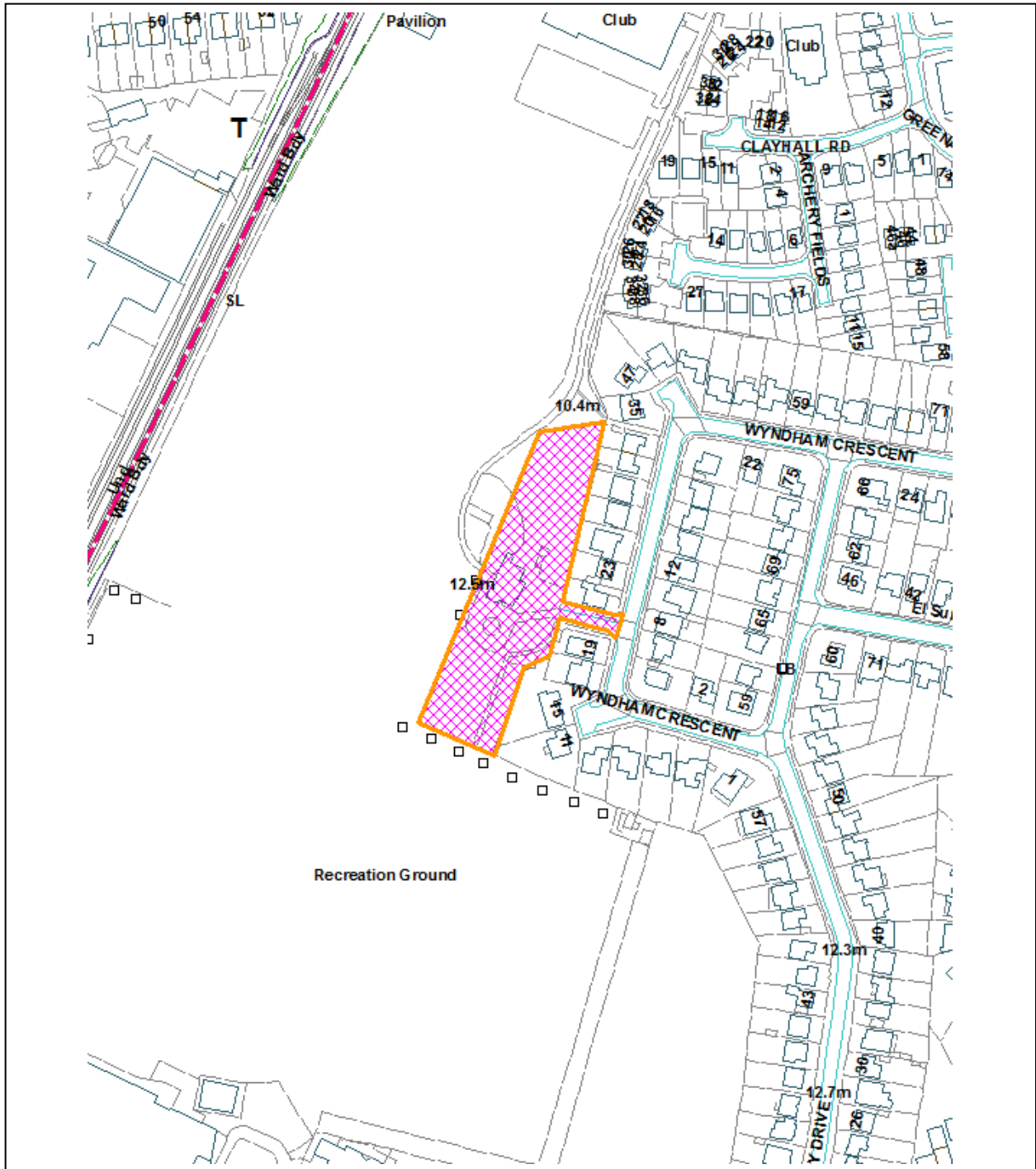


PLANNING COMMITTEE

12<sup>th</sup> JULY 2016

REPORT OF THE HEAD OF PLANNING

**A.2 PLANNING APPLICATIONS - 15/01413/FUL - CLAY HALL, WYNDHAM CRESCENT, CLACTON ON SEA, CO15 6LG**



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<b>Application:</b>	15/01413/FUL	<b>Town / Parish:</b> Clacton (Non Parished)
<b>Applicant:</b>	Beech Hill Properties	
<b>Address:</b>	Clay Hall, Wyndham Crescent, Clacton on Sea, CO15 6LG	
<b>Development:</b>	Demolition of existing building and erection of 8 No. bungalows and associated road access.	

