

Application:	15/00761/OUT	Town / Parish: Mistley
Applicant:	Tendring Farms Ltd	
Address:	Land to the south of Long Road and to west of Clacton Road, Mistley, Essex CO11 2HN	
Development:	Outline application with all matters reserved, other than strategic access points onto the public highway, for the erection of up to 300 dwellings, up to 2 hectares of employment land (A2/A3/B1/D1 uses), with associated public open space and infrastructure.	

1. Executive Summary

- 1.1 The application was submitted on 19 May 2015 and was due for determination on 19 August 2015. The Council wrote to the applicant's agent on 6 August 2015, 25 September 2015 and 1 December 2015 requesting an extension of time for determination to allow outstanding issues to be addressed before a fully informed decision could be taken (the main outstanding issues related to highway considerations and the cumulative impact arising from a number of applications in the Manningtree, Lawford and Mistley area). The applicant made an appeal to the Planning Inspectorate on 14 December 2015 against non-determination.
- 1.2 The Council can no longer determine this application. The decision will instead be taken by the Planning Inspectorate. The purpose of this report is to inform members of the appeal against non-determination regarding the above planning application; set out the policy background and other material considerations and to establish what determination the Planning Committee would have made in respect of the application, in order to allow the Council's case to be made at appeal.
- 1.3 This is one of four very large residential-led planning applications including more than 100 dwellings currently under consideration in the Manningtree, Lawford, Mistley and Brantham area:
- 15/00671/OUT – Land off Long Road/Clacton Road, Mistley (this application);
 - 15/00876/OUT – Land off Bromley Road/Dead Lane, Lawford (including up to 360 dwellings);
 - 15/01520/OUT – Land south of Harwich Road, Mistley (including up to 135 dwellings); and
 - B/15/00263 – Brantham Industrial Estate (including 320 dwellings and business, retail and community uses) – being determined by Babergh District Council.
- 1.4 Determination of these application has been delayed whilst Officers have been working with the applicants, Babergh District Council, Essex and Suffolk County Councils, the NHS and Anglian Water to ensure that in the absence of an up to date Local Plan, both the individual and cumulative impact of these major developments on infrastructure are properly understood and, through appropriate mitigation, can be adequately addressed.
- 1.5 The site comprises just under 24 hectares of greenfield agricultural land south of Long Road and west of Clacton Road, Mistley. This is an outline application for which approval is sought only for the principle of developing up to 300 dwellings with strategic access points onto Long Road and Clacton with up to 2 hectares of employment land and associated

open space and infrastructure. Matters of detailed design and layout are reserved for approval through detailed applications at a later date.

- 1.6 Mistley Parish Council, Lawford Parish Council and Manningtree Town Council all object to this outline application and 75 individual letters and a 217 name petition have also been received in objection, with a small number of representations in support.
- 1.7 Because the Council does not have an up to date Local Plan and is currently unable to identify a five-year supply of deliverable housing sites, as required by government planning policy, this application was being considered in line with the government's 'presumption in favour of sustainable development'. To comply with government requirements, Officers had approached the application with a view to positively addressing, as far as possible, technical issues and other matters raised by consultees and residents.
- 1.8 The applicant has however chosen to appeal against non-determination with some matters still to be resolved, in particular the cumulative impact of developments on the local highway network, a related objection from Babergh District Council (with whom this Council has a legal duty to cooperate) and the impact of development on the open countryside and settlement form in the event that the development took place in isolation.
- 1.9 These matters form the basis of the Officer recommendation set out below that, based on the information available at this point in time, the application would be refused. The Planning Committee is asked to endorse this recommendation as the basis for the Council's defence against the appeal.

Recommendation:

(A) That the Planning Committee endorses the view that the application would have been REFUSED for the following reasons and instructs Officers to defend the Council's case at appeal on this basis:

Highways

This is one of several major residential-led planning applications under consideration in the Manningtree, Lawford and Mistley (and Brantham) area that will result in an increase in vehicular movements on the local highway network and, in particular, around the railway crossing on the A137 at Manningtree Railway Station – a location known to suffer with traffic congestion during peak periods.

Officers have been working with Essex County Council as the Highway Authority for Essex, Suffolk County Council as the Highway Authority for Suffolk and Babergh District Council to ensure a coordinated approach to the consideration of cumulative transport impacts. At the time of the appeal being submitted, the Highway Authorities were still in the process of analysing the likely cumulative impacts of development and any necessary mitigation measures.

Until a conclusion on this matter has been reached and the Highway Authority has issued its advice, Officers have no other option but to recommend refusal.

Duty to Cooperate

Babergh District Council has objected to this planning application on the basis that it, along with other applications under consideration in the area, could jeopardise the

delivery of a regeneration scheme in Brantham (which is part of its adopted Local Plan) if the highways implications of the developments are not properly understood and mitigated.

Neighbouring authorities have a legal duty to cooperate on strategic planning matters of cross-boundary significance. Officers are working with Babergh District Council, Essex County Council and Suffolk County Council to understand the potential cumulative impact of development on the local highway network and to identify any necessary mitigation measures. If this Council was to approve this planning application prior to the conclusion of this matter, it would represent a failure in the legal duty to cooperate.

Landscape Impact and Settlement Form

In isolation, and in advance of any decision with regard to the future use of adjoining land to the west, either through the new Local Plan or through the determination of the separate planning application 15/00876/OUT (land east of Bromley Road, Lawford), the development of this land would represent an illogical and harmful incursion into the open countryside that is poorly related to the existing settlement of Manningtree, Lawford and Mistley.

S106 Legal Agreement

If the proposal is to be considered acceptable in planning terms, a s106 legal agreement would be required to secure affordable housing, financial contributions toward health and education, the future management of the proposed open spaces and, potentially, off-site highways works. Whilst to date the applicant has indicated that they would be willing to enter into such agreement, a completed agreement is yet to be submitted to the Council and notwithstanding the matters set out above, could not be granted planning permission until this is complete.

Important: The Planning Committee should note that because the applicant has decided to appeal against non-determination in advance of Officers being able to determine the application in a positive and proactive manner taking into account the cumulative impact alongside other proposals in the area, the Council must consider the implications of this development taking place in isolation, not knowing how the other applications will be determined.

2. Planning Policy

National Planning Policy Framework (NPPF)

- 2.1 The National Planning Policy Framework (March 2012) sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.2 Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The NPPF doesn't change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan it should be approved and where it does not it should be refused – unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:
 - an economic role;
 - a social role; and
 - an environmental role.

- 2.3 These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.
- 2.4 Section 6 of the NPPF relates to delivering a wide choice of quality new homes. It requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years worth of deliverable housing land against their projected housing requirements (plus a 5% or 20% buffer to ensure choice and competition in the market for land). If this is not possible, housing policies are to be considered out of date and the presumption in favour of sustainable development is engaged with applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.

Local Plan

- 2.5 Section 38(6) of the Planning Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the 'development plan' unless material considerations indicate otherwise. In the case of Tendring the development plan consist of the following:

Tendring District Local Plan (Adopted November 2007) – as 'saved' through a Direction from the Secretary of State.

Relevant policies include:

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

QL12: Planning Obligations

ER7: Business, Industrial and Warehouse Proposals

HG1: Housing Provision

HG3: Residential Development Within Defined Settlements

HG3a: Mixed Communities

HG4: Affordable Housing in New Developments

HG6: Dwellings Size and Type

HG7: Residential Densities

HG9: Private Amenity Space

COM2: Community Safety

COM6: Provision of Recreational Open Space for New Residential Developments

COM21: Light Pollution

COM23: General Pollution

COM26: Contributions to Education Provision

COM29: Utilities

COM31a: Sewerage and Sewage Disposal

EN1: Landscape Character

EN4: Protection of the Best and Most Versatile Agricultural Land

EN6: Biodiversity

EN6a: Protected Species

EN6b: Habitat Creation

EN11a: Protection of International Sites

EN12: Design and Access Statements

EN13: Sustainable Drainage Systems

EN17: Conservation Areas

EN29: Archaeology

EN36: Area Proposed as an Extension to the Suffolk Coast and Heaths AONB

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 (November 2012), as amended by the Tendring District Local Plan Pre-Submission Focussed Changes (January 2014).

