in consultation with the Parish Council and interested parties.
- 6.16 The applicant has confirmed in their draft Heads of Terms that a staged approach is proposed that will; (i) offer to build the facility; (ii) agree specification to build and fit out elements where agreed, and; (iii) transfer the ownership of a building that accords with specification, and including adjoining land, car park to the Parish Council. It is also proposed in the draft Heads of Terms to transfer the green infrastructure including public open space and allotments to the Parish Council in order to manage future interests on behalf of the community.
- 6.17 Alongside the proposed community hall is shown parking spaces for approx 40 cars, in addition to an overspill provision for a further 20 cars, all served by a new access from Church Road.

- 6.18 With regards to accommodation types, again whilst all matters are reserved, the applicant has provided an indicative accommodation scheme, which provides for 4 x 3-bed dwellings, 12 x 4-bed dwellings, and 4 x 5-bed dwellings.
- 6.19 In terms of ground coverage, the indicative layout scheme provides for approx. 1.7 hectares of residential area, and 1.5 hectares of allotments, community hall, green space, utilities, and car parking.
- 6.20 The application is supported by:
- Planning Statement
  - Design and Access Statement
  - Transport Statement
  - Flood Risk Assessment
  - Ecology Appraisal
  - Arborticultural Impact Assessment
  - Statement of Community Involvement
  - Viability Appraisal
  - Indicative Layout Plan

### **Principle of Development**

- 6.21 The main issues for consideration are:
1. whether the site would be suitable for housing having regard to the principles of sustainable development.
  2. the effect of the proposed development on the character and appearance of the surrounding area.
- 6.22 The application site is located outside of the defined settlement boundary as defined within the Tendring District Local Plan, 2007 which aims to direct new development to the most sustainable sites. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake by not allowing new housing unless it is consistent with countryside policies.
- 6.23 Elmstead Market is identified as a village within Policy QL1 of the Tendring District Local Plan (2007) and on this basis it is considered that a modest amount of growth can be supported. Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan.
- 6.24 Elmstead Market is identified within Policy SD3 of the Tendring District Local Plan Proposed Submission Draft (2012) as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014) as a Key Rural Service Centre, where such settlements will be the focus for small-scale employment and tourism related development that reflects their unique rural character, local housing and employment needs and physical, environmental and infrastructure constraints. In addition, these settlements will accommodate a sustainable, fair and proportionate increase in housing stock that will support the overall housing growth proposed for the district.
- 6.25 The application site has also been identified within the Tendring District Local Plan Proposed Submission Draft (2012) as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014) as supporting an urban extension to the village and has been specifically identified for residential development under policy KEY2.

6.26 Policy KEY2 (as amended by the Focussed Changes Report in January 2014) is outlined below:

Land west of Church Road, Elmstead Market (as defined on the Policies Map Inset) is allocated for a mix of residential development (comprising around 20 dwellings), community uses and public open space. The Council will work with the developers (and relevant partners) prior to the submission of a planning application to ensure that alongside other relevant policy requirements in Chapters 2 to 5 of this Local Plan, any development proposal for this site also meet the following specific requirements:

- a) the principle point of vehicular access will be off Church Road with pedestrian access only via Elmcroft;
- b) the development shall deliver off-site highway improvements including improvements to the junction of Church Road and Colchester/Clacton Road to the satisfaction of Essex County Council as the Highways Authority;
- c) the development will provide a new community hall and car park at the western end of the development, the specification of which will be agreed with Elmstead Parish Council; and
- d) the development will set aside a minimum of 2 hectares of land as 'green infrastructure' that will incorporate allotments at the western end of the site and public open space alongside the new community hall and adjoining the cricket ground, to be transferred to Elmstead Parish Council for future management and maintenance, or suitable alternative management arrangements put in place to ensure long-term maintenance.

6.27 In addition policy KEY2 also refers to development at land off Meadow Close for no more than 20 dwellings. An outline application has been submitted for this site and has also been presented to committee for determination (14/01238/OUT refers).

6.28 Given the limited weight that can be applied to the draft Local Plan, and the status of policy QL1, assessment of the principle of development falls to be considered under the NPPF.