## 1. Executive Summary

- 1.1 This application was withdrawn from the Planning Committee agenda on 2 February 2016 by the Chair of the Planning Committee in consultation with the Head of Planning in order to address the late submission of objections relating to biodiversity issues. The application is referred to Planning Committee in accordance with the Council's Constitution as the proposed development is "in respect of Council owned land." (Part 3.16). In addition, Councillor A. Mooney requested that this application is referred to Planning Committee as the site represents green space in the centre of Clacton, with mature trees and the benefit of 8 bungalows does not offset this loss. Since his request, Councillor Mooney has stepped down and the ward of St Pauls is now represented by Councillor J Parsons.
- 1.2 The site is in the St Paul's Ward of Clacton. It lies within the settlement boundary for Clacton on Sea in both the Adopted Local Plan and the Emerging Local Plan. The footprint of the existing building (known as Clay Hall) and its immediate curtilage (including the hard surfaced car park) is defined as 'whiteland' in both the Adopted Local Plan and the Emerging Local Plan. In other words, it is not designated for any particular planning land use. The unsurfaced, overflow car park area, that also forms part of the current application site is designated as protected green space in both the Adopted Local Plan and the Emerging Local Plan. The loss of protected green space is a material consideration in the determination of the application.
- 1.3 This application seeks full planning permission for the demolition of Clay Hall and the development of 8 bungalows with garages. Access to the site is proposed via the existing access to Clay Hall from Wyndham Crescent.
- 1.4 Since the deferral of the application on 2 February 2016 the applicant has submitted a Preliminary Ecological Appraisal 7 March 2016; an Interim Bat Survey Report 1 June 2016; and a Final Bat Survey Report 12 June 2016.
- 1.5 The initial report in March concluded that the building had high potential to support roosting bats and one tree (the willow tree) had potential to support roosting bats and so the site should be subject to further surveys. The report also concluded that the site provides suitable habitat for nesting birds and that either demolition and building work should take place outside of the nesting season or that before such works commenced a check for nesting birds should be undertaken and any nests should be left in situ until the young have left the nest. The report concluded that the site was not likely to support any other protected species and that, with the retained trees and proposed planting, the proposal would have a negligible to low impact upon wildlife.
- 1.6 It is considered that the site is capable of accommodating 8 no. bungalows without resulting in material harm to protected species; the loss of public open space or to the character of the surrounding area whilst preserving the amenities of neighbouring residents and meeting the

requirements of Essex County Council Highways for a suitable access that would not result in harm to highway safety.

- 1.7 The site is within the settlement boundary of Clacton on Sea and therefore it is in a sustainable location meeting the three limbs of sustainable development as defined in the NPPF. In the absence of an up-to-date Local Plan and the subsequent need to consider the proposal against the NPPF presumption in favour of sustainable development, the application is recommended for approval.

**Recommendation:**

That the Head of Planning be authorised to grant planning permission for the development subject to planning conditions in accordance with those set out in below (but with such amendments and additions, if any, to the detailed wording thereof as the Head of Planning in their discretion considers appropriate).

*(i) Conditions:*

1. Standard time limit of three years to commence development
2. Provision of the carriageway and footway connection between the proposed development site and Wyndham Crescent in accordance with Drawing Numbered 1303 01.
3. Provision of a turning facility.
4. Construction of vehicular access to a minimum width of 5.5 metres.
5. Provision of communal recycling/bin/refuse collection point within 25m of the highway boundary or adjacent to the highway boundary.
6. All off street car parking in accordance the details contained within the current Parking Standards.
7. The public's rights and ease of passage over Public Footpath No.36 (Gt Clacton) shall be maintained free and unobstructed at all times and a scheme for the surfacing of the path shall be submitted for approval
8. Submission of Construction Method Statement.
9. Submission of Arboricultural Method Statement and Tree/Root Protection Plan
10. Submission of Tree Management Plan
11. Implementation of biodiversity mitigation measures as recommended by the ecological reports – to protect the potential for foraging bats and nesting birds
12. Implementation of landscape proposals and submission of a Landscape Management Plan
13. Submission of external lighting; external facing, roofing and hard surfacing materials to be agreed
14. Submission of boundary treatments to be agreed
15. Removal of permitted development rights for roof conversions
16. Submission of detailed surface water strategy

**2. Planning Policy**

National Policy

National Planning Policy Framework

Including Para 74 – the loss of public open space

National Planning Practice Guidance

Including - Open space, sports and recreation facilities, public rights of way and local green space

### Local Policy

#### *Tendring District Local Plan 2007*

- QL1 Spatial Strategy
- QL2 Promoting Transport Choice
- QL9 Design of New Development
- QL10 Designing New Development to Meet Functional Needs
- QL11 Environmental Impacts and Compatibility of Uses
- QL12 Planning Obligations
- HG1 Housing Provision
- HG3 Residential Development Within Defined Settlements
- HG6 Dwelling Size and Type
- HG7 Residential Densities
- HG9 Private Amenity Space
- COM6 Provision of Recreational Open Space for New Residential Development
- COM7 Protection of Existing Recreational and Public Open Space
- COM7 Protection of Playing Fields and Sports Fields
- EN6 Biodiversity
- EN6A Protected Species
- EN6B Habitat Creation
- EN13 Sustainable Drainage Systems
- TR1A Development Affecting Highways
- TR7 Vehicle Parking at New Development