Relevant policies include:

SD1: Presumption in Favour of Sustainable Development

SD2: Urban Settlements

SD5: Managing Growth

SD7: Securing Facilities and Infrastructure

SD8: Transport and Accessibility

SD9: Design of New Development

SD10: Sustainable Construction

PRO1: Improving the Strategic Road Network

PRO2: Improving the Telecommunications Network

PRO3: Improving Education and Skills

PRO14: Employment Sites

PEO1: Housing Supply

PEO3: Housing Density

PEO4: Standards for New Housing

PEO5: Housing Layout in Tendring

PEO7: Housing Choice

PEO9: Family Housing

PEO10: Council Housing

PEO19: Green Infrastructure

PEO20: Playing Pitches and Outdoor Sports Facilities

PEO22: Green Infrastructure in New Residential Developments

PEO23: Children's Play Areas

PLA1: Development and Flood Risk

PLA3: Water Conservation, Drainage and Sewerage

PLA4: Nature Conservation and Geo-Diversity

PLA5: The Countryside Landscape

PLA6: The Historic Environment

PLA7: Conservation Areas

Other Guidance

Essex County Council Car Parking Standards – Design and Good Practice

Essex Design Guide for Residential and Mixed-Use Areas.

3. Relevant Planning History

3.1 None.

4. Consultations

TDC Environmental Health	Having looked at application and considered any Environmental Health issues, we have no comments or observations to make regarding this application.
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TDC Principal Tree & Landscape Officer	The development proposal has the potential to adversely affect established trees and hedgerows on the land. In order to assess the impact of the development proposal on the existing trees and other vegetation on the land the applicant has provided a detailed Tree Survey and Report to show the extent of the constraint that trees and hedgerows are on the development of the land. The report has been carried out in accordance with the recommendations contained in BS5837: 2012 Trees in relation to design, demolition and construction.
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In simple terms the information provided adequately demonstrates that the development of the land could take place without harm being caused to the trees and other vegetation on the land. The indicative site layout plan shows new soft landscaping and the provision for amenity facilities such as play areas. Should consent be likely to be granted then the layout will need to include a detailed soft landscaping scheme that should include new tree planting.

If it is likely that open space land is expected to be adopted by the Council for future maintenance the Council's Public Experience section should be consulted to ensure that the land is set out to an appropriate standard.

TDC Housing	The Manningtree/Mistley/Lawford area is an area of high demand and in terms of Mistley, there are currently 144 households on the housing register seeking a 1 bedroom property, 65 seeking a 2 bedroom property, 28 seeking a 3 bedroom property and 8 seeking a 4 bedroom or larger
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property.

The Housing Department is currently working on its development priorities and cannot commit at this stage to purchase 75 of the dwellings on the site as the affordable housing provision. As an alternative, the Department would be prepared to accept 18 gifted properties, this being 20% of the 25% provision. These properties would be for social rent.

It is noted on the application that the developer has accounted for 75 properties as affordable housing, this being split as 25 properties for social rent and 50 for intermediate rent. If it is decided that another registered provider purchases the units as set out in the application, we would express some caution about these numbers because in recent years, other providers have had difficulty in letting intermediate properties locally because of low wages and the fact that tenants cannot be in receipt of local housing allowance. Furthermore, one of the Council's corporate priorities is 'Local Homes for Local People' and if a provider could not fill the number of intermediate units proposed, the Council would object if these units were let to households who did not live in the Tendring area.

TDC Open
Space and Play

There is currently a deficit of 3.00 hectares of equipped play/formal open space in Mistley. It is considered essential that the open space identified to be provided as part of this development is not lost as it will provide a readily accessible open space for the residents. It is pleasing to also note that the open space is of sufficient size to make it useable.

We note the provision for play areas however would question the location of these facilities. In our view, the LEAP should be positioned away from the Village Green and replaced by the LAP being moved from its Local Green location shown on the plan.

Should the developer wish to transfer the open space provision to the Council for future maintenance, a commuted sum to cover the cost of maintenance for ten year period would be payable.

ECC Highways

Comments yet to be received.

ECC Schools

According to the latest information available to Essex County Council's Early Years and Childcare Team, places in the Manningtree, Mistley, Little Bentley and Tendring ward are currently operating at over 80% capacity, and we would need to provide additional places to support this development; based on 300 dwellings, this would generate a need for an additional 27 places.

The proposed development is located within reasonable travelling distance of Highfields Primary School, Lawford CE Primary School and Mistley Norman CE Primary School. These schools have a combined overall capacity of 630 places. These schools overall are forecast to have a deficit of 33 places by the school year 2018-19. Based on 300 dwellings this development would generate the need for an additional 90 places.

This proposed development is located within the priority admissions area for Manningtree High School. The school has a capacity of 870 places. Forecasts indicate there will be insufficient places available to accommodate all children generated by this development. Based on 300 dwellings this development would generate the need for an additional 60

secondary places.

In view of the above it is requested that any permission for this development is granted subject to a section 106 agreement to mitigate its impact on education. We request that the s106 agreement include a contribution toward early years and childcare, primary and secondary education.

On the understanding that all of the units will have 2 or more bedrooms, the early years and childcare contribution would be £374,706, for expansion of early years and childcare provision within the Manningtree, Mistley, Little Bentley and Tendring ward. The primary school contribution would be £1,095,480, to be used for expansion at one of the following schools, Highfields Primary School, Lawford CE Primary School or Mistley Norman CE Primary School. The secondary school contribution would be £1,109,460 for expansion at Manningtree High School. Index linked to April 2015 costs.

If your Council was minded to turn down the application, we would be grateful if the lack of education and transport provision in the area can be noted as an additional reason for refusal and that we are automatically consulted on any appeal or further application relating to this site.

Anglian Water

Assets affected: Our records show that there are no assets owned by Anglian Water or those subject to an adoption agreement within the development site boundary.

Wastewater treatment: The foul drainage from this development is in the catchment of Manningtree Water Recycling Centre that will have available capacity for these flows.

Development will lead to an unacceptable risk of flooding downstream. However a development impact assessment has been prepared in consultation with Anglian Water to determine a feasible mitigation solution. We will request a condition requiring compliance with the agreed drainage strategy.

Surface water disposal: The preferred method of surface water disposal would be to a sustainable drainage system (SUDS) with connection to sewer seen as the last option. Building Regulations (part H) on Drainage and Waste Disposal for England includes a surface water drainage hierarchy, with infiltration on site as the preferred disposal option, followed by discharge to watercourse and then connection to a sewer.

The surface water strategy/flood risk assessment submitted with the planning application relevant to Anglian Water is unacceptable as the final surface water drainage strategy is unclear. Section 16.5 of the FRA states a discharge to watercourse is proposed, whereas section 4.2 makes reference to discharging flows to the combined public sewer. We require clarification of the surface water drainage strategy. We would therefore recommend that the applicant needs to consult with Anglian Water and Environment Agency.

We will request that the agreed strategy is reflected in the planning approval.

Trade effluent: This planning application includes employment/commercial use. To discharge trade effluent from trade premises to a public sewer vested in Anglian Water requires our consent. It is an offence under

section 118 of the Water Industry Act 1991 to discharge trade effluent to sewer without consent. Anglian Water would ask that the following text be included within your Notice should permission be granted.

“An application to discharge trade effluent must be made to Anglian Water and must have been obtained before any discharge of trade effluent can be made to the public sewer.

Anglian Water recommends that petrol/oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of such facilities could result in pollution of the local watercourse and may constitute an offence.

Anglian Water also recommends the installation of properly maintained fat traps on all catering establishments. Failure to do so may result in this and other properties suffering blocked drains, sewage flooding and consequential environmental and amenity impact and may also constitute an offence under section 111 of the Water Industry Act 1991.”

Suggested planning conditions: Anglian Water would recommend the following planning conditions if the Local Planning Authority is mindful to grant planning approval:

Condition: No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.

Reason: To prevent environmental and amenity problems arising from flooding.

Condition: No drainage works shall commence until a surface water management strategy has been submitted to and approved in writing by the Local Planning Authority. No hard-standing areas to be constructed until the works have been carried out in accordance with the surface water strategy so approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent environmental and amenity problems arising from flooding.