6.29 Chapter 6 of the National Planning Policy Framework (NPPF) has as an objective for the delivery of a wide choice of high quality homes. In order to facilitate this objective paragraph 49 of the NPPF sets out housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

6.30 It is accepted that the Council cannot demonstrate a deliverable 5 year housing land supply and as a result officers consider that Tendring District Local Plan (2007) Policy QL1, cannot be considered up-to-date as set out in paragraph 49 of the NPPF.

6.31 This view has also been supported by the Planning Inspectorate in a number of recent appeal decisions for similar outline schemes.

6.32 Members should note that whilst the Council has published the Tendring District Local Plan Proposed Submission Draft (2012), the document is yet to be submitted to the Secretary of State and formal adoption cannot take place before it has been examined, consulted on and found to be sound and until that time the relevant emerging policies may possibly be subject to change. When considered in relation to paragraph 216 of the Framework they may be afforded only limited weight.

6.33 Based on the above it is considered that, in the absence of up-to-date policies, development proposals cannot be refused solely on the basis that a site is outside the development boundary. Paragraph 14 of the NPPF supports this view when it sets out that where relevant policies are out-of-date planning permission should be granted unless any

adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

6.34 On this basis and having regard to paragraphs 14 and 49 of the NPPF, the presumption in favour of sustainable development carries significant weight. As a result the current scheme falls to be considered against the 3 dimensions of 'sustainable development',

- economic,
- social and
- environmental roles.

6.35 The sustainability of the application site is therefore of particular importance. In assessing sustainability, it is not necessary for the applicant to show why the proposed development could not be located within the development boundary.

#### Economic

6.36 Officers consider that the proposal would contribute economically to the area, for example by providing employment during the construction of the development and from future occupants utilising local services, and so meets the economic arm of sustainable development

#### Social

6.37 In terms of the social role, the site is within close proximity of the local amenities within Elmstead Market such as a new village convenience store, post office, restaurant, take-aways and petrol filling station within walking distance of the site. The site is also within walking and cycling distance of the local primary school and recreational area at Old School Lane. Elmstead Market is also on a bus route and there is a bus shelter on Colchester Road within walking distance of the site, with services to Clacton and Colchester.

6.38 It is noted that Elmstead Market has been identified as one of seven 'Key Rural Service Centres' within the district in Policy SD3 of the draft Local Plan. These are larger villages containing a relatively good range of local services and facilities with potential for limited growth in homes and jobs. For these settlements, the draft Local Plan identifies opportunities for the enhancement of village centres, public transport facilities and other community facilities. Whilst the policy has limited weight at this stage, it goes some way to illustrate the sustainability credentials for the village and the site.

6.39 Overall officers consider that the application site performs reasonably well in terms of the social role within the definition of sustainability.

#### Environmental

6.40 It is acknowledged that, in terms of settlement shape and form, development in this location is unlikely to have a significantly detrimental impact (subject to consideration against other Local Plan policies) as the site forms part of the Settlement Development Boundary in the 2012 Draft Local Plan with a number of residential dwellings to the east off Church Road, and the primary school to the west of the site, and would be well contained by existing mature vegetation and proposed structural landscaping.

6.41 As a result, development would be comparable with existing development in the locality. On this basis Officers consider that a more pragmatic approach is justified in this instance to development, as the development of this site can be achieved in keeping with the aims and objectives of National Planning Policy Framework.