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

- SD1 Presumption in Favour of Sustainable Development
- SD2 Urban Settlements
- SD5 Managing Growth

- SD7 Securing Facilities and Infrastructure
- SD8 Transport and Accessibility
- SD9 Design of New Development
- SD10 Sustainable Construction
- PEO1 Housing Supply
- PEO3 Housing Density
- PEO4 Standards for New Housing
- PEO5 Housing Layout in Tendring
- PEO7 Housing Choice
- PEO19 Green Infrastructure
- PEO20 Playing Pitches and Outdoor Sports Facilities
- PEO22 Green Infrastructure in New Residential Development
- PLA3 Water Conservation, Drainage and Sewerage
- PLA4 Nature Conservation and Geodiversity

Other Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice 2009

**3. Relevant Planning History**

None

08/01460/FUL	New changing pavilion.	Approved	26.11.2008
08/01597/FUL	New paved public access on Tendring District Council land to new changing pavilion on land owned by the Applicant. The works to include drainage connections from the new building to existing main drains, a dropped kerb at the leisure centre car park and the extension of the existing accessible path marked on the car park surface linking the leisure centre to the new pavilion.	Approved	08.01.2009

**4. Consultations**

**Asset Management Team**

Clay Hall was last used as changing facilities in 2012. Clacton County High School built their own facilities in 2008 and Clacton Rugby Club built their own facilities in 2011. Cabinet made the decision to dispose of Clay Hall on 24 July 2015.

**Principal Tree &  
Landscape Officer**

Comments dated 29 October 2015 : The site is well populated with trees that make a significant and positive contribution to the character and appearance of the area. The application site forms an integral part of the recreation ground and many of the trees have high visual amenity value.

At the present time the extent to which the trees are a constraint on the development potential of the land has not been established and it has not been demonstrated that the development could take place without causing harm to, or loss of, important trees.

In order to show the extent of the constraint that the trees are on the development of the land the applicant will need to provide a Tree Survey and Report. The report should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction - Recommendations.

The report will need to show that the development proposal could be implemented without causing harm to retained trees.

At this time and from the information submitted in support of the applicant it is not possible to determine whether or not a satisfactory juxtaposition of trees and dwellings can be achieved. The tree survey and report should be submitted to the Council prior to the determination of the planning application.

Should planning permission be likely to be granted then a soft landscaping condition should be attached to secure details of tree, shrub and hedge planting to soften and enhance the appearance of the development. Boundary treatments should be given special attention

Revised comments dated 4 December 2015 following receipt of Tree Report

In order to establish the degree to which the trees are a constraint on the development potential of the land the applicant has provided a Tree Survey and Report. The report is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction - Recommendations.

The report accurately describes the general health and condition of the trees on the application site and adjacent land; it accurately shows the extent to which they affect the development potential of the land. The report identifies those trees to be removed in order to facilitate the development and the way that retained trees will be protected for the duration of the construction phase of any planning permission that may be granted.

Trees contained in A1, G1 and G2 on the south-eastern boundary of the application site have low visual amenity value and are either poorly formed specimens or inappropriate species for their location. These trees are marked for removal. T1 and T2 Beech are well-formed specimens with high visual amenity value. Both trees are shown as retained. The need for specialist construction techniques for

works within their Root Protection Areas has been identified. The retention of these trees is not threatened by the development proposal and as long as the measures set out in the tree report are adhered to it should be possible for construction works to be carried out without causing harm to them: however there may be post development pressures for crown reduction works to be carried out to them once dwellings are inhabited.

On the western boundary the trees marked for retention are:- T3 to T6, Beech, Cedar, Redwood and Holly, T8 Yew, T12 Field Maple, T16 Cypress T17 Field Maple, T20 to T23 Pine, Holly, Field Maple and Thuya. These trees are either: on the application site and close to the boundary or just outside the application site and close to the boundary. As with T1 and T2 the retention of these trees is not threatened by the development proposal but there may be pressure for works to be carried out to them once dwellings are inhabited.

The only trees marked for retention of the north eastern boundary are those contained in G5 - Beech, T29 Common Yew and T33 Beech. As above the site layout makes provision for their retention and they are not at risk as a result of the development proposal however, they too, may be susceptible to post development pressures.

In addition to the removal of the trees contained in A1, G1 and G2, the development proposal also identifies the removal of G4, G6 and G7 as well as 17 individual trees, 5 of which are in such condition that their removal is warranted regardless of the proposal to develop the land.

The best trees that would be lost would be the 2 Beech in G6 which are accurately described in the tree report as 'two high quality mature Beech located adjacent to one another and which coalesce to form a homogenous canopy'. These trees are significant features in the landscape and make a positive contribution to the character and appearance of the area. It is not possible to secure replacement planting to mitigate for the loss of these trees.

The other tree that is a particularly good specimen is T11 Lime. The tree has no significant defects and is a mature healthy specimen. Although it appears stable it is positioned on an earth bund and this may affect the trees stability. This does not appear to be a problem at the present time but may be more of an issue if trees around it were to be removed as this would alter the load bearing stresses within the crown of the tree.