National Grid

National Grid has identified that it has apparatus in the vicinity of the site. Can the Council please inform National Grid, as soon as possible, the decision the authority is likely to make regarding this application.

NHS England

The proposal is likely to have an impact on the NHS funding programme for the delivery of primary healthcare provision within this area and specifically within the health catchment of the development. NHS England would therefore expect these impacts to be fully assessed and mitigated by way of a developer contribution secured through a Section 106 planning obligation.

The planning application does not include a Healthcare Impact Assessment (HIA) of the proposed development or proposed any mitigation of healthcare impacts arising from the proposed development. NHS England has recently carried out a review of GP services to identify capacity issues throughout Essex. This development is likely to have an

impact on the services of 2 practices within the Lawford locality [Lawford Surgery and Riverside Health Centre]. This GP does not have capacity for the additional growth as a result of this development. There a HIA has been prepared by NHS England to provide the basis for a developer contribution toward capital funding to increase capacity within the GP Catchment Area.

There is a capacity deficit in the catchment practices and a developer contribution of £90,520 is required to mitigate the 'capital cost' to NHS England for the provision of additional healthcare services arising directly as a result of the development proposal. NHS England requests that this sum be secured through a planning obligation linked to any grant of planning permission, in the form of a Section 106 agreement.

Natural England Internationally and nationally designated sites: The application site is within or in close proximity to a European designated site (also commonly referred to as Natural 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). The application site is in close proximity to the Stour and Orwell Estuaries Special Protection Area (SPA) which is a European Site. The site is also listed as the Stour and Orwell Estuaries Ramsar site and also notified at a national level as the Stour Estuary Site of Special Scientific Interest (SSSI).

In considering the European site interest, Natural England advises that the Council, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

The consultation documents do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitat Regulations have been considered by the Council, i.e. the consultation does not include a Habitats Regulation Assessment.

In advising your authority on the requirements relating to Habitats Regulations Assessment, and to assist you in screening for the likelihood of significant effects, based on the information provided, Natural England offers the following advice:

- the proposal is not necessary for the management of the European site
- that the proposal is unlikely to have a significant effect on any European site, and can therefore be screened out from any requirement for further assessment

When recording your HRA we recommend you refer to the following information to justify your conclusions regarding the likelihood of significant effects.

The application is supported by a Habitats Regulations Assessment Screening Report which concludes that there would be no likely significant effect on any international site either alone or in combination. Natural England is in agreement with this conclusion. Of the issues covered in the HRA report we note in particular that the proposals include mitigation to

avoid increased disturbance to the Stour and Orwell Estuaries SPA and Ramsar Site through the provision of high levels of public open space within the application site (figure given of approximately one third of the site) which would provide new as well as existing residents with an alternative to using the estuary for recreational activities such as dog walking.

SSSI No objection: This application is in close proximity to the Stour Estuary Site of Special Scientific Interest (SSSI). For the reasons discussed above, Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which this site has been notified. We therefore advise your authority that this SSSI does not represent a constraint in determining this application.

Other advice: We would expect the Local Planning Authority to consider the other possible impacts resulting from this proposal on local sites (biodiversity and geodiversity), local landscape character and local or national biodiversity priority habitats and species.

Protected species: Apply Natural England's standing advice.

Biodiversity enhancements: This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the use of native trees and shrubs and planning of wildflower meadows.

Soils and land quality: Recommend a detailed soil survey to establish the its agricultural grading.

Essex County
Council Flood
Authority

Having reviewed the information sent in response to our objection to the Flood Risk Assessment it is now considered that a drainage scheme has been proposed which demonstrates surface water management is achievable in principle, without causing flooding on-site or elsewhere. We therefore support the granting of outline planning permission.

The proposed development will only meet the requirements of the National Planning Policy Framework if the following measures as detailed in the FRA and the above mentioned email submitted with this application are implemented and secured by way of a planning condition on any planning permission.

Condition: Before each phase of development approved by the planning permission, a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, should be submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent the increased risk of flooding, both onsite and offsite, and minimise the risk of pollution of surface water by ensuring the provision of a satisfactory means of surface water pollution control and disposal during and after development.

ECC
Archaeology

This application has been identified as having archaeological implications. The Essex Historic Environment Record, and the archaeological desk based assessment and geophysical survey that accompany the application identify the potential for significant heritage assets in the form of below

ground archaeological remains that will be affected by the proposed development. The following recommendations are made in line with the Department for Communities and Local Government National Planning Policy Framework.

Recommendation: A programme of trial trenching followed by open area excavation.

1. No development or preliminary ground-works can commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a written scheme of investigation, which has been submitted by the applicant, and approved by the planning authority.
2. No development or preliminary groundwork can commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the mitigation strategy, which has been signed off by the local planning authority.
3. Following completion of the archeological fieldwork, the applicant will submit to the local planning authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the planning authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Further recommendations: A professional team of archaeologists should undertake the archaeological work. The archaeological work will comprise initial train trenching evaluation of 4% of the area (with 1% contingency). The evaluation will be undertaken and completed and then followed by open area excavation under a new archaeological programme where archaeological deposits are identified that will be affected by the proposed development. A brief outlining the level of archaeological investigation will be issued from this office on request. Tending should inform the applicant of the recommendation and its financial implications.

Essex
Bridleways
Association

We note no new bridleways are proposed. We are of the opinion this development provides an ideal opportunity to improve the public rights of way network in accordance with the NPPF by creating bridleways in circular routes around the development, to link to the tracks which are already used by horses to the east of the development [as shown coloured yellow on the enclosed copy location plan].

There are virtually no bridleways in the area, resulting horse riders having no choice but to use dangerous roads to the detriment of all users. This development creates an ideal opportunity to provide some bridleways in the district.

The new bridleways would become important strategic links in the bridleway network and would provide a safe route for horses and other vulnerable users, so they can avoid using local roads.

The creation of new bridleways would be in accordance with Government Policy as set out in the NPPF and other documents.

Sustrans
Ranger

These objections can be considered removed if the following conditions are part of outline approval:

- 3m shared use path provided along Clacton Road between Long Road and Pedlars Corner/Dead Lane, providing, for the first time, a safe cycle link between Trinity Road/New Road and Chequers Road. This provides access to the countryside and access across Tendring, and removes cyclists from the current difficult turning into Dead Lane from Clacton Road.
- A short section needs to be provided at Mistley Manor Care Home which could be achieved through a contribution from the developer.
- 3m shared use path provided along Long Road and a contribution from the developer to enable this shared path to be extended past existing properties to Clacton Road removing cyclists from this busy junction.
- A contribution from the developer to improve shared use infrastructure along Long Road to the junction with Colchester Road again removes cyclists from this busy section.
- The development should include a shared use non-motorised traffic access to Dead Lane/Chequers Road linking the development to the countryside to the benefit of the occupants.
- This access, if designed and positioned well, can be delivered in accordance with the Secured By Design Guidelines, and these guidelines should be used as an excuse to prevent such access.
- It will encourage cycling, provide access to the local countryside and has the potential to form part of a strategic North/South cycle route across Tendring using the proposed cycle crossing to be delivered by Highways England at A120 Hare Green and Pellens Corner.
- The development should include a North/South 0 East/West shared use route through the development between Long Road and Dead Lane and between Clacton Road and the proposed development to the West. This will link the developments, provide an East/West route via Grange Road all the way to Colchester and provide access.