## **Character and Appearance**

- 6.42 The application is in outline with all matters reserved. However, the indicative drawing submitted with the application suggests that the development would comprise up to 20 detached residential dwellings. The DAS submitted with the application states the concept will be to provide a mixture of two-storey units ranging from 8-9 metres in height, and some with low eaves line and dormer windows to facilitate changes in the ridge levels which will provide for a variation in house types and increases articulation of the roof line.
- 6.43 It is considered by officers whilst the final design of the dwellings would be considered at reserved matters stage, a mixture of two storey and one and half chalet style with low eaves lines would harmonise with the local environment, and the siting of the chalet style properties to the northern boundary of the site would assist in integrating the development into its wider countryside setting by stepping the development down towards the northern boundary.
- 6.44 Whilst landscaping is a reserved matter for later consideration, the indicative layout drawing provides for a landscaped buffer zone to the open northern boundary, and it would be essential that this boundary is provided with a structural landscape scheme to aid the transition from development into countryside.
- 6.45 The net residential development area of the site is approx 1.7 hectares, this would equate to a density of 12 dwellings per hectare, which is comparable with the existing settlement pattern and grain of the area, and comparable to the development in Church Gardens to the east of the site.
- 6.46 The indicative layout illustrates that 20 dwellings would comply with the Councils requirements with regard to parking provision and amenity space as set out in Saved Policy HG9 of the 2007 Local Plan, and the 2009 Parking Standards.
- 6.47 It is considered that the development as shown on the indicative layout drawing would broadly follow the character and appearance of existing development in the locality. The properties at two-storey in height would be seen in context with existing two-storey development that exists to the east of the application site.
- 6.48 It is noted that policy KEY2 requires a minimum of 2 hectares of land to be set aside as green infrastructure. The indicative layout provides approx. 1 hectare of green infrastructure in the form of public open space and allotments, but in addition green infrastructure is also provided in the form of part of a sustainable drainage system and open and landscaped areas integral to the future design of the housing element which would add to the open and landscaped character of the development. Given the limited weight to be applied to the draft Local Plan, it is considered the provision of green infrastructure within the application site, although less than 2 hectares, is considered to be acceptable in this instance.
- 6.49 Although design and appearance do not form part of the consideration of this outline application, it is considered that the site is capable of accommodating up to 20 dwellings in a way that would not result in any adverse impact on the character and appearance of the surrounding area and therefore, Officers conclude that the proposed development can be considered as fulfilling the environmental role of sustainable development and consequently does comply with the presumption in favour of sustainable development anticipated in paragraph 14 of the NPPF.



### **Neighbouring Amenity**

- 6.50 The NPPF, in paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. Policy SD9 of the Tendring District Local Plan Proposed Submission Draft (2012) supports these objectives and states that 'the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'.
- 6.51 The application is in outline form with all matters reserved and Officers consider that sufficient space is available on site to provide a development that, through the submission of a reserved matters application, could achieve an internal layout and separation distances that would not detract from the amenities of nearby properties or the future occupiers of the proposed dwellings.

### **Highway and Parking Issues**

- 6.52 Paragraph 4 of the NPPF sets out the criteria for promoting sustainable transport and in this regard stipulates in Paragraphs 34 to 36 how this should be approached. The overall aims and objectives of the NPPF are supported by Policies contained within Chapter 7 of the Tendring District Local Plan (2007) as well as by Policies SD8 and PEO4 of the draft Local Plan.
- 6.53 Paragraph 34 indicates that decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.
- 6.54 Paragraph 35 further requires that plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to:
- accommodate the efficient delivery of goods and supplies;
  - give priority to pedestrian and cycle movements, and have access to high quality public transport facilities;
  - create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, avoiding street clutter and where appropriate establishing home zones;
  - incorporate facilities for charging plug-in and other ultra-low emission vehicles; and,
  - consider the needs of people with disabilities by all modes of transport.
- 6.55 Paragraph 37 stipulates that there should be a balance of land uses within the area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities.
- 6.56 Policy QL10 of the Saved Plan states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. This requirement is also carried forward to Policy SD9 of the Draft Plan.
- 6.57 In this regard and in support of the application, the applicants have submitted a Transport Statement (TS), which identifies that the site is in a location suitable for development in accordance with national and local planning policy. It is within walking and cycling distance of local bus stops served by routes providing links to surrounding towns. The TS can be reviewed in full by members on the planning pages of the Council's website.