In terms of the landscape impact of the development proposal it is clear that demolition of Clay Hall and the removal of such a number of trees growing in close proximity to one another will significantly alter the character of the area and affect the public's use and enjoyment of the recreation ground. However, when considering whether any of the trees that are at risk as a result of the development proposal merit protection by means of a Tree Preservation Order it is clear that only a few merit such action. Most of the trees that merit formal legal protection are shown on the Arboricultural Impact Assessment (AIA) as retained the exception being the 2 Beech G6 and the Lime T11.

It is worth drawing attention to the vandalism caused to Clay Hall and the damage to some of the main stems of the surrounding trees. Whilst the retention and protection of trees will be an important part of the development of the land the behavioural problems associated with this part of the recreation ground cannot be ignored. It will be necessary to reach a compromise between the conflicting objectives of retaining the best trees on the application site and achieving a satisfactory level of development.

It should be recognised that at the present time none of the trees on the land are afforded formal legal protection and could be felled at any time without the need to obtain the local planning authorities consent.

Should consent be likely to be granted then it will be necessary to ensure that the harm caused to the character of the recreation ground is minimised by appropriate hard and soft landscaping works. The treatment of the boundaries of the new development will be a key element to achieving a satisfactory layout. Close board or panel fencing will not be appropriate demarcation for the boundary of the development with the recreation ground. The boundary should be demarcated by something more substantial such as a boundary wall with new soft landscaping on the recreation ground side of the wall.

Should planning permission be likely to be granted then a hard and soft landscaping condition should be attached to secure details of boundary treatments and tree, shrub and hedge planting to soften and enhance the appearance of the development.

#### Revised comments dated 13 January 2016 following receipt of Landscaping Scheme

The proposed soft landscaping scheme is comprehensive and shows a good level of new tree, shrub and hedge planting.

Whilst it is not possible to replicate the amenity value of the trees that would be removed to facilitate the development of the land the planting of 17 new trees will go some way to compensate for the harm caused by the removal of existing trees.

The soft landscaping proposals include sufficient details relating to nursery stock species and specification.

In terms of hard landscaping and boundary treatments the Landscape Proposals Plan shows a 1.8m tall close boarded fence on the boundary of the application site, abutting the recreation ground.

Experience shows that the fence is likely to be used by persons using the recreation ground as either a 'Back Stop' for ball games or as a 'Rebound Wall'. This may well cause problems because of the noise it will make and may result in damage to the fence. It may be desirable to consider replacing the fence with a brick wall or setting the fence back into the site to enable planting to be carried out against the outward facing side of the fence to discourage these activities. This may, however, make it difficult to carry out care and maintenance of such planting.



## **ECC Highways Dept**

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to conditions:

1. Provision of the carriageway and footway connection between the proposed development site and Wyndham Crescent in accordance with Drawing Numbered 1303 01.
2. Provision of a turning facility.
3. Construction of vehicular access to a minimum width of 5.5 metres.
4. Provision of communal recycling/bin/refuse collection point within 25m of the highway boundary or adjacent to the highway boundary.
5. All off street car parking in accordance the details contained within the current Parking Standards.
6. Provision of Construction Method Statement (CMS) to include:
  - i. the parking of vehicles of site operatives and visitors
  - ii. loading and unloading of plant and materials
  - iii. storage of plant and materials used in constructing the development
  - iv. wheel and under body washing facilities
7. The public's rights and ease of passage over Public Footpath No.36 (Gt Clacton) shall be maintained free and unobstructed at all times.

## **Open Space Consultation**

Due to the significant lack of play facilities in the area a contribution, in line with PEO22, towards play is justified and relevant to the application and that this money would be spent at the closest play area, being Vista Road, Clacton on Sea. However, Clacton on Sea is well provided of in terms of open space and we do not consider that a contribution towards additional formal open space is necessary or relevant to this application.

## **Sport England**

The proposal involves the loss of a section of playing field which has been segregated using bollards and has been used as overflow car parking. The LPA has stated that the car parking available at the Leisure Centre and the rear of the Indoor Bowls Club also serves the playing field.

Having assessed the application, Sport England is satisfied that the proposed development meets the following Sport England Policy exception:

E3 – The proposed development affects only land incapable of forming, or forming part of a playing pitch, and does not result in the loss, or inability to make use of any playing pitch (including the maintenance of adequate safety margins), a reduction in the size of the playing area of any pitch or the loss of any other sporting/ancillary facility on the site.

Sport England does not wish to raise an objection to this application.

## **5. Representations**

- 5.1 The former Councillor A. Mooney objected to the application and requested that it is referred to Planning Committee on the following grounds:

- the site represents green space in the centre of Clacton, with mature trees.
- the benefit of 8 bungalows does not offset this loss.

5.2 A letter has also been received from Douglas Carswell MP enclosing an objection from a local resident objecting to the application. The objection is summarised with the other objections that have been received and which are summarised below.