5. Representations

5.1 This planning application has attracted considerable public interest with 75 individual representations in objection to the proposal along with a petition signed by 217 people. The main concerns raised by residents are summarised as follows:

- No-one in the area wants this development;
- New housing will not benefit the area, it will only benefit the developer;
- The area's infrastructure is not sufficient to support this new development;
- It is wrong to build on high-grade greenfield arable land;
- The development would be too large, would represent over-development and would be located in the wrong place;
- If the Council had an up to date Local Plan, this site would not be allocated for development in it;
- Development on greenfield land should not be allowed when there are alternative brownfield sites available in the Tendring area;
- The houses would be isolated from local shops and amenities and would increase every day dependence of the use of the private car;
- The development would be disproportionate for the area and well above the 6% increase in housing stock recommended in the emerging Local Plan;
- The government is opposed to development in 'Green Belt' areas;
- The development is contrary to policies and proposals in the Local Plan;

- The development would not comply with the economic, social and environmental requirements of the National Planning Policy Framework's definition of sustainable development;
- This development and others in the area should not be considered until the Council's new Local Plan, which will address cumulative infrastructure requirements, has been put in place;
- The cumulative affects of all development proposals in Manningtree, Lawford, Mistley, Brantham and East Bergholt have not been properly taken into account;
- No further development in the area should be considered until the 150 houses at Summers Park have been occupied;
- Developments in the area are being proposed without due consideration of the concerns of current residents and the problems that will arise;
- There are other more appropriate development sites in the area including the redundant Railex/Tesco site which is a brownfield site in a better location and an eyesore at the entry to the town centre that would benefit from being tidied up;
- This development and others are inappropriate and disproportionate in scale for this area;
- Unacceptable that more of our village green areas are to be built on
- The planning application does not provide sufficient detail of what is proposed;
- The benefits of the development do not outweigh the harm;
- There is no shortage of homes the area and more than enough housing is already either planned or under construction;
- There are thousands of empty houses in the London area that should be sufficient to meet UK housing need;
- Development would result in Mistley and Lawford merging together and losing their individual identities;
- The development would be poorly related to, and isolated from the rest of the settlement by the busy main road;
- The development would be located 'out on a limb' and would be an isolated township;
- The measures aimed at mitigating the closure of the green gap between Lawford and Mistley are minimal and do nothing except isolate the development even further;
- Manningtree would lose its status as Britain's smallest town status if this development and others in the area go ahead;
- Villages like should be kept rural and not developed into commuter towns;
- The village will be transformed into a concrete jungle;
- Development will destroy the area's appeal as an attractive place to live;
- Many people will consider leaving the area if this development takes place;
- Development would be out of character with the existing village and will change the area beyond recognition;
- The roads in the area cannot cope with current levels of traffic and additional people and cars will make the situation a lot worse;
- Both day time and night time traffic would increase to an unacceptable level;
- Congestion at the railway bridge is a particular problem that has not been adequately assessed and would be worsened by this and other developments in the area;
- The industrial area proposed for the rear of the site would result in delivery and other vehicles going through the housing estate at the same time as people leave for work or take their children to school;
- Putting traffic lights at the A137 rail crossing will not ease congestion, it will only serve to add to rush hour gridlock;
- The new road aimed to link Long Road and Clacton Road will not address traffic concerns in the area;

- Trains are already overcrowded and there is insufficient parking at the station which leads to on-street parking in Station Road and surrounding residential areas;
- The A12 is not of sufficient standard or capacity to cope with increased traffic movements that would result from this and other proposed developments;
- Traffic is particularly overwhelming when the A12 is blocked due to an accident;
- The necessary traffic management measures would not address, and would worsen, traffic problems on Long Road;
- The site is too far from existing key services and facilities to promote walking, cycling and public transport use and will therefore only succeed in encouraging increased traffic;
- Had the Local Plan not been delayed the traffic problem at the bridge would have been resolved;
- Local schools do not have the capacity to accommodate such a large increase in the local population and they do not have the space to expand;
- New families will take up places in the local schools forcing local people to send their children to schools outside of the catchment area;
- No provision had been made on this site, or any of the other sites, for new schools;
- Doctors and dentist would be unable to cope with extra influx of patients;
- No provision has been made on this site, or any of the other sites, for new surgeries;
- Colchester hospital would need to expand in order to cope with the increase of patient numbers;
- Local people will have to travel out of the area for NHS services;
- Police services will be unable to deal with further crime and emergencies arising from additional homes;
- Mistley Police Station is due to close completely from its already poor opening times surely there more of case for it to remain open with the additional homes;
- There are limited employment opportunities in the area so the majority of new residents will be commuters to Colchester, Ipswich and elsewhere;
- Companies are not likely to occupy the proposed employment area when there are other available sites elsewhere in the locality;
- It is unlikely that local residents would work on the proposed industrial estate;
- New homes would not be matched with new jobs and the development itself does not include any employment uses or permanent job opportunities;
- The biggest local employers have gone and these jobs have not been replaced;
- Construction jobs resulting from the development will only provide temporary employment; and
- The economic benefit of this development to the district would be negligible;
- The development on this exposed site would destroy the natural and beautiful skyline;
- There should be a full assessment of the carbon footprint of this development;
- The Council should require a full Environmental Impact Assessment (EIA) for this development, particularly when considered cumulatively with other developments proposed for the area;
- The Council must consider the impact on local wildlife due to loss of agricultural land;
- The environmental impact on the flora and fauna has not been properly considered;
- There will be a loss of biodiversity in an area where green and spotted woodpeckers, owls, bats, frogs, slowworms, newts and many species of wildflowers, insects and other birds have been observed;
- Development is partly within the Local Green Gap in the emerging Local Plan;
- Development on open farmland on the edge of the village would harm the surrounding countryside;
- Lots of people will consider leaving if development goes ahead;

- Increase in output by the power station, which will have a detrimental effect on residents;
- There would be an increase in community tension and loss of social capital;
- Destruction of semi rural life;
- This development will have a negative impact on the value of existing properties;
- Inadequate infrastructure and the detrimental impact on the life of local residents
- Local people attach considerable importance to individual character of their village
- Development will lead to a drop in water pressure.
- These fields are likely to have underground water sources that would be effected by development;
- If homes are needed, the Council should select one site only on the basis of providing the best package of benefits to the community;
- The area only has the co-op and a Tesco express for food shopping;
- Manningtree lacks the retail required for the size of the population and due to lack of parking, causes people to shop elsewhere;
- Concerns regarding whether there is sufficient water supply and sewage facilities to serve the new development;
- New development will increase noise and potential nuisance which inevitably comes with new development;
- New housing should only be allowed if when it can be proved to be of greater benefit to the community and not to the politicians;
- There has been a lack opportunity for people to oppose the plans;
- If development is to be allowed, 2.5 storey homes should not be allowed as they would unacceptable in a rural edge-of-settlement location and would be out of keeping with the surrounding area;
- There should be a 'beauty contest' in which architects can present their designs and ideas at meetings to gain public support;
- Sports facilities need to be upgraded the outdoor swimming pool at Manningtree sports centre is uncovered and unheated this should be improved or provision for a new local pool;
- Before any permission is granted it is vital that the railway bridge is rebuilt;
- If planning permission is given it should be contingent on the developer extending the station car park for at another 200 cars; and
- Issue of people doing shopping out the local area and not supporting the local shop so they close down.

5.2 **Mistley Parish Council** has objected strongly to the application with the following concerns:

- all options would involve closing the green gap between Mistley and Lawford;
- the proposed green spaces are tokenistic;
- proposed employment area at the rear of the development is wrongly sited as commercial vehicles will need access through the residential areas – and there is a surplus of local commercial land at the Riverside Estate in Lawford and potential commercial land at Horsley Cross, Mistley;
- parking;
- building on the highest point in the area would add considerably to the light spill at night destroying the current dark skies that can be experienced along the Clacton Road;
- impact of additional traffic in an area where there are 40 mph speed limits on the Clacton Road and Long Road which converge at a busy junction with New Road along which all heavy goods vehicles need to use to access EDME, Crisp Maltings and the Port of Mistley;

- proposed access points to development becoming used as rat runs;
- increase of traffic to Trinity Road, which bottlenecks at the railway bridge with the road narrowing and leading into Brook Street.
- This application represents unplanned development which will have a serious impact on the sustainability of the services and amenities in the locality.
- The proposed Local Plan makes provision for up to 650 new houses to be built over the next sixteen years in Mistley, Lawford and Manningtree. However, the number of potential houses to be built has increased by almost double with additional developments such as this one, plus possible developments of land at Mistley Heath and at Bromley Road and Long Road, Lawford.
- This proposed development would result in a 30 percent increase in the building of new houses in Mistley.
- In addition, there is the proposed development of land in nearby Brantham and East Bergholt in Suffolk.
- Altogether, these developments will have a deleterious impact on the local health services, schools and shops. This proposed development is currently remote from local shops and facilities.
- No public transport provision is proposed, so residents will need to rely on cars.
- It was noted that there is no mention in the application about the potential impact on the A137 and the railways.
- Mistley Parish Council considers that this application for outline planning is unwanted and unnecessary.