- 6.58 The TS has examined the existing highway conditions, the accident data over the period 01/03/2007 to 29/11/2013 (6 ½ years) which includes the Church Road/Colchester Road junction, and the proposed site access arrangements and junction visibility in the locality, including the Church Road/Colchester Road junction.
- 6.59 The TA concludes that:-
- The site location is on the northern outskirts of the village however there are still good connections to the immediate local facilities such as the primary school, public open space and leisure facilities.
  - Access to the site is easily achieved given the available site frontage and land available to provide the required visibility splays of 2.4m x 43m for a 30mph speed limit.
  - The distance to The Green, where connection to the public transport service is available, is considered acceptable at 700m under IHT guidelines albeit over 400m which is normally desirable.
  - The opportunity of providing a footway along Church Road has been agreed with ECC and aims to facilitate pedestrian movement to and from the village for users of the site.
  - Footway links will be provided within the masterplan to link in with the existing public footpath network (namely 162-7 to the north of the site). An additional link may be provided to the south-west of the site to Elmstead Primary School subject to third party land.
  - Consideration has been given to potential improvements at the junction of Church Road /A133 /School Road. Consultation with ECC and a review of the PIA data for this junction has confirmed the junction has a good accident record over the past five years. It is reported that only one accident has occurred in the past three years and this occurred in icy conditions.
  - It is considered that junctions enhancements could be made to reduce the highway dominance of the junction by reducing the carriageway and kerbing the edges. This in turn would formalise the junction arrangement, reducing the likelihood for driver confusion and encourage reduced vehicle speeds. Pedestrian facilities can also be improved with increased footway provision at the junction and a reduced carriageway width to cross. A new bus shelter on the southern side of the A133 could also be provided and this, along with the existing bus stop could be RTI enabled.
- 6.60 On this basis, the TS states the proposal is acceptable in highway, traffic and transport terms.
- 6.61 As part of the draft Heads of Terms, the applicant has agreed private-sector funded works to provide footway installation to Church Road (from the site access on Church Road to outside No.43 Church Road to the south) (Cannon drawing no. J621/09), and alterations to the Church Road/Colchester Road/Clacton Road junction (Cannon drawing no.J621/003 RevB), which proposes for a re-alignment of the junction, proposed to help define the carriageway by building out the junction and remove the existing lay-by to the north of Clacton Road, and relocate the bus stop (not bus shelter) so that it is then on-carriageway rather than within the lay-by.
- 6.62 Essex County Council as the Highway Authority has been consulted on the application. They raise no objection to the principle of the development and vehicular access from Church Road in this location, subject to conditions. However they have confirmed given that Clacton Road is the A133, they would not be able to support relocating the bus stop such that it is then on-carriageway, rather than as currently within a lay-by. Whilst the Highway Authority appreciate the improvements shown on drawing J621/003 RevB have been offered to try and alleviate local concerns, in their opinion these improvements are not required to mitigate the possible impact of the proposed development. Given that these improvements shown on drawing no. J621/003 RevB are not required to make the

development acceptable, their requirements by condition or legal agreement would fail the relevant tests and have not been requested.

- 6.63 It is noted that the Parish Council and those making representations have raised concerns with regards to the highway safety implications of the proposal. These concerns have been put to the Highway Authority. The Highway Authority has confirmed that they do not share these concerns. They state that they are not aware of any severe congestion in the vicinity of the proposal site or surrounding area and are satisfied the proposed development would not create severe congestion. They are content that the highway network, subject to the requirements set out in their recommendation, would be able to cope with any additional trips generated by the proposal. They further state a majority of the residential trips are unlikely to coincide with trips generated by the other proposed land uses. A majority of the residential trips would be generated during the morning and evening peak periods, with a majority of the other land use trips being generated off peak and at weekends.
- 6.64 The Councils Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres and garage, if being relied on to provide a parking space should measure 7 metres by 3 metres internally. Furthermore, development sites should provide unallocated visitor spaces at 0.25 spaces per residential unit. It is considered that the site is capable of accommodating this level of parking.
- 6.65 It is also noted that whilst the layout plan is indicative, the development would be capable of meeting the specific requirements of criteria a) and b) of policy KEY2 which are both highway related.
- 6.66 Based on the above it is considered that the application site would comply with the aims and objectives of the NPPF as well as Local Plan Policies with regard to highway safety and parking requirements.

### **Impact on Heritage Assets**

- 6.67 The enduring physical presence of the historic environment contributes significantly to the character and 'sense of place' of rural and urban environments. Some of this resource lies hidden and often unrecognised beneath the ground in the form of archaeological deposits, but other heritage assets are more visible.
- 6.68 Policy PLA6 of the draft Local Plan states that the Council will work with its partners to understand, protect and enhance the district's historic environment by, amongst other things, requiring archaeological evaluation to be undertaken for schemes affecting sites that do or might contain archaeological remains. Furthermore, Policy PLA7 of the draft Local Plan states within a conservation area, development will not be permitted unless the proposal (inter alia), is of a design and/or scale that preserves or enhances the special character or appearance of the area and is compatible with neighbouring buildings and spaces; and uses building materials, finishes, and building techniques, including those for features such as walls, railings, gates and hard surfacing, that are appropriate to the local context. These sentiments are echoed in policies EN17 and EN29 of the 2007 Local Plan.
- 6.69 The NPPF is clear that when determining applications, Local Planning Authorities (LPA's) should require the applicant to describe the significance of a heritage asset affected, including any contribution made by their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