5.3 A total of 39 objections have been received as summarised:

- Object to the demolition of Clay Hall and its contribution to the town's history to allow development for unnecessary housing that will not genuinely be for local people.
- Consideration should be given to retaining and converting Clay Hall – possibly as flats at affordable rents.
- Developments should be outside the settlement boundary rather than on public open space.
- The original tender suggested five dwellings and the application proposes eight.
- Loss of open space/playing fields and tranquil green space that should be retained as a nature reserve.
- Loss of open space and impact on biodiversity is contrary to government policy.
- Loss of trees/Clay Hall Spinney that should be preserved and impact on remaining trees.
- New planting will take many years before it can compensate for the loss of the existing trees that are to be removed and it will be out of character and stark.
- Impact on public right of way.
- Impact on wildlife and flora.
- Impact of the construction on the nearby school, local highways.
- Increase in traffic and construction traffic via unadopted roads.
- Empty residential properties should be brought back to use first.
- Lack of facilities including schools and surgeries.
- Development is against the wishes of local people and is only being considered because of the financial benefit it will bring to the Council and the applicant.
- Poor design of proposed dwellings.
- Concern that the Committee members did not walk the site at the site visit and so could not make an informed decision.
- The officer's report did not refer to para 77 of the NPPF (relating to the designation of local green space/public open space), para 58, 61, 64, 73 and 109 (relating to design; the natural environment; access to public open space the Natural Environment and Rural Communities Act 2006 or Capital Asset Value of Community Trees).
- A preliminary ecological appraisal has not been undertaken contrary to the Natural Environment and Rural Communities Act 2006 (and case law and the Council's own guidance). The Act places a duty on the Council to conserve biodiversity.
- A bat survey has not been undertaken contrary to Natural England's standing advice and therefore the Council cannot determine the application and fulfil its duty under the Natural Environment and Rural Communities Act 2006 and the Conservation of Habitats and Species Regulations 2010. The Council should either refuse the application due to the lack of information or defer it until the necessary surveys have been completed.

## 6. **Assessment**

The main planning considerations are:

- Principle of Development
- Demolition of Clay Hall
- Loss of Open Space
- Impact on Trees/Biodiversity
- Design; Layout; Residential Amenity and Impact on Public Right of Way
- Highway Safety
- Planning Gain

## **Proposal**

- 6.1 The application site, including the property known as Clay Hall, is owned by the Council. A decision was taken to dispose of the site in July 2015.
- 6.2 This application seeks full planning permission for the development of eight 2 bed bungalows following the demolition of Clay Hall. The bungalows are to be constructed of a mix of brick and render or brick under a tiled roof.
- 6.3 Each bungalow is to be served by two parking spaces – comprising a garage space and one driveway space.
- 6.4 The proposed development requires the removal of a number of trees either to facilitate development or due to their condition. A full schedule of works is included within the Arboricultural Survey that accompanies the application.
- 6.5 The proposed landscaping scheme proposes planting of 17 trees along with woodland and hedgerow planting and other grasses and low level shrubs.
- 6.6 Vehicular access is to be via the existing access from Wyndham Crescent.
- 6.7 Public right of way (Public Footpath 36) is to be retained on its current alignment.

## **Site Location**

- 6.8 The application site is situated to the west of Wyndham Crescent, within the settlement boundary for Clacton on Sea both in the Adopted and Emerging Local Plans. It is bounded to the north, south and west by the public open space/playing fields and pitches known as Vista Road recreation ground. Wyndham Crescent is characterised by a mix of single and one and a half storey properties. The site covers an area of approximately 0.5 hectares. The site is currently occupied by Clay Hall which is a two storey, Victorian Villa that was originally built as a farmhouse in the 1880's and that was more recently used up until 2012 as offices (in connection with Council business) and as a sports changing facility. The site is also occupied by a range of mature trees that are described and assessed in full with the accompanying Tree Report.
- 6.9 The application is accompanied by the following documents:
  - Applications forms
  - Site Plan 303 01
  - Plans and elevations Plots 3, 4, 5 and 6 1303 02
  - Plans and elevations Plots 1, 2, 7, and 8 1303 03
  - Garages 1303 04
  - Tree survey and arboricultural assessment
  - Tree survey and arboricultural assessment plan
  - Landscape Proposals NC15.216-P201 and NC15.216-P202
  - Preliminary Ecological Appraisal 7 March 2016
  - Interim Bat Survey Report 1 June 2016
  - Final Bat Survey Report 12 June 2016

## **Principle of Development**

- 6.10 The site lies within the Settlement Development Boundary of Clacton on Sea in the Adopted Local Plan (Tendring District Local Plan 2007) and in the Emerging Plan (Tendring District Local Plan Proposed Submission Draft 2012).