5.3 Manningtree Town Council has objected to this application on the grounds of over-development of the area and inadequate existing infrastructure.

5.4 Lawford Parish Council has also objected to this application on the basis that:

- It is not part of the emerging local plan and the site has not been identified by the district planners for a development therefore not supported by Tendring District Council and it is believed the developers were informed of this fact and have chosen to ignore this fact.
- It should remain part of a green wedge.
- A proposal for a house in Ramsey was turned down because it infringed the green wedge of Ramsey Village so a precedent has been set.
- The proposal for commercial units has not had a proper assessment done to see if they are required.
- The industrial estate in Lawford still has spare capacity and there is a proposal for commercial units at Horsley Cross which is not very far away and with better road access.
- Please note, have all the sustainability checks been carried out to ensure that Mistley, Manningtree and Lawford parishes infrastructure i.e. roads, water, sewerage etc can cope with this large building development.

6 Assessment

The Site

6.1 The land in question lies immediately south of Long Road on the Mistley side of the Mistley/Lawford Parish boundary and borders Clacton Road to east and Dead Lane to the south. The site comprises 23 hectares of arable agricultural land that is roughly square in shape and that rises from its northern boundary but then falls to a relatively flat plateau over the southern part of the site. With limited boundary hedging and vegetation, the site is visually very exposed on entry into the settlement from the south along Clacton Road.

6.2 To the west of the site lies open agricultural land that is the subject of separate outline planning application 15/00876/OUT for mixed use development including up to 360 dwellings. The northern edge of the site abuts Long Road which passes through the open gap between the built up areas of Lawford and Mistley. To the north of Long Road is an area of open space that falls towards the built up area and which affords long distance views over the built up area and toward the Stour Estuary. The site abuts a small number of dwellings and recently completed care home in Clacton Road to the east and there is further open countryside to the south past Dead Lane.

The Proposal

6.3 This outline planning application with all matters reserved, other than strategic access points onto Long Road and Clacton Road, seeks approval for the principle of up to 300 dwellings, up to 2 hectares of employment land (including use classes A2: financial and professional services; A3: restaurants and cafes, B1: business use and D1: non-residential institutions), with associated public open space and infrastructure.

6.4 Whilst most matters are reserved for later consideration, a Design and Access Statement and indicative drawings have been submitted which demonstrate, indicatively, how such a development could be achieved within the application site, with a number of different options for how different uses could be orientated.

6.5 The indicative material and the applicant's preferred option shows a scheme with substantial area of open space, water-features and landscaping around the north, eastern and south eastern edges of the site. The drawings show residential development located in the central and western part of the site accessed via a new link road created between Long Road and Clacton Road that would bypass the need for Lawford-bound traffic to use the existing junction at Clacton Road/Trinity Road. The proposed employment land is shown in the south western corner of the site close to Dead Lane.

6.6 The application is supported by the following documentation:

- Landscape Parameter Plan;
- Massing Parameter Plan;
- Indicative Master Plan;
- Proposed Access Arrangements;
- Proposed Highways Improvements;
- Planning Statement;
- Design and Access Statement;
- Landscape and Visual Impact Assessment;
- Tree Survey;
- Transport Assessment;
- Geo-environmental Survey;
- Archaeological Desk-Based Assessment;
- Ecology Assessment; and
- Statement of Community Involvement.

Main Planning Considerations

6.7 The main planning considerations are:

- Principle of development;

- Settlement form;
- Highways, transport and accessibility;
- Duty to cooperate;
- Flood risk and drainage;
- Education provision;
- Health provision;
- Utilities;
- Landscape, visual impact and trees;
- Green gaps and Conservation Area
- Open space;
- Ecology;
- Archaeology;
- Council Housing/Affordable Housing; and
- Indicative design and layout.

Principle of development

- 6.8 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2014, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework (NPPF) are a material consideration in this regard.
- 6.9 The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. The 2012 Local Plan: Proposed Submission Draft, as amended by the 2014 Local Plan: Pre-Submission Focussed Changes, is the Council's 'emerging' Local Plan.
- 6.10 On 25th March 2014, the Council decided that further substantial revisions to the emerging plan will be required before it is submitted to the Secretary of State to be examined by a Planning Inspector. These revisions will aim to ensure conformity with both the NPPF and the legal 'duty to cooperate' relating mainly to issues around housing supply. The separate Local Plan Committee is overseeing this work with a view to a new version of the plan being published for consultation in early 2016.
- 6.11 The site is not allocated for housing or mixed use development in either the adopted or emerging Local Plans. The site also lies completely outside of the 'settlement development boundary' in both the adopted and emerging Local Plans. The site is almost completely isolated from the existing built up area and the settlement development boundary as defined in the adopted Local Plan, although it immediately adjoins a small part of the boundary in the emerging plan which was extended to better reflect the delineation of the built-up area with the open countryside.
- 6.12 In the emerging Local Plan, the northern part of the site fronting Long Road is shown as part of a 'Strategic Green Gap designed to maintain separation between the two distinct parts of the settlement. No part of the site is protected as such in the adopted Local Plan.
- 6.13 Although the proposal is contrary to local policy, as it stands both the adopted and emerging Local Plans fall significantly short in identifying sufficient land to meet the 'objectively assessed' future need for housing which is a key requirement of the NPPF. As a

result, the Council is also currently unable to identify a five-year supply of deliverable housing sites, plus a 5-20% buffer, as required by paragraph 47 of the NPPF.

- 6.14 Based on the evidence contained within the 'Objectively Assessed Housing Needs Study (July 2015) for Braintree, Chelmsford, Colchester and Tendring, the projected need for housing in Tendring is 597 dwellings per annum. Whilst this figure is still the subject of continued scrutiny by the Local Plan Committee and could change, it currently provides the most up to date evidence on which to base the calculation of housing land supply. In applying the requirements of NPPF paragraph 47 to this requirement, the Council is currently only able to identify an approximate 3.5 year supply. In line with paragraph 49 of the NPPF, housing policies must therefore be considered 'out-of-date' and the government's 'presumption in favour of sustainable development' is engaged. To comply with national planning policy, the Council would not, at this time, be justified in refusing this planning application purely on the basis that it lies outside of the settlement development boundary and is not allocated for development in either the adopted and emerging Local Plan.
- 6.15 'Sustainable Development', as far as the NPPF is concerned, is development that contributes positively to the economy, society and the environment and under the 'presumption in favour of sustainable development', authorities are expected to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted.
- 6.16 One of the NPPF's core planning principles is to "*actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable*". With this in mind, the emerging Local Plan includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations.
- 6.17 In both adopted and emerging plans, Manningtree, Lawford and Mistley are together categorised as a 'town' or 'urban settlement' in recognition of their collective size and range of services and facilities and as a location where sustainable development on a larger scale can be achieved. In comparison, 'villages', 'key rural service centres' and 'smaller rural settlements' are considered to offer lesser sustainable locations for major development. On a matter of principle therefore, this proposal for major residential and mixed-use development on the periphery of Mistley and Lawford was being approached positively by Officers. The applicant has however chosen to appeal against non-determination before all planning matters have been addressed.

Settlement form

- 6.18 The site enjoys a location adjoining a settlement categorised as a town or urban settlement and therefore offers a potentially sustainable location for major development. However the site, unlike others under consideration in the area, is for the best part physically separate from the established built up area. Although this has the advantage of affecting a fewer number of existing properties directly, it also means that in isolation, development on this site would represent an illogical incursion into the open countryside with a weak relationship with the established pattern of built development in the area. Policy QL9 in the adopted Local Plan and policy SD9 in the emerging Local Plan both require that developments should maintain or enhance local character and distinctiveness, relate well to their site and

surroundings and respect or enhance existing street patterns. In isolation, this development would perform poorly against these policy requirements.