- 6.70 The NPPF further states that where a site includes or has the potential to include heritage assets with archaeological interest, LPA's should require developers to submit an appropriate desk-based assessment and where necessary a field evaluation.
- 6.71 In this instance, whilst the applicant has not submitted a heritage statement, given the size of the site which is undeveloped, the Senior Historic Environment Consultant at Essex County Council has been consulted and has advised a programme of trial trenching followed by open area excavation to be imposed as a condition if outline planning permission is granted. This is due to the Tendring Historic Environment Characterisation project which shows that the proposed development site lies within a wider area with good potential for below ground archaeological deposits. As no previous archaeological work has been undertaken within the proposed development site, but the Historic Environment Record contains information on adjacent areas that highlight the potential for archaeological remains to be present; in particular prehistoric activity evidenced by cropmarks of field systems, enclosures and double ditched trackways, a programme of archaeological work is considered to be justified, and in accordance with the aims and objectives of National and Local Plan Policies as set out above.
- 6.72 Based on the above it is considered that the development of this site can be achieved without harm to heritage assets, in keeping with the aims and objectives of National and Local Plan Policies as set out above.

#### **Arboriculture/Landscaping**

- 6.73 Policy PLA5 of the Tendring District Local Plan Proposed Submission Draft (2012) sets out that the countryside in the district is one of its key assets both in terms of tourism and the living environment of local residents. The district is diverse in its landscape character and appearance and certain areas are particularly sensitive to development and change.
- 6.74 The applicant has submitted a separate Arboricultural Impact Assessment, which contains a Tree Constraints Plan and Tree Protection Plan.
- 6.75 With regard to the above the Councils Landscape and Tree Officer was consulted. The Officer commented that it has been demonstrated that the development proposal could be developed without harm being caused to the protected trees on the boundary with the cricket ground. The Officer also noted that the indicative site layout shows soft landscaping proposal to the northern boundary, and that details for this planting should be provided at reserved matters stage.
- 6.76 As a result, it is considered the proposals would not have a significant adverse impact on the character and appearance of the area, or any protected trees.

#### **Biodiversity**

- 6.77 Policies within Chapter 6 of the Tendring District Local Plan (2007) and Policy PLA4 of the Tendring District Local Plan Proposed Submission Draft (2012) seek to ensure that where development is likely to harm nature conservation or geo-diversity interests, planning permission will only be granted in exceptional circumstances. The benefits of the development should clearly outweigh the harm caused and where appropriate mitigation measures must be incorporated into the development to the satisfaction of Natural England and other appropriate Authorities.
- 6.78 No part of the development site or any land that it abuts has any type of statutory or non-statutory conservation designations.

6.79 The application site whilst devoid of any species rich habitat (the site being an agricultural field), the site is surrounded on two sides by trees and hedgerows, and a dry ditch. As a result the applicant has submitted an Ecology Appraisal with the application submission, produced by Mill House Ecology. The report concluded:

- Boundary hedges and trees are of no particular botanical value but any proposals should aim to retain existing boundary features as they provide potential habitat for wildlife.
- There are not considered to be any significant adverse impacts on existing habitat and botanical interest if the site is developed.
- Hedgerow do not support any features such as woodland indicator plant species.
- The risk of Great Crested Newts being present on site is considered to be low.
- The risk of amphibians being killed or injured during construction work is considered to be low but standard site clearance methods should be used to minimise this.
- If the hedgerows and trees are unaffected by any development then there is not considered to be any significant impact on bats.
- Two short sections of hedgerow will require removal to create an access to the allotments from the school and from the car park to the south-west. No significant impacts will occur as a result of their loss.
- Use of lighting on buildings etc needs to be positioned so as to avoid illumination of retained habitats such as boundary hedgerows or trees. Measures should be adopted to avoid light pollution impacts on bats.
- Boundary hedgerows and trees provide suitable nesting habitat for a variety of bird species but these will be unaffected by the development.
- Vegetation clearance should ideally be undertaken outside of the nesting season.
- The predicted adverse impacts of the development on biodiversity are considered to be low.
- Conversely there are a range of enhancements that could be incorporated into the design of the scheme that could deliver significant biodiversity benefits.