- 6.11 Given that the Tendring District Local Plan Proposed Submission Draft 2012 and Focussed Changes 2014 are not yet fully adopted and are subject to change, in accordance with a number of appeal decisions, it can only be given limited weight.
- 6.12 The Council accepts that both the adopted and emerging Local Plans fall significantly short in identifying sufficient land to meet the objectively assessed future need for housing and cannot identify a deliverable five year supply of housing sites toward meeting that requirement. Therefore, in accordance with paragraph 49 of the NPPF, relevant development policies for the supply of housing should not be considered as up to date and the 'presumption in favour of sustainable development' as set out in the NPPF should apply to housing proposals.
- 6.13 Paragraph 7 of the NPPF states that there are three dimensions to sustainable development; economic, social and environmental and that these roles should not be undertaken in isolation, because they are mutually dependent. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
- 6.14 Economically the construction and habitation of 8 dwellings would be of economic benefit through the construction of new housing and the local benefit that new residents could bring to the local economy.
- 6.15 In terms of the social role, the site is situated in the settlement boundary of Clacton which is defined by both the Adopted and Emerging Local Plans as an Urban Area where development should be focussed. Clacton is a socially sustainable location for large scale some development, with a full range of local facilities within close proximity to the site.
- 6.16 Environmental sustainability is about contributing to protecting and enhancing our natural, built and historic environment; and as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution and mitigate and adapt to climate change including moving to a low carbon economy. A major issue with regard to the environmental sustainability of the site is its tree cover and potential to provide habitat for protected species (bats), which is discussed in detail below and its impact on the surrounding area.

### **Demolition of Clay Hall**

- 6.17 The NPPF and National Planning Policy Guidance seek to protect the historic environment. Policies of the Adopted and Emerging Local Plans replicate this aspiration. Many of the representations received in relation to the application refer to the loss of Clay Hall through its demolition.
- 6.18 Clay Hall was constructed in around 1880 as a farmhouse. It has more recently been used as offices in connection with Council business and as a sport's changing facility. It was last used in 2012.
- 6.19 Whilst the building is of pleasant appearance and plays a part in the history of the evolution of Clacton, it has no statutory protection. It is not listed either on the national List of Buildings of Special Architectural or Historic Interest or on any Local List. The criteria for listing a building includes its age and rarity; architectural interest; historic interest; historical association with nationally important people or events; or as group value. Clay Hall would not fit this criteria. It is not within a designated Conservation Area. The demolition of the building cannot be objected to in principle and is not contrary to national or local development plan policy.

### **Loss of Open Space**

- 6.20 National and local development plan policies and national planning policy guidance seek to protect the development of open spaces and playing fields/pitches from development.
- 6.21 Several objectors are concerned that the development will result in the loss of recreational open space and local, tranquil green space.
- 6.22 The land on which Clay Hall stands and its immediate curtilage is identified as 'whiteland' in the development plan – in other words it has no particular land use designation, however, part of the site (to the south) is identified in the Adopted and Emerging Local Plans as public open space or local green space (even though it is more often used as an overflow car park). As a result, Sport England has been notified as a statutory consultee in accordance with the General Permitted Development Procedure Order 2015. Sport England has responded that they do not wish to object to the application.
- 6.23 The application will not need to be referred to the Secretary of State, in the absence of an objection from Sport England, and the proposal is not considered contrary to those policies that seek to protect public open spaces from development. In terms of the loss of tranquil open space, this only amounts to approximately 0.25 hectares. The loss of such a small area which is often used as an overspill parking area in connection with the sports pitches cannot be considered as having a material adverse impact.

#### **Impact on Trees/Biodiversity**

- 6.24 The application proposal involves the removal of a number of trees to facilitate the development along with some that would need to be removed in any event due to their existing condition. Many of the objections relate specifically to the loss of the existing trees.
- 6.25 The Town and Country Planning Act seeks to protect trees and both national and local plan policies seek to protect the natural environment.
- 6.26 None of the trees on site are protected by virtue of tree preservation orders and could be felled at any time without the need to obtain the local planning authority's consent.
- 6.27 The application is accompanied by an Arboricultural Report that is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations.
- 6.28 The Council's Tree and Landscape Officer has carefully assessed the report and the impact of the development and comments as follows:
- 6.29 The report accurately describes the general health and condition of the trees on the application site and adjacent land; it accurately shows the extent to which they affect the development potential of the land. The report identifies those trees to be removed in order to facilitate the development and the way that retained trees will be protected for the duration of the construction phase of any planning permission that may be granted.
- 6.30 Trees contained in A1, G1 and G2 on the south-eastern boundary of the application site have low visual amenity value and are either poorly formed specimens or inappropriate species for their location. These trees are marked for removal. T1 and T2 Beech are well-formed specimens with high visual amenity value. Both trees are shown as retained. The need for specialist construction techniques for works within their Root Protection Areas has been identified. The retention of these trees is not threatened by the development proposal and as long as the measures set out in the tree report are adhered to it should be possible for construction works to be carried out without causing harm to them; however there may be post development pressures for crown reduction works to be carried out to them once

dwellings are inhabited. As a result it is proposed to impose a condition that would secure a post construction tree management plan.