- 6.19 This would be less of an issue if development on land to the west of the site (currently the subject of planning application 15/00876/OUT) was approved and was to take place because then this development could be read in the context of a wider direction of growth.
- 6.20 At pre-application stage, the applicants were advised to promote their scheme through the Local Plan process rather than submitting a planning application to ensure that matters relating to settlement form and expansion were considered comprehensively along with other potential development sites.
- 6.21 Whilst evidence has been submitted to demonstrate how a package of landscaping measures could mitigate some of the landscape and visual impacts, an isolated development in this location would still conflict with the established pattern and character of development in the Mistley and Lawford area. It would also represent an illogical incursion into the countryside which would be less of a concern on other potentially developable sites or if the site were developed comprehensively with adjoining land.
- 6.22 Because the applicant has chosen to appeal against non-determination in advance of any decision with regards to the application for land to the west, Officers advise that matters relating to settlement form and incursion into the open countryside remain unresolved.

Highways, transport and accessibility

- 6.23 Paragraph 32 of the NPPF relates to transport and requires Councils, when making decisions, to take account of whether:
- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
 - safe a suitable access to the site can be achieved for all people; and
 - improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 6.24 From the comments submitted by Babergh District Council, the local Town and Parish Councils and a large number of local objectors to the proposal, matters relating to highways, transport and accessibility are of fundamental concern and have required very careful consideration.
- 6.25 Policy QL2 in the adopted Local Plan and Policy SD8 in the emerging Local Plan seek to ensure that developments maximise the opportunities for access to sustainable transport including walking, cycling and public transport. The application site is within a reasonable walking distance of some local services and facilities as well as local bus services and despite being located on the outskirts of the established built up area, offers a reasonable level of accessibility which is reflected in Manningtree, Lawford and Mistley's categorisation as an urban settlement in the emerging Local Plan.

- 6.26 Through this outline application, approval was being sought for two strategic access points – one off Clacton Road and one off Long Road with the potential for these to be linked through the development. At the time of writing, the comments of Essex County Council as the Highway Authority had yet to be received (for the reasons explained below) and Officers are not in a position to confirm whether or not the proposed access points are acceptable.
- 6.27 Policy TRA1a in the adopted Local Plan requires that development affecting highways be considered in relation to reducing and preventing hazards and inconvenience to traffic including the capacity of the road network. Policy SD8 in the emerging Local Plan states that developments will only be acceptable if the additional vehicular movements likely to result from the development can be accommodated within the capacity of the existing or improved highway network or would not lead to an unacceptable increase in congestion.
- 6.28 Highway capacity is a significant matter in the Manningtree, Lawford and Mistley (and Brantham) area and the A137 in particular is known to be the subject of regular queuing and congestion during peak periods, as highlighted by many residents that had objected to this planning application. Queuing at the railway crossing is a known problem in the area which is identified in Policy PRO1 in the Council's emerging Local Plan as a key priority for action. In support of the planning application, the applicant submitted a Transport Assessment that sought to demonstrate how the additional vehicular movements resulting from the development could be accommodated on the highway network. However, because this is one of a number of planning applications for major development under consideration in the area, the cumulative impacts have required further collaborative assessment under the direction of Essex and Suffolk County Council as the relevant local Highway Authorities.
- 6.29 At the time of the applicants submitting their appeal against non-determination, the collaborative work was still ongoing and the Highways Authorities had yet to issue their conclusions on the potential cumulative impact of developments on the highway network and any mitigation measures that might be necessary to address such impacts.
- 6.30 Until such matters are resolved, Officers are not in a position to demonstrate that severe impacts on the transport network will be avoided or mitigated and are therefore unable to recommend the approval of outline planning permission. By implication, if making a recommendation at the present time, Officers would have no choice but to recommend refusal.

Duty to Cooperate

- 6.31 Section 33A of the Planning and Compulsory Purchase Act 2004, as amended by Section 110 of the Localism Act 2011 places a duty upon local authorities and other public bodies to cooperate on strategic matters of cross-boundary significance. It is significant therefore that Babergh District Council has objected to this application, as well as other major applications under consideration in the area. The reason for objection relates to a concern that unless the cumulative impacts of developments on the highway network are properly understood and mitigated, developments in the Manningtree, Lawford and Mistley area could jeopardise the successful delivery of a regeneration project at Brantham Industrial Estate that is allocated in the Council's Local Plan and that is the subject of its own planning application currently under consideration.
- 6.32 As explained above, partners are working together to assess the cumulative impacts and identify any necessary mitigation measures. If resolved, this should result in Babergh District Council's objection being addressed. As this is yet to be resolved, Officers advise

that approving this planning application now would represent a failure in the legal duty to cooperate.

Flood risk and drainage

- 6.33 Paragraph 103 of the NPPF requires Councils, when determining planning applications, to ensure flood risk is not increased elsewhere. Although the site is in Flood Zone 1 (low risk), the NPPF, Policy QL3 in the adopted Local Plan and Policy PLA1 in the emerging Local Plan still require any development proposal on site larger than 1 hectare to be accompanied by a site-specific Flood Risk Assessment (FRA). This is to assess the potential risk of all potential sources of flooding, including surface water flooding, that might arise as a result of development.
- 6.34 The applicant has submitted a Flood Risk Assessment which has been considered by Essex County Council as the authority for sustainable drainage. Initially, ECC issued a 'holding objection' and required further work to be undertaken to ensure compliance with the guidelines set out in the relevant National Planning Practice Guidance. The applicant responded to the objection with further information requested and the objection has now been addressed. ECC now supports the grant of outline planning permission subject to conditions relating to the submission and subsequent approval of a detailed Surface Water Drainage Scheme before development can take place.
- 6.35 In conclusion, the applicant has demonstrated through their Flood Risk Assessment and supplementary information that development can, in principle, be achieved without increasing flood risk elsewhere. With the planning condition suggested by ECC, the scheme should comply with the NPPF and Policies QL3 and PLA1 of the adopted and emerging Local Plans (respectively) and therefore addresses the flood risk element of the environmental dimension of sustainable development.

Education provision

- 6.36 As part of the 'social role' of sustainable development, the NPPF promotes the creation of high quality built environments with accessible local services that reflect the community's needs and support its health, social and cultural well-being. Policy QL12 in the adopted Local Plan and Policy SD7 in the emerging Local Plan require that new development is supported by the necessary infrastructure but many local residents have raised serious concern about the impact of additional homes on local infrastructure, including education and schools.
- 6.37 As this the case across most parts of the district, local education services are operating either at or close to capacity in catering for the needs of the current population. One of the roles of the Local Plan is to ensure that major residential developments are planned alongside agreed investment in an area's infrastructure to accommodate anticipated increases in population. For education provision, this could mean the expansion of existing facilities or through the provision of new ones.
- 6.38 However, because the Council's Local Plan is out of date and it cannot identify sufficient land to meet projected housing needs, applications must be considered on their merits against the government's presumption in favour of sustainable development and Officers have needed to liaise with Essex County Council as the Local Education Authority (with a strategic overview of early years and school places in our area) to calculate what investment will be required to mitigate the impact of this development and others proposed

in the Manningtree, Lawford and Mistley area. Through adopted Policy QL12 and emerging Policy SD7, the Council can require developers to address infrastructure requirements likely to arise from their developments by either building new facilities or making financial contributions towards the creation of new places.

- 6.39 As with highways matters, the individual and cumulative impacts on education provision arising from a number of major development proposals in the Manningtree, Lawford and Mistley area have needed to be carefully considered. Essex County Council has been consulted on this planning application as well as the other major applications in the area. The County Council has made representations to advise on future capacity for early years and childcare facilities, primary school places and secondary school places based on projections that are updated regularly. These indicate how the additional children likely to arise from these developments can best be accommodated by the provision of early years and childcare facilities and primary and secondary schools in the area.
- 6.40 ECC has advised that on the basis of 300 houses, this proposal alone would generate a need for 27 Early Years and Childcare (EY&C), 90 primary school and 60 secondary school places. To address these requirements, ECC has requested contributions of £374,706 for EY&C, £1,095,480 for primary provision and £1,109,460 for secondary provision – just over £2.5million in total
- 6.41 Cumulatively, if permission for this development of up to 300 dwellings were granted as well as the proposals for up to 360 dwellings off Bromley Road, Mistley and up to 135 dwellings off Harwich Road, Mistley that would mean potentially close to 800 additional dwellings being built in the area (excluding existing sites with permission and other smaller sites that might come forward in the future). ECC has advised that if all such developments proceeded, expansion at Lawford Church or England Primary School would be required, possibly requiring the acquisition of adjoining land. Alternatively new facilities might need to be planned for.