6.80 As suggested, given the site's edge of settlement location in proximity to the wider countryside, and in accordance with paragraph 118 of the NPPF, this application provides opportunities to incorporate features into the design which are beneficial to wildlife. For example, roosting opportunities for bats and/or the installation of bird nest boxes could be secured by condition. Furthermore, to maximise the ecological value of new landscaping, plants should be native, and wildflower meadows should be provided in areas of public open space.

6.81 In addition, it is considered that an ecological management scheme and mitigation plan is sought and secured by condition, to ensure the proposed development follows appropriate impact avoidance precautionary measures, such as minimising the use of external lighting, and any scrub and tree removal is undertaken outside the bird nesting season.

6.82 Based on the above it is considered that the development of this site in the manner proposed can be achieved without significant harm to nature conservation or biodiversity interests in keeping with the aims and objectives of National and Local Plan Policies as set out above.

### **Drainage and Flood Risk**

6.83 The NPPF makes it clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, it should be made safe without increasing flood risk elsewhere. Accordingly, Saved Policy QL3 of the Tendring District Local Plan (2007) and PLA1 of the Tendring District Local Plan Proposed Submission Draft (2012) have been informed by

these national policy requirements, the findings of Strategic Flood Risk Assessments (SFRA) and advice from the Environment Agency.

- 6.84 The applicants have submitted a Flood Risk and Waste Water Drainage Assessment (produced by Cannon Consulting Engineers) as part of the application which highlights the fact that with reference to the Environment Agency Flood Maps the site is located entirely within Zone 1 – at low risk of flooding.
- 6.85 With regards to the information submitted within the FRA, the Environment Agency whilst having some concerns regarding infiltration, has advised that they have no objection subject to the imposition of conditions relating to surface water drainage strategy. The applicant has confirmed in any event that their drainage consultants confirm that the proposed approach to surface water disposal is a sound basis and it is anticipated that precise details on the size and capacity would be dealt with by condition.
- 6.86 Anglian Water Services have been consulted with regards to foul water drainage. They have confirmed that the foul drainage from this development is in the catchment of Thorrington Water Recycling Centre that will have available capacity for the flows from this development.
- 6.87 With regards to the foul sewerage system, at present this has available capacity for the flows from this development. Whilst surface water strategy/flood risk assessment is not relevant to AW, they request the views of the EA are sought, and the agreed strategy is conditioned in the planning approval.

#### **Other Material Considerations (Section 106 Obligations)**

- 6.88 As stated above, this site is allocated for residential development within the draft 2012 Local Plan. Policy KEY2 requires the delivery of off-site highway improvements including improvements to the junction of Church Road and Colchester/Clacton Road, as well as a new community hall and car park, and green infrastructure including allotments and public open space.
- 6.89 As part of the application submission, the applicant has provided draft Heads of Terms. This includes for the provision of an area of public open space of not less than 0.84 hectares; an area of allotment land of not less than 0.15 hectares; an education financial contribution towards the education purposes (primary school) and towards secondary school transport; a building (community hall) and associated car parking; public transport contributions for the provision of Real Time Display and bus shelter at the bus stops on the junction of Colchester Road/Church Road; and highway improvement work for alterations to the Church Road/Colchester Road junction, and footway installation to Church Road.
- 6.90 Notwithstanding policy KEY2, this type of application would attract on-site provision of affordable dwellings, an education contribution, and public open space contribution.
- 6.91 Saved Policy COM6 of the adopted Tendring District Local Plan (2007) states that residential development below 1.5 hectares in size, where existing public open space facilities are inadequate, shall provide a financial contribution towards the provision of new or improved off-site facilities to meet the projected needs of the future occupiers of the development. On a site of 1.5 hectares and above proposals for residential development are required to provide at least 10% of the gross site area as public open space.
- 6.92 This requirement is also set out in Policy PEO22 of the draft Local Plan, with 1.5 hectares revised to 10 hectares.