- 6.31 On the western boundary the trees marked for retention are:- T3 to T6, Beech, Cedar, Redwood and Holly, T8 Yew, T12 Field Maple, T16 Cypress T17 Field Maple, T20 to T23 Pine, Holly, Field Maple and Thuya. These trees are either: on the application site and close to the boundary or just outside the application site and close to the boundary. As with T1 and T2 the retention of these trees is not threatened by the development proposal but there may be pressure for works to be carried out to them once dwellings are inhabited. As a result it is proposed to impose a condition that would secure a post construction tree management plan.
- 6.32 The only trees marked for retention of the north eastern boundary are those contained in G5 - Beech, T29 Common Yew and T33 Beech. As above the site layout makes provision for their retention and they are not at risk as a result of the development proposal however, they too, may be susceptible to post development pressures. As a result it is proposed to impose a condition that would secure a post construction tree management plan.
- 6.33 In addition to the removal of the trees contained in A1, G1 and G2, the development proposal also identifies the removal of G4, G6 and G7 as well as 17 individual trees, 5 of which are in such condition that their removal is warranted regardless of the proposal to develop the land.
- 6.34 The best trees that would be lost would be the 2 Beech in G6 which are accurately described in the tree report as 'two high quality mature Beech located adjacent to one another and which coalesce to form a homogenous canopy'. These trees are significant features in the landscape and make a positive contribution to the character and appearance of the area. It is not possible to secure replacement planting to fully mitigate for the loss of these trees.
- 6.35 The other tree that is a particularly good specimen is T11 Lime. The tree has no significant defects and is a mature healthy specimen. Although it appears stable it is positioned on an earth bund and this may affect the trees stability. This does not appear to be a problem at the present time but may be more of an issue if trees around it were to be removed as this would alter the load bearing stresses within the crown of the tree.
- 6.36 In terms of the landscape impact of the development proposal it is clear that the removal of such a number of trees growing in close proximity to one another will significantly alter the character of the area and affect the public's use and enjoyment of the recreation ground. However, when considering whether any of the trees that are at risk as a result of the development proposal merit protection by means of a Tree Preservation Order it is clear that only a few merit such action. Most of the trees that merit formal legal protection are shown on the Arboricultural Impact Assessment (AIA) as retained the exception being the 2 Beech G6 and the Lime T11.
- 6.37 The loss of these trees has to be weighed against the benefits of the development, in accordance with the requirements of the NPPF, and it must be noted that the vandalism caused to Clay Hall has also resulted in damage to some of the main stems of the surrounding trees. Whilst the retention and protection of trees will be an important part of the development of the land the behavioural problems associated with this part of the recreation ground cannot be ignored. It will be necessary to reach a compromise between the conflicting objectives of retaining the best trees on the application site and achieving a satisfactory level of development.
- 6.38 The application is also accompanied by a comprehensive landscaping scheme. The proposed soft landscaping scheme shows a good level of new tree, shrub and hedge planting.

- 6.39 Whilst it is not possible to replicate the amenity value of the trees that would be removed to facilitate the development of the land the planting of 17 new trees will go some way to compensate for the harm caused by the removal of existing trees as will the intention to plant native hedgerows and shrubs. One of the objectors refers to the lack of an exercise called a Capital Asset Value of Community Trees (CAVAT). CAVAT is one of a number of tools that have been designed by professionals within the arboricultural industry, over a period of the last 100 years, to express the value of trees in monetary terms. There is no statutory requirement for Councils or other public bodies to use any of these systems which are intended to be used as a basis for managing trees as public assets rather than liabilities. The ascribing of a monetary value to a tree may be useful but it is not 'real' in the sense that the value assigned to any given tree can ever be materialised.
- 6.40 In terms of biodiversity, the application was deferred from the agenda on 2 February 2016 in order to consider the late submission of objections that had been received on biodiversity grounds. The officer's report originally indicated that there is potential for the site to provide habitats for wildlife and therefore a condition was proposed to secure a Phase 1 Habitat Survey and a Ecological Management Plan in order to mitigate against any identified adverse impacts. Members will be aware that the Council's procedures in relation to such matters have recently been amended. In accordance with this revised approach, the applicant has submitted a Preliminary Ecological Appraisal 7 March 2016; an Interim Bat Survey Report 1 June 2016; and a Final Bat Survey Report 12 June 2016.
- 6.41 The initial report in March concluded that the building had high potential to support roosting bats and one tree (the willow tree) had potential to support roosting bats and so the site should be subject to further surveys. The report also concluded that the site provides suitable habitat for nesting birds and that either demolition and building work should take place outside of the nesting season or that before such works commenced a check for nesting birds should be undertaken and any nests should be left in situ until the young have left the nest. The report concluded that the site was not likely to support any other protected species and that, with the retained trees and proposed planting, the proposal would have a negligible to low impact upon wildlife.
- 6.42 In accordance with the initial report, two further surveys were undertaken to establish the presence of bats on the site. The first report on 1 June 2016 was based on two dusk emergence surveys. This report concluded that it was unlikely that bats are using the building or tree to roost. However, to ensure this to be the case, a further dawn re-entry survey was recommended. The final report includes the results of the dawn re-entry survey and concludes that no bats have been recorded roosting in the building or tree and it is unlikely that they are using these features to roost.
- 6.43 The tree cover to the north of Clay Hall was confirmed to be of value to small numbers of foraging common pipistrelle *Pipistrellus pipistrellus* and soprano pipistrelle *P. pygmaeus* bats. Recommendations are given to retain as many of the boundary trees as possible and to enhance the site with wildlife friendly planting and ensure the site boundaries remain dark at night and to remove the building and tree in a bat friendly manner. These recommendations are covered in the suggested conditions.
- 6.44 In conclusion, the development will have an minor adverse impact on the existing natural environment but for the reasons identified above it is not considered that these outweigh the benefits of the scheme in contributing towards the lack of housing supply in what is a sustainable, urban location.