Health provision

- 6.42 The requirement of the NPPF to promote the creation of high quality environments with accessible local services that reflect the community's needs also extends to health provision, another matter of considerable concern amongst local residents. Again through Policy QL12 in adopted Local Plan and Policy SD7 in the emerging Local Plan, new development needs to be supported by the necessary infrastructure, including health provision.
- 6.43 As this the case across most parts of the district, local health services are operating either at, close to or above capacity in catering for the needs of the current population. One of the roles of the Local Plan is to ensure that major residential developments are planned alongside agreed investment in an area's infrastructure to accommodate anticipated increases in population. For health provision, this could mean the expansion of existing facilities or through the provision of new ones.
- 6.44 However, because the Council's Local Plan is out of date and it cannot identify sufficient land to meet projected housing needs, applications must be considered on their merits against the government's presumption in favour of sustainable development and Officers have needed to liaise with NHS England (with a strategic overview of health provision in our area) to calculate what investment will be required to mitigate the impact of this development and others proposed in the Manningtree, Lawford and Mistley area. Through

adopted Policy QL12 and emerging Policy SD7, the Council can require developers to address infrastructure requirements likely to arise from their developments by either building new facilities or making financial contributions towards the creation of additional capacity.

- 6.45 As with highways and education, Officers have considered both the individual impact of this development on health provision as well as the cumulative impact that might arise if the other major developments are to be allowed. In terms of secondary hospital provision, the NHS is responsible for investment that will ensure the growing population is properly served. The Council cannot refuse planning permission for major residential developments in response to local concerns about facilities at Colchester General Hospital, particularly as house building is a key government objective alongside the modernisation of the NHS.
- 6.46 For local primary healthcare provision however, the Council working with NHS England can, through the planning system, put measures in place to mitigate the impact of population growth arising from major residential developments on local infrastructure. Whilst it is the NHS' responsibility to ensure that health centres and local surgeries are adequately resourced and staffed, the Council can secure either new buildings or financial contributions towards expanding existing buildings to ensure there is at least sufficient space for additional doctors, nurses and other medical professions to provide their services.
- 6.47 The Manningtree, Lawford and Mistley area is served by two doctors surgeries, the Riverside Health Centre in Station Road and Lawford Surgery in Colchester Road. NHS England has identified that the proposed developments are likely to have an impact on the NHS funding programme for the delivery of primary healthcare provision within this area and specifically within the health catchment of the development. NHS England would therefore expect these impacts to be fully assessed and mitigated by way of a developer contribution secured through a s106 agreement.
- 6.48 NHS England has undertaken a Health Impact Assessment of the development proposal and has identified that the local surgeries will not have the capacity to serve the additional residents that would result from the development. A developer contribution of £90,520 is requested to mitigate the capital cost to the NHS for the provision of additional healthcare services. NHS England has confirmed that there are already plans in the pipeline to expand the Riverside Health Centre and that such moneys could be used to help fund this investment, or future expansion at Lawford Surgery.

Utilities

- 6.49 With regard to sewage capacity, Anglian Water has advised that there is sufficient capacity in the foul sewerage network to deal with the levels of effluent expected from this scheme of and has made no objections to the proposal subject to conditions to require a surface water management strategy and a foul water strategy being submitted and agreed. Officers have requested information from Anglian Water to comment on the potential cumulative effects of development (if more than one proposal were to be approved) on sewage treatment capacity.
- 6.50 The National Grid has commented on the application to say that there are apparatus close to the site (there is visibly an overhead line across the site) but offers no specific objections at this time, simply requesting that they are notified of the Council's decision.

Landscape, visual impact and trees

- 6.51 Policy QL9 in the adopted Local Plan and Policy SD9 in the emerging Local Plan require developments to respect and enhance views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Policy EN1 of the adopted Local Plan and Policy PLA5 in the emerging Local Plan seek to protect and, wherever possible, enhance the quality of the district's landscape; requiring developments to conserve natural and man-made features that contribute toward local distinctiveness and, where necessary, requiring suitable measures for landscape conservation and enhancement. Policies QL9 and SD9 also require developments to incorporate important existing site features of landscape, ecological or amenity value such as trees, hedges, water features, buffer zones, walls and buildings.
- 6.52 With limited boundary hedging and vegetation, the site is visually very exposed on entry into the settlement from the south along Clacton Road and Dead Lane. Development on this site would also be clearly visible from Long Road which currently enjoys a sense of openness on both sides. There are also some long distance views at the northern part of the site over the settlement of Manningtree and Mistley towards the Stour Estuary that would be affected but not lost as a result of development.
- 6.53 The applicant has submitted a Landscape and Visual Impact Assessment and indicative landscape plan that have been considered by the Council's own Principle Trees and Landscapes Officer. The submitted material demonstrates that whilst the character of the location would change considerably, there is scope for a comprehensive package of open space and landscaping that would help to mitigate the visual impact of the development and potentially bring about some environmental enhancements. The applicant has also submitted a Tree Survey and Report that demonstrates, the Officers' satisfaction, that development can take place without harm being caused to the trees and other vegetation on the land.
- 6.54 If not for the concerns outline above in relation to the illogical incursion of the development into the open countryside if delivered in isolation, visual and landscape impacts could have potentially been addressed through an appropriate landscaping scheme. However, because the proposal in isolation is considered to be harmful in terms of settlement form and urbanisation, on balance the benefits of any mitigation package would not outweigh the environmental harm.

Green gaps and Conservation Area

- 6.55 The site does not form part of one the district's 'Local Green Gaps' as identified in the Council's adopted Local Plan, but a number of objectors to the scheme have raised concern that the development would lead to the coalescence of Lawford and Mistley and would lead to their individual characters being lost. The frontage of the site onto Long Road has been designated as a 'strategic green gap' in the emerging Local Plan aimed at maintaining an open feel around Long Road and maintaining that degree of separation – although the emerging Local Plan only carries limited weight.
- 6.56 Through the applicant's indicative drawings, they have indicated how a substantial open space gap could be retained around the northern part of the site and along the east and north-eastern edge to avoid coalescence and retain a sense of openness.
- 6.57 The site adjoins the Manningtree and Mistley Conservation Area along both its northern and eastern edge and the open spaces proposed in the locations shown has the potential to avoid any detrimental effects on the setting of the Conservation Area, subject to detailed

design at a later stage. The development would not affect the setting of any listed buildings, the nearest of which being at the Acorn Village to the east, off Clacton Road.

Employment Land

- 6.58 The proposal includes provision for up to 2 hectares of employment land that could incorporate a range of employment uses including A2: financial and professional services; A3: restaurants and cafes, B1: business use and D1: non-residential institutions). Whilst the Council's latest evidence of employment land need suggests that no additional employment land is required in this location, if delivered as part of a major mixed use development would comply with one of the core planning principles of the NPPF which is to promoted mixed used developments that deliver social, economic and environmental gains.
- 6.59 Whilst there is limited evidence as to the likely demand for such additional employment land in this area, the Local Plan is out of date and the principle of creating employment opportunities as part of mixed use developments should be viewed positively in line with the NPPF.

Open Space

- 6.60 Policy COM6 in the adopted Local Plan and Policy PEO22 of the emerging Local Plan require large residential developments to provide at least 10% of land as public open space or otherwise make financial contributions toward off-site provision. The indicative drawings in support of the planning application show the provision of significant areas of open space, particularly in the northern and eastern parts of the site that would exceed, significantly the minimum 10% requirement.
- 6.61 The Council's open spaces team has made some constructive comments about the location of play areas within the site, but these would be matters for a later reserved matters application.
- 6.62 If the Council had been in a position to approve outline permission, appropriate management arrangements would need to put in place, potentially through a s106 legal agreement to transfer the space to Tendring District Council, Mistley Parish Council or another appropriate body for future maintenance with financial contributions, if necessary, toward future maintenance.

Ecology

- 6.63 Paragraph 118 of the NPPF requires Councils, when determining planning applications, to aim to conserve and enhance biodiversity. Where significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for, Councils should refuse planning permission. Many local residents have raised concern about the impact of the development on local wildlife and Natural England has raised some specific concerns that are addressed below.
- 6.64 Policy EN6 of the adopted Local Plan and Policy PLA4 of the emerging Local Plan give special protection to designated sites of international, national or local importance to nature conservation but for non-designated sites still require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.