- 6.93 With regards to public open space contributions, the Public Experience dept has confirmed there is a deficiency of 4.51 hectares of equipped play/formal open space in Elmstead Market, and any additional development will increase demand on already stretched play facilities. The only play area in the village is located along Old School Lane. This play area is classified as a Local Equipped Area of Play and provides facilities for various age groups. As this is the only area in Elmstead it is already well used and further development in the village will put added pressure on the facility. Whilst the proposed development indicates the inclusion of a public open space which will contribute to the significant lack of facilities in the area, it is felt a contribution towards play is justified.
- 6.94 Policy PEO10 of the draft Local Plan requires for developments of 10 or more dwellings, the Council will expect 25% of new dwellings to be made available to Tendring District Council to acquire at a discounted value for use as Council Housing, or as an alternative, the Council will accept a minimum 10% of new dwellings to be made available to the Council alongside a financial contribution toward the construction or acquisition of property for use as Council Housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 25% requirement.
- 6.95 Essex County Council Education Services have confirmed the need for a financial contribution towards education provision. ECC confirm that it is anticipated that there is likely to be sufficient early years and childcare places to serve the needs of the development, although the ward is close to capacity.
- 6.96 With regards to primary school provision, the Priority Admissions Schools for the development would be Elmstead Primary School. The school is forecast to have a deficiency of 18 places by school year 2017/18, and in addition to this there is no safe walking route to Elmstead Primary School, therefore ECCC is obliged to provide free school transport.
- 6.97 There is likely to be sufficient places at secondary school level to meet the needs of the secondary school children generated by the proposed development. However the school is in excess of the statutory walking distance from the proposed development and therefore ECC is obliged to provide free transport to the school at a cost to ECC. It is the practice of ECC to seek costs for a 5 year period.
- 6.98 On this basis, ECC have also requested financial contributions towards the provision of primary school places, primary school transport and secondary school transport. However Officers consider that given a new footpath/cycle link to Elmcroft is to be provided to the south-west of the development next to the primary school, a financial contribution sought for primary school transport would not meet the CIL regulations in terms of making this particular development acceptable in planning terms.
- 6.99 The applicant has advised the Council that the delivery of the community hall and provision of open space, including allotment land, are principal items to be secured on site as a net benefit of the proposed development in this instance. Together they form substantial elements of capital investment and in order to ensure the development overall is viable and deliverable, will require reduced or nil contributions towards other aspects of community infrastructure. In particular the applicant states the substantial costs of the community hall make the provision of affordable housing unviable on this site, and which is reflected in the wording of policy KEY2. In this instance, the site should deliver at least 5 units as affordable.
- 6.100 As a result, and as part of the application submission, the applicants have submitted a development viability report (by Black Swan Property (BSP)) which has been independently assessed by the District Valuation Service (DVS). Its conclusions are still being assessed and negotiations are on-going with the applicant.

6.101 The applicant has indicated a willingness to enter into a planning agreement to secure financial contributions required by the development, and these discussions are ongoing. Members are therefore requested that if there is a resolution to grant outline planning permission, that the Head of Planning (or equivalent authorised officer) be authorised to grant outline planning permission for the development subject to within 6 months of the date of the Committee's resolution, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the matters of highway and public transport improvements; education contributions; public open space contributions; and completion and transfer of public open space, allotments, and community facilities to the Parish Council. It is also noted that negotiations are still on-going with the applicant regarding the conclusions of the viability appraisal, and if further monies are obtainable, the section 106 would also include for a provision of affordable housing (either on-site or off-site contribution).

### **Other Issues**

6.102 With regards to section 106 monies sought by SusTrans, Policy SD7 of the draft Local Plan states planning permission will not be granted for new development unless the individual or cumulative impacts of development on infrastructure can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements.

6.103 In this regard the Council will use appropriate legal agreements or apply CIL to secure one or more of the following, which includes increased capacity for schools, green infrastructure and improvements to the transport network including environmental improvements to pedestrian spaces.

6.104 However to secure these the tests of CIL have to be applied. The legal tests for when you can use a s106 agreement are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended. The tests are:

1. Necessary to make the development acceptable in planning terms
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development.

6.105 It is considered in this instance the requirement to establish a direct cycle route between Elmstead Market and Colchester along the A133 does not meet the 3 tests.

### **Background Papers**

None.