**Design; Layout; Residential Amenity and Impact on Public Right of Way**

- 6.45 The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, in indivisible from good planning, and should contribute positively to making places better for people. One of the core planning principles of The National Planning Policy Framework (NPPF) as stated at paragraph 17 is to always seek to secure high quality design.
- 6.46 Policy QL9 and EN1 of the Tendring District Local Plan 2007 (Saved Plan) and Policy SD9 of the Tendring District Local Plan Proposed Submission Draft 2012 (Draft Plan) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape.
- 6.47 The NPPF, at paragraph 17 also states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. Policy SD9 of the Draft Plan carries forward the sentiments of these saved policies and states that 'the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'.
- 6.48 The scheme proposes single storey dwellings that are of a design and density in keeping with the character of the surrounding built development.
- 6.49 Due to the single storey nature of the development there will be no overlooking or overshadowing of neighbouring properties and a condition is suggested that would control the future conversion of roof areas to living accommodation to ensure that this remains to be the case.
- 6.50 The proposal accords with amenity space policies in the adopted local plan.
- 6.51 The layout of the proposal incorporates the retention of Public Footpath 36 in its existing position and alignment. A condition is proposed to ensure that this is not obstructed and that an appropriate surface is introduced.
- 6.52 The residential development is considered acceptable in terms of design, layout, density and impact on residential amenity and therefore it complies with the relevant national and local development plan policies.

### **Highway Safety**

- 6.53 Policy QL10 of the Saved Plan states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. This requirement is also carried forward to Policy SD9 of the Draft Plan.
- 6.54 The vehicular access to the site currently provides access to Clay Hall, its car park and the overflow car park. The County Highway Authority do not object to the development subject to a number of conditions (previously listed in this report).
- 6.55 One of the conditions relates to the submission of a Construction Management Plan that will ensure minimum disruption to the local highway network and neighbouring properties during the construction phase.
- 6.56 The proposed parking spaces are in accordance with the current parking standards in both terms of numbers and dimensions.



- 6.57 The number of dwellings proposed will not result in any material increase in traffic to the site and would certainly not result in severe traffic impacts – which is the test referred to in the NPPF.
- 6.58 The development is therefore considered acceptable in highway safety terms and is in accord with both national and local plan policies.

### **Planning Gain**

- 6.59 The Council's Leisure Services Manager has commented that Policy COM6 of the Adopted Plan and PEO22 of the emerging Local Plan are relevant to this consideration. There is a deficit of play space in the area and therefore a contribution towards additional facilities is considered to be relevant to the development and necessary to make it acceptable.
- 6.60 Since the submission of this application the decision by the Court of Appeal in West Berkshire District Council and Reading Borough Council v. Secretary of State for Communities and Local Government [2016] EWCA Civ 441 the National Planning Practice Guidance (NPPG) has now been amended so as to prohibit the Council from enforcing levies on certain development schemes.
- 6.61 This amendment now means that tariff style contributions (such as those previously secured for play space/equipment and formal open space) can no longer be imposed on development schemes of 10 or less dwellings.

### **Conclusion**

- 6.62 In the absence of an up-to-date Local Plan and the subsequent need to consider the proposal against the NPPF presumption in favour of sustainable development, the proposal achieves an appropriate balance between economic, social and environmental considerations. It is considered that the proposal represents sustainable development.
- 6.63 Whilst the proposal would result in the loss of mature trees it would also provide some replacement planting to compensate for this loss.
- 6.64 It is considered that the site is capable of accommodating 8 no. bungalows without resulting in material harm to protected species; the loss of public open space or to the character of the surrounding area whilst preserving the amenities of neighbouring residents and meeting the requirements of Essex County Council Highways for a suitable access that would not result in harm to highway safety.
- 6.65 The site is within the settlement boundary of Clacton on Sea and therefore it is in a sustainable location meeting the three dimensions of sustainable development as defined in the NPPF. In the absence of an up-to-date Local Plan and the subsequent need to consider the proposal against the NPPF presumption in favour of sustainable development, the application is recommended for approval as it accords with development plan policy and the adverse impacts of the development would not outweigh the benefits of doing so when assessed against the policies of the NPPF as a whole.

### **Background Papers**

None.