- 6.65 Under Regulations 61 and 62 of the Habitats Regulations, local planning authorities as the 'competent authority' must have regard for any potential impact that a plan or project might have on European designated sites. The application site is not, itself, designated as site of international, national or local importance to nature conservation but the urban area of Manningtree, Lawford and Mistley does abut the Stour Estuary which is designated as a Special Protection Area (SPA), a Ramsar Site and a Site of Special Scientific Interest (SSSI). Whilst the application site is located within 2 kilometers of the Stour Estuary and consideration needs to be given to potential indirect effects on the designated area that might result from the proposed development.
- 6.66 Natural England has written to remind the Council of its statutory duty and to highlight specific concerns about the potential for 'recreational disturbance' to the protected habitat that might arise from the development and the associated increase in population and activity. Recreational disturbance is a significant problem for such habitats and can have a disastrous effect, in particular, on rare populations of breeding and nesting birds. Notable concerns include increased marine activity (boating, jet skiing etc) and people walking their dogs either within or close to the protected areas. Both activities can easily frighten birds that are breeding and nesting and can have an extremely detrimental impact on their numbers.
- 6.67 Importantly, paragraph 119 of the NPPF states very clearly that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. Natural England has advised that the assessments provided with the application and the fact that a considerable amount of recreational and informal open space is proposed as part of the development provides suitable assurances that there would be no detrimental impact on the designated areas.
- 6.68 The applicant has prepared and submitted a Phase 1 Ecological Report that has identified no evidence of protected species occupying the site but that parts of the site, particularly around the very edges, do offer potential habitats that could be protected, reinforced and enhanced through the landscaping proposals for the site. The assessment concludes that there are no over-riding ecological constraints to the development being proposed, subject to appropriate conditions to secure mitigation/enhancement measures that would both reduce the impact on wildlife and increase the long-term nature conservation value of the site.
- 6.69 In conclusion, the impact on biodiversity is expected to be low and through the landscaping proposals and recommended mitigation measures, the ecological value of the site could actually be enhanced. Officers consider that these measures are acceptable, would ensure compliance with the policies in the Local Plan.

Archaeology

- 6.70 The applicant has undertaken a desk-based archaeological survey of the site and Essex County Council's Archaeologist has recommended that if the application were to be granted permission, a condition be applied to require archaeological trial trenching.

Council Housing/Affordable Housing

- 6.71 Policy HG4 in the adopted Local Plan requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy

or rent on the open market. Policy PEO10 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 25% of new dwellings on large sites to be made available to the Council to acquire at a discounted value for use as Council Housing. The policy does allow flexibility to accept as low as 10% of dwellings on site, with 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.

- 6.72 The applicant has indicated a willingness, in principle, to comply with the requirement of the emerging policy and to enter into a s106 agreement to secure the necessary level of provision.
- 6.73 The Council's Housing Needs team has commented on the application and advised that there is a significant need for affordable housing in the Manningtree, Lawford and Mistley area based on evidence from the local housing register. It has been suggested that, as an alternative to transferring 25% of properties to the Council (up to 75 dwellings) at a discounted value, the Council would be prepared to accept 18 properties 'gifted' (i.e. transferred to the Council at zero cost).
- 6.74 If the Council had been minded to approve this application, Officers would have negotiated and agree an appropriate level of Council Housing to be secured through a s106 legal agreement. This will now be discussed as part of the appeal process.

Indicative Design and Layout

- 6.75 As an outline planning application, detailed design and layout is a reserved matter for future consideration but the Council needs to be satisfied that an appropriate scheme of up to 300 dwellings with associated open space and infrastructure can be accommodated on the site in an appropriate manner. The indicative material submitted in support of the application demonstrates that there is a reasonable prospect of an acceptable scheme being achievable on the site with ample open space.

Conclusion

- 6.76 The application will be determined by the Planning Inspectorate as the applicant has appealed against non-determination. Up to this point, the application was being assessed by Officers in relation to the policies of the NPPF and relevant adopted Local Plan and emerging Local Plan in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2014.
- 6.77 The proposal is contrary to both the adopted and emerging Local Plan. However, because the Local Plan is out of date in terms of housing supply and it is not possible to identify a five –year supply of deliverable housing sites in line with government planning policy, the application was being considered against the government's 'presumption in favour of sustainable development'. Local Plan policies that accord with the thrust of the NPPF are still relevant have apply in the determination of applications like this, including policies relating to highway safety and capacity and designed to protect the countryside from inappropriate development.
- 6.78 In summary the main considerations and conclusions are:

- The application is for 'outline' consent seeking approval only for two strategic access points (off Long Road and Clacton Road) and the principle of up to 300 dwellings and up to 2 hectares of employment land with associated public open space and infrastructure.
- The site is greenfield agricultural land in an exposed location close to but predominantly detached from the established built up area.
- The site is not allocated for housing or commercial development and it lies completely outside of the 'settlement development boundaries' in both the Council's adopted Local Plans; however because the Council's housing policies are out of date and a five-year supply of deliverable housing sites (plus a 20% buffer) cannot currently be identified, the proposal was being considered on its merits in line with the government's 'presumption in favour of sustainable development'.
- Mistley is categorised as part of the 'Urban Settlement' of Manningtree, Lawford and Mistley in the emerging Local Plan where, in recognition of its range of shops, services, facilities and infrastructure where, a proportion of the district's future housing and employment growth would be expected to take place in a sustainable manner.
- The Council is still awaiting advice from the Highways Authority on the suitability of the proposed access and the impact on highway safety and capacity both for this site individually and cumulatively alongside other significant development proposals. In the absence of this advice, which has been delayed by necessary modelling work, Officers would have no choice but to have recommend refusal of this application.
- Babergh District Council objects to the proposal, and other large applications in the area, on the basis that the cumulative impact on the highway network needs to be addressed. The Council has a legal duty to cooperate with neighbouring authorities on strategic matters of cross-boundary significance.
- The impacts of the new housing development on schools and health provision can be addressed through financial contributions, as requested by Essex County Council and the NHS. Anglian Water has no objection subject to conditions and National Grid just wants to be informed of any decision on the application.
- A Flood Risk Assessment has been submitted with the application which demonstrates that surface water flooding resulting from development on the site can be managed through the use of sustainable drainage systems and conditions are proposed requiring the submission of detailed drainage strategy for the Council's approval, in liaison with Essex County Council, before development takes place.
- In isolation, the development would represent an illogical incursion into the open countryside, poorly related to the established pattern of development. If considered alongside development to the west however, it could be considered as part of a wider comprehensive development.
- The landscape, visual and ecological impacts of the scheme have been considered and, whilst mitigation measures have been put forward in support of the application, the impact of the development on the countryside if developed in isolation is still considered to be harmful.

- Mistley Parish Council, Manningtree Town Council, Lawford Parish Council and Babergh District Council all object to the application.
- 6.80 In applying the NPPF 'presumption in favour of sustainable development' proposals must address the three dimensions of sustainable development, the economic, social and environmental roles.
- 6.81 The economic impact of the development would be positive in terms of temporary construction jobs and the increased demand for goods and services that arises from population growth and the provision of new employment opportunities within the development itself.
- 6.82 The social impacts would be positive in terms of the significant contribution toward meeting projected housing need, providing public open space and funding additional school places and healthcare expansion.
- 6.83 The environmental impacts of the development, when considered in isolation, would be harmful mixed with the loss of agricultural land and an incursion into the open countryside. Positive effects could however include the creation of new habitats as part of a comprehensive open space and landscaping package.
- 6.84 At the time that the appeal against non-determination had been submitted, insufficient information was available to determine the impacts of the development on the capacity and safety of the highway network and Officers would therefore have no choice but to have recommended refusal. The illogical incursion into the open countryside is another unresolved matter of concern.
- 6.85 At this point in time, based on the evidence available, Officers consider that the harm of development would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. Officers therefore recommend that the Council's defence against the appeal against non-determination be based upon the above issues.
- 6.86 The Planning Committee is asked to endorse this recommendation as the basis for the Council's defence against the appeal.

Background Papers